

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**UNITED STATES OF AMERICA** : **CRIMINAL NO. 07-693**

**v.** : **DATE FILED: May 6, 2010**

**PAUL M. EUSTACE** : **VIOLATIONS:**

: **7 U.S.C. §§60, 13(a)(2) (commodities**

: **fraud - 6 counts)**

: **18 U.S.C. §1343 (wire fraud -5 counts)**

: **Notice of forfeiture**

**SUPERSEDING INDICTMENT**

**COUNTS ONE THROUGH SIX**

**THE GRAND JURY CHARGES THAT:**

At all times material to this superseding indictment:

**COMMODITY FUTURES TRADING**

1. The Commodity Futures Trading Commission (“CFTC”) was an agency of the United States government with responsibilities under federal law for administering and enforcing the provisions of the Commodity Exchange Act (“CEA”).

2. In addition to the CFTC, the commodity futures industry is also subject to oversight by registered futures associations. While the CFTC provides nationwide oversight of the entire commodity futures industry, each commodity exchange has its own self-regulatory organization, and establishes rules which govern the brokers, traders and member firms which operate on that exchange. In addition to self-governing bodies for each of the individual commodity exchanges, the National Futures Association (“NFA”), pursuant to delegated authority by the CFTC, “regulates every firm or individual who conducts futures trading business

with public customers.” The NFA has the power to “deny, revoke, suspend, restrict or condition” any firm’s or individual’s registration.

3. Regulatory responsibilities of the CFTC include, but are not limited to, the regulation of commodity pools, which may engage in transactions involving commodity futures, commodity options and the exchange of futures for physicals (“EFPs”):

a. A commodity future contract is an agreement to purchase or sell a commodity for delivery in the future: (1) at a price that is determined at initiation of the contract; (2) that obligates each party to the contract to fulfill the contract at the specified price; (3) that is used to assume or shift price risk; and (4) that may be satisfied by delivery or offset.

b. A commodity option is an option on a commodity or futures contract that gives the buyer the right, but not the obligation, to buy or sell a specific amount of a commodity or other instrument at a specific price at a specified date in the future, regardless of the market price of that commodity or instrument.

c. A physical is the actual commodity or cash, as distinguished from a futures contract. The physical may be delivered to satisfy obligations on a futures contract.

d. An EFP is a form of privately negotiated transaction which, while subject to exchange rules and CFTC regulations, is not conducted on an exchange. For example, one party to an EFP transaction may buy physical assets and sell a corresponding amount of futures contracts while the other sells physical assets and buys futures contracts at a privately agreed upon price. In this way both parties are able to close out their opposite position in futures at the same time.

e. A commodity pool is an entity in which multiple individuals or entities contribute funds in order to trade futures or futures options as a group. A commodity pool is intended to enable the investors to make investments as a group that they might not be able to or want to make individually, and to minimize the risks to individual investors by enabling them to invest in a broader range of investment opportunities.

4. A commodity pool operator is a person engaged in a business in the nature of an investment trust or similar form of enterprise and who solicits, accepts, or receives funds from others for the purpose of trading in commodity futures contracts. 7 U.S.C. § 1a(5). Typically, the funds received from investors by a commodity pool operator are combined in commodity pools and used to trade in commodity futures contracts or commodity options.

5. An associated person of a commodity pool operator is one who solicits or accepts orders or participation in the pool.

6. Commodity pool operators and associated persons are required to be registered with the CFTC unless they qualify for an exemption under the CEA and/or CFTC regulations.

7. Commodity pool operators typically receive a management fee based on the amount of assets in the funds they manage. Thus, fees to commodity pool operators usually increase when the amount of assets under their control increases.

8. Some commodity pool operators also receive substantial additional fees based upon the performance of the funds under their management. Depending on the fund, a commodity pool operator may receive fees of 20 percent or more based upon the increase in the value of the fund from the preceding reporting period.

9. Trading of commodity futures and options usually takes place in trading accounts held at a futures commission merchant registered with the CFTC. A futures commission merchant is an individual or organization, similar to a brokerage house, that solicits or accepts orders to buy or sell commodity futures or options in accordance with the rules of an exchange. A futures commission merchant may also accept money from and extend credit to clients, hold money for clients in accounts and guarantee or secure trades or contracts.

10. The administration of commodity pools is done either by the commodity pool operator or fund manager and/or by a third party administrator. In addition to other functions, an administrator is situated to protect funds from fraud by acting as a buffer between the commodity pool operator and the funds, and also between the investors and the funds. For this reason, the administrator is supposed to report to investors based upon information received directly from the institutions holding the trading accounts rather than on information from the pool operator or the funds themselves.

11. In order to carry out their duties, third party administrators typically have access, via the internet or other means, to financial transactions taking place in a fund's trading accounts held at futures commission merchants. After receiving information from the futures commission merchants, the administrator prepares statements for investors based on the information received from those entities.

12. Investors in commodity pools may receive statements from the third party administrator informing them of the Net Asset Value ("NAV") of the investors holdings. The NAV is calculated by subtracting the liabilities of a fund from its assets, and then dividing that

answer by the number of investment shares. In other words, it provides the net value of each unit of participation in a commodity pool.

13. By statute, commodity pool operators and associated persons of commodity pool operators are prohibited from using any means of interstate commerce to (A) employ any device, scheme or artifice to defraud any client or participant or prospective client or participant, or (B) engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant. 7 U.S.C. § 6o.

#### **DEFENDANT AND OTHER COMPANIES AND INDIVIDUALS**

14. The Option Capital Fund LLC (“Option Capital Fund”) was a commodity pool which traded primarily commodity futures and options. Defendant PAUL M. EUSTACE was the General Partner and operator of the Option Capital Fund, over which he exercised complete control. Defendant EUSTACE did not register as required with the CFTC as a commodity pool operator for this fund.

15. The Philadelphia Alternative Asset Management Company, LLC (“PAAM”), located in King of Prussia, Pennsylvania and Canada was formed by defendant PAUL M. EUSTACE, and Persons #1, #2, and #3, known to the grand jury. PAAM was registered with the CFTC as a commodity pool operator. Defendant EUSTACE, who was the President and principal trader for PAAM, was registered with the CFTC as an associated person of PAAM. Defendant EUSTACE conducted his trading on behalf of PAAM out of Canada. The administrative functions were often handled by the King of Prussia office, including sending out

statements and correspondence to investors throughout the United States and abroad in accordance with defendant EUSTACE's instructions.

16. The Philadelphia Alternative Asset Fund, LP ("LP Fund"), was established by PAAM and defendant PAUL M. EUSTACE to trade commodity futures and options contracts. PAAM was the General Partner of the LP Fund. Defendant EUSTACE, who was the trader of the LP Fund, was the only individual authorized signatory on LP Fund bank accounts, and he had exclusive control over the assets and trading of the LP Fund.

17. The Philadelphia Alternative Asset Fund, Ltd. ("Off-Shore Fund") was established by PAAM and defendant PAUL M. EUSTACE. The Off-Shore Fund, which was based in the Cayman Islands, traded commodity futures and options on United States futures exchanges. The Off-Shore Fund also traded foreign currencies and engaged in the exchange of futures for physicals ("FEP trades"). Defendant EUSTACE conducted trades, or directed the conducting of trades, for the Off-Shore Fund, and had control of all of the Off-Shore Fund's trading accounts.

18. The Philadelphia Asset Feeder Fund LLC ("Feeder Fund") was established by PAAM and defendant PAUL M. EUSTACE for the purpose of allowing investors in the United States to participate in the Off-Shore Fund, which they otherwise would have been prohibited from doing as a result of regulatory constraints. The Feeder Fund did not maintain any trading accounts in its own name.

19. MAN Financial Inc. ("MAN") is a futures commission merchant. Person #1 was employed by MAN. Defendant PAUL M. EUSTACE opened several accounts in the name of the Off-Shore Fund at MAN, including but not limited to the "10 account" and the "50

account.” Defendant EUSTACE had sole trading authority over these accounts. The third-party administrator of the Off-Shore Fund had internet access to information concerning the “10 account” but not to the “50 account.”

20. UBS Securities, LLC (“UBS Securities”) is also a futures commission merchant. Defendant PAUL M. EUSTACE opened one account in the name of the Off-Shore Fund at UBS Securities. Defendant EUSTACE had control of trading in this account.

21. UBS Fund Services (Cayman) Ltd. (“UBS Cayman”) was the administrator of the Off-Shore Fund. UBS Cayman prepared statements for investors in the Off-Shore Fund (“NAV statements”), primarily relying on Off-Shore Fund account information that UBS Cayman accessed through web sites and computer systems maintained by MAN and UBS Securities. Defendant PAUL M. EUSTACE usually also sent investors in the Off-Shore Fund a statement based on the same information from MAN and UBS Securities, which meant that investors in the Off-Shore Fund would receive two statements for the same reporting period, one from UBS Cayman and one from defendant EUSTACE.

22. Defendant PAUL M. EUSTACE also caused correspondence and statements pertaining to the performance of funds under his control to be sent to investors, including individual investors in the Off-Shore Fund and the Feeder Fund, from PAAM’s offices in King of Prussia, Pennsylvania.

### **THE SCHEME**

23. From at least Spring 2001 through in or about June 2005, in the Eastern District of Pennsylvania, and elsewhere, defendant

**PAUL M. EUSTACE**

knowingly employed a scheme to defraud clients and participants, and prospective clients and participants of the Option Capital Fund, the LP Fund, the Off-Shore Fund and the Feeder Fund, causing losses to these victims of at least \$200 million.

### **MANNER AND MEANS**

It was part of the scheme that:

24. Defendant PAUL M. EUSTACE fraudulently induced investors to participate or increase their investment in commodity pools for which he was the commodity pool operator or associated person, and induced existing investors to continue to participate in these commodity pools, by failing to disclose material facts concerning these commodity pools, and by issuing or causing to be issued account statements which made it appear that the funds under his control were profitable, when in fact they were sustaining losses.

25. As a result of defendant PAUL M. EUSTACE's fraudulent actions in making the funds appear profitable when they were actually losing money, defendant EUSTACE greatly increased the amount of fees he received. Management fees were based upon the amount of assets under defendant EUSTACE's control, and by attracting and retaining more money in the funds under his control, defendant EUSTACE also increased the fees he received. Also, because defendant EUSTACE received a percentage of the increase in value of the funds under his control, he received additional fees as the funds reported greater profits.

26. From in or about Spring 2001 through in or about June 2005, defendant PAUL M. EUSTACE solicited at least \$4 million from at least 12 investors for Option Capital Fund. Defendant EUSTACE defrauded investors and potential investors in the Option Capital Fund by:

a. failing to disclose his losing investment track record to investors and potential investors, and/or by affirmatively telling investors and potential investors that funds under his management had been profitable, when in fact those funds had suffered significant losses;

b. issuing statements to investors from in or about March 2003 through in or about June 2005, which showed that the Option Capital Fund was profitable, when defendant EUSTACE knew that (1) the fund was not profitable as indicated on statements sent to investors; and (2) defendant EUSTACE had closed all of Option Capital Fund's trading accounts in or about March 2003; and

c. failing to inform investors that defendant EUSTACE had: (1) made loans to himself using the funds which belonged to the investors in the Option Capital Fund; (2) transferred money belonging to investors in the fund to his personal accounts; and (3) used approximately \$500,000 belonging to investors in the fund to pay a settlement in a legal case which defendant EUSTACE knew should not have been charged to the fund.

27. From in or about Fall 2002 through in or about June 2005, defendant PAUL M. EUSTACE solicited at least \$28 million from at least 10 investors for the LP Fund. Defendant EUSTACE defrauded investors and potential investors in the LP Fund by:

a. fraudulently providing investors and potential investors of the LP Fund information that indicated that the Option Capital Fund had been profitable, when defendant EUSTACE knew that the Option Capital Fund had not achieved the results he claimed;

b. sending fictitious statements to investors between Fall 2002 and May 2005, which falsely stated that the value of investor's LP Fund investments had increased

due to profitable trading of commodity futures and options, when defendant EUSTACE knew that the LP Fund had not achieved the results he claimed;

c. failing to disclose to investors and potential investors that no trading was ever done in the name of the LP Fund, and that all monies invested in the LP Fund were placed in accounts in the name of the Option Capital Fund or in defendant EUSTACE's personal accounts; and

d. failing to disclose the existence of the LP Fund for the first six months of an audit of PAAM by the NFA.

28. From in or about June 2004 through in or about June 2005, defendant PAUL M. EUSTACE solicited at least \$250 million from at least 60 investors for the Off-Shore and Feeder Funds. Defendant EUSTACE defrauded investors and potential investors in these funds by:

a. fraudulently providing investors and potential investors of the Off-Shore and Feeder Funds information that falsely indicated that the Option Capital Fund and the LP Fund had consistently profitably traded commodity futures and options, when defendant EUSTACE knew that the Option Capital Fund and LP Fund had not achieved the results he claimed;

b. fraudulently causing, at various times, USB Cayman, the fund administrator, to receive incorrect information concerning the time and/or date that certain EFP trades took place. Defendant EUSTACE caused this false information to be conveyed to UBS Cayman through Person #1, who was employed at MAN where many of the Off-Shore Fund's trading accounts were maintained, or by other means. By altering the time and/or date of these

EFP trades, defendant EUSTACE made it appear that the Off-Shore Fund was profitable in certain reporting periods when, if the timing of the trades had been correctly stated, statements to investors would have shown losses in those same reporting periods;

c. fraudulently failing to disclose, or denying the existence of the “50 account” at MAN. From approximately March 2005 through June 2005, defendant EUSTACE used the “50 account” as a secret account which could only be accessed on the internet by defendant EUSTACE;

d. fraudulently causing losing trades to appear in the “50 account,” while profitable trades were placed in the “10 account.” Because defendant EUSTACE had hidden the existence of the “50 account” at MAN from UBS Cayman, the fund administrator, and UBS Cayman did not have internet access to the “50 account,” these actions of defendant EUSTACE resulted in UBS Cayman receiving reports from MAN only on the profitable trades in the “10 account,” but not the losing trades in the “50 account;”

e. fraudulently causing UBS Cayman to issue NAV statements to the investors in the Off-Shore Fund which defendant PAUL EUSTACE knew incorrectly informed investors that the Off-Shore, and therefore the Feeder Fund had been profitable, when defendant EUSTACE knew that: (1) UBS Cayman did not know of the secret “50 account,” as defendant EUSTACE had blocked UBS from internet access to that account; and (2) UBS Cayman did not know that the Off-Shore Fund had massive losses which were hidden in the “50 account;” and

f. fraudulently sending or causing letters and statements to be sent to investors from PAAM’s offices in King of Prussia to investors in the United States and abroad by facsimile machine, which made it appear that the Off-Shore Fund and Feeder Fund were

profitable, when, as defendant EUSTACE well knew, these funds had sustained trading very substantial losses.

27. As of June 2005, accounts in commodity pools under the control of defendant PAUL M. EUSTACE had sustained heavy losses. The combined loss in the Option Capital and LP Fund was approximately \$22 million; the combined loss in the Off-Shore and Feeder Funds was approximately \$180 million. Total losses to investors as a result of defendant EUSTACE's fraudulent activity were therefore approximately \$202 million.

28. On or about each of the dates set forth below, in the Eastern District of Pennsylvania and elsewhere, defendant

**PAUL M. EUSTACE,**

being a commodity pool operator and associated person of a commodity pool operator knowingly violated Title 7, United States Code, Section 60(1), by the use of a means of interstate commerce, that is, the use of a facsimile machine to send documents from King of Prussia, Pennsylvania to New York, New York, for the purpose of executing the scheme described above:

<b>COUNT</b>	<b>DATE</b>	<b>DESCRIPTION</b>
1	May 9, 2005	Facsimile transmission of fund statement and correspondence from PAAM in King of Prussia, Pennsylvania to Bank of America in New York.
2	June 10, 2005	Facsimile transmission of fund statement and correspondence from PAAM in King of Prussia, Pennsylvania to Bank of America in New York.
3	June 10, 2005	Facsimile transmission of fund statement and correspondence from PAAM in King of Prussia, Pennsylvania to Fifth Third Bank in Cincinnati, OH.
4	June 10, 2005	Facsimile transmission of fund statement and correspondence from PAAM in King of Prussia,

Pennsylvania to Fortis Prime Fund Solutions,  
Dublin Ireland.

- |   |               |  |
|---|---------------|--|
| 5 | June 10, 2005 | Facsimile transmission of fund statement and correspondence from PAAM in King of Prussia, Pennsylvania to Head Start Class F. Holdings, Ltd., in the Grand Cayman, Cayman Islands. |
| 6 | June 10, 2005 | Facsimile transmission of fund statement and correspondence from PAAM in King of Prussia, Pennsylvania to HSBC Securities Services, Luxembourg.                                    |

All in violation of Title 7, United States Code, Sections 6o(1) and 13(a)(2).

**COUNTS SEVEN THROUGH ELEVEN**

**THE GRAND JURY FURTHER CHARGES THAT:**

1. Paragraphs 1-22 and 24-27 of Count One are incorporated here.
2. From at least Spring 2001 in or about June 2005, in the Eastern District of

Pennsylvania and elsewhere, defendant

**PAUL M. EUSTACE**

devised and intended to devise a scheme to defraud clients and participants, and prospective clients and participants of the Option Capital Fund, the LP Fund, the Off-Shore Fund, and the Feeder Fund, and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, causing losses to these victims of at least \$200 million.

3. On or about each of the dates set forth below, in the Eastern District of Pennsylvania and elsewhere, defendant

**PAUL M. EUSTACE,**

for the purpose of executing the scheme described above, caused to be transmitted by means of wire communication in interstate commerce the signals and sounds described below for each count, each transmission constituting a separate count:

<b>COUNT</b>	<b>DATE</b>	<b>DESCRIPTION</b>
7	June 10, 2005	Facsimile transmission of fund statement and correspondence from PAAM in King of Prussia, Pennsylvania to Bank of America in New York.
8	June 10, 2005	Facsimile transmission of fund statement and correspondence from PAAM in King of Prussia, Pennsylvania to Fifth Third Bank in Cincinnati, OH.
9	June 10, 2005	Facsimile transmission of fund statement and correspondence from PAAM in King of Prussia, Pennsylvania to Fortis Prime Fund Solutions, Dublin Ireland.
10	June 10, 2005	Facsimile transmission of fund statement and correspondence from PAAM in King of Prussia, Pennsylvania to Head Start Class F. Holdings, Ltd., in the Grand Cayman, Cayman Islands.
11	June 10, 2005	Facsimile transmission of fund statement and correspondence from PAAM in King of Prussia, Pennsylvania to HSBC Securities Services, Luxembourg.

All in violation of Title, 18, United States Code, Section 1343.

**NOTICE OF FORFEITURE**

**THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:**

1. As a result of the violations of Title 18, United States Code, Section 1343 set forth in this indictment, defendant

**PAUL M. EUSTACE**

shall forfeit to the United States of America any property constituting, or derived from, proceeds obtained directly or indirectly from the commission of such offenses.

2. If any of the property described above, 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 to, sold to, or deposited with a third party;
- c. has been placed beyond the jurisdiction of this 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 intention of the United States, pursuant to 21 U.S.C. § 853(p), to seek forfeiture of any other property of the defendant up to the value of the property subject to forfeiture.

All pursuant to Title 18, United States Code, Section 981(a)(1)(C), 28 U.S.C.

§ 2461, and United States Code, Section 853.

**A TRUE BILL:**

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**GRAND JURY FOREPERSON**

*Peter F Schenck for*

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**MICHAEL L. LEVY**  
**United States Attorney**