

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

UNITED STATES OF AMERICA	:	CRIMINAL NO: 13-_____
v.	:	DATE FILED: <u>February 7, 2013</u>
HELMUT KIENER	:	18 U.S.C. §§ 1343, 1349 (wire fraud - 4 counts)
	:	18 U.S.C. § 1344 (bank fraud - 2 counts)
	:	18 U.S.C. § 1956(a)(1) (money laundering - 3 counts)
	:	18 U.S.C. § 2 (aiding and abetting)
	:	Notice of forfeiture

INDICTMENT

COUNTS ONE AND TWO

**Defendant's Scheme to Defraud
Bear Stearns Using Bahamian Hedge Funds**

THE GRAND JURY CHARGES THAT:

At all times material to this indictment:

1. Defendant HELMUT KIENER, a German national, established and controlled several hedge funds which were marketed to various international financial institutions. Hedge funds are privately managed investment entities that are speculative, loosely regulated investment products, open only to qualified private investors and financial institutions. A hedge fund that invests in other hedge funds is called a "fund of funds."

2. John C. Tausche, a United States citizen charged elsewhere, owned and operated a financial consulting business located in Wichita, Kansas, through which he established and controlled certain hedge funds incorporated in the Bahamas. Tausche and defendant HELMUT KIENER were business associates.

3. Bear, Stearns International Limited was a global financial firm with affiliated offices located in London, England, and New York, NY. Bear Stearns Alternative Assets International, Ltd. (“BSAAIL”) was an Cayman Islands entity created to conduct investment transactions on behalf of Bear Stearns International Limited. In or about 2008, J.P. Morgan Chase Bank acquired the Bear Stearns entities (together “Bear Stearns”).

The Hedge Funds

4. K1 Global Limited and K1 Invest (the “K1 Funds”) were British Virgin Islands hedge funds established and controlled by defendant HELMUT KIENER. Defendant KIENER represented to institutional investors that the K1 Funds were funds of funds, invested in other hedge funds that were themselves managed by independent fund managers and diversified to avoid concentration of risk.

5. The Nauticus Fund (Class I and Class J) and the Silverback Fund (together, the “Oceanus Funds”) were Bahamian hedge funds established and controlled by John C. Tausche. Tausche represented to institutional investors that the Oceanus Funds were funds of funds, invested in other hedge funds that were themselves managed by independent fund managers and diversified to avoid concentration of risk.

Scheme to Defraud Bear Stearns

6. From in or about March 2005 to in or about December 2008, defendant

HELMUT KIENER

devised and intended to devise a scheme to defraud Bear Stearns, and to obtain money and property by means of false and fraudulent pretenses, representations and promises.

MANNER AND MEANS

It was part of the scheme that:

7. In or about March 2005, Bear Stearns entered into investment management agreements with the K1 Funds, under which defendant HELMUT KIENER agreed as investment manager to invest the K1 Funds in diverse, non-leveraged, multi-strategy funds of funds that he had discretion to choose from within a basket of funds. In exchange, Bear Stearns agreed to offer leverage to the K1 Funds at a rate of 3-to-1 (meaning that Bear Stearns agreed to invest \$3 for every \$1 invested by the K1 Funds). The investment management agreements were restructured and amended over the years, but the agreement by Bear Stearns to provide 3-to-1 leverage to the K1 Funds remained in place.

8. Under the aforementioned investment agreements, defendant HELMUT KIENER selected the hedge funds that were to be included within the basket of funds available to him, including the Oceanus Funds.

9. In accordance with their investment agreements, defendant HELMUT KIENER invested into the funds he selected, and Bear Stearns made equity investments into the same funds at the agreed upon 3-to-1 ratio. When defendant KIENER invested additional money, Bear Stearns made equity investments of additional funds at the agreed upon 3-to-1 ratio.

10. Rather than invest the K1 Funds exclusively into diverse, non-leveraged, multi-strategy funds of funds via arms-length transactions, defendant HELMUT KIENER directed a portion of the money into the Oceanus Funds. Defendant KIENER then directed John C. Tausche to transfer nearly all of that money back into the K1 Funds, thereby creating a circular flow of money. By creating this circularity, defendant KIENER knowingly and intentionally

fostered the false appearance that the K1 Funds were diversified, high- performing funds infused with new investment money, in order to induce Bear Stearns to continue to provide additional leverage to the K1 Funds.

11. John C. Tausche paid and caused to be paid to defendant HELMUT KIENER sales agent fees amounting to a percentage of the funds that defendant KIENER directed into the Oceanus Funds, including amounts that were transferred back to the K1 funds and then re-invested in the Oceanus Funds pursuant to the circular flow described above.

12. From in or about November 2007 through in or about December 2008, defendant HELMUT KIENER and John C. Tausche worked together to submit false and fraudulent information to Bear Stearns in response to inquiries regarding the K1 Funds and the Oceanus Funds, repeatedly representing the Oceanus Funds to be diversified funds of funds with exposure to over 250 underlying funds, in order to conceal the fact that Tausche was channeling money back into the K1 Funds.

13. From in or about March 2005 through in or about January 2008, Bear Stearns invested and lost a total of approximately \$82 million into the Oceanus Funds in this manner.

14. On or about each of the dates set forth below, in the Republic of Germany, Wichita, Kansas, and elsewhere, defendant

HELMUT KIENER,

for the purpose of executing the scheme described above, and attempting to do so, and aiding and abetting its execution, caused to be transmitted by means of wire communication in interstate and

foreign commerce the signals and sounds described below for each count, each transmission constituting a separate count:

COUNT	DATE	DESCRIPTION
ONE	March 11, 2008	Email from John C. Tausche to executives of Bear Stearns, attaching false and fraudulent documentation regarding the Nauticus Fund.
TWO	March 17, 2008	Email from John C. Tausche to executives of Bear Stearns, attaching false and fraudulent documentation regarding the Silverback Fund.

All in violation of Title 18, United States Code, Sections 1343, 1349, and 2.

COUNTS THREE AND FOUR

Defendant's Scheme to Defraud Institutional Investors Using Cayman Islands Investment Funds

THE GRAND JURY FURTHER CHARGES THAT:

At all times material to this indictment:

1 Paragraphs One through Four, and Seven through Nine of Counts One and Two are realleged herein.

2. Barclays Bank, PLC (“Barclays”) was a foreign financial institution incorporated under the laws of the United Kingdom, with headquarters in London, England, and with branches and agencies located in the United States. K1 Global Sub-Trust was a Cayman Islands entity wholly owned by Barclays that conducted investment transactions on behalf of Barclays.

3. BNP Paribas (“BNPP”) was a foreign financial institution organized under the laws of France, with headquarters in Paris, France, and with branches and agencies located in the United States. BNPP Arbitrage was a French entity wholly owned by BNPP that conducted investment transactions on behalf of BNPP.

The Cayman Islands Investment Funds

4. Defendant HELMUT KIENER hired a United States firm called Seuss Consulting Group (“SCG”), which specialized in establishing offshore entities, to set up investment funds for him in the Cayman Islands.

5. In or about March 2007, at the direction of defendant HELMUT KIENER, SCG established a Cayman Islands company called Consistent Return Ltd. (“Consistent Return”)

and purchased assets in the United States for Consistent Return under the names of various corporations wholly owned by Consistent Return. SCG purchased these assets for defendant KIENER's benefit and at his direction, including a parcel of real estate in the State of Florida, luxury motor vehicles, and watercraft. As the beneficial owner of Consistent Return, defendant KIENER controlled the acquisition, use, and disposition of its assets.

6. In or about April 2007, at the direction of defendant HELMUT KIENER, SCG established a Cayman Islands hedge fund called Mezzanine Financing Ltd. ("Mezzanine") and purchased assets in the United States for Mezzanine under the names of various corporations wholly owned by Mezzanine. SCG purchased these assets for defendant KIENER's benefit and at his direction, including three aircraft. As the beneficial owner of Mezzanine, defendant KIENER controlled the acquisition, use, and disposition of its assets.

Scheme to Defraud Institutional Investors

7. From in or about early 2006 to in or about January 2009, defendant

HELMUT KIENER

devised and intended to devise a scheme to defraud institutional investors, and to obtain money and property by means of false and fraudulent pretenses, representations and promises.

MANNER AND MEANS

8. In or about March 2006, Barclays entered into an investment management agreement with the K1 Funds, under which defendant HELMUT KIENER agreed as investment manager to invest the K1 Funds in diverse, non-leveraged, multi-strategy funds of funds that he had discretion to choose from within a basket of funds. In exchange, Barclays agreed to offer leverage to the K1 Funds at a rate of 3-to-1 (meaning that Barclays agreed to invest \$3 for every

\$1 invested by the K1 Funds). These investment management agreements were restructured and amended over the years, but the agreement by Barclays to provide 3-to-1 leverage to the K1 Funds remained in place.

9. In or about March 2007, BNPP entered into investment management agreements with the K1 Funds, under which defendant HELMUT KIENER agreed as investment manager to invest the K1 Funds in diverse, non-leveraged, multi-strategy funds of funds that he had discretion to choose from within a basket of funds. In exchange, BNPP agreed to offer leverage to the K1 Funds at a rate of 3-to-1 (meaning that BNPP agreed to invest \$3 for every \$1 invested by the K1 Funds).

10. Defendant HELMUT KIENER, under his investment management agreements with Barclays, BNPP, and Bear Stearns (together the “institutional investors”), selected the hedge funds that were to be included within the basket of funds available to him, including the Consistent Return fund. Defendant KIENER represented to the institutional investors that Consistent Return was a real estate fund which met the requirements for inclusion in the basket of funds.

11. Under his investment management agreement with Barclays, defendant HELMUT KIENER selected the Mezzanine fund to be included within the basket of funds available to him. Defendant KIENER represented to Barclays that Mezzanine was a substantial and bona fide hedge fund which met the requirements for inclusion in the basket of funds.

12. In accordance with their investment agreements, defendant HELMUT KIENER caused the institutional investors to make equity investments into Consistent Return and Mezzanine at the agreed upon 3-to-1 ratio.

13. From in or about March 2007 through in or about 2008, at the direction of defendant HELMUT KIENER, Bear Stearns invested approximately \$23 million into Consistent Return.

14. In or about 2007, at the direction of defendant HELMUT KIENER, Barclays invested approximately \$21 million into Consistent Return.

15. From in or about July 2008 through in or about January 2009, at the direction of defendant HELMUT KIENER, BNPP invested approximately \$13.4 million into Consistent Return. Unbeknownst to BNPP, defendant KIENER utilized BNPP's investment into Consistent Return to redeem the Barclays position in Consistent Return, after Barclays had questioned the nature and propriety of including the Consistent Return fund in the basket of funds.

16. From in or about July 2007 through in or about May 2008, at the direction of defendant HELMUT KIENER, Barclays invested approximately \$56 million into Mezzanine.

17. Unbeknownst to his institutional investors, defendant HELMUT KIENER used the money they invested in the Consistent Return fund to purchase and upgrade various luxury items in the United States for his own personal benefit and enjoyment, including oceanfront real estate in Delray Beach, Florida valued at over \$21 million at that time; luxury cars such as a Bentley, a Mercedes and a Maybach; two luxury watercraft; and over \$8 million in upgrades to his real estate. And defendant KIENER used the institutional investment money in Mezzanine to purchase and maintain various luxury items in the United States for his own personal benefit and enjoyment, including a Bombardier executive jet purchased in July 2007 for approximately \$37.1 million; a Bell helicopter purchased in November 2007 for approximately

\$4.8 million; and a short-range aircraft purchased in July 2008 for approximately \$4.5 million. Defendant KIENER further used the executive jet as collateral to secure a loan totaling \$29.6 million from Credit Suisse in Zurich, Switzerland.

18. On or about each of the dates set forth below, in in the Republic of Germany, New York, New York, and elsewhere, defendant

HELMUT KIENER,

for the purpose of executing the scheme described above, and attempting to do so, and aiding and abetting its execution, caused to be transmitted by means of wire communication in interstate and foreign commerce the signals and sounds described below for each count, each transmission constituting a separate count:

COUNT	DATE	DESCRIPTION
THREE	July 29, 2008	E-mail from defendant HELMUT KIENER in Germany, to an executive with BNPP in New York, agreeing to contact a bank in order to facilitate BNPP's investment in Consistent Return.
FOUR	July 30, 2008	E-mail from an executive with BNPP in New York, to defendant HELMUT KIENER in Germany, asking for fund documentation on Consistent Return in order to allow the investment to go through.

All in violation of Title 18, United States Code, Sections 1343, 1349, and 2.

COUNT FIVE

Bank Fraud on Barclays Using Cayman Islands Investment Funds

THE GRAND JURY FURTHER CHARGES THAT:

At all times material to this indictment:

1 Paragraphs One, Two, and Four of Counts One and Two, and paragraphs Two, Four through Six, Eight, Ten through Twelve, and Fourteen through Seventeen of Counts Three and Four are realleged herein.

2. From in or about January 2007 through in or about January 2009, in the Republic of Germany, the State of Florida, and elsewhere, defendant

HELMUT KIENER

knowingly executed and attempted to execute a scheme to defraud Barclays, a financial institution, and to obtain monies owned by and under the care, custody and control of that financial institution by means of false and fraudulent pretenses, representations and promises, and aided and abetted the execution of the scheme, resulting in a loss to Barclays totaling approximately \$56 million related to its investment in Mezzanine.

All in violation of Title 18, United States Code, Sections 1344, 2.

COUNT SIX

Bank Fraud on BNPP Using Cayman Islands Investment Funds

THE GRAND JURY FURTHER CHARGES THAT:

At all times material to this indictment:

1 Paragraphs One, Two, and Four of Counts One and Two, and paragraphs Three through Six, Nine, Ten, Twelve, Fifteen, and Seventeen of Counts Three and Four are realleged herein.

2. From in or about January 2007 through in or about January 2009, in the Republic of Germany, the State of Florida, and elsewhere, defendant

HELMUT KIENER

knowingly executed and attempted to execute a scheme to defraud BNPP, a financial institution, and to obtain monies owned by and under the care, custody and control of that financial institution by means of false and fraudulent pretenses, representations and promises, and aided and abetted the execution of the scheme, resulting in a loss to BNPP totaling approximately \$13.4 million related to its investment in Consistent Return.

All in violation of Title 18 United States Code, Sections 1344, 2.

COUNTS SEVEN THROUGH NINE

Money Laundering

THE GRAND JURY FURTHER CHARGES THAT:

At all times material to this indictment:

1 Paragraphs One through Five, and Seven through Thirteen of Counts One and Two, and paragraphs Two through Six, and Eight through Seventeen of Counts Three and Four are realleged herein.

2. On direction of defendant HELMUT KIENER, SCG opened up a bank account for defendant KIENER in the name of Atlantic Management Consultancy Ltd. (“AMC”), at Syz Bank in Switzerland.

3. On direction of defendant HELMUT KIENER, John C. Tausche caused defendant KIENER’s sales agent fees related to the Oceanus Funds to be deposited into the AMC account at Syz Bank. Defendant KIENER then directed that funds be transferred from the AMC account at Syz Bank into an SCG account at Wachovia Bank, Miami, Florida.

4. On direction of HELMUT KIENER, SCG used said funds to purchase luxury items in the United States under various corporate names, and to maintain and upgrade said items, for the personal enjoyment of defendant KIENER.

5. On or about the dates set forth below, in the Bahamas, Switzerland, Miami, Florida, and elsewhere, defendant

HELMUT KIENER

knowingly conducted, and attempted to conduct, and aided, abetted, and willfully caused, the following financial transactions affecting interstate and foreign commerce:

<u>COUNT</u>	<u>DATE</u>	<u>DESCRIPTION</u>
Seven	April 28, 2008	Transfer of \$80,240 from the AMC bank account in Switzerland, into the SCG account in the United States.
Eight	July 28, 2008	Transfer of \$59,040 from the AMC bank account in Switzerland, into the SCG account in the United States.
Nine	August 28, 2008	Transfer of \$80,164 from the AMC bank account in Switzerland, into the SCG account in the United States.

6. When conducting, aiding, abetting, and willfully causing the financial transactions described in paragraph 5 above, defendant HELMUT KIENER knew that the property involved in those financial transactions represented the proceeds of some form of unlawful activity.

7. The financial transactions described in paragraph 5 above involved the proceeds of a specified unlawful activity, that is, bank fraud in violation of 18 U.S.C. § 1344, and wire fraud in violation of 18 U.S.C. § 1343, and defendant HELMUT KIENER acted with the knowledge that the transactions were designed, in whole and in part, to conceal and disguise the nature, location, source, ownership and control of the proceeds of the specified unlawful activity.

All in violation of Title 18, United States Code, Sections 1956(a)(1)(B)(I) and 2.

NOTICE OF FORFEITURE

(Bank and Wire Fraud - 18 U.S.C. §§ 1343, 1344, 1349)

THE GRAND JURY FURTHER CHARGES THAT:

1. As a result of the violations of Title 18, United States Code, Sections 1343, 1344, and 1349 set forth in this indictment, defendant

HELMUT KIENER

shall forfeit to the United States of America any property that constitutes or is derived from proceeds traceable to the commission of such offenses, including, but not limited to, the sum of \$420,000,000 (Forfeiture Money Judgment)

2. If any of the property 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 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 28, United States Code, Section 2461(c), incorporating Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant(s) up to the value of the property subject to forfeiture.

All pursuant to Title 28, United States Code, Section 2461(c) and Title 18, United States Code, Sections 981(a)(1)(c).

NOTICE OF FORFEITURE

(Money Laundering - 18 U.S.C. §1956(a)(1)(B)(I))

THE GRAND JURY FURTHER CHARGES THAT:

1. As a result of the violations of Title 18, United States Code, Sections 1956(a)(1)(B)(I) set forth in this indictment, defendant

HELMUT KIENER

shall forfeit to the United States of America any property, real or personal, involved in such violations, and any property traceable to such property, including, but not limited to, the sum of \$822,800, and:

3. If any of the property 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 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 18, United States Code, Section 982(b), incorporating Title 21, United States Code, Section 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 982.

A TRUE BILL:


ZANE DAVID MEMEGER
United States Attorney

FOREPERSON