

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Criminal No. 12-
	:	
	:	15 U.S.C. §§ 78j(b) and 78ff
v.	:	17 C.F.R. § 240.10b-5
	:	
	:	<u>INFORMATION</u>
SCOTT KUPERSMITH	:	

The defendant having waived in open court prosecution by Indictment, the United States Attorney for the District of New Jersey charges:

BACKGROUND

Defendant and Others

1. At all times relevant to this Information:
 - a. Defendant SCOTT KUPERSMITH resided in New Jersey and Florida.
 - b. John Gordon, who is named as a coconspirator but not as a defendant herein, resided in New York and Florida.
 - c. Atlantic Southern Capital Group, Inc., Fullerton Capital Group, Inc., and Northbrea Capital Group, Inc. were shell companies, without significant assets or business operations, incorporated by defendant SCOTT KUPERSMITH and John Gordon.
 - d. Broker A was a broker-dealer with offices in New Jersey and throughout the United States.

Free-Riding Schemes

2. The term "free-riding" referred to a scheme in which a customer placed orders to buy or sell securities in a brokerage account without cash or securities sufficient to cover the trades. For example, in a typical free-riding scheme, the "free-rider" would place an order to sell shares of a security in a brokerage account without actually owning the shares and then "cover" the sale by subsequently purchasing shares of the same security through another brokerage firm. Free-riders attempted to profit from short-term changes in the market prices of securities without placing personal assets at risk.

3. Free-riding schemes often were perpetrated through the use of Delivery Versus Payment ("DVP") accounts. A DVP account allowed customers to buy or sell securities in an account at one firm and then settle those trades with cash or securities held at an account at a different firm. In most instances, the customer was given a short window - usually three days - to produce the cash or securities to settle the trades. Generally, broker-dealers permitted only institutional customers or very high-net-worth individuals to open DVP accounts.

The Securities Fraud Scheme

4. From in or about 2008 through in or October 2011, in the District of New Jersey and elsewhere, defendant

SCOTT KUPERSMITH

did knowingly and willfully, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails and of the facilities of national securities exchanges, in connection with the purchase and sale of securities, use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon persons, as more fully described below.

Object of the Scheme

5. It was the object of the scheme for defendant SCOTT KUPERSMITH, John Gordon and others to obtain money by engaging in the free-riding scheme more fully described herein.

Manner and Means of the Scheme

6. It was part of the scheme that defendant SCOTT KUPERSMITH and John Gordon applied to open DVP accounts at numerous broker-dealers in the names of Atlantic Southern Capital Group, Inc., Fullerton Capital Group, Inc., Northbrea Capital Group, Inc. and other shell companies (collectively, the "Shell Companies").

7. It was further part of the scheme that, in order to induce the broker-dealers to open these DVP accounts, defendant SCOTT KUPERSMITH and John Gordon falsely represented that the Shell Companies were successful "hedge funds" with assets worth more than approximately \$10 million. For example, to induce Broker A to open a DVP account, defendant SCOTT KUPERSMITH falsely represented that Atlantic Southern Capital Group, Inc. was a successful hedge fund with a liquid net worth of approximately \$20 million.

8. It was further part of the scheme that defendant SCOTT KUPERSMITH and John Gordon falsely represented to broker-dealers that the Shell Companies held securities and other assets in a custodial account with a third-party bank that were sufficient to cover any trades they executed in the DVP accounts.

9. It was further part of the scheme that once the DVP accounts were opened, defendant SCOTT KUPERSMITH and John Gordon funded those accounts, in part, with monies received from numerous victim-investors. To induce victim-investors to invest, defendant SCOTT KUPERSMITH made numerous material

misrepresentations, including that his alleged hedge fund had achieved an annual return on its investments of approximately 30 percent, that he had personally made over \$1 million in the past year, and that the victim-investors' principal investment was "guaranteed."

10. It was further part of the scheme that once the DVP accounts were opened and funded, defendant SCOTT KUPERSMITH and John Gordon used those accounts to trade millions of dollars worth of securities in the form of stock in publicly-traded companies, such as Baidu, Inc. ("Baidu") and CME Group, Inc. ("CME").

11. It was further part of the scheme that defendant SCOTT KUPERSMITH and John Gordon settled these trades not with existing cash or securities held in a third-party custodial account, as represented, but rather by making a corresponding trade at another broker-dealer.

12. It was further part of the scheme that when certain trades threatened to result in substantial losses, defendant SCOTT KUPERSMITH and John Gordon failed to cover the trades.

13. For example, on or about November 11, 2009, defendant SCOTT KUPERSMITH placed an order with the New Jersey branch of Broker A to sell approximately 3,500 shares of Baidu. Broker A executed the order and sold approximately 3,500 shares of Baidu for approximately \$1,465,644. Subsequently, defendant SCOTT KUPERSMITH failed to produce the approximately 3,500 shares

of Baidu he had agreed to sell, forcing Broker A to purchase the shares and "cover" the trade on his behalf, resulting in a loss to Broker A of more than approximately \$200,000.

14. As a result of the scheme, defendant SCOTT KUPERSMITH caused numerous broker-dealers to cover trades that he failed to settle using their own funds, leading to losses of more than approximately \$1,000,000.

In violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5

FORFEITURE ALLEGATION

1. The allegations contained in this Information are hereby realleged and incorporated by reference for the purpose of noticing forfeiture pursuant to Title 18, United States Code, Sections 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

2. The United States hereby gives notice to the defendant that, upon his conviction of the offense alleged in this Information, the government will seek forfeiture in accordance with Title 18, United States Code, Sections 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), which requires any person convicted of such offense to forfeit any property constituting or derived from proceeds obtained directly or indirectly as a result of such offense.

3. 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;

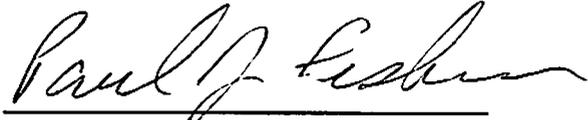
(b) has been transferred or sold to, or deposited with, a third party;

(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), as incorporated by Title 28,
United States Code, Section 2461(c), to seek forfeiture of any
other property of such defendant up to the value of the
forfeitable property described above.



PAUL J. FISHMAN
United States Attorney

CASE NUMBER: _____

**United States District Court
District of New Jersey**

UNITED STATES OF AMERICA

v.

SCOTT KUPERSMITH

INFORMATION FOR

15 U.S.C. §§ 78j(b) and 78ff
17 C.F.R. § 240.10b-5

PAUL J. FISHMAN
U. S. ATTORNEY
NEWARK, NEW JERSEY

CHRISTOPHER J. KELLY
ASSISTANT U. S. ATTORNEY
NEWARK, NEW JERSEY
973-645-6112
