

**FILED**

**MAY 28 2010**

CLIFFORD J. PROUD  
U.S. MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF ILLINOIS  
EAST ST. LOUIS OFFICE

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 NICHOLAS A. SMIRNOW, )  
 a/k/a Nicoloy Smirnow, Alexander Judizcev, )  
 Nicholas Kachura, and Jeff Prozorowicz, )  
 )  
 Defendant. )

Case No. 10-M-6147-CJP

**CRIMINAL COMPLAINT**

I, Postal Inspector Jacob Gholson, United States Postal Inspection Service, the undersigned complainant, being duly sworn, state the following is true and correct to the best of my knowledge and belief.

**I. Introduction**

1. Beginning sometime in 2007, and continuing thereafter until sometime in 2009, **NICOLAS A. SMIRNOW**, also known *inter alia* as Nicoloy Smirnow, Alexander Judizcev, Nicholas Kachura, and Jeff Prozorowicz, together with others known and unknown, doing business as Pathway to Prosperity, also known as "P-2-P", operating in Canada, the Philippines and ostensibly from the Turks & Caicos Islands in the Caribbean, and through an Internet website in the Netherlands, devised and engaged in a scheme and artifice to defraud victims in over one hundred twenty countries on six continents in the operation of an Internet investment scheme. In total, **SMIRNOW** persuaded over 40,000 individuals to invest and caused losses exceeding \$70 million as a result of his scheme.

2. The scheme operated in and victimized residents in the counties of St. Clair, Madison, Calhoun, Clinton, Crawford, Effingham, Franklin, Jackson, Jasper, Jefferson, Jersey, Lawrence, Marion, Randolph, Richland, Washington, Wayne, and Williamson, within the Southern District of Illinois.

3. In the execution of his scheme **SMIRNOW** made or caused misrepresentations and omissions of material fact on his internet site, in high yield investment web sites, and in emails and other communications to investors. He claimed that the purported investments his company was making would yield a return at the rate of several hundred percent per annum, while lacking any objective basis to assert that there were legitimate investments that on a sustained basis could achieve the promised rate of return. He claimed that the investments were "guaranteed," yet failed to return even the principal to the majority of his investors, despite the fact that the investments had reached full maturity and were subject to withdrawal by the investors on demand.

4. Pathway to Prosperity was a massive Ponzi scheme. It took in investment funds and paid returns to initial investors from investment funds contributed by later investors. If Pathway to Prosperity indeed made any legitimate investments, those legitimate investments represented a relatively small fraction of the overall investment funds contributed by investors, the bulk of which, if not all, was diverted to **SMIRNOW** personally, or to make Ponzi payments to earlier investors, all to create the illusion that Pathway to Prosperity was a legitimate investment company, which it was not.

5. In the sale of investment interests on the Internet as described in this Criminal Complaint, **SMIRNOW** and others engaged in a scheme involving deceit and trickery in order to

gain an unfair or dishonest advantage over investors.

## II. Participants

6. **SMIRNOW**, a Canadian citizen, was a resident of the Greater Toronto Area in the Province of Ontario, Canada. When his scheme was first hatched, it was operated out of a rented house in Baysville, Ontario, which served as both his office and personal residence. Sometime around September 2007 **SMIRNOW** diverted approximately \$315,000 Canadian in investor funds to purchase a substantial personal residence. He later fled Canada for the Philippines when his scheme began to unravel and also transferred some of P-2-P's money to the Philippines as well. At all times relevant to this indictment **SMIRNOW** was in control of P-2-P and its actions.

7. Pathway to Prosperity ("P-2-P") was the name under which **SMIRNOW** operated his scam. The scheme also used the name "P-2-P Network." There is no record of a company by either of those names being incorporated in the Province of Ontario. P-2-P initially operated in the Province of Ontario until after **SMIRNOW** fled Canada for the Philippines. P-2-P maintained an Internet website hosted in the Netherlands. The website, which was the major sales tool, made misrepresentations and omissions of material fact in order to induce investors to invest in P-2-P. The website provided an interactive mechanism for those investors who did contribute funds to establish their "account" with P-2-P and to make investments in various P-2-P programs. To do so, investors would deposit funds with a third party payment processor, transfer the money to P-2-P's account with that payment processor, whereupon the money transferred would eventually show up in the investors' P-2-P account. The website allowed the investor to log on to their "account" and make an investment in P-2-P from the money

transferred from the payment processor. The website also purportedly allowed investors to transfer account balances to their payment processor accounts for withdrawal or distribution.

8. Solid Trust Pay (“STP”) was a payment processor in Canada. Similar in some respects to PayPal, it allowed customers to set up an account to facilitate money transfers and financial transactions. STP was used by P-2-P as the mechanism of receiving funds from investors. To fund their account with STP, customers would send STP funds through a variety of means, including direct bank wire transfer, money orders, and personal checks. With this deposit of funds, consumers created what is sometimes referred to as an “e-currency” account. STP, at the customer’s online direction, would then transfer investor funds to P-2-P. Approximately three quarters of all investor funds to P-2-P flowed through STP.

9. Alert Pay (“AP”) was another payment processor in Canada. A competitor of STP, AP functioned in a manner similar to STP. Approximately eighteen percent of all investor funds received by P-2-P flowed through AP.

10. P-2 P Energy Ltd (“P-2PE”) was a company incorporated by **SMIRNOW** under the laws of Turks & Caicos Islands in the Carribean. It was incorporated as an exempt company and therefore was not authorized to conduct business within the Turks & Caicos Islands. **SMIRNOW** at various times claimed that P-2-P operated in the Turks & Caicos Islands, but the charter granted to P-2-P Energy Ltd. gave him no such authority. P-2PE was established by **SMIRNOW** to be his own in house payment processor in order to cut STP and AP out of P-2-P’s scam transactions. P-2PE in turn utilized the services of another payment processor, International Payout Systems (“IPS”) to provide the infrastructure to handle P-2PE’s financial transactions. In addition, IPS provided P-2PE the ability to provide debit cards for each P-2-P

investor to access their account. Approximately seven percent of all investor funds went through IPS and P-2PE.

11. E.M. is a U.S. citizen residing in Pennsylvania who was used by **SMIRNOW** to carry out his scheme. E.M. was a principal of and controlled TMI Group, SA whose principal place of business was Panama City, Panama. TMI Group, SA did business under the name Tru-Mar Investments and Tru-Mar Holdings. ("Tru-Mar"). Subsequent to the establishment of the P-2-P Network, **SMIRNOW** caused E.M. to establish a parallel website in the name of Tru-Mar Investments. The website made claims similar to those that appeared on the P-2-P websites. Tru-Mar had no legitimate investments. Some of P-2-Ps funds were diverted to E.M. to make Ponzi payments to E.M.'s investors. After **SMIRNOW** fled to the Philippines, E.M. acted on behalf of **SMIRNOW** and at his direction with respect to contracts with IPS. In the conduct of the scheme described in this criminal complaint, the actions of E.M. were directed and aided and abetted by **SMIRNOW**.

### **III. The Scheme and Artifice to Defraud**

12. The P-2-P Network was a "long term 'private' retirement Club," or so P-2-P's Internet site claimed. P-2-P purported to afford the average person the opportunity to take advantage of investment vehicles ostensibly accessible by only the very rich. It was represented that by investing with P-2-P, the average investor would pool his/her money with that of other investors and be able to "piggy-back" on the investment of P-2-P and its principal **SMIRNOW**.

13. Investors had a choice of several P-2-P investment programs, the only difference among them was the length of time that the investor would have their funds committed. The

programs ranged from as short as 7 days to as long as 60 days. The return on investment varied with the length of time the funds were committed, with the larger returns for the longer period programs. A “seven day plan” promised a net profit of 1.5 percent per day, resulting in a promised annual return of over 500%. A “60 day plan” supposedly yielded a net profit of 2.5% daily, with a promised annualized return in excess of 900%. There were also 15 day and 30 day plans that promised similarly outlandish rates of return.

14. How exactly P-2-P was to achieve these spectacular returns was not explained on P-2-P’s website. P-2-P distributed no prospectus, offering circular or private placement memoranda. The only information available to the prospective investor was that provided in the website and by other investors, which was very little. P-2-P also failed to publically disclose the information usually contained in a prospectus.

15. While P-2-P offered little explanation as to its investment methodology, it claimed that P-2-P, and implicitly the promised rates of return, would continue over the “long term,” since P-2-P made representations that it was based upon “solid experience,” “real information,” and “real results.” P-2-P asserted that it had a proven track record, and by implication, an objective basis to assert that an investor could and would achieve the promised rates of return.

16. P-2-P’s website created the false impression that a prospective investor’s funds would be completely safe. Each investor’s principal investment was covered by a purported “guarantee,” an assurance that was repeated often. P-2-P’s principals (i.e., **SMIRNOW**), would not be investing their own money in the absence of a “guarantee” of the principal, the website claimed.

17. There was almost no information given about the background of P-2-P's principal, **SMIRNOW**. As to why P-2-P offered no personal history on **SMIRNOW**, P-2-P's main financial strategist and the manager of P-2-Ps funds, the website suggested that there were those "out there" who did not share P-2-P's "strong moral foundation." The website cautioned that the Internet seemed to attract what he described as the "bad element" of society. By implication, **SMIRNOW** was not numbered among that "bad element." Because **SMIRNOW** purportedly followed a different moral compass than the "bad element" on the Internet, it was supposedly necessary to keep **SMIRNOW'S** identity and background secret for his personal safety as well as to ensure the success of the program. As is detailed more fully in Count 10 below, this portrayal painted a highly misleading picture of **SMIRNOW'S** supposed positive character traits and omitted material facts about his background that made these statements in his website highly misleading.

18. As a way of creating the false appearance that he was a sophisticated and legitimate international financier, in order to gain investors' confidence with respect to his supposed expertise, and to create the illusion of honesty, **SMIRNOW** disclaimed any connection between P-2-P and so called "high yield investment programs."

19. A "high yield" investment program ("HYIP") is a term used to describe a type of scam in which investors are offered unrealistic and excessive rates of returns for investments that are concomitantly reported to be safe. While originally "high yield" investments referred to a legitimate, but speculative investment in the 1980s involving junk bonds, the term came to be associated with scams promising investment returns disproportionate to the risk involved where the source of the funds was obscured, involved some esoteric aspect of supposedly international

finance, entailed secrecy and did not actually involve investments that could return the promised yields. A large percentage, if not all, HYIPs, are Ponzi schemes.

20. In disclaiming any connection between P-2-P and HYIPs, **SMIRNOW** described HYIPs as taking money from one investor to pay another, a practice he described as “highly illegal.” “It is fairly simple to do, as they set the percentages in such a way that there is enough to pay the next guy and run for periods of up to a year!” “This is NOT a H.Y.I.P site.. We do NOT believe in them!”, **SMIRNOW** asserted on his website. He warned investors to “stay away” from HYIPs “at all cost.”

21. While disclaiming any connection between P-2-P and HYIPs, **SMIRNOW** admitted to using the same website programming used by HYIP websites. In light of the fact that P-2-P was indeed another high yield investment scam, **SMIRNOW** seemed almost to be mocking prospective investors when he explained: “it is ironic though... when we asked our programmer to write a management tool where we can manage Member’s returns online, in a web-based application, he came back within a few days and gave us a real good laugh!! He suggested we purchase the same software that HYIP scammers use..... It was the office joke for a while, but in the end he was RIGHT.”

22. To further amplify his denials that P-2-P was a HYIP, and to further bolster the illusion of honesty and legitimacy, **SMIRNOW** dealt directly with the core lie that characterizes HYIPs, that investors can make big money with no risk: He warned: “the bigger the return on offer, the louder the warning bells should sound.”

23. Investors, however, did not heed the “warning bells” of **SMIRNOW’S** ridiculous claims of unrealistic rates of return and instead invested by the thousands. Two factors



contributed to P-2-P's phenomenal success. First, P-2-P made very substantial Ponzi payments to earlier investors. Not disclosing that the source of these payments was from investment funds contributed by later investors, the Ponzi payments were made to appear as if they were a legitimate return on the investors' funds. This created the illusion that P-2-P was actually profitable in the usual business sense and made it appear that P-2-P had a track record of substantial earnings. These appearances were reasonably calculated to draw in new investors based on the supposition that P-2-P was actually paying the returns that it promised. The second factor that contributed to P-2-P's phenomenal growth was the payment of generous sales commissions. Those investors who recruited other investors received a ten percent commission, more or less, paid out of the investment proceeds contributed by those whom they recruited to the scheme.

24. Accordingly, P-2-P was structured so that investors believed that their investment was performing well and at the same time were shown a way to reap huge rewards for inducing their friends, co-workers, neighbors and family members to join on this so called "pathway to prosperity." Sales exploded.

25. **SMIRNOW**, who publically claimed that HYIPs seldom last more than a year, privately expressed pleasure to a key employee that P-2-P had lasted more than a year. At the same time, P-2-P's web site trumpeted the claim that P-2-P was "DEFINITELY here for the 'long haul!!'" (Emphasis in the original).

26. Despite representations that P-2-P was "here for the long haul," and assurances that an investment in P-2-P was "guaranteed" and implicitly safe, on or about October 23, 2008, P-2-P payouts to investors through STP ceased. Investors, who had been assured that they could

obtain the payout on their “plans” when they were “completed” were thereafter unable to withdraw their funds. P-2-P nevertheless continued to solicit funds through its own newly created payment processor, P-2PE, but eventually P2-PE also ceased making payouts.

27. Tens of thousands of investors lost millions of dollars as a result of **SMIRNOW’S** fraudulent activities.

28. **SMIRNOW’S** scheme attracted approximately forty thousand investors from over one hundred twenty countries on six continents. P-2-P account holders, when they registered for a P-2-P account, gave addresses in the following countries, *inter alia*: the United States, Canada, and Mexico in North America; Costa Rica, El Salvador, Honduras and Panama in Central America; Argentina, Bolivia, Brazil, Chile, Columbia, Equador, Guyana, Peru, Uruguay and Venezuela in South America; The Bahamas, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Dominica, Dominican Republic, Grenada, Guadeloupe, Haiti, Jamaica, Martinique, Netherlands Antilles, Saint Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago in the Caribbean; Iceland, Norway, Sweden, Finland, Denmark, Iceland, the Faroe Islands, United Kingdom, Ireland, France, Belgium, Netherlands, Germany, Switzerland, Liechtenstein, Luxembourg, Monaco, Andorra, Portugal, Spain, Malta, Italy, Austria, Hungary, Czech Republic, Slovakia, Slovenia, Romania, Bulgaria, Poland, Estonia, Latvia, Lithuania, Russian Federation, Belarus, Ukraine, Azerbaijan, Republic of Georgia, Greece, Macedonia, Croatia, Bosnia and Herzegovina, and Yugoslavia in Europe; Turkey, Cyprus, Armenia, Uzbekistan, Kazakhstan, Afghanistan, Pakistan, India, Republic of Maldives, Sri Lanka, Nepal, Cambodia, Thailand, Vietnam, Taiwan, South Korea, North Korea, Peoples Republic of China, Peoples Republic of China Hong Kong SAR, Singapore, Macau,

Indonesia, Malaysia, Philippines, and Japan, in Asia.

29. The scheme caused losses to investors in forty eight of fifty states and in eighteen of the thirty eight counties that comprise the Southern District of Illinois.

**Count 1 – Conspiracy**  
**18 U.S.C. §371**

30. Paragraphs 1 through 29 are hereby realleged.

31. From on or about February, 2007 and continuing through approximately April 2009, in the counties of St. Clair, Madison, Calhoun, Clinton, Crawford, Effingham, Franklin, Jackson, Jasper, Jefferson, Jersey, Lawrence, Marion, Randolph, Richland, Washington, Wayne, and Williamson, within the Southern District of Illinois, and elsewhere,

**NICHOLAS A. SMIRNOW,**

together with P-2-P Energy, Ltd, E.M., and others known and unknown, did unlawfully, willfully, and knowingly combine, conspire, confederate and agree among themselves and each other to commit certain offenses against the United States as follows:

A. To devise a scheme and artifice to defraud and to obtain money and property by means of false pretenses, representations and promises, and for the purpose of executing the scheme, to knowingly cause to be sent and delivered by the United States Postal Service and by commercial interstate carrier, mail matter from residents of the United States, including residents of the Southern District of Illinois, in violation of Title 18, United States Code, Section 1341.

B. To devise a scheme and artifice to defraud and to obtain money and

property by means of false pretenses, for the purpose of executing and in order to effect the scheme, to knowingly cause to be transmitted by means of wire or radio communication in interstate and foreign commerce, interstate and international telephone calls, facsimile transmissions, electronic fund transfers, and signs and signals to and from the United States, all in violation of Title 18, United States Code, Section 1343.

C. In connection with the offer and sale of securities in the United States by the use of means and instruments of transportation and communication in interstate commerce and by the use of the mails, to employ devices, schemes and artifices to defraud and omit to state material facts necessary in order to make statements made, in light of the circumstances under which they were made not misleading, and to engage in transactions, practices and courses of business which operated as a fraud and deceit upon the purchasers of securities, all in violation of Title 15, United States Code, Sections 77q(a) and 77x.

D. To knowingly engage and attempt to engage in monetary transactions in criminally derived property of a value greater than \$10,000 that was derived from the specified unlawful activity of mail fraud and wire fraud, in violation of Title 18, United States Code, Sections 1957.

32. In furtherance of the conspiracy, between February 2007 and April 2009, defendant, and his co-conspirators, committed, or caused to be committed, the following overt acts:

- A. On or about February 3, 2007, **SMIRNOW** acquired software for P-2-P designed to be used by high yield investment program scams.
- B. At various times in 2007 and 2008, **SMIRNOW** established bank

accounts and payment processing accounts with various payment processors and banks in order to receive funds contributed to the scheme from investors. Such accounts were opened with STP, AP, IPS, and SunTrust Bank, *inter alia*.

- C. At various times beginning in 2007, **SMIRNOW** created web pages that represented that investors would be able to obtain yields of several hundred percent per annum, rates of return that were exorbitant, unrealistic and for which there was no objective support.
- D. At various times beginning in 2007, **SMIRNOW** created web pages that represented that the investment was “guaranteed,” implying that it was safe.
- E. At various times beginning in 2007, **SMIRNOW** made massive Ponzi payments to some investors, payments that bore no relationship to actual, legitimate earnings by P-2-P and were designed to create the illusion that P-2-P was a legitimate, profitable business.
- F. When P-2-P’s funds were depleted and when investors did not receive a return of their funds as they had been promised, **SMIRNOW** caused a posting on P-2-P’s private forum warning investors not to complain to payment processors about P-2-P’s failure to return their money or they would find themselves “on the outside looking in.”
- G. On or about December 26, 2008, January 7, 2009, and April 6, 2009, **SMIRNOW** transferred over \$1 million in P-2-P funds to the Philippines.

H. On or about the dates listed in Counts two through nine, and from the Counties in the Southern District of Illinois listed in the respective count, **SMIRNOW** caused the mailings and wire transmissions to occur as described in the respective count.

I. **SMIRNOW** caused other mailings and wire transmissions to occur from Calhoun, Clinton, Crawford, Effingham, Franklin, Jackson, Jasper, Jefferson, Jersey, Lawrence, Madison, Marion, Randolph, Richland, St. Clair, Washington, Wayne, and Williamson Counties, within the Southern District of Illinois, to Canada.

**Counts 2- 5 - Mail Fraud**  
**18 U.S.C. § 1341**

33. Paragraphs 1 through 29 are hereby realleged.

34. On or about the dates listed below, from the places and from the victims as alleged in the respective count, within the Southern District of Illinois, and elsewhere, the defendant,

**NICHOLAS A. SMIRNOW,**

having devised the above-described scheme and artifice to defraud and to obtain money or property by means of false and fraudulent pretenses, representations and promises, for the purpose of executing the scheme and attempting so to do, did knowingly cause investors in P-2-P to place in a post office or authorized depository for mail matter various documents to establish accounts with payment processors in Canada, including copies of identification documents and bank account information, and further did cause the same to be sent or delivered by the U.S. Postal Service

according to the direction thereon from the Southern District of Illinois and to payment processors in Canada, in the manner described in the respective Count:

Count	Date	From	To	Victim
2	July 31, 2008	Franklin County	AP, Quebec Canada	BF
3	August 29, 2008	Jackson County	STP, Ontario, Canada	CTD
4	September 23, 2008	Williamson County	STP, Ontario, Canada	DW
5	October 1, 2008	Jackson County	STP, Ontario, Canada	CTD

All in violation of Title 18, United States Code, Sections 1341 and 2.

**Counts 6-7 - Wire Fraud  
18 U.S.C. § 1343**

35. Paragraphs 1 through 29 are realleged.

36. On or about the dates listed below, from the places and from the victims as alleged in the respective count, within the Southern District of Illinois, and elsewhere, the defendant,

**NICHOLAS A. SMIRNOW,**

having devised the above-described scheme and artifice to defraud and to obtain money or property by means of false and fraudulent pretenses, representations and promises, for the purpose of executing the scheme and attempting so to do, did knowingly cause investors in P-2-P to send by means of wire or radio communication in interstate and foreign commerce, signs and signals, that is, facsimile transmissions, from the Southern District of Illinois to payment processors in Canada, in manner described in the respective count.

Count	Date	To	Victim
6	September 20, 2008	STP, 705-738- 9068	DW

7	September 25, 2008	STP, 705-731-0341	CTD
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All in violation of Title 18, United States Code, Sections 1343 and 2.

**Counts 8-9 - Wire Fraud  
18 U.S.C. § 1343**

37. Paragraphs 1 through 29 are realleged.

38. On or about the dates listed below, from the places and from the victims as alleged in the respective count, within the Southern District of Illinois, and elsewhere, the defendant,

**NICHOLAS A. SMIRNOW,**

having devised the above-described scheme and artifice to defraud and to obtain money or property by means of false and fraudulent pretenses, representations and promises, for the purpose of executing the scheme and attempting so to do, did knowingly cause investors in P-2-P to transmit by means of wire or radio communication in interstate and foreign commerce, signs and signals, that is, ACH debit transfers from bank accounts of consumers in the Southern District of Illinois, to banks outside the State of Illinois.

Count	Date	Amount	Wire From	Wire To	Victim
8	October 27, 2008	\$1071.90	Madison County	SunTrust Bank,	VD
9	December 4, 2008	\$3035.95	Madison County	SunTrust Bank,	LD

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



**Count 10**  
**Securities Fraud**  
**15 U.S.C. 77q(a) and 77x**

39. Paragraphs 1 through 29 are realleged.

40. At all times relevant to this complaint, the Securities Act of 1933, Title 15, United States Code, Section 77a et seq, provided a regulatory framework requiring the full and fair disclosure of the character of securities sold in foreign and interstate commerce and through the use of the mails.

41. The interests in P-2-P offered for sale and sold by **SMIRNOW** were securities within the meaning of Section 2(1) of the Securities Act of 1933.

42. In addition to the material misrepresentations and omissions of material fact described in paragraphs 1 through 29, **SMIRNOW** made certain representations about his moral character. In the frequently asked questions section of his website, in answer to the question “[w]hy is your identity hidden? **SMIRNOW** stated, or caused to be stated as follows:

“We do not expose ourselves to possible harm/risk resulting from people, companies or organization who do not share the strong moral foundation we do.”

\* \* \*

“The internet may be a wonderful place, but it has attracted the bad element of our society too.”

43. These statements were explicit or at least implicit assertions both that **SMIRNOW** shared a “strong moral foundation” and that he was not part of the “bad element” on the internet. In light of the circumstances under which they were made, these assertions by **SMIRNOW** were misleading in that he omitted certain material facts necessary to make those statements not

misleading, including the fact that he had been convicted in Canada of several serious crimes, among them were the following:

- A. A 2002 conviction for the crime of breaking and entering;
- B. A 2001 conviction for the crime of robbery with a firearm;
- C. A 1996 conviction for the crime of cultivation of a narcotic for purpose of trafficking;
- D. A 1981 conviction for the crime of possession of stolen property; and
- E. A 1979 conviction for the crime of trafficking in a controlled drug.

44. Between February 2007 and continuing thereafter through April 2009, in the counties of St. Clair, Madison, Calhoun, Clinton, Crawford, Effingham, Franklin, Jackson, Jasper, Jefferson, Jersey, Lawrence, Marion, Randolph, Richland, Washington, Wayne, and Williamson, within the Southern District of Illinois, and elsewhere,

**NICHOLAS A. SMIRNOW,**

in the offer and sale of a security, by the use of means and instruments of transportation and communication in foreign and interstate commerce and by the use of the mails, directly and indirectly, did wilfully (a) employ devices, schemes and artifices to defraud, (b) obtain money and property by means of untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engage in transactions, practices, and courses of business which operated and would operate as a fraud and deceit upon purchasers.

All in violation of Title 15, United States Code, Sections 77q(a) and 77x, and Title 18, United States Code, Section 2.



STATE OF ILLINOIS        )  
                                   )  
 COUNTY OF ST. CLAIR    )

SS.

Sworn to before me and subscribed in my presence on the 28<sup>th</sup> day of May, 2010, at East St. Louis, Illinois.



CLIFFORD J. PROUD  
 United States Magistrate Judge

A. COURTNEY COX  
 United States Attorney



BRUCE E. REPERT  
 Assistant United States Attorney