

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA :

SEALED INDICTMENT

- v. - :

14 Cr.

RYAN TOMAZIN, :

Defendant. :

14 CRIM 790

- - - - - X

COUNT ONE
(Securities Fraud)

The Grand Jury charges:

Relevant Entities and Individuals

1. R2 Capital Group LLC ("R2 Capital"), a limited liability company with operations in New York, Colorado and Florida, began operating as an investment firm in or about 2008. R2 Capital became a registered commodity pool operator with the United States Commodity Futures Trading Commission ("CFTC") and a member of the National Futures Association ("NFA") on or about September 27, 2013, providing a New York business address and telephone number.

2. At all times relevant to this Indictment, RYAN TOMAZIN, the defendant, was a founder and managing partner of R2 Capital and was R2 Capital's registered agent. TOMAZIN has never been registered with the CFTC or NFA in any capacity.

The Scheme to Defraud

3. Starting in or about late 2009, R2 Capital created a commodity pool, R2 Commercial Capital Partners I L.P. (the "Commercial Pool"), for the purpose of trading in foreign exchanges, and raised approximately \$2.2 million from investors. Starting in or about January 2010, R2 Capital engaged in trading on behalf of the Commercial Pool, but experienced significant losses, eventually ceasing all trading activity in or about July 2011. By in or about August 2011, there was less than \$5,000 remaining in bank accounts associated with the Commercial Pool.

4. From at least in or about late 2009 through in or about December 2014, RYAN TOMAZIN, the defendant, engaged in a scheme to defraud investors in R2 Capital. As part of the scheme, TOMAZIN falsely informed Commercial Pool investors that the value of their investments was increasing when, in fact, the value was declining. As a further part of the scheme, between in or about February 2010 and October 2013, TOMAZIN and other principals in R2 Capital caused over \$850,000 of investors' funds to be withdrawn from bank accounts associated with the Commercial Pool and directed to bank accounts held in their own names or that of their respective holding companies.

5. To effectuate the fraudulent scheme, RYAN TOMAZIN, the defendant, disseminated, and caused others to disseminate, documents, including offering documents, account

statements, and performance reports, containing false and misleading representations regarding how assets of the Commercial Pool would be managed, as well as the value of investments in the Commercial Pool; and made false and misleading statements to investors designed to conceal trading losses and the fact that significant assets of the Commercial Pool had been directed to the personal bank accounts and holding companies of R2 Capital principals.

False Statements In Initial Investment Offering Document

6. In or about late 2009, RYAN TOMAZIN, the defendant, filed a Certificate of Limited Partnership for the Commercial Pool, which identified TOMAZIN as registered agent. Thereafter, TOMAZIN and others began to solicit investors in the Commercial Pool.

7. In or about January 2010, RYAN TOMAZIN, the defendant, provided a potential investor ("Investment Fund-1") with a December 15, 2009 Confidential Information Memorandum (the "Confidential Information Memorandum"). The Confidential Information Memorandum set forth, among other things, the terms of agreement between R2 Capital and its Commercial Pool investors. Specifically, among other things, the Confidential Information Memorandum stated that R2 Capital would receive a management fee limited to 50% of the profits earned by the Commercial Pool.

8. Between in or about January 2010 and in or about March 2010, Investment Fund-1 invested approximately \$1,105,000.00 in the Commercial Pool.

9. From at least June 2010 up to and including July 2011, when all trading in the Commercial Pool ceased, the Commercial Pool experienced significant net losses.

10. Contrary to representations in the Confidential Information Memorandum, and despite the fact that the Commercial Pool was suffering net losses, RYAN TOMAZIN, the defendant, and other principals in R2 Capital caused investors' funds to be withdrawn from bank accounts associated with the Commercial Pool for their own personal benefit. Specifically, TOMAZIN and other principals withdrew approximately \$850,000 to which, according to the Confidential Information Memorandum, they were not entitled. Wire communications directing the transfer of funds from bank accounts associated with the Commercial Pool to a holding company belonging to TOMAZIN traveled through New York, New York.

Fraudulent Account Statements

11. Also in furtherance of the fraudulent scheme, RYAN TOMAZIN, the defendant, caused to be sent by electronic means to Investment Fund-1 false "Trading Statements" reflecting purported monthly trading profits and trade balances in the R2 Capital Commercial Pool from at least in or about August 2011

through September 2011, and from at least in or about November 2011 through in or about March 2013. The "Trading Statements" reflected profit figures which were fictitious, inasmuch as they reflected trading profits in months in which the Pool had in fact suffered significant trading losses. The Trading Statements also reflected inaccurate trade balances. For example:

a. The Trading Statement for Month Ending August 31, 2011 indicated a total ending trade balance of \$364,198.72 and trading profits of \$8,078.38. In fact, the Commercial Pool had not engaged in any trading during the month of August 2011 and the bank accounts associated with the Commercial Pool had a total value of approximately \$4,812.53.

b. The Trading Statement for Month Ending December 31, 2011 indicated a total ending trade balance of \$391,566.95 and trading profits of \$13,887.04. In fact, the Commercial Pool had not engaged in any trading during the month of December 2011 and the bank accounts associated with the Commercial Pool had a total value of approximately \$7,532.39.

c. The Trading Statement for Month Ending February 29, 2012 indicated a total ending trade balance of \$406,603.62 and trading profits of \$8,145.90. In fact, the Commercial Pool had not engaged in any trading during the month of February 2012 and the bank accounts associated with the

Commercial Pool had a total value of approximately \$1,847.03.

d. The Trading Statement for Month Ending June 30, 2012 indicated a total ending trade balance of \$437,689.61 and trading profits of \$7,376.57. In fact, the Commercial Pool had not engaged in any trading during the month of June 2012 and the bank accounts associated with the Commercial Pool had a total value of approximately \$6,156.23.

e. The Trading Statement for Month Ending March 31, 2013 indicated a total ending trade balance of \$482,978.41 and trading profits of \$3,835.36. In fact, the Commercial Pool had not engaged in any trading during the month of March 2013 and the bank accounts associated with the Commercial Pool had a total value of approximately \$3,558.51.

12. In addition, RYAN TOMAZIN, the defendant, caused to be sent by electronic means to Investment Fund-1 performance reports, listing the New York business address, that contained inaccurate narrative descriptions of the performance of the Commercial Pool and that falsely claimed the Commercial Pool had experienced positive returns.

Efforts to Further Conceal Trading Losses

13. In or about October 2013, a principal ("Principal-1") of Investment Fund-1 contacted RYAN TOMAZIN, the defendant, and requested a full redemption of Investment Fund-1's interest in the Commercial Pool, which Principal-1

understood, based upon the last Trading Statement provided, was valued at over \$400,000.

14. Between in or about February 2014 and July 2014, RYAN TOMAZIN, the defendant, exchanged hundreds of text messages with Principal-1 concerning Investment Fund-1's redemption request. During these exchanges, TOMAZIN, in sum and substance, repeatedly assured Principal-1 that Investment Fund-1's redemption was imminently forthcoming and provided various reasons for the continued delays.

15. In or about July 2014, RYAN TOMAZIN, the defendant, spoke with Principal-1 on the telephone on at least two occasions. During the calls, TOMAZIN, in sum and substance, continued to assure Principal-1 that the redemption in the amount of approximately \$526,000 was imminently forthcoming. As of December 2014, Investment Fund-1 had not received any redemption funds from its investment in the Commercial Pool.

Statutory Allegations

16. From at least in or about late 2009 through in or about December 2014, in the Southern District of New York and elsewhere, RYAN TOMAZIN, the defendant, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, in connection with the purchase and sale of securities, used and employed

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 and causing to be made untrue statements of material facts and omitting to state 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, to wit, after soliciting investments for the purchase and sale of securities, TOMAZIN engaged in a scheme to defraud by making material misrepresentations to investors concerning, among other things, the performance of their investments and the manner in which investor funds were utilized.

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

COUNT TWO
(Commodities Fraud)

The Grand Jury further charges:

17. The allegations contained in paragraphs 1 through 15 of this Indictment are repeated and realleged as if fully set forth herein.

18. From at least in or about late 2009 through in or about December 2014, in the Southern District of New York and

elsewhere, RYAN TOMAZIN, the defendant, while acting as a commodity pool operator and associated person of a commodity pool operator, willfully and knowingly, by use of the mails, and of the means and instrumentalities of interstate commerce, directly and indirectly, (a) employed devices, schemes, and artifices to defraud clients and participants, and prospective clients and participants; and (b) engaged in transactions, practices, and courses of business which operated as a fraud and deceit upon clients and participants, and prospective clients and participants, to wit, after soliciting investments in a commodity pool, TOMAZIN engaged in a scheme to defraud by making material misrepresentations to investors concerning, among other things, the performance of their investments and the manner in which investor funds were utilized.

(Title 7, United States Code, Sections 60(1) and 13(a)(2); Title 18, United States Code, Section 2.)

FORFEITURE ALLEGATION

19. As a result of committing one or more of the offenses alleged in Counts One and Two of this Indictment, RYAN TOMAZIN, 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.

Substitute Assets Provision

20. 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 18, United States Code, Section 981; Title 28, United States Code, Section 2461.)



Preet Bharara
PREET BHARARA
United States Attorney

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17 C.F.R. § 240.10b-5; 7 U.S.C.
§§ 6o(1), 13(a)(2); 18 U.S.C. § 2.)

PREET BHARARA

United States Attorney.

A TRUE BILL


Foreperson.
