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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. MOSES ONCIU, et al., Defendants.	Case No. SA CR 08-180-DOC TRIAL MEMORANDUM 18 U.S.C. § 371, 1343 Trial Date: September 17. 2013 Time: 2:00 p.m. Place: Courtroom of the Honorable David O. Carter

Plaintiff United States of America, by and through its counsel of record, Assistant United States Attorney Lawrence E. Kole, hereby submits its trial memorandum.

Dated: September 12, 2013.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

I.

CASE SCHEDULING MATTERS

Jury trial in this case is set for September 17, 2013 at 2:00 p.m. The estimated time for the government's case-in-chief is six days (counting the half-day session on the first day of trial as one day) and the estimated time for the entire trial is seven to eight days. The government anticipates calling approximately 8 witnesses in its case-in-chief, including two expert witnesses.

At the status conferences conducted on August 16 and September 5, 2013, the court notified the parties that the trial would be advanced from October 15 to September 17 and that the trial would be recessed after September 20 until October 15. The government alerted the court to the potential for schedule conflicts, in part due to the trial recess and the advancement of the trial date. The government also discussed with the court the government's ability to call witnesses out of order if needed, to adjourn at a convenient time on Friday, September 20, in the event that the witnesses present were concluded, and then to proceed with the remainder of the government's witnesses when the trial resumes in October.

The following witnesses have schedule conflicts due to work or personal commitments as a result of which they will need to testify on particular dates or will be unavailable on particular dates. Specifically, (1) FBI SA Lisa Schmadtke will be unavailable during the week of October 15 when the trial will resume, therefore, the government plans to call her on September 20, which may necessitate interrupting the testimony of FBI SA

Thomas Reitz if he is still testifying at that time; and (2) Keena Willis is unavailable during the week of September 17 so government plans to call her on October 15.

The parties have discussed stipulations of fact and to foundation of certain evidence and drafts have been circulated, but these proposed stipulations are still under consideration. Defendant Beata Priore filed a motion in limine to exclude or limit the testimony of the government's expert witnesses, Sean O'Malley and James Byrne. The government filed an opposition to the motion and the matter is scheduled to be heard at the beginning of trial. On Tuesday, September 10, defendant Priore filed another motion in limine, which seeks to exclude her prior testimony in an investment fraud case in which she was a victim. It was also set to be heard at the beginning of trial. The government has not yet filed its opposition.

Defendants are not in custody.

II.

THE INDICTMENT

Defendants are charged in a six-count Indictment with violating 18 U.S.C. §§ 371 and 1343. A copy of the Indictment is attached to this memorandum. Count 1 charges defendants with conspiracy to commit wire fraud, in violation of 18 U.S.C. § 371, which has the following elements: (1) beginning on or about November 29, 2006, and ending on or about March 7, 2007, there was an agreement between two or more persons to commit at least one crime as charged in the indictment; (2) each defendant became a member of the conspiracy knowing of at least one of its objects and intending to help accomplish it; and (3) one of the members

of the conspiracy performed at least one overt act on or after November 29, 2006 for the purpose of carrying out the conspiracy.

Counts 2 through 6 charge defendants with wire fraud, in violation of 18 U.S.C. § 1343, which has the following elements: (1) each defendant knowingly participated in a scheme or plan to defraud, or a scheme or plan for obtaining money or property by means of false or fraudulent pretenses, representations, or promises; (2) the statements made or facts omitted as part of the scheme were material; that is, they had a natural tendency to influence, or were capable of influencing, a person to part with money or property; (3) defendants acted with the intent to defraud; that is, the intent to deceive or cheat; and (4) defendants transmitted, or caused to be transmitted, a wire communication in interstate commerce to carry out or attempt to carry out an essential part of the scheme.

III.

STATEMENT OF FACTS

The government intends to prove at trial the following facts, among others:

On February 27, 2006, an associate of defendant Irene Pimkova called an individual going by the name of Tom Moore, who Pimkova and the associate believed to be a wealthy investor. In reality, this individual was FBI Special Agent ("SA") Thomas Reitz, acting in an undercover capacity (when defendants' interactions with the agent acting undercover are referenced, he will be referred to by his undercover identity), Pimkova told Moore that she had two investment opportunities available, which would pay 300% to 500% profit in six months on an investment of

$1 million or $10 million. Pimkova's associate stated that these returns could be earned with no risk. Pimkova arranged a meeting involving her, Moore, and an individual seeking investment capital. As this deal was not of the type of interest to the undercover operation, Moore did not pursue it. After some additional conversations, Pimkova told Moore in early May that investments of the size that they had discussed were not available at that time and mentioned that she worked mostly on bigger deals.

After almost four months passed with no contact, Pimkova called Moore on August 24, told him that there was now a $1 million investment available, and asked him if he was interested. She stated that this investment involved trading medium term notes, would earn 40-50% profit per week for 40 weeks, and that Moore could leave his money in his own bank account. While not identifying the entity performing the trading, Pimkova stated that it was under the direct guidance of the Federal Reserve (the "Fed") and Central Intelligence Agency ("CIA"), that she had dealt with it for several years, and that it had been performing for a long time. Pimkova had occasional contact with Moore during September, but then a period of two months elapsed without any interaction between them.

On November 28, Pimkova reinitiated communication with Moore by calling him and leaving a message asking him to call back as soon as possible. They spoke the next day, at which time Pimkova asked Moore if he was still willing to invest and said that a spot had opened in a deal due to an investor being disapproved. Moore would have to send $1 million to a European bank and travel

to Germany the next week, but could earn a 300% return in 30 days. Pimkova told Moore that he had to send personal and financial information, such as a copy of his passport and his bank statement. Moore expressed interest, but said that he did not want to travel.

Pimkova called Moore back less than an hour later and told him that she had gotten an exception for him and that he would not have to travel. She confirmed the 300%/month rate of return, said that she had three clients in the program who had already been paid, that it was definitely a working program, and that Moore will definitely be paid in January. While they were speaking, Pimkova placed the call on hold and spoke with defendant Beata Priore. Pimkova stated that Priore was dealing directly with the bank handling the investment, Priore would manage Moore's file, and Priore would call Moore the next day.

Later that day, Pimkova and Moore exchanged contractual documents for the purported investment by email. Pimkova was in Las Vegas, Nevada when she had these telephonic and email communications with Moore, her email messages to Moore were routed through a server located in Nevada, and they were received by SA Reitz in Newport Beach, California. In these documents, defendant Moses Onciu was identified as the authorized Project Consultant Representative. It was stated that a foundation operated by Onciu would retain 25% of the profits earned from the investment.

After receiving these documents, Moore spoke with Pimkova about Onciu and was told that the was a former CIA officer, that his foundation was under the CIA "umbrella," and that the

investment was intended to help fund a humanitarian project being run by the CIA. Moore requested a conference with Onciu and Pimkova said that she could arrange that, as she was in frequent contact with Onciu.

The next morning, defendant Priore called Moore as Pimkova had promised she would. Priore said that she was calling from the trading group in Frankfurt, Germany, although she later acknowledged that she was actually in New York. Priore described the investment at length, stating that it would pay the investor a profit of $6.5 million in return for the $1 million invested, that this would be paid within 30-45 days, and that it was "pretty much risk free" because it was guaranteed by an escrow account held by a European judge. The investment was managed by a German entity called TSI Consulting Group that traded foreign currency. Priore said that she had been in this business for seven years, that she had seen people make this type of return, and that she put eight people into this investment every week. Many of these investors asked Priore about federal government warnings that high yield income programs ("HYIPs") did not actually exist and were scams. She indicated that the government needed to keep HYIPs secret because, if the general population discovered that money could made in this way, no one would be willing to work anymore. The identities of prior client who had profited from Priore's investments were highly confidential, she said, and she could not provide references to them. Priore told Moore that she would send him the investment contract and tell him how to transfer his money for the investment.

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Later that day, Priore and Moore exchanged contractual documents for the purported investment by email. Priore was in Glen Head, New York when she had these telephonic and email communications with Moore, her email messages to Moore were routed through a server located in Arizona, and they were received by SA Reitz in Newport Beach, California. These documents included a fee agreement that provided for Priore to be paid 5% of the earnings from the investment. As the investment was to be $1 million and to earn $6.5 million in profits, Priore's fee from this transaction would have been $325,000.

The next day, December 1, Moore faxed signed documents to Priore's New York telephone number and she sent Moore two email messages from New York, which were routed through a server located in Arizona and received by SA Reitz in Newport Beach, California. Priore directed Moore to call her when he received his investment contract so she could go over it with him and explain it to him.

On December 4, a contract for an investment with TSI was emailed to Moore. The contract provided for Moore to pay to TSI $1 million so that TSI could procure a loan denominated in Euros for a real estate property. However, most of the loan proceeds would be sent directly to Moore, with approximately $2 million Euros withheld to repay the loan in 12 years. Moore would receive approximately 5.6 million Euros (equivalent to approximately $7 million, according to the contract). Although the contract allowed TSI six months to pay Moore, an addendum to it provided that Moore would be paid by December 22 if he sent in his money by December 4. The 2 million Euros withheld were to be

used to generate sufficient earnings over the 12-year period to repay the full principal amount of the loan, which was 10.58 million Euros (i.e., to earn a return of approximately 430% over that time period). Although the loan was not actually going to be repaid for 12 years, was said to be obtained for Moore's benefit, and most of proceeds of the purported loan were being given to Moore, the contract provided that Moore would have no duty to repay the loan and that the lender would provide a statement that all obligations under the loan would be released before the loan proceeds were even distributed to Moore. TSI was to deposit 22.5 million Euros in an escrow account with the European judge in Belgium to secure the investments of Moore and others and, if the program was not successful, the investors' principal would be returned in full out of the escrow plus a payment of 5.5% interest. Moore was required to keep the transaction confidential and was required to pay a penalty of 10,000 Euros if he disclosed it.

Moore forwarded the contract to Pimkova. On December 4, Pimkova set up a conference call between Moore, Onciu, and herself. Pimkova and Onciu both stated that they had read the contract and that they liked it; Onciu said that he did not see any red flags indicating that Moore should not put his money into the deal. Onciu stated that Pimkova had asked him to find a $1 million investment that was genuine, that Priore had brought this deal to them, and that Priore had past success with investments. Onciu told Moore that he had completed HYIPs before and had seen returns much higher than 600% in 30 days, although he did not often deal with amounts under $100 million because his expertise

was in transactions involving tens of billions of dollars.

While Onciu acknowledged awareness of government warnings about HYIPs and said that most HYIPs were scams and that he had seen people lose money in them, he stated that such losses occurred when the investor's money was not protected. He pointed out that the TSI deal built in enough safeguards that Moore's money was not at risk and that he did not have much to lose. Although Onciu suggested that Moore consult an attorney, he said that it would be sufficient if that attorney merely spent a couple of hours contacting the escrow holder and getting a letter from him and need not do a formal investigation of the investment.

Onciu claimed to be working directly with one of seven or eight Fed licensees who have authority to engage in these types of transactions, which are used because the government wanted to get money out of accounts and back into circulation. The high yield business only worked, Onciu warned, because people kept it quiet. If the public learned that it was possible to make a 100% return on money in a month, the world's economy would destabilize in a month, therefore, the government did not want HYIPs to become widely known. As a result, Moore would not be permitted to speak with prior TSI customers.

Because a humanitarian project was needed in these HYIPs, Onciu's function was to provide his foundation to satisfy that requirement. When Moore expressed concerns about the fees payable in the deal, Onciu quickly offered to reduce his cut from 25% to 20% or 15% if that would encourage Moore to invest.

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Later in the week of December 4, Priore arranged through additional telephone and email communication with Moore for him to speak with individuals in Europe who were said to be involved with the TSI deal. On December 6, Moore was called by an individual identifying himself as Jehan Bernard de la Vingne, who said that he was the TSI escrow holder. De la Vingne told Moore that the transaction was very good, that many have invested already, that only one had asked for his money back, and that it was no problem to make a return of six times one's money in 30 days. The next day, Moore was called by individuals identified as Juergen Schaeffer and Marc Schlag from TSI and they discussed the investment with Moore. Schaeffer stated that the deal provided profits that were way above average market returns, was structured as a loan, and that the money withheld from the loan proceeds was invested in medium term note trading, which yielded the high return needed to repay the loan principal in 12 years (the repayment required was over four times the amount withheld). Moore was also told that the investment had been operating successfully for four years and that Schaeffer had invested in HYIPs before and obtained the contracted returns.

In her phone calls with Moore during that week, as well as later in December, Priore told Moore that she had other clients who were being paid by the TSI investment, that TSI pays out money to 80-100 investors each month, and that it had been doing so for many years. Priore also stated that she had accumulated enough from her 5% fee per TSI investment placed that she was going to invest $1 million of her own money in TSI's program in January 2007. On January 4, 2007, Priore told Moore that TSI had

finished paying out profits to 100 people who had invested in December. Priore had an in-person meeting with Moore on January 6 during which she said that TSI had been performing for ten years and that some clients invested repeatedly, turning their $1 million principal into $25 million. For an investor with more money, or one who had made returns totaling $25 million, Priore had another investment available in which one could earn 100% per week. By using both of these programs, Moore could make a 10,000% return, generating $100 million within a year from his original $1 million, Priore said.

During this time period, Pimkova made several urgent phone calls to Moore, in which she tried to get him to make an additional high yield investment. In this new opportunity marketed by Pimkova, Moore could earn a return of $32 million on a $1 million investment with no risk. Pimkova tried to reach Moore again by telephone in late January and early February 2007, asking him to call her back as soon as he could.

In mid-January, Onciu told Moore that he had a new program available and sent documents to Moore by email stating that an investor could receive 12.5% profit per week on a $500,000 investment (i.e., a 650% annual return). Onciu stated in a January 29 email message that he was about to invest $2.5 million of his own money in this program.

After Moore never carried through with sending the investment money to TSI, Priore contacted him on January 29 and told him that she had a new deal available, in which one could invest without transferring funds. The investor's money would remain in his own account and be periodically "pinged" to verify

that it was still there. In return, the investor would earn 7.2 times his principal. Priore said that this investment had been working successfully for seven to eight months.

Onciu also switched to offering Moore a program that did not require money to be moved. In a February 20 telephone call and email message. Onciu offered a "ping" investment in which 25% could be earned per week if the investor committed to keeping $1 million in his own bank account. Onciu stated that it had been paying out for three years, that he had just placed a client into it with a $2 million investment, and that it was Fed-licensed. Shortly thereafter, FBI concluded the undercover operation.

Priore had been a victim of an investment scheme prior to this case. In 2002, she lost hundreds of thousands of dollars and reported the incident to law enforcement. The perpetrator of that fraud was charged and went to trial. Priore testified at his trial in May 2006, just a few months prior to the communications in the instant case in which she marketed HYIPs to Moore and told him that they had been successful. Onciu also had lost money in aa HYIP in 1998, when he invested $35,000 and only received half of his money back.

The government will be presenting expert testimony from Fed Investigator Sean O'Malley and Professor James Byrne. Mr. O'Malley will explain that the Fed does not offer investments to the general public nor does it license agents to deal with the public, that the Fed and the federal government do not use HYIPs as a method of increasing the supply of money in circulation or to support humanitarian projects, and that the Fed does not attempt to keep HYIPs secret. On the contrary, Mr. O'Malley will

state that the Fed tries to publicize the dangers of HYIPs, which are presented as if they were real investments but, in reality, do not exist. Mr. O'Malley will also discuss common hallmarks of fictitious HYIPs. Mr. Byrne will describe the nature of genuine financial transactions and investments available, particularly in Europe, such as currency trading and medium term notes, and the interaction of risk present and return available through investments. He will explain that high return investments necessarily entail high risk, that all investments have some risk, that low risk investments typically yield the lowest returns, and that it would be economically irrational for a party offering an investment to pay a rate of return that far exceeded others available in the market. Mr. Byrne will discuss the magnitude of returns claimed to be offered in this case, the fact that such high returns are not available in real investments in the economy, and that the type of discounting of debt instruments implied in this case does not exist in reality.

IV.

LEGAL AND EVIDENTIARY ISSUES

A. The Expert Testimony Offered by the Government Is Admissible

Defendant Priore has filed a motion in limine to exclude or limit expert testimony to be presented by the government. She contends that the expert testimony does not meet the Daubert criteria for scientific expert testimony, will be cumulative, will not be helpful to the jury, and may violate Crawford and the hearsay rule. In its opposition to this motion, the government explained why these arguments did not provide a basis to exclude or limit the expert testimony. The expert testimony will be

based on technical and specialized knowledge, not scientific knowledge, therefore, the Daubert criteria used in evaluating scientific experts are inapplicable. The testimony will not be cumulative as the experts have different backgrounds and areas of expertise and will be testifying about different issues (one will address the Federal Reserve and United States banking systems while the other will discuss general market principles of risk and return and will focus on European financial instruments). The experts' testimony will be helpful to the jurors, many of whom are likely to have limited knowledge of investment or economic concepts, European financial instruments, and the operation of the Fed.

B. Priore's Testimony in the Case in Which She Was a Victim Is Admissible as it Shows Motive, Intent, Knowledge, and Absence of Mistake.

Priore filed another motion in limine three days ago in which she sought to preclude the government from offering testimony that she gave at the trial of an individual who she reported had defrauded her of money in an investment scheme. The government will be filing an opposition to that motion that describes its response in more detail. The motion should be denied because evidence that Priore was a victim of an investment fraud shortly before committing the instant offense -- and testified about it just seven months before this offense -- is probative as to her motive, intent, knowledge, and absence of mistake. See Fed. R. Evid. 404(b). Priore further argues that any probative value of this evidence is outweighed by its prejudice. However, Priore does not proffer any manner in which

it would be prejudicial and, to the contrary, the fact that she was a victim of crime would appear to cast her in a more positive light.

C. The Hearsay Rule Prevents Defendants from Eliciting Their Statements from Witnesses During the Government's Case-in-Chief

The government may offer defendants' statements because they are non-hearsay admissions of a party-opponent. See Fed. R. Evid. 801(d)(2)(A). However, the hearsay rule prevents the defendants from offering potentially exculpatory portions of those same statements. Rule 801(d)(2)(A) is limited to party-opponent admissions. A defendant's statement is admissible only if offered against him by the government; a defendant may not elicit his own prior statements. See United States v. Fernandez, 839 F.2d 639, 640 (9th Cir. 1988). As the Ninth Circuit noted in Fernandez, the defendant is free to introduce assertedly exculpatory evidence by testifying to it during the trial. Id. The court noted that the defense's attempt to introduce the defendant's exculpatory statements through a government witness was improper: "It seems obvious defense counsel wished to place Fernandez's statement to Bateman before the jury without subjecting Fernandez to cross-examination, precisely what the hearsay rule forbids." Id.

In United States v. Ortega, 203 F.3d 675, 682 (9th Cir. 2000), the Ninth Circuit reaffirmed this rule, holding that a defendant may not elicit his own exculpatory statements on cross-examination of a law enforcement officer. The court further held that the exculpatory statements are inadmissible even though they

were made in the context of other inculpatory statements that were introduced by the government. Id. Such exculpatory statements offered by the defense are inadmissible regardless of the rule of completeness, Fed. R. Evid. 106. Id. See also United States v. Collicott, 92 F.3d 973, 983 (9th Cir. 1996):("Rule 106 'does not compel admission of otherwise inadmissible hearsay evidence'"). The Confrontation Clause also provides no basis for admission, as a defendant should not be allowed to use it to admit hearsay testimony through the "back door" without subjecting himself to cross-examination. Ortega, 203 F.3d at 682.

These principles prevent defendants in this case from offering any exculpatory statements that they made to law enforcement after the conclusion of the instant offense. Defendants likewise may not proffer their own statements made during the commission of the offense, if such statements are offered for the truth of the matter(s) asserted.

D. The Best Evidence Rule Does Not Prevent the Agent Who Was Involved in Conversations with Defendants from Testifying about the Contents of Those Conversations.

Although the government will be playing recordings of undercover conversations between the case agent and defendants, the use and existence of those recordings does not prevent the agent from testifying about the contents of the conversations. A person who participated in a conversation is entitled to testify as to the contents of the conversation, notwithstanding the fact that the conversation was recorded. United States v. Workinger, 90 F.3d 1409, 1414 (9th Cir. 1996); United States v.

Gonzales-Benitez, 537 F.2d 1051, 1053-54 (9th Cir. 1976). In such a situation, the testimony concerns the contents of the conversation that are recalled by the participant, not the contents of the recording itself. Id. Both a recording and testimony are evidence about a conversation itself, therefore, the best evidence rule has no applicability to the admission of either the recording or the testimony to show what was said during the conversation. Id.

E. *Crawford* Does Not Prevent the Use of Custodian of Records Declarations

The government anticipates presenting custodian of records declarations in support of certain business records that it will seek to have admitted in evidence. Custodian of records declarations may be utilized by the court to provide a foundation for the admission in evidence of business records without creating any issue under Crawford v. Washington, 541 U.S. 36, 124 S. Ct. 1354, 158 L. Ed. 2d 177 (2004). First, the declarations need not be admitted in evidence themselves, because their function is merely to provide a basis for the court to make a decision whether to admit evidence, i.e., business records. Rule 104(b) of the Federal Rules of Evidence permits the court to rely on inadmissible evidence when making a preliminary ruling as to whether evidence is admissible. The Confrontation Clause right protected by Crawford applies only during the presentation of evidence to the fact-finder at trial, not to preliminary matters such as determination by the court of the admissibility of evidence.

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Furthermore, the Ninth Circuit has found that certifications of custodians of records are non-testimonial matters that are not covered by Crawford. The court in United States v. Hagege, 437 F.3d 933, 958 (9th Cir. 2006) rejected a Crawford challenge to the admission of foreign bank records for which a foundation was provided by means of a certificate of authenticity. In United States v. Cervantes-Flores, 421 F.3d 825, 831-32 (9th Cir. 2005), the court held that use of a custodian of record's certificate as to whether records existed in a file was not barred by Crawford. Therefore, custodian of records declarations may be used in the instant case without creating any issue under Crawford.

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

October 2007 Grand Jury

UNITED STATES OF AMERICA, Plaintiff, v. MOSES ONCIU, BEATA GIZELLA PRIORE, and IRENE PEMKOVA, Defendants.	SA CR 08- 180-DOC I N D I C T M E N T [18 U.S.C. § 371: Conspiracy; 18 U.S.C. § 1343: Wire Fraud; 18 U.S.C. § 2: Aiding and Abetting/ Causing an Act To Be Done]

The Grand Jury charges:

COUNT ONE

[18 U.S.C. § 371]

A. INTRODUCTION

At all times relevant to this Indictment:

1. Defendant MOSES ONCIU was a resident of Fountain Hills, Arizona, and a director of David and Goliath International Ministries ("D&G").

2. Defendant BEATA GIZELLA PRIORE was a resident of Glen Head, New York.

3. Defendant IRENE PEMKOVA was a resident of Las Vegas, Nevada.

4. Special agents of the Federal Bureau of Investigation (FBI) conducted an undercover investigation into fraudulent high yield investment schemes. The undercover investigation specifically targeted those persons who fraudulently offered substantial returns on investments with low or no risk of loss.

5. As part of the undercover investigation, the FBI established an undercover entity (UCE) in Newport Beach, California that purported to be a financial advisory firm. FBI undercover agents (UCAs) posed either as partners of the UCE seeking to invest their own funds or as wealthy clients of the UCE seeking to invest substantial monies.

6. A "High Yield Investment Program" (HYIP) is a general term given to fraud schemes that are known by various specific names, including "Prime Bank Guarantees," "Prime Bank Debenture Programs," "Medium Term Note Trading Programs," and "Roll Programs." Such programs do not exist as legitimate investment vehicles. In these schemes, the fraud perpetrator claims to have privileged access to secret financial trading programs, which are falsely represented to be sanctioned by the U.S. Federal Reserve Bank, the U.S. Treasury Department, the World Bank, or some other entity involved in international monetary transactions or policy. Claims are typically made that a privileged few are invited to participate in the trading of some form of bank security such as bank guarantees, notes, stocks, or debentures, which can be bought at a discount and sold at a premium. It is often claimed that there are only a few "traders" or "commitment holders" in the world who are authorized to resell these bank securities between the top 25 or 50 banks in the world, often falsely referred to as "Prime Banks." By conducting multiple "trades" in rapid succession, they claim to be able to produce

extraordinary rates of returns, far beyond any normal investment. It is often further claimed that one of the primary reasons these trading programs exist is to generate funds for humanitarian purposes and that a portion of the investor's profits must be used to provide humanitarian relief and aid somewhere.

7. The perpetrators of HYIPs claim that a high degree of secrecy is required of the unsuspecting investor in order to participate in the program, and require the execution of various documents which have no meaning in legitimate financial transactions. Typically, the investor first is directed to provide a "Letter of Intent," a "Non-Solicitation Agreement," a "Confidentiality Agreement," a "Non-Circumvention Letter," a "Bank Proof of Funds," a "Client Information Summary," and a copy of the investor's passport. The investor is typically told that he must go through "compliance," which will purportedly be done by the FBI, Central Intelligence Agency, Federal Reserve Bank or some other government "compliance officer." The investor is also told that his funds must be verified on a "bank to bank" basis to make sure that they do exist and that the funds must be "good, clean, clear funds of non-criminal origin." The investor typically is assured that his funds are absolutely safe and never at risk in any way. The scheme is designed to gradually progress to its ultimate goal of gaining control of all or a portion of the investor's funds.

B. OBJECT OF THE CONSPIRACY

8. Beginning on or about November 29, 2006, and continuing to on or about March 7, 2007, in Orange County, within the Central District of California and elsewhere, defendants ONCIU, PRIORE, and PEMKOVA, together with others known and unknown to the Grand Jury, knowingly combined, conspired, and agreed with each other to commit the following

offense against the United States: wire fraud, in violation of Title 18, United States Code, Section 1343, in connection with the promotion of fraudulent high yield investment schemes promising extremely high returns at little or no risk to principal.

C. MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendants and their co-conspirators sought to accomplish the conspiracy included, among other things, the following:

9. Defendants made fraudulent representations and promises to the UCA about defendants' ability to place the UCA's client-investor into a select, secret HYIP.

10. Defendants fraudulently represented they had successfully closed previous deals in which extraordinary rates of return were realized by other investors.

11. Defendants fraudulently represented that they had access to a HYIP that would yield a 300% to 650% return in 30 to 45 days at no risk.

12. Defendants, for the purpose of promoting their fraudulent investment program, made telephone calls to the UCA in Orange County, California, and sent email transmissions to the UCA in Orange County, California.

D. OVERT ACTS

13. In furtherance of the conspiracy, and to accomplish its object of the conspiracy, defendants ONCIU, PRIORE, and PEMKOVA, together with others known and unknown to the Grand Jury, committed and willfully caused others to commit the following over acts, among others, in the Central District of California and elsewhere:

Overt Act No. 1: On or about November 29, 2006, defendant PEMKOVA had a telephone conversation with the UCA.

Overt Act No. 2: On or about November 29, 2006, during a phone conversation with the UCA, defendant PEMKOVA stated, among other things, that:

a. The UCA could expect a call from a "Dr. Priore" in Europe who was working with the bank involved in the program; and

b. Defendant PEMKOVA had other clients in the program, which was a "working program," and who had already been paid.

Overt Act No. 3: On or about November 29, 2006, defendant PEMKOVA sent an email to the UCA.

Overt Act No. 4: On or about November 29, 2006, during a telephone conversation with the UCA, defendant PEMKOVA stated, among other things, that:

a. D&G was a humanitarian foundation under the Central Intelligence Agency (CIA) umbrella;

b. Defendant ONCIU was a former, highly placed CIA officer and a director of D&G; and

c. A humanitarian project was required for entry into the program.

Overt Act No. 5: On or about November 29, 2006, defendant PEMKOVA sent the UCA an email that stated, among other things, that the UCA could expect a call from defendant PRIORE the next day and that defendant PEMKOVA would arrange a phone conference with defendant ONCIU.

Overt Act No. 6: On or about November 30, 2006, during a phone conversation with the UCA, defendant PRIORE stated, among other things, that:

a. Defendant PRIORE was calling from the trading group in Frankfurt;

b. The investment program was run by the TSI Consulting

Group in Frankfurt;

c. The program yields returns that are 6.5 times the original investment in 30 to 45 days;

d. The investment is "pretty much risk free";

e. Defendant PRIORE had been in the business of high-yielding investments for seven years and has seen people make these kinds of returns in the past; and

f. The program required a minimum investment of $1 million;

Overt Act No. 7: On or about November 30, 2006, defendant PRIORE sent the UCA an email.

Overt Act No. 8: On or about December 1, 2006, defendant PRIORE sent the UCA an email.

Overt Act No. 9: On or about December 1, 2006, defendant PRIORE sent the UCA an email.

Overt Act No. 10: On or about December 4, 2006, during a telephone conference call with the UCA (the "12/4/06 Conference Call"), defendant ONCIU stated, among other things, that:

a. Defendant Onciu usually doesn't do transactions of less than $100 million;

b. Making a return of 100% per month is not abnormal;

c. Defendant Onciu's role in this transaction is to provide the humanitarian element required for these transactions;

d. The program is highly confidential and the government does not want people talking about such investment programs; and

e. Defendant Onciu would reduce his fees if it would influence the UCA to invest in the program.

Overt Act No. 11: On or about December 4, 2006, defendant PEMKOVA participated in the 12/4/06 Conference Call.

Overt Act No. 12: On or about December 5, 2006, during a phone conversation with the UCA, defendant PRIORE stated, among other things, that a client of hers invested $1 million in the program and made a return of $6.5 million.

Overt Act No. 13: On or about January 6, 2007, defendant PRIORE met with the UCA.

COUNTS TWO THROUGH SIX

(18 U.S.C. §§ 1343 and 2)

14. Paragraphs 1 through 13 are realleged and incorporated herein by reference, as if set forth in full.

15. Beginning on or about November 29, 2006, and continuing to on or about March 7, 2007 in Orange County, within the Central District of California, and elsewhere, defendants ONCIU, PRIORE, and PEMKOVA, together with others known and unknown to the Grand Jury, knowingly and with intent to defraud, devised, participated in, and executed a scheme to defraud as to material matters, and to obtain money and property by means of material false and fraudulent pretenses, representations, and promises, and the concealment of material facts.

16. On or about the dates set forth below, within the Central District of California and elsewhere, defendants ONCIU, PRIORE, and PEMKOVA, for the purpose of executing the above-described scheme to defraud, transmitted, willfully caused the transmission, and aided and abetted the transmission of, the following items by means of wire and radio communication in interstate and foreign commerce:

COUNT	DATE	WIRE TRANSMISSION
2	11/29/06	Email from defendant PEMKOVA, sent from amartyk@yahoo.com through a server in Las Vegas, Nevada to the UCA in Newport Beach, California
3	11/29/06	Email from defendant PEMKOVA, sent from amartyk@yahoo.com through a server in Las Vegas, Nevada to the UCA in Newport Beach, California
4	11/30/06	Email from defendant PRIORE, sent from drbpriore@maxfoundation.us, sent through a server in Arizona to the UCA in Newport Beach, California
5	12/01/06	Email from defendant PRIORE, sent from drbpriore@maxfoundation.us, sent through a server in Arizona to the UCA in Newport Beach, California

COUNT	DATE	WIRE TRANSMISSION
6	12/01/06	Email from defendant PRIORE, sent from drbpriore@maxfoundation.us, sent through a server in Arizona to the UCA in Newport Beach, California

A TRUE BILL

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FOREPERSON

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