

05 MAG 1720

Approved:

[Handwritten signature]

David C. Esseks/Marcia R. Isaacson
Assistant United States Attorneys

Before: HONORABLE DOUGLAS F. EATON
United States Magistrate Judge
Southern District of New York

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:
UNITED STATES OF AMERICA
:
- v -
:
PHILLIP R. BENNETT
:
Defendant.
:
- - - - - x

COMPLAINT
:
Violation of
:
15 U.S.C. § 78j(b)
:
COUNTY OF OFFENSE:
NEW YORK

SOUTHERN DISTRICT OF NEW YORK, ss.:

HEATHER TUCCI, being duly sworn, deposes and says that she is a Postal Inspector with the United States Postal Inspection Service and charges as follows:

COUNT ONE

(Securities Fraud)

1. From at least in or about 2004 up to and including in or about October 2005, in the Southern District of New York and elsewhere, PHILLIP R. BENNETT, the defendant, unlawfully, willfully, and knowingly, directly and indirectly, by the use of means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, did use and employ, in connection with the purchase and sale of securities, 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 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) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit

upon a person, in connection with the purchase and sale of the common stock of Refco, Inc.

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

The bases for my knowledge and the foregoing charge are, in part, as follows:

Background

4. I have been employed by the United States Postal Inspection Service for approximately two years. I am currently assigned to a unit that investigates mail fraud, wire fraud, securities fraud, money laundering and related offenses.

5. I am fully familiar with the information contained in this Complaint, either through personal investigation or conversations with other individuals involved in this investigation, including examination of documents obtained from Refco, Inc. and public filings made by that company.

6. Because this Complaint is being submitted for the limited purpose of establishing probable cause, I have not set forth each and every fact that I learned in connection with this investigation. To the extent that there are assertions herein concerning dates and numbers, they are approximations based upon information and evidence gathered to date. Where I have reported the contents of documents, or the actions or statements of others, I have reported those matters in substance and in part, except where indicated otherwise.

Relevant Parties and Entities

7. Refco Inc. is a Delaware corporation with its principal place of business in New York, New York whose shares are listed on the New York Stock Exchange. Refco Inc. and its predecessor entities are referred to herein collectively as "Refco". Refco's business includes providing execution and clearing services for exchange-traded derivatives and providing prime brokerage services in the fixed income and foreign exchange markets.

8. At all relevant times, PHILLIP R. BENNETT was the President and Chief Executive Officer of Refco.

Overview

9. Based on the evidence set forth below, there is probable cause to believe that from at least as early as in or about 2004 up to and including in or about October 2005, PHILLIP R. BENNETT, the defendant, and others known and unknown, hid from investors in the August 2005 initial public offering of stock in Refco the existence of hundreds of millions of dollars of related party transactions between Refco and a company controlled by BENNETT, including by causing Refco to file a false and fraudulent S-1 registration statement with the Securities and Exchange Commission. When those related party transactions were disclosed to the market on October 10, 2005, the stock price plummeted, leading to a loss to investors of over a billion dollars.

Refco's Initial Public Offering

10. According to publicly available documents, in or about August 2005, Refco's registration statement for its initial public offering of stock was declared effective, and Refco thereafter sold to the public approximately \$583 million of common stock. Refco's stock was listed on the New York Stock Exchange under the ticker symbol "RFX."

11. In order to carry out its initial public offering, Refco was required to and did file a registration statement, pursuant to form S-1, with the United States Securities and Exchange Commission. That registration statement, which I have reviewed, provided potential investors with information about, among other things, Refco's business operations, management, and the planned use of the proceeds of the offering. It also contained audited financial statements of the company.

12. Among other items that the applicable regulations required be disclosed in Refco's registration statement were, in substance, all transactions (of at least \$60,000) by the registrant within the last fiscal year in which any executive officer of the registrant had a material interest, and all debts (of at least \$60,000) by any executive officer of the registrant to the registrant. (Form S-1, Item 11(n); Regulation S-K, Items 404(a) and (c)). These regulations are designed to disclose potential conflicts of interest by management, among other things, that may be material to investors in evaluating the company's stock.

13. Refco's S-1 registration statement, signed by PHILLIP R. BENNETT, the defendant, on August 8, 2005 in New York,

New York, disclosed nothing about the hundreds of millions of dollars of transactions with and debts owed to Refco by a company controlled by BENNETT that are detailed below.

14. Refco's S-1 registration statement contained audited financial statements as of February 28, 2005, and unaudited financial statements as of May 31, 2005.

BENNETT's Related Party Transactions And Indebtedness

15. According to Refco's S-1 registration statement, at all relevant times, PHILLIP R. BENNETT, the defendant, controlled Refco Group Holdings, Inc. ("RGHI"), a privately-held corporation.

16. I have spoken with an officer of Refco who informed me that the books of the company showed a multi-hundred million dollar receivable from RGHI throughout 2005, including in late February 2005, except for quarter-end periods.

17. I have reviewed documents obtained from Refco that reflect that in February 2005, PHILLIP R. BENNETT caused Refco to engage in a series of transactions designed to disguise the related-party nature of this \$300 million-plus debt owed to Refco by RGHI by temporarily paying off the debt and transferring it from RGHI to another entity, unrelated to BENNETT. I believe that this temporary re-positioning of the debt was carried out so that the debt would not appear to be owed by RGHI over Refco's February 28, 2005 fiscal year-end. The documents establish the following:

a. On or about February 23, 2005, Refco Capital Markets, a subsidiary of Refco, loaned a Refco customer, apparently unrelated to BENNETT, \$335 million. The loan was to be repaid on March 8, 2005.

b. On the same date, the customer loaned RGHI \$335 million. The repayment date was March 8, 2005. The loan agreement for this loan was executed by PHILLIP R. BENNETT on behalf of RGHI. The interest rate on this loan was 75 basis points higher than the interest rate on the loan from Refco Capital Markets to the customer, thereby assuring the customer a profit.

c. On the same date, PHILLIP R. BENNETT signed a letter of guaranty to the customer on behalf of Refco Group, Ltd., assuring the customer that, should RGHI default on its \$335 million obligation to the customer, Refco Group, Ltd. would make

the customer whole.

18. I am informed by an employee of Refco that the \$335 million loaned to RGHI in these transactions was used to pay down a portion of the existing RGHI debt to Refco. The result of these transactions was to substitute a \$335 million debt to Refco by the customer for a \$335 million debt by RGHI. According to the documentation, the transactions were unwound on or about March 8, 2005, after the end of Refco's fiscal year on February 28, 2005.

19. I have reviewed documents obtained from Refco that establish that Refco engaged in similar transactions over the quarters ended May 31, 2005, November 30, 2004, and August 31, 2004: namely, I have reviewed documents that show short-term loans, carried out over these quarter-end periods, in which a Refco entity loaned as much as \$545 million to the customer, who in turn loaned the same sum to RGHI. Each of the loans to RGHI was executed by PHILLIP R. BENNETT, the defendant, on behalf of RGHI, and in each case BENNETT signed a letter of guaranty from a Refco entity to the customer, assuring that Refco would make the customer whole should RGHI not pay back the loan. I conclude that those loans allowed RGHI to temporarily eliminate its debt to Refco as of the end of these quarterly reporting periods, replacing those debts with debts from the customer and allowing BENNETT to hide the related-party nature of the continuing indebtedness by RGHI to Refco.

20. On or about October 10, 2005, Refco issued a press release announcing, in substance, that it had discovered that it was owed a debt of approximately \$430 million by an entity controlled by PHILLIP R. BENNETT, the defendant. The press release also stated that BENNETT had repaid the entire sum to the company that day. I have reviewed documents obtained from Refco that show that 350 million euros were transferred to an account held at Refco in the name of PHILLIP BENNETT/RGHI on or about October 10, 2005 from a foreign bank, and were converted to approximately \$424 million on the same day. Following the company's announcement of its discovery of this related party receivable, the market price of Refco stock plummeted from

approximately \$28.56, its closing price on Friday, October 7, 2005, to \$13.85, its closing price on October 11, 2005, resulting in a loss of well more than \$1 billion in market capitalization.

WHEREFORE, deponent prays that PHILLIP R. BENNETT, the defendant, be imprisoned or bailed as the case may be.

Heather Tucci
HEATHER TUCCI
United States Postal Inspector

Sworn to before me this
OCT 12 2005 day of October, 2005.

UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

DOUGLAS F. EATON
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK