

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED

2010 JUN -1 PM 12:41

CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD DONALD THEYE,
Defendant.

CRIMINAL NO. _____

INDICTMENT

USAO #2010R00069

[Violations:

A10 CR 346 SS

-) 7 U.S.C. § 13(a)(1)- Embezzlement of
-) Commodity Pool Funds;
-) 15 U.S.C. § 77q(a) & 77x- Securities Fraud;
-) 18 U.S.C. § 1348- Securities and
-) Commodities Fraud;
-) 18 U.S.C. § 1343- Wire Fraud;
-) 18 U.S.C. § 1956- Money Laundering]

THE GRAND JURY CHARGES:

Introduction

1. The Defendant,

RICHARD DONALD THEYE,

is a 50 year old former resident of Austin, Texas.

2. In or about 2000, the Defendant formed Private Investors Credit Union (PICU), later renamed Harmony Capital, in Nevis, West Indies. PICU maintained a bank account in Nevis. Investors wired their funds to the PICU bank account in Nevis. The Defendant would then wire the funds to a bank account in Austin, Texas. PICU had approximately 62 investors, 38 of which remained active in December of 2009. An active investor is an investor who maintained an active investment account with the Defendant.

3. In or about 2005, the Defendant formed the RYCO Group (RYCO), a California limited liability company. RYCO had approximately 52 investors, 41 of which remained active in December of 2009.

4. In or about 2006, the Defendant formed First RYCO Group (FRG), a California limited liability company. FRG had approximately 25 investors, all of which remained active in December of 2009.

5. In or about 2009, the Defendant formed Micind Capital Management. Micind had only one investor who remained active in December of 2009.

6. PICU, RYCO, FRG and Micind were entities created by the Defendant so as to pool the investments of individual investors in the trading of commodities, stocks, options and futures. Each of these pooled investment entities had the same address in Austin, Texas and maintained bank accounts in Austin, Texas. Each pool was essentially the alter ego of the Defendant. To the extent the Defendant represented that pooled investments would be used to buy, sell and trade commodities, the pools constituted "commodity pools."

7. The Commodity Futures Trading Commission (CFTC) is a federal regulatory agency charged with administering and enforcing the Commodity Exchange Act, Title 7, United States Code, § 1 *et seq.*, and the regulations promulgated thereunder. The stated mission of the CFTC is "protect market users and the public from fraud, manipulation, and abusive practices related to the sale of commodity and financial futures and options, and to foster open, competitive, and financially sound futures and options markets." The Commodity Exchange Act provides that:

- a. A "commodity pool" is any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity futures.
- b. A "commodity pool operator" is any person engaged in the business of a commodity pool and in connection with the pool's operation, solicits, accepts or receives from others, funds, securities or property for the purpose of trading in commodity futures. Unless exempted or excluded from registration, a commodity pool operator is required to be registered with the CFTC, before it could act on behalf of another person in connection with commodity futures trading.

- c. A "participant" is any person who had any direct financial interest in a commodity pool.

The Defendant's investment and trading activities described in this Indictment brought him within the purview of the Commodity Exchange Act. As a consequence, the Defendant was required to register with the CFTC.

The Scheme

8. From in or about 2000 and continuing until December of 2009, the Defendant devised and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises. The scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, so devised and so intended, was, in substance, as follows:

9. The purpose of the scheme was for the Defendant to unlawfully acquire cash and assets from individual investors (also known as participants) and thereafter misappropriate and convert investor funds to the Defendant's own benefit and the benefit of others without the knowledge or authorization of the investors.

10. The Defendant orchestrated an elaborate Ponzi Scheme. That is, the Defendant used new investor funds to meet the periodic redemption requests of other investors.

11. It was part of the scheme that the Defendant represented to individuals that he was a shrewd and capable manager of investment capital that allowed him to guarantee positive returns when in truth and in fact the Defendant never generated sufficient investment returns to make such a guarantee.

12. It was part of the scheme that the Defendant boasted of a successful investment strategy and investment plan that allowed him to guarantee positive returns when in truth and in fact the Defendant's strategy and "investment plan" did not produce positive results or yields. For example, in connection with RYCO the Defendant's offering document stated:

The funds in this portfolio will be used to actively trade and invest in a combination of U.S. commodity and equity markets. The experience and stability of Ryco Group, LLC's management team has permitted continuous refinement of techniques used to effectively trade these markets. Ryco Group, LLC uses proprietary trading techniques and industry specific software to implement trading decisions in these markets. Coupled with strict money management policies, this approach provides for consistent growth and achievement of targeted goals.

13. It was part of the scheme that the Defendant advised investors that their funds would be invested in commodities, stocks, options and futures when in truth and fact the Defendant did not do so.

14. It was part of the scheme that the Defendant advised investors that "we get paid only after you get paid;" and that no management fees would be charged or paid unless the investment strategy was profitable. This representation was false in that the pools were never profitable yet "fees" were assessed and taken by the Defendant.

15. It was part of the scheme that the Defendant advised PICU investors that their investment would generate gains of 2% per month. The Defendant later advised RYCO, FRG and Micind investors that they could earn up to 2% month. The Defendant perpetuated the myth of at least a 2% return for all investors by preparing account statements that fraudulently reflected at least a 2% positive monthly return on investment.

16. It was part of the scheme that the Defendant obtained investor funds through interstate wire transfers from financial institutions located outside of the state of Texas.

17. It was part of the scheme that the Defendant prepared false monthly financial statements for the investors. These statements inflated the type and worth of the investments and profits.

18. It was part of the scheme that the Defendant maintained a website that allowed investors to review their monthly statement and investments. Every month the Defendant posted the false account statement for each investor on the website. Many of the investors would access these statements, via the Internet, for reassurance as to the value and viability of their individual investments.

19. It was part of the scheme that the Defendant paid referral fees to individuals who recommended others who subsequently invested with the Defendant.

20. During the course of the scheme, the Defendant took in approximately \$11,900,000 in investor funds. In order to perpetuate the Ponzi scheme described above and lull the investors into the mistaken belief that their investment was safe, secure and generating positive returns, the Defendant paid-out approximately \$8,000,000 of the total received from investors back to the investors in what appeared to be gains on their individual investments and the return of their initial investment. The remaining investor funds, approximately \$3,900,000, were liquidated by the Defendant in the form of losses on trades, expenses associated with running his business and for his own personal use.

COUNT ONE
[7 U.S.C. § 13(a)(1)]
Embezzlement of Commodity Pool Funds

The Grand Jury re-alleges and incorporates the Introduction, Scheme (numbered paragraphs 1-20) and the wires and financial transactions described in Counts 4 through 11 of this Indictment, as if fully set forth herein.

From in or about 2000 and continuing until December of 2009, in the Western District of Texas and elsewhere, the Defendant,

RICHARD DONALD THEYE,

was required to be registered with the Commodity Futures Trading Commission pursuant to the provisions of the Commodity Exchange Act (7 U.S.C. § 1 *et. seq.*). The Defendant did knowingly and with intent to defraud, embezzle, steal and convert to the Defendant's use, money, securities and property of another in excess of \$100. Said money, securities and property having been received by the Defendant from the investors for the purpose of investing in the Defendant's commodity trading pools, namely PICU, RYCO, FRG and Micind.

All in violation of Title 7, United States Code §13(a)(1).

COUNT TWO
[15 U.S.C. §§ 77q(a) and 77x]
Securities Fraud

The Grand Jury re-alleges and incorporates the Introduction, Scheme (numbered paragraphs 1-20) and the wires and financial transactions described in Counts 4 through 11 of this Indictment, as if fully set forth herein.

From in or about 2000 and continuing until December of 2009, in the Western District of Texas and elsewhere, the Defendant,

RICHARD DONALD THEYE,

knowingly and willfully, in connection with the offer and sale of securities in the form of stock, options, futures and indexes, by the use of transportation and communication in interstate commerce, directly and indirectly:

- (a) employed the aforesaid scheme and artifice to defraud, and
- (b) obtained money by means of untrue statements of material facts and omission of material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading, and
- (c) engaged in transactions, practices, and a course of business which operated as a fraud and deceit upon the purchasers, namely: investors who purchased securities in the form of stock, options, futures and indexes.

All in violation of Title 15, United States Code §§ 77q(a) and 77x.

COUNT THREE
[18 U.S.C. § 1348]
Securities and Commodities Fraud

The Grand Jury re-alleges and incorporates the Introduction, Scheme (numbered paragraphs 1-20) and the wires and financial transactions described in Counts 4 through 11 of this Indictment, as if fully set forth herein.

From in or about July 30, 2002 and continuing until December of 2009, in the Western District of Texas and elsewhere, the Defendant,

RICHARD DONALD THEYE,

did knowingly execute or attempt to execute a scheme or artifice to obtain, by means of false and fraudulent pretenses, representations and promises, money and property in connection with the purchase and sale of a commodity for future delivery, an option on a commodity for future delivery and a security of an issuer with a class of securities registered under section 12 of the Securities Exchange Act of 1934 or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934.

All in violation of Title 18, United States Code § 1348.

COUNTS FOUR through ELEVEN
[18 U.S.C. § 1343]
Wire Fraud

The Grand Jury re-alleges and incorporates the Introduction and Scheme (numbered paragraphs 1-20) of this Indictment, as if fully set forth herein.

From in or about 2000 and continuing until December of 2009, in the Western District of Texas and elsewhere, the Defendant,

RICHARD DONALD THEYE,

knowingly devised and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises, did transmit or cause to be transmitted by wire communications in interstate commerce, writings, signs, signals, pictures and sounds for the purpose of executing such scheme and artifice to defraud (The Wires).

The Wires include but are not limited to the wires described specifically below:

COUNT	DATE	The Wires
4	April 4, 2007	a wire transfer of approximately \$71,000 from the account of W. Sampson-Wright at La Loma Federal Credit Union in California via Fiserv ISS & Co. in Colorado to the RYCO Group account maintained by the Defendant at Guaranty Bank in Austin, Texas.
5	August 31, 2007	a wire transfer of approximately \$15,000 from the account of D. Rodman at Pomona First Federal Bank and Trust in California to the RYCO Group account maintained by the Defendant at Guaranty Bank in Austin, Texas.
6	September 20, 2007	a wire transfer of approximately \$37,500 from the account of E. Jensen at Fiserv Trust Company in Colorado to the RYCO Group account maintained by the Defendant at Guaranty Bank in Austin, Texas.

COUNT	DATE	The Wires
7	April 28, 2008	a wire transfer of approximately \$176,750 from the account of R. Christian at Lincoln Trust Company in Colorado to the RYCO Group account maintained by the Defendant at Guaranty Bank in Austin, Texas.
8	August 1, 2008	a wire transfer of approximately \$150,000 from the account of D. Lang at Wells Fargo Bank in California to the RYCO Group account maintained by the Defendant at Guaranty Bank in Austin, Texas.
9	November 4, 2008	a wire transfer of approximately \$200,000 from the account of Endowment Builders Advisory Group at Washington Mutual Bank in California to the RYCO Group account maintained by the Defendant at Guaranty Bank in Austin, Texas.
10	January 7, 2009	a wire transfer of approximately \$175,000 from the account of M. Porter at the 1 st Centennial Bank in California to the RYCO Group account maintained by the Defendant at Guaranty Bank in Austin, Texas.
11	May 7, 2009	a wire transfer of approximately \$55,750 from the account of G. Fouse at the Equity Trust Company in Ohio to the First Ryco Group account maintained by the Defendant at Guaranty Bank in Austin, Texas.

All in violation of Title 18, United States Code Section 1343.

COUNTS TWELVE AND THIRTEEN
[18 U.S.C. § 1956(a)(1)(B)(i)]
Money Laundering-Conceal

The Grand Jury re-alleges and incorporates the Introduction, Scheme (numbered paragraphs 1-20) of this Indictment, as if fully set forth herein.

From in or about 2000 and continuing until December of 2009, in the Western District of Texas and elsewhere, the Defendant,

RICHARD DONALD THEYE,

did conduct and attempt to conduct the following financial transactions knowing that the property involved in said transactions represents the proceeds of some form of unlawful activity and said property did in fact involve the proceeds of specified unlawful activities, namely the offenses described in Counts Four through Eleven of this Indictment, namely: Title 18, United States Code § 1343, knowing the transactions are designed in whole or in part to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of said specified unlawful activity. The transactions include but are not limited to the transactions described specifically below:

COUNT	DATE	FINANCIAL TRANSACTION
12	December 17, 2007	A wire transfer in the amount of \$55,000 from the RYCO Group account maintained by the Defendant at Guaranty Bank in Austin, Texas to the account of A. de Mola at the Bank of America in California.
13	November 5, 2008	A wire transfer in the amount of \$43,015.91 from the RYCO Group account maintained by the Defendant at Guaranty Bank in Austin, Texas to the account of F. Villanueva at J.P. Morgan Chase Bank in New York.

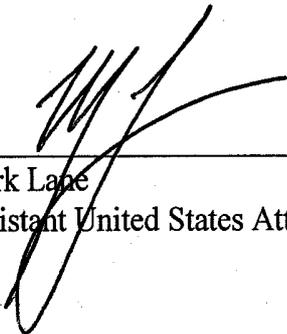
All in violation of Title 18, United States Code Section 1956(a)(1)(B)(i).

A TRUE BILL:

**ORIGINAL SIGNATURE
REDACTED PURSUANT TO
E-GOVERNMENT ACT OF 2002**

JOHN E. MURPHY
UNITED STATES ATTORNEY

By:



Mark Lane
Assistant United States Attorney