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F.#2008R00006

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★ AUG 26 2008 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

BROOKLYN OFFICE

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UNITED STATES OF AMERICA

S U P E R S E D I N G
I N D I C T M E N T

- against -

JULIAN TZOLOV and
ERIC BUTLER,

Defendants.

Cr. No. 08-370 (S-2) (JBW)
(T. 15, U.S.C., §§ 78j(b)
and 78ff; T. 18, U.S.C.,
§§ 371, 981(a)(1)(C),
982, 1343, 2 and 3551 et
seq.; T. 21 U.S.C., §
853(p); T. 28 U.S.C., §
2461(c))

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THE GRAND JURY CHARGES:

INTRODUCTION

At all times relevant to this Indictment, unless
otherwise indicated:

Auction-Rate Securities

1. Auction rate securities ("ARs") were debt
instruments with long-term nominal maturities for which the
interest rates were set at regular intervals through a process
known as "Dutch auctions." In the Dutch auctions, broker-dealers
submitted bids, on behalf of current and prospective investors,
to the auction agents. Based on the submitted bids, the auction
agents set the next interest rates by determining the lowest
rates to clear the total outstanding amounts of ARs. Auctions
were typically held every seven, twenty-eight, or thirty-five
days and settled on the next business day.

2. One type of ARSs was asset-backed securities ("ABSs"). ABSs were types of bonds or notes that were based on pools of assets, or collateralized by the cash flows from specified pools of underlying assets. Assets were pooled to make otherwise minor and uneconomical investments worthwhile, while also reducing risk by diversifying the underlying assets. Securitization made these assets available for investment to a broader set of investors.

3. ABSs collateralized by student loans ("SLABS") comprised one type of asset class financed through asset-backed securitizations. The Federal Family Education Loan Program ("FFELP") loans were the most common form of student loans and were guaranteed by the U.S. Department of Education. As a result, the risk of default on SLABS based on FFELP loans was low. SLABS based on FFELP loans were traded as ARSs ("SL-ARS"), which were purchased through an auction process on a twenty-eight day cycle.

4. Collateralized debt obligations ("CDOs") were one type of ABS. CDOs were constructed from a portfolio of fixed-income assets. One common type of CDO was securitizations of mortgages, including subprime mortgages or second mortgages. Mortgage-backed CDOs were traded as ARSs ("CDO-ARSs"), which were purchased through an auction process on a twenty-eight day cycle.

5. Because SL-ARSSs were generally less risky than CDO-ARSSs, SL-ARSSs generally provided a lower return on investment than the return CDO-ARSSs provided.

The Brokerage Firm

6. Credit Suisse Securities (USA) LLC ("Credit Suisse") was a broker-dealer of securities registered with the U.S. Securities and Exchange Commission ("SEC"). Credit Suisse was a member of the National Association of Securities Dealers, Inc. ("NASD") and the New York Stock Exchange. Credit Suisse maintained its principal office in New York, New York. The Corporate Cash Management Group was a division within Credit Suisse that helped its clients manage excess corporate cash holdings.

The Defendants

7. In or about and between November 2003 to September 2007, the defendants JULIAN TZOLOV and ERIC BUTLER were employed as brokers in Credit Suisse's Corporate Cash Management Group. TZOLOV and BUTLER were licensed by the NASD.

8. As employees of Credit Suisse, the defendants JULIAN TZOLOV and ERIC BUTLER owed Credit Suisse a duty of honest services and were required to make business decisions in the best interests of Credit Suisse, without regard to their own personal gain.

9. At all times relevant to the indictment, Credit Suisse paid the defendants JULIAN TZOLOV and ERIC BUTLER commissions, which were based upon the yield, measured in basis points, of a particular product sold to a client. The commissions TZOLOV and BUTLER received for sales of CDO-ARSS were far greater than the commissions TZOLOV and BUTLER received for sales of SL-ARSSs.

The Conspirators' Sales of SL-ARS

10. Beginning in or about November 2004, the defendants JULIAN TZOLOV and ERIC BUTLER contacted, by telephone and in person, companies that had prior banking relationships with Credit Suisse (the "Companies") to discuss the benefits of investing in SL-ARSSs.

11. The defendants JULIAN TZOLOV and ERIC BUTLER explained to the Companies that SL-ARSSs were low-risk products, guaranteed by the United States government with an approximately twenty-eight day auction cycle. TZOLOV and BUTLER explained that the market for SL-ARSSs was very liquid because of the federal government guarantee.

12. As a result of these meetings and telephone calls, the Companies invested money in SL-ARSSs with Credit Suisse through the defendants JULIAN TZOLOV and ERIC BUTLER, and as directed, TZOLOV and BUTLER invested the Companies' money in SL-ARSSs (the "Subject SL-ARSSs").

13. The defendants JULIAN TZOLOV and ERIC BUTLER sent and caused others to send to the Companies electronic-mail communications as confirmation to the Companies that TZOLOV and BUTLER had bought the Subject SL-ARSSs for the benefit of the Companies. These electronic-mail communications included various information about the products purchased, the yields and the next auction dates.

The Fraudulent Scheme

14. Beginning in or about November 2004, and without the knowledge or consent of the Companies, instead of using the proceeds of auctions from the sale of the Subject SL-ARSSs to purchase new SL-ARSSs, the defendants JULIAN TZOLOV and ERIC BUTLER used the proceeds of auctions from the sale of the Subject SL-ARSSs to purchase other types of ARSSs, including higher-yield, mortgage-backed CDO-ARSSs (the "Subject CDO-ARSSs").

15. As part of their fraudulent scheme, and to conceal the true nature of their conduct, the defendants JULIAN TZOLOV and ERIC BUTLER sent to the Companies and directed others to send to the Companies electronic-mail communications in which TZOLOV and BUTLER, or others working at their direction, falsified the names of the products held by the Companies to make it appear that those products were the Subject SL-ARSSs when they were, in fact, other types of ARSSs, including the Subject CDO-ARSSs. TZOLOV and BUTLER did so either by removing the term "CDO" from

the name of the product, by adding the term "student loan" or "SL," or by doing both.

16. In approximately August 2007, the market for mortgage-backed CDOs, including the Subject CDO-ARSS, collapsed, and the various auctions for the Subject CDO-ARSS began to fail. As a result of those auction failures, the defendants JULIAN TZOLOV and ERIC BUTLER were unable to liquidate the investments of the Companies and return the money to them.

17. It was part of the fraudulent scheme that on or about March 30, 2007, the defendants JULIAN TZOLOV and ERIC BUTLER flew on American Airlines flight number 122 from John F. Kennedy International Airport ("JFK") in Queens, New York to London Heathrow Airport to attend meetings with one of the Companies. TZOLOV and BUTLER returned to the United States on or about April 2, 2007, on Air France flight number 8 from Paris Charles De Gaulle International Airport to JFK.

COUNT ONE

(Conspiracy to Commit Securities Fraud and Wire Fraud)

18. The allegations contained in paragraphs 1 through 17 are realleged and incorporated as though fully set forth in this paragraph.

19. In or about and between November 2004 and August 2007, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants JULIAN

TZOLOV and ERIC BUTLER, together with others, did knowingly and willfully conspire to:

a. use and employ manipulative and deceptive devices and contrivances, contrary to Rule 10b-5 of the Rules and Regulations of the SEC (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 fact and omitting to state material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which would and did operate as a fraud and deceit upon members of the investing public, in connection with the purchases and sales of the Subject CDO-ARs, directly and indirectly, by use of the means and instrumentalities of interstate commerce and the mails, contrary to Title 15, United States Code, Sections 78j(b) and 78ff; and

b. devise a scheme and artifice to defraud the Companies and Credit Suisse, and to obtain money and property from the Companies and Credit Suisse by means of materially false and fraudulent pretenses, representations and promises, and to deprive Credit Suisse of the intangible right of honest services of its employees, the defendants JULIAN TZOLOV and ERIC BUTLER, and for the purpose of executing such scheme and artifice, and attempting to do so, to transmit and cause to be transmitted, by

means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds, contrary to Title 18, United States Code, Sections 1343 and 1346.

20. In furtherance of the conspiracy and to effect its objectives, within the Eastern District of New York and elsewhere, the defendants JULIAN TZOLOV and ERIC BUTLER, together with others, committed and caused to be committed, among others, the following:

OVERT ACTS

a. On March 30, 2007, TZOLOV and BUTLER flew on American Airlines flight number 122 from John F. Kennedy International Airport ("JFK") in Queens, New York to London Heathrow Airport to attend meetings with one of the Companies.

b. On April 2, 2007, TZOLOV and BUTLER flew on Air France flight number 8 from Paris Charles De Gaulle International Airport to JFK after meeting with one of the Companies.

(Title 18, United States Code, Sections 371 and 3551 et seq.)

COUNT TWO
(Securities Fraud)

21. The allegations contained in paragraphs 1 through 17 are realleged and incorporated as though fully set forth in this paragraph.

22. In or about and between November 2004 and August 2007, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendants JULIAN TZOLOV and ERIC BUTLER, together with others, did knowingly and willfully use and employ manipulative and deceptive devices and contrivances, contrary to Rule 10b-5 of the Rules and Regulations of the SEC (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 fact and omitting to state material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which would and did operate as a fraud and deceit upon members of the investing public, in connection with the purchases and sales of the Subject CDO-ARSS, directly and indirectly, by use of the means and instrumentalities of interstate commerce and the mails.

(Title 15, United States Code, Sections 78j(b) and 78ff; Title 18, United States Code, Sections 2 and 3551 et seq.)

COUNTS THREE and FOUR
(Wire Fraud)

23. The allegations contained in paragraphs 1 through 17 are realleged and incorporated as though fully set forth in this paragraph.

24. In or about and between November 2004 and August 2007, within the Southern District of New York and elsewhere, the defendants JULIAN TZOLOV and ERIC BUTLER, together with others, did knowingly and intentionally devise a scheme and artifice to defraud the Companies and Credit Suisse and to obtain money from them by means of materially false and fraudulent pretenses, representations and promises.

25. For the purpose of executing the scheme and artifice, and attempting to do so, on or about the date set forth below, the defendants JULIAN TZOLOV and ERIC BUTLER transmitted and caused to be transmitted, by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds, as follows:

COUNT	DATE	DESCRIPTION
3	2/9/05, at approx. 9:38am	Email from BUTLER to one of the Companies, whose identity is known to the Grand Jury, in which BUTLER states that the company purchased "Greenpoint Student Assistance"
4	5/10/05, at approx. 1:27pm	Email from BUTLER to one of the Companies, whose identity is known to the Grand Jury, in which BUTLER states that the company purchased "Greenpoint Student Loan," "NPS Education," and "Wisconsin State Education"

(Title 18, United States Code, Sections 1343, 2 and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION

26. The United States hereby gives notice to the defendants charged in this Indictment that, upon their conviction

of the offenses charged herein, the government will seek forfeiture in accordance with Title 18, United States Code, Sections 981(a)(1)(C), 982, and Title 28, United States Code, Section 2461(c), which require any person convicted of such offense to forfeit any property constituting or derived from proceeds obtained directly or indirectly as a result of such offenses, including but not limited to the following:

a. MONEY JUDGMENT

A sum of money in United States currency, in an amount to be determined at trial, for which the defendants are jointly and severally liable.

27. If any of the above-described forfeitable property, as a result of any act or omission of the defendants:

(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 18 U.S.C. Section 982(b)(2), Title 21, United States Code, Section

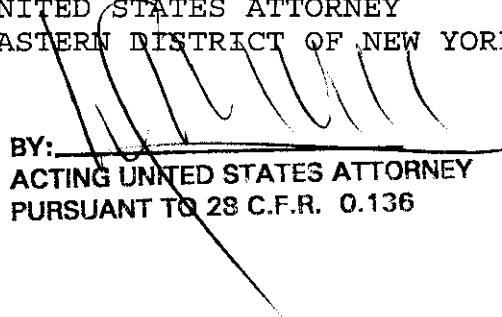
853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of such defendants up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Sections 981(a)(1)(C) and 982; Title 21, United States Code, Section 853(p); Title 28, United States Code, Section 2461(c))

A TRUE/BILL

FOREPERSON

BENTON J. CAMPBELL
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

BY: 
ACTING UNITED STATES ATTORNEY
PURSUANT TO 28 C.F.R. 0.136

No.

UNITED STATES DISTRICT COURT

EASTERN *District of* NEW YORK

CRIMINAL DIVISION

THE UNITED STATES OF AMERICA

vs.

JULIAN TZOLOV and ERIC BUTLER,
Defendants.

SUPERSEDING INDICTMENT

(S-2)

(T. 15, U.S.C., §§ 78j(b) and 78ff; T. 18, U.S.C., §§ 371, 981(a)(1)(C), 982, 1343, 2 and 3551 et seq.; T. 21 U.S.C., § 853(p); T. 28 U.S.C., § 2461(c))

A true bill.

Foreman

Filed in open court this 26th day,
of August A.D. 20 08

Clerk

Bail, \$

John P. Nowak, Assistant U.S. Attorney, (718) 254-6097