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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

October 2022 Grand Jury

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES ARTHUR MCDONALD, JR.,

Defendant.

CR 2:23-cr-00019-DSF

I N D I C T M E N T

[15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. § 240.10b-5: Securities Fraud; 18 U.S.C. § 1343: Wire Fraud; 15 U.S.C. § 80b-6, 80b-17: Investment Adviser Fraud; 18 U.S.C. § 1957: Engaging in Monetary Transactions in Property Derived from Specified Unlawful Activity; 18 U.S.C. §§ 981(a)(1)(C), 982, and 28 U.S.C. § 2461(c): Criminal Forfeiture]

The Grand Jury charges:

COUNT ONE

[15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. § 240.10b-5]

A. INTRODUCTORY ALLEGATIONS

1. At times relevant to this Indictment:

a. Defendant JAMES ARTHUR MCDONALD, JR., was a resident of Arcadia, California.

b. Defendant MCDONALD was the Chief Executive Officer ("CEO") and Chief Investment Officer ("CIO") of Hercules Investments

1 LLC ("Hercules"), a California limited liability company
2 headquartered in Los Angeles. From on or about September 5, 2019, to
3 on or about December 31, 2021, Hercules was registered with the
4 United States Securities and Exchange Commission ("SEC") as an
5 investment adviser under the Investment Advisers Act of 1940, and
6 defendant MCDONALD served as the investment adviser representative
7 for Hercules.

8 c. Defendant MCDONALD was the CEO and CIO of Index
9 Strategy Advisors Inc. ("ISA"), a Texas corporation headquartered in
10 Los Angeles, California. From on or about November 22, 2010, to on
11 or about May 1, 2019, ISA was registered in at least one state as an
12 investment adviser under the Investment Advisers Act of 1940, and
13 defendant MCDONALD served as the investment adviser representative
14 for ISA.

15 i. On or about December 11, 2014, defendant MCDONALD
16 filed on behalf of ISA a notice of withdrawal from registration as an
17 investment adviser in all states in which ISA was registered except
18 Texas.

19 ii. On or about May 1, 2019, defendant MCDONALD filed
20 on behalf of ISA a notice of withdrawal from registration as an
21 investment adviser in Texas, at which point ISA was no longer a
22 registered investment adviser in any jurisdiction. In the withdrawal
23 notice form, defendant MCDONALD represented, under penalty of
24 perjury, that ISA had ceased conducting advisory business in the
25 jurisdiction from which it was withdrawing as of August 1, 2018. In
26 the "Reasons for withdrawal" section of the form, defendant MCDONALD
27 crossed out "[c]ontinuing advisory activities, but relying on an
28 exemption from registration," and wrote, "No longer in business or

1 closing business.” Defendant MCDONALD also represented on the form
2 that neither he, nor any related person, had custody of client
3 assets.

4 d. Bank of America, N.A., was a financial institution
5 within the meaning of 18 U.S.C. § 1956(c)(6) whose accounts were then
6 insured by the Federal Deposit Insurance Corporation.

7 i. Defendant MCDONALD maintained a checking account
8 at Bank of America ending -5386 in the name “Hercules Investments
9 LLC” for which he was the sole signatory (the “Hercules BoA
10 Account”).

11 ii. Defendant MCDONALD maintained a checking account
12 at Bank of America ending -0758 in the name “Index Strategy Advisors
13 Inc” for which he was the sole signatory (the “ISA BoA Account”).

14 e. Defendant MCDONALD was, with respect to ISA’s clients,
15 an investment adviser within the meaning of 15 U.S.C. § 80b-2(a)(11).

16 f. Defendant MCDONALD rented a home in Arcadia,
17 California, from landlord Y.C.

18 B. THE SCHEME TO DEFRAUD

19 2. Beginning no later than in or about January 2021, and
20 continuing through on or about January 17, 2023, in Los Angeles
21 County, within the Central District of California, and elsewhere,
22 defendant MCDONALD, knowingly and willfully, directly and indirectly,
23 by the use of the means and instrumentalities of interstate commerce
24 and the mails, in connection with the purchase and sale of Hercules
25 securities, used and employed manipulative and deceptive devices and
26 contrivances by: (1) employing a scheme to defraud; (2) making untrue
27 statements of material facts and omitting to state material facts
28 necessary in order to make the statements made, in light of the

1 circumstances under which they were made, not misleading; and
2 (3) engaging in acts, practices, and courses of business which
3 operated and would operate as a fraud and deceit upon purchasers and
4 prospective purchasers of securities (the "victim-investors"), by
5 causing materially false and fraudulent statements and material
6 omissions to be made to the victim-investors about defendant
7 MCDONALD's use of victim-investors' investments and Hercules's
8 financial health.

9 3. The scheme to defraud operated, in substance, as follows:

10 a. Defendant MCDONALD solicited investments from the
11 victim-investors by offering to sell, as part of a purported "capital
12 raise," equity in Hercules in the form of "units," which units
13 constituted "securities" within the meaning of the Securities
14 Exchange Act of 1934.

15 b. Defendant MCDONALD pitched investment opportunities to
16 the victim-investors, including by means of interstate wire
17 communications through use of Zoom's video teleconference platform.

18 c. To induce the victim-investors to invest in Hercules
19 by purchasing units, defendant MCDONALD concealed from victim-
20 investors the following material facts:

21 i. That, because of a risky bet that defendant
22 MCDONALD made using Hercules's clients' funds, Hercules's clients had
23 recently lost between \$30 million and \$40 million; and

24 ii. That defendant MCDONALD had agreed on behalf of
25 Hercules to repay Hercules's clients, including, if necessary, with
26 funds obtained by selling equity in Hercules to the victim-investors.

27 d. In soliciting funds from the victim-investors,
28 defendant MCDONALD falsely represented that the sale of equity in

1 Hercules was intended to finance the expansion of Hercules's
2 infrastructure and staff. In truth, as defendant MCDONALD then knew,
3 defendant MCDONALD intended to use the victim-investors' funds to
4 repay Hercules's clients and fund his own lifestyle.

5 e. During investment pitches, defendant MCDONALD conveyed
6 a false sense of urgency to the victim-investors by suggesting that,
7 if victim-investors waited, they would lose the opportunity to invest
8 because further equity in Hercules would no longer be available for
9 sale.

10 f. In soliciting investments from the victim-investors,
11 defendant MCDONALD also misrepresented his educational background.

12 g. Defendant MCDONALD caused victim-investors to make
13 their purchases of units in Hercules by means of interstate wire
14 transfers to the Hercules BoA Account.

15 h. To lull victim-investors who confronted him about the
16 use of their investments, and delay their bringing legal action
17 against him, defendant MCDONALD falsely promised to repay their
18 investments and issued purported promissory notes.

19 i. To prevent exposure of his misuse of victim-investors'
20 funds, defendant MCDONALD failed to appear, as required, to testify
21 before the SEC, changed his residence, and concealed his location
22 from government authorities.

23 C. EXECUTION OF THE FRAUDULENT SCHEME

24 4. On or about March 9, 2021, within the Central District of
25 California, and elsewhere, for the purpose of executing the scheme to
26 defraud described above, and in furtherance of the manipulative and
27 deceptive devices described above, defendant MCDONALD directly and
28 indirectly caused the use of a means and instrumentality of

1 interstate commerce in connection with the purchase and sale of
2 securities, namely, the interstate wire transfer of approximately
3 \$675,000 from a bank account belonging to victim-investor T.I. to the
4 Hercules BoA Account in connection with the purchase of Hercules
5 units.

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COUNT TWO

[18 U.S.C. § 1343]

5. The Grand Jury realleges paragraphs 1, 3, and 4 of this Indictment here.

A. THE SCHEME TO DEFRAUD

6. Beginning no later than in or about January 2021, and continuing through on or about January 17, 2023, in Los Angeles County, within the Central District of California, and elsewhere, defendant MCDONALD, knowingly and with the intent to defraud, devised, participated in, and executed a scheme to defraud victim-investors in Hercules as to material matters, and to obtain money and property by means of material false and fraudulent pretenses, representations, promises, and the concealment of material facts.

7. The scheme to defraud operated, in substance, as described in paragraph 3 of this Indictment.

B. USE OF INTERSTATE WIRES

8. On or about March 11, 2021, in Los Angeles County, within the Central District of California, and elsewhere, for the purpose of executing the scheme to defraud described above, defendant MCDONALD transmitted and caused the transmission of a wire communication in interstate commerce, namely, a Zoom video meeting with victim-investors R.F. and K.F.

COUNTS THREE THROUGH FIVE

[15 U.S.C. §§ 80b-6, 80b-17]

9. The Grand Jury realleges paragraph 1 of this Indictment here.

A. THE SCHEME TO DEFRAUD

10. Beginning no later than on or about May 1, 2019, and continuing through on or about January 17, 2023, in Los Angeles County, within the Central District of California, and elsewhere, defendant MCDONALD, knowingly and willfully, directly and indirectly, by the use of the means and instrumentalities of interstate commerce and the mails, (a) employed devices, schemes, and artifices to defraud ISA's clients and prospective clients; and (b) engaged in transactions, practices, and courses of business which operated as a fraud and deceit upon ISA's clients and prospective clients.

11. The scheme to defraud operated, in substance, as follows:

a. Defendant MCDONALD solicited prospective clients to provide funds for ISA to manage on their behalf through further investment of those funds.

b. In soliciting prospective clients, defendant MCDONALD falsely represented that ISA was a registered investment adviser even after defendant MCDONALD had terminated ISA's status as a registered investment adviser in all jurisdictions, stated that ISA was "[n]o longer in business or closing business," and represented that neither he, nor any related person, had custody of ISA's client assets.

c. Defendant MCDONALD falsely represented to ISA's clients that he would use their funds to trade securities. In fact,

i. Defendant MCDONALD used less than half of the money he raised from ISA's clients for the purpose of trading

1 securities and sometimes conducted no trading activity at all with
2 ISA's client funds for months at a time; and

3 ii. Defendant MCDONALD misappropriated ISA's client
4 funds by using them to pay his personal expenses, pay Hercules's
5 clients and/or creditors, and pay Ponzi-like returns to investors to
6 create the false impression that ISA was a successful firm.

7 d. Defendant MCDONALD falsely represented to ISA's
8 clients that their funds would be held in individual accounts.
9 Instead, defendant MCDONALD commingled ISA's client funds with
10 Hercules's client funds and personal funds.

11 e. To conceal his misappropriation of ISA's client funds
12 and continue his fraudulent scheme, defendant MCDONALD sent ISA's
13 clients false account statements each month that purported to show
14 positive returns from trading and cash held at the end of the month.

15 f. To prevent exposure of his misuse of ISA's clients'
16 funds, defendant MCDONALD failed to appear, as required, to testify
17 before the SEC, changed his residence, and concealed his location
18 from government authorities.

19 B. EXECUTIONS OF THE FRAUDULENT SCHEME

20 12. On or about the following dates, within the Central
21 District of California, and elsewhere, for the purpose of executing
22 the scheme to defraud described above, defendant MCDONALD directly
23 and indirectly caused the use of a means and instrumentality of
24 interstate commerce in connection with the purchase and sale of

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1 securities, namely, the transmission of the following items by means
2 of interstate wire communication:

COUNT	DATE	EXECUTION
THREE	05/29/2020	Interstate wire transfer of \$150,000 from ISA client J.M. to the ISA BoA Account
FOUR	12/29/2020	Interstate wire transfer of \$100,000 from ISA client C.M. to the ISA BoA Account
FIVE	01/05/2021	Interstate wire transfer of \$3,000 from the ISA BoA Account to the bank account of ISA client B.C.

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COUNTS SIX AND SEVEN

[18 U.S.C. § 1957]

13. The Grand Jury realleges paragraphs 1 and 3 through 5 of this Indictment here.

14. On or about the dates set forth below, in Los Angeles County, within the Central District of California, and elsewhere, defendant MCDONALD, knowing that the property involved represented the proceeds of some form of unlawful activity, knowingly engaged in the following monetary transactions in criminally derived property of a value greater than \$10,000, which property, in fact, was derived from specified unlawful activity, namely, securities fraud, in violation of Title 15, United States Code, Sections 78j(b), 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5, as charged in Count One of this Indictment:

COUNT	DATE	MONETARY TRANSACTION
SIX	03/10/2021	Wire transfer of approximately \$174,610 from the Hercules BoA Account to Kienle Motor Sports LLC, dba Porsche Ontario
SEVEN	03/10/2021	Wire transfer of approximately \$109,512 to C.H. on behalf of landlord Y.C.

FORFEITURE ALLEGATION ONE

[18 U.S.C. § 981(a)(1)(C); 28 U.S.C. § 2461(c)]

15. Pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure, notice is hereby given that the United States of America will seek forfeiture as part of any sentence, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), in the event of defendant JAMES ARTHUR MCDONALD, JR.'s conviction of any of the offenses set forth in Counts One through Five of this Indictment.

16. Defendant MCDONALD, if so convicted, shall forfeit to the United States of America the following:

a. All right, title, and interest in any and all property, real or personal, constituting, or derived from, any proceeds traceable to the offense; and

b. To the extent such property is not available for forfeiture, a sum of money equal to the total value of the property described in subparagraph (a).

17. Pursuant to Title 18, United States Code, Section 981(a)(1)(c), as incorporated by Title 28, United States Code, Section 2461(c), if so convicted, defendant MCDONALD shall forfeit substitute property, up to the total value of the property described in the preceding paragraph if, as the result of any act or omission of defendant MCDONALD, the property described in the preceding paragraph, or any portion thereof: (a) cannot be located upon the exercise of due diligence; (b) has been transferred, sold to or deposited with a third party; (c) has been placed beyond the jurisdiction of the Court; (d) has been substantially diminished in

1 value; or (e) has been commingled with other property that cannot be
2 divided without difficulty.

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FORFEITURE ALLEGATION TWO

[18 U.S.C. § 982]

18. Pursuant to Rule 32.2(a) of the Federal Rules of Criminal Procedure, notice is hereby given that the United States will seek forfeiture as part of any sentence, pursuant to Title 18, United States Code, Section 982(a)(1) and Title 28, United States Code, Section 2461(c), in the event of defendant JAMES ARTHUR MCDONALD, JR.'s conviction of either of the offenses set forth in Counts Six and Seven of this Indictment.

19. Defendant MCDONALD, if so convicted, shall forfeit to the United States of America the following:

a. Any property, real or personal, involved in such offense, and any property traceable to such property; and

b. To the extent such property is not available for forfeiture, a sum of money equal to the total value of the property described in subparagraph (a).

20. Pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1), and Title 18, United States Code, Section 982(b)(2), defendant MCDONALD, if so convicted, shall forfeit substitute property, if, by any act or omission of defendant MCDONALD, the property described in the preceding paragraph, or any portion thereof: (a) cannot be located upon the exercise of due diligence; (b) has been transferred, 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 that cannot be divided without difficulty. Substitution of assets shall not be ordered, however, where the convicted defendant acted merely as an

1 intermediary who handled but did not retain the property in the
2 course of the money laundering offense unless the defendant, in
3 committing the offense or offenses giving rise to the forfeiture,
4 conducted three or more separate transactions involving a total of
5 \$100,000.00 or more in any twelve-month period.

6
7 A TRUE BILL

8
9 /s/
10 _____
Foreperson

11 E. MARTIN ESTRADA
12 United States Attorney

13 

14 SCOTT M. GARRINGER
15 Assistant United States Attorney
Chief, Criminal Division

16 RANEE A. KATZENSTEIN
17 Assistant United States Attorney
Chief, Major Frauds Section

18 CAROLYN S. SMALL
19 ALEXANDER B. SCHWAB
Assistant United States Attorneys
20 Major Frauds Section