

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

UNITED STATES OF AMERICA

CRIMINAL COMPLAINT

vs.

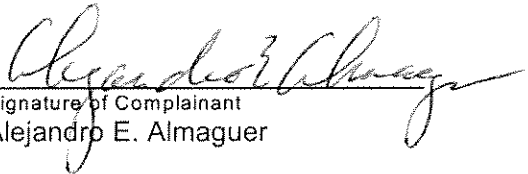
CASE NUMBER: 8:10MJ1508 TBM

DAVID RICHARD LEWALSKI

I, the undersigned complainant, being duly sworn, state the following is true and correct to the best of my knowledge and belief. On or about October 10, 2006, in the Middle District of Florida, the defendant did commit wire fraud, in violation of Title 18, United States Code, Section 1343. I further state that I am a United States Postal Inspector with the United States Postal Inspection Service, and that this Complaint is based on the following facts:

SEE ATTACHED AFFIDAVIT

Continued on the attached sheet and made a part hereof:  Yes  No

  
Signature of Complainant  
Alejandro E. Almaguer

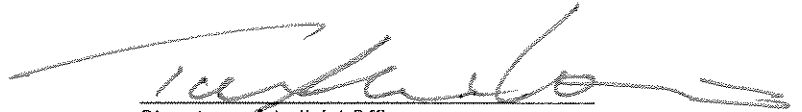
Sworn to before me and subscribed in my presence,

November 2, 2010

at

Tampa, Florida

THOMAS B. McCOUN, III  
United States Magistrate Judge  
Name & Title of Judicial Officer

  
Signature of Judicial Officer

## AFFIDAVIT IN SUPPORT OF COMPLAINT

I, Alejandro E. Almaguer, being duly sworn, state that the following is true and correct to the best of my knowledge and belief:

### **I. Introduction**

1. This Affidavit is submitted in support of a complaint charging DAVID RICHARD LEWALSKI with wire fraud, in violation of 18 U.S.C. § 1343 (Wire Fraud).
2. The facts set forth in this affidavit are based upon physical evidence, reports, and discussions with other regulatory and law enforcement agencies, and upon review of evidentiary documents and witness interviews of individuals who have personal knowledge of the events described herein. Certain facts and financial and interview reports have been presented to me from investigators from the Federal Bureau of Investigation (FBI), State of Florida Office of the Attorney General (FLAG), the Florida Department of Law Enforcement (FDLE), and Florida Office of Financial Regulations (OFR). Because the purpose of this Affidavit is limited to setting forth probable cause to arrest, I have not set forth every fact of which I am aware pertaining to the investigation.

### **II. Affiant's Background and Experience**

3. I, Alejandro E. Almaguer, am an Inspector with the United States Postal Inspection Service, and have been so employed for over six years. I am currently assigned to the U.S. Postal Inspection Service - Department of Justice Fraud Team in Washington, D.C. I am a federal law enforcement officer with the authority to execute arrest and search and seizure warrants issued under the authority of the United States. I am responsible for investigating allegations of fraud and white-collar crime violations, namely 18 U.S.C. § 1341 (Mail Fraud) and 18 U.S.C. § 1343 (Wire Fraud). I am also a licensed attorney in the State of Ohio and admitted to the U.S. District Court for the Southern District of Ohio.
4. Through training and participation in criminal investigations, I have become familiar with and have participated in various methods of investigations, e.g., review of bank records and financial statements, electronic surveillance, visual surveillance, questioning of witnesses, and the use of search warrants and undercover operations. In the course of these investigations, I have made numerous arrests.
5. I have experience investigating large complex mail, wire, and bank fraud schemes and the attendant money laundering activities associated with those crimes. I also have experience tracing and seizing real and personal property involved in criminal activity and subject to the federal forfeiture statutes, e.g., 18 U.S.C. §§ 981-84. I have experience investigating fraudulent investment schemes, including Ponzi schemes wherein the promoters pay purported returns out of the investments of new investors rather than the returns of legitimate investments. The perpetrators of these fraudulent investment schemes typically use false representations and statements to investors to obtain money and property for their own personal gain.

### III. The Investigation

6. Based on the investigation conducted to date, there is probable cause to believe that DAVID RICHARD LEWALSKI (hereinafter "LEWALSKI") created and executed a scheme and artifice to defraud and obtain money and property by means of material false statements and representations. The scheme involved fraudulently inducing investors to provide funds to BOTFLY, LLC. The investigation identified hundreds of victims around the country, and in particular, victims residing in the Middle District of Florida.
7. BOTFLY, LLC (hereinafter "BOTFLY") is an active Florida limited liability company incorporated on or about September 13, 2005. LEWALSKI filed a limited liability company reinstatement for BOTFLY on or about April 10, 2008. BOTFLY's principal office address is listed as 12709 Clocktower Parkway, Bayonet Point, FL 34667, in the Middle District of Florida, which is the residence of LEWALSKI's mother. The corporation documents list DAVID LEWALSKI as the manager and registered agent of BOTFLY.
8. This investigation has revealed that LEWALSKI, in complicity with others, engaged in a Ponzi scheme wherein he told investors that through foreign currency trading ("forex"), he could generate returns of as much as 120% per year. LEWALSKI made materially false statements and misrepresentations to investors, including that the investors would earn 10% returns, compounded monthly. He promised investors that their investment was secure and that they could withdraw their funds at any time. In reality, LEWALSKI invested very little investor money in the forex market and instead paid investor returns with the other investors' funds. LEWALSKI also lavishly spent investor funds on himself and gave investor money to his girlfriend, friends, and relatives.
9. On or about April 1, 2010, the FLAG filed a state civil enforcement action, State of Florida v. Botfly LLC, David R. Lewalski, et al., civil number 51-2010-CA-2912-WS/G (Cir. Court of the Sixth Jud. Cir. in and for Pasco County). The FLAG's Amended Complaint described LEWALSKI'S scheme as "beginning as early as 2005...soliciting money from consumers in Florida and the United States totaling more than \$23 million. On information and belief, more than 500 persons and entities have invested in Botfly, and of these investors, more than 200 are Florida residents." Also on or about April 1, 2010, the Pasco County Circuit Court issued a temporary injunction (which continues to this day) that, among other things, froze all of the defendants' assets, including BOTFLY's trading accounts at Deutsche Bank. Also on or about April 1, 2010, the Pasco County Circuit Court issued a separate order appointing a receiver to take possession of the defendants' assets.
10. Following the filing of this civil enforcement action, the matter was referred to FDLE and ultimately, the USPIS, for criminal investigation. I have reviewed various reports from the FLAG's office and FDLE, including financial analyses and victim statements. Based upon these and other information, I have probable cause to believe that LEWALSKI conducted a fraudulent investment scheme, i.e., a Ponzi scheme, whereby LEWALSKI promised unrealistically high rates of return to investors and paid monies to some investors with funds obtained from other investors. In reality, LEWALSKI invested relatively small amounts of investor monies in actual trading accounts. My review of those accounts demonstrates that what little money was invested in trading did not generate nearly enough positive gains to fund the 10% per month compounded interest as promised.

Instead, LEWALSKI took investors' money and used it to pay other investors as well as spend funds on himself, his girlfriend, his family members, and his co-conspirators.

#### IV. The Scheme to Defraud

11. LEWALSKI's fraudulent activity and false statements about trading investor money in the forex market preceded his establishment of BOTFLY and his targeting of victims in Florida. In or around 2004, LEWALSKI began soliciting investors in Arizona, where he was living at the time, and promised to invest their money in the forex market. Initially, LEWALSKI solicited investors under the company name Forex Capital Development, Inc. LEWALSKI started with a small group of investors, promising to pay them 10% monthly returns on their investments. In or around 2006, LEWALSKI began giving excuses to these investors as to why he could not return their money. LEWALSKI then ceased all communication with these investors. Several of these investors provided information to the FBI, including:
  - a. One investor, BN, advised the FBI that he invested \$54,000 between in or about January 2005, and in or about January 2006. BN stated he invested based upon his direct contact with LEWALSKI, who promised to put the funds in a forex trading account and generate a 10% monthly return. BN received \$500 per month for three months, for a total of \$1500, but nothing more.
  - b. Another investor, JO, told the FBI that she gave LEWALSKI \$27,000 based upon the same promises described above. She received two payments totaling \$13,000, and suffered a net loss of \$14,000.
  - c. LEWALSKI promised another Arizona investor, EK, returns of 10% guaranteed per month. Based on this and other information provided by LEWALSKI, EK invested \$20,500 between October 2004, and September 2005. He withdrew \$1,000 in supposed interest returns in August 2006, but never received any additional funds.
12. During this same time, LEWALSKI relocated to Florida, established BOTFLY, and engaged in the same or similar scheme to defraud. Beginning in or around 2006, LEWALSKI started attracting new investors, most of whom resided in Florida. LEWALSKI, through BOTFLY, offered investors as much as 10% interest compounded monthly. In or around 2008, LEWALSKI was joined by co-conspirator 1. In solicitations or welcome emails, LEWALSKI and later co-conspirator 1 explained their supposed investment scheme to the investors by stating:

“We borrow your money from you and pay a monthly interest of 10%. Most people like to have the interest added in and then it compounds each month. It creates incredible growth rates (\$25k will compound to \$78460 in 12 months, it takes 25 months to go from \$100k to \$1 mil). How we do it is on the foreign exchange market....”
13. LEWALSKI and co-conspirator 1 used a website, [www.Botflyllc.com](http://www.Botflyllc.com), starting in or around 2008, to communicate with investors. Investors were provided with a log on and password to access the webpage. I have reviewed screenshots from the website, which is no longer active. The “Account” page for one investor indicates an interest rate of 10%. The “Statements” page, dated January 24, 2010, for the same investor shows a monthly statement with principal, interest earned that month, withdrawals, deposits, and the balance. For this particular investor, CWA, the website shows a

principal amount of \$12,100, interest earned of \$3,210, deposits of \$20,000, and a total balance of \$35,310. Investors could also find forms on the website, including a "Botfly LLC Wire Transfer Form," and could request disbursements from their account.

14. From BOTFLY's establishment in 2005, through the filing of the FLAG's complaint in April 2010, LEWALSKI and later co-conspirator 1, while residing in the Middle District and other places in Florida, solicited investors and accepted monies from investors in Florida and throughout the United States. To date, investigators have traced approximately \$29,866,000 of investor funds deposited into accounts controlled by LEWALSKI and co-conspirator 1. FLAG's financial analysis also found the following:
  - a. Approximately \$15 million of investor funds was paid out to other investors, who were falsely told that the funds represented monies earned from LEWALSKI's trading activities;
  - b. Approximately \$4 million of investor funds is currently sitting in various domestic and foreign bank and trading accounts formerly controlled by LEWALSKI and/or co-conspirator 1, and currently frozen by the State of Florida or under the control of the state-appointed receiver;
  - c. Approximately \$1.8 million of investor funds was transferred from domestic accounts controlled by LEWALSKI to four Deutsche Bank trading accounts in the United Kingdom (see below) established in the names of BOTFLY, LEWALSKI, and co-conspirator 1. No "profits" from these trading accounts were ever distributed back into LEWALSKI's or BOTFLY's accounts from which LEWALSKI paid investors;
  - d. Approximately \$1.55 million of investor funds was transferred from domestic accounts controlled by LEWALSKI to one or more UBS Swiss bank / trading accounts. Similarly, no "profits" from these trading accounts were ever distributed back into LEWALSKI's or BOTFLY's accounts from which LEWALSKI paid investors;
  - e. Approximately \$9 million in investor funds was distributed to and/or spent by LEWALSKI, co-conspirator 1, their co-conspirators, and others.
  
15. On or about February 10, 2009, agents from the FBI interviewed LEWALSKI at his residence at 2515 SW 35<sup>th</sup> Place, Unit 112, Gainesville, FL 32608. The interview stemmed from an investigation of defrauded investors in Colorado. During the interview, LEWALSKI made the following pertinent admissions:
  - a. He owned two AR15 assault rifles, a Walther pistol, and a .45 caliber H&K pistol.
  - b. He graduated from community college and attended but did not graduate from the University of Florida.
  - c. He had been self-employed as an investor/day trader off and on for the previous five years.
  - d. He focused primarily on the foreign currency markets.
  - e. He confirmed that he had accepted money from approximately twelve to twenty investors, but refused to tell the agents how much money he took from these investors.
  - f. He was not a registered broker/dealer, nor did he possess any license or registration by any agency or organization as a trader, broker, or securities dealer.

- g. He refused to provide a list of his investors' names.
- h. He refused to name the company he used for soliciting investors.
- i. He declined to state whether he provided statements or prospectuses to potential investors.
- j. He communicated with investors via cellular telephone and electronic messaging (e-mail) via the Internet.
- k. He stated that his sole source of income came from day trading and denied any other source of income.
- l. He had not filed personal or corporate federal income tax returns since 2005 and he refused to state his income level.

#### V. LEWALSKI'S Spending

- 16. Based upon my training and experience, I know that perpetrators of Ponzi schemes often spend investor funds lavishly on themselves. During this investigation, I and others have identified personal expenditures by LEWALSKI and his co-conspirators exceeding \$10 million that were paid for by investor funds.
- 17. For example, LEWALSKI funded a Fifth Third Bank account opened in the name of BOTFLY with \$325,000 for his and his girlfriend's use while living at various times in the borough of Manhattan in New York City. The money was used for various living expenses, including:
  - a. Over \$95,000 in cash, \$50,000 of which was in checks to LEWALSKI's girlfriend
  - b. \$8,949.49 to Gucci
  - c. \$2,403.86 to Hermes of Paris
  - d. \$34,000 in checks to LEWALSKI
  - e. \$11,675 to a plastic surgeon
  - f. \$13,700 for Broadway shows
- 18. In addition to monies spent by LEWALSKI out of this Fifth Third account, LEWALSKI spent enormous sums of investor funds out of his and BOTFLY's Bank of America accounts on items for himself and his friends and relations, including:
  - a. \$22,933.82 at Hermes of Paris
  - b. \$45,069.51 at Gucci
  - c. \$45,000 to Wynn & Co. watches
  - d. \$44,994 to the "Anti-Aging Group"
- 19. LEWALSKI frequently chartered private jets for travel in the continental United States and abroad, spending \$852,436.36.
- 20. LEWALSKI leased an apartment overlooking New York's Central Park for \$120,230 at the Jumeirah Essex House from June 11, 2009, to August 13, 2010. He paid for the entire year's rent in advance.

21. Presently, LEWALSKI resides in a condominium managed by The Mandarin Oriental Hotel in New York, New York. The condominium was obtained using investor funds totaling \$143,000. The lease period for the Mandarin condo runs from December 1, 2009, to November 30, 2010, substantially overlapping the Essex House lease. He paid for the entire year's rent in advance.
22. LEWALSKI also paid for guest(s) to stay in the adjacent Mandarin Oriental Hotel, spending \$8500 for a five night stay. LEWALSKI purchased three 81 Krug Rose NV champagne bottles that cost \$950 each, on a bar bill totaling \$3,989.79. Two nights later, LEWALSKI spent \$1,930.45 on a bar tab that included another bottle 81 Krug Rose NV and a \$225 bottle of wine. As admitted by LEWALSKI, he has no other known source of income other than that derived from his supposed trading activities and collection of investor funds.
23. Reports from acquaintances detail LEWALSKI's habit of spending large amounts of cash at food and entertainment establishments. For instance, LEWALSKI spent \$2,219.57 of investor funds on or about February 20, 2010, at 4:18 a.m., at "2001 Odyssey," which is billed as "Tampa's premier full nude adult club."
24. LEWALSKI spent investor money on over \$400,000 worth of high-end bicycles and used investor monies to help finance a bicycle shop called Brick City Bicycles in Ocala, Florida.
25. LEWALSKI spent more than \$700,000 of investor funds on vehicles, two of which have not yet been located by the receiver. These vehicles include:
  - a. 2010 Corvette ZR1 for \$110,800
  - b. 2010 Porsche 911 Turbo Cabriolet for \$145,560
  - c. 2010 Land Rover for \$94,022 (not located)
  - d. 2008 Ferrari F430 for \$200,000
  - e. 2008 Porsche 911 Coupe for \$113,140 (not located)
  - f. 2008 Toyota Tundra for \$35,000
  - g. 2002 Porsche Turbo for \$41,500

## VI. Investor MC

26. Investor MC resided in Pasco County in the Middle District of Florida. In or about October 2006, LEWALSKI met with Investor MC at Investor MC's residence. During that meeting, LEWALSKI told Investor MC that he invested money for many clients in the forex market and that the rate of return was very good. Based upon Investor MC's meeting with LEWALSKI, Investor MC decided to invest with LEWALSKI because of the promised rate of return and the ability to withdraw money at anytime without penalty.
27. During the first meeting at Investor MC's residence on or about October 5, 2006, Investor MC wrote a check to LEWALSKI for \$15,000, made payable to BOTFLY. At this time, LEWALSKI provided Investor MC a "promissory note" that both Investor MC and LEWALSKI signed.
28. On or about October 10, 2006, LEWALSKI deposited the check into a Wachovia bank account ending in 6928 opened in the name of BOTFLY, LLC, over which LEWALSKI had signature

authority. In doing so, LEWALSKI caused Investor MC's federal credit union, GTE Federal Credit Union, which was headquartered in Tampa, Florida, to wire funds across state lines to LEWALSKI's account at Wachovia, which was headquartered in North Carolina.

29. On or about October 7, 2006, two days after her meeting with LEWALSKI, Investor MC wrote a second check for \$10,000 payable to BOTFLY after receiving a document entitled "Trendlines" from LEWALSKI that discussed forex trading. Sometime after this second investment, LEWALSKI provided Investor MC a document entitled "promissory note," that reflected a principal investment amount of \$25,000. In the promissory note from BOTFLY LLC that LEWALSKI signed, LEWALSKI made the following false statements:
  - a. BOTFLY LLC promised to pay Investor MC the principal sum of \$25,000 with interest payable at the rate of 5% per month;
  - b. Investor MC would be repaid in consecutive monthly installments of interest only on the 4<sup>th</sup> day of each month commencing the month following the execution of the note, and that upon written notice, he would pay the investor the balance owing under the note within 14 days; and
  - c. BOTFLY or Investor MC could terminate the agreement at any time without penalty and full repayment of the principal plus any accrued interest will be repaid within 14 business days.
30. On or about October 11, 2006, LEWALSKI deposited Investor MC's second check for \$10,000 into the same Wachovia account.
31. On or about November 6, 2006, Investor MC wrote a third check to BOTFLY for \$10,000, which LEWALSKI deposited into the BOTFLY Wachovia account on or about November 7, 2006. Investor MC never received another promissory note reflecting this last investment or Investor MC's total investment of \$35,000.
32. An examination of BOTFLY's Wachovia Bank account ending 6928 reveals that after LEWALSKI deposited Investor MC's three checks into the BOTFLY account, only one corresponding wire of \$10,000 was sent to a trading account. Immediately after the first two checks from Investor MC were deposited, LEWALSKI withdrew \$10,000 for himself.
33. Under the terms of the \$25,000 promissory note, Investor MC was supposed to receive 5% interest payments on a monthly basis, which should have begun on November 4, 2006. Investor MC never received any interest checks or interest in any form from LEWALSKI.
34. On or about January 3, 2007, Investor MC received an email to her Yahoo! email account from LEWALSKI at [Lewalski@aol.com](mailto:Lewalski@aol.com), signed by "Dave," that attached a purported statement relating to Investor MC's investment with BOTFLY. The statement, which bears the heading "Forex Capital Development," shows an account creation date of September 24, 2006, a principal balance of \$38,062.50, interest of \$1,903.13, withdrawals of \$0.00, and balance of \$39,965.63. When LEWALSKI sent this email from his AOL account, he caused the false statements contained in the email to travel from AOL's servers, located in Virginia, across state lines to Yahoo!'s servers, which are located in California.

35. In or about June 2007, Investor MC asked LEWALSKI for an account statement in connection with her efforts to obtain a loan. In response, on or about June 18, 2007, Investor MC received a letter signed by "David R. Lewalski, President, Botfly LLC." The letter stated, in pertinent part, that the balance of Investor MC's account was \$41,337.87 in "liquid assets in an interest bearing foreign exchange trading account. These funds can be made available in their entirety upon written notification from [Investor MC] within the terms of [Investor MC's] contractual agreement."
36. Approximately one week later, on or about June 25, 2007, Investor MC hand delivered a letter dated June 20, 2007, to LEWALSKI requesting that Investor MC's "total assets be withdrawn from the interest bearing foreign exchange account, as soon as possible" and directing LEWALSKI to forward the check to her at her residence. Investor MC sent this letter based upon LEWALSKI'S representations in the promissory note and in the June 18, 2007, letter that the funds were liquid and could be withdrawn upon written notification. LEWALSKI did not return the funds.
37. On or about August 6, 2007, LEWALSKI used his America Online e-mail account to send Investor MC two emails at her Yahoo! email account. The email messages from LEWALSKI offered excuses why he could not provide Investor MC's funds at that time, and stated it was possible he could get her "\$10K" and "then in a few weeks I can get a time frame for the rest..." America Online's e-mail operations and servers are located in Virginia and Yahoo!'s e-mail operations and servers are located in California. In sending these emails, LEWALSKI used interstate wires in furtherance of his scheme to defraud Investor MC, who resides in the Middle District of Florida.
38. On or about August 27, 2007, Investor MC sent a letter to BOTFLY and LEWALSKI via certified U.S. Mail. The letter was delivered to LEWALSKI and BOTFLY at the company's corporate address, 12709 Clocktower Parkway, Bayonet Point, Florida, in the Middle District of Florida. In the letter, Investor MC informed LEWALSKI that Investor MC needed her funds back to pay for her child's college tuition and fees. In the letter, she went on to state that, "I have never received one cent of interest as your contract states I should have." She noted that "[a]t the time of investing, you told me that I could cash out my investments at ANY TIME without penalty. I have requested my investment at least three times, once by mail, all to no avail." She concluded by stating, "Please understand, this is my family's future at stake, and I no longer can take a chance and juggle with the investments I made with you."
39. After the receiver was appointed by the State of Florida to take control of LEWALSKI's assets, the receiver took possession of one of LEWALSKI's residences in Gainesville, Florida and the contents therein. Among the contents was the envelope and certified mailing identifiers that contained the letter from Investor MC described above.
40. On or about December 12, 2007, Investor MC's attorney sent a demand letter via Certified Mail to LEWALSKI and BOTFLY at the Bayonet Point address, demanding the return of Investor MC's funds. The attorney further informed LEWALSKI that he was in violation of Florida securities laws, by failing to register the BOTFLY promissory note as a security and by failing to fully and fairly advise Investor MC of the risks of the investment. The envelope evidencing this transmission via the U.S. Mails was found in LEWALSKI'S former residence in Gainesville, FL.

41. At some later date, Investor MC again confronted LEWALSKI, at which time LEWALSKI made further excuses for failing to return her funds. To date, Investor MC has neither received her principal nor the promised interest payments from her \$35,000 investment with LEWALSKI and BOTFLY.

## VII. Deutsche Bank Forex Accounts

42. BOTFLY has two foreign currency trading accounts at Deutsche Bank AG ("DB"). LEWALSKI used the accounts to engage in foreign currency speculation in the over-the-counter market.
43. The forex trading division of DB is located in London in the United Kingdom. One of BOTFLY'S forex trading accounts ends in number 3108 ("the 3108 account") and the other account ends in number 3177 ("the 3177 account"). LEWALSKI opened the 3108 account in or about August 2008, and opened the 3177 account in or about September 2008. The account statements for both accounts list the owner as Botfly, LLC, c/o David Lewalski, 12709 Clocktower Parkway Bayonet Point, Florida 34667 United States. When he opened the accounts, LEWALSKI elected that the account balances would be expressed in U.S. Dollars.
44. LEWALSKI and co-conspirator 1 emailed account statements from the 3108 and 3177 accounts to existing and prospective investors in BOTFLY. In doing so, LEWALSKI and co-conspirator 1 sought to demonstrate BOTFLY's trading profits and induce funds from current and new investors.
45. I have compared the account statements from the 3108 and 3177 accounts that LEWALSKI and co-conspirator 1 emailed to two BOTFLY investors with the actual account statements provided by DB. Based on this review, there is probable cause to believe that LEWALSKI falsified several entries on the statements to make it look as if the accounts' trading activity was more profitable than it actually was. Then LEWALSKI and co-conspirator 1 emailed the altered DB statements to at least two investors located in the Middle District of Florida, as described further below. These false statements were sent via email and via interstate wires to the Middle District of Florida. These false statements also had the effect of convincing the investors that their investments were safe and that LEWALSKI was a competent trader in the forex market.
46. I reviewed the emails from LEWALSKI and co-conspirator 1 to the two investors, which contained the false DB trading account statements. Both the genuine account statements and the statements emailed to BOTFLY investors by LEWALSKI and co-conspirator 1 contain trade data that allowed me to identify the specific trades that LEWALSKI altered, as discussed more specifically below.

## VIII. Investor JR

47. On or about June 9, 2010, Investor JR advised FDLE that he invested approximately \$100,000 with BOTFLY. FLAG's financial review of BOTFLY accounts shows various investments from Investor JR from July 2008 to July 2009, totaling \$117,380. Investor JR made various withdrawals from his BOTFLY account exceeding \$250,000. The same financial analysis shows that LEWALSKI paid Investor JR with monies obtained from other investors.

48. Investor JR received funds from LEWALSKI and BOTFLY not only for his supposed “interest payments” but also for being a promoter of the scheme to defraud. LEWALSKI and co-conspirator 1 used investors to promote the scheme among their friends and family, and paid these promoters 10% of the principal invested by anyone they referred to BOTFLY.
49. On or about December 2, 2008, LEWALSKI emailed Investor JR at his Yahoo! email account from LEWALSKI’s email account [lewalski@aol.com](mailto:lewalski@aol.com). The email from LEWALSKI contained an attached account statement for DB trading account 3108 that contained forex trades dating from October 31, 2008, to December 1, 2008.
50. The statement LEWALSKI emailed to Investor JR shows four completed forex trades executed between November 20, 2008, and November 24, 2008, that are indentified by ticket numbers 06257222, 06257429, 06260640, and 06260965. The statement further shows that BOTFLY earned profits on all four completed trades in the amounts of \$3,707.63, \$4,008.54, \$6,882.31 and \$2,741.53, respectively.
51. I found these trades on the genuine DB account statements by matching the ticket numbers and the dates and times of each purchase and sale contained in each completed trade. The corresponding net profit/loss entries on the genuine account statements are \$-3,707.63, \$-4,008.54, \$-6,882.31 and \$-2,741.53. Thus, BOTFLY actually suffered losses in the exact amount that LEWALSKI claimed BOTFLY’s trading account made money. In short, LEWALSKI changed the numbers from negative to positive.
52. The altered DB account statement emailed to Investor JR by LEWALSKI shows a profit of \$33,657.43 when, in reality, the BOTFLY account lost \$1,022.59 for the same period.
53. In LEWALSKI’S December 2, 2008, email to Investor JR, to which LEWALSKI attached the fabricated DB trading account statement described above, LEWALSKI also stated that JR earned “a bit more than ten percent for the month,” which, based upon the actual trading activity, was a false statement.

#### **IX. Investor AP**

54. On or about July 15, 2010, Investor AP advised FDLE investigators that he learned of BOTFLY from an acquaintance who had invested with the company. Investor AP further explained that in or around February 2009, he contacted co-conspirator 1 to inquire about investing in BOTFLY.
55. On or about February 28, 2009, co-conspirator 1 emailed Investor AP from co-conspirator 1’s Yahoo! account. Co-conspirator 1 attached an Excel spreadsheet that contained the same four trades falsified in the same manner as described with Investor JR.
56. Further, in his email sent on or about February 28, 2009, co-conspirator 1, signing on behalf of BOTFLY, LLC, stated to Investor AP in part:

“We try to keep this as simple as possible for all the investors involved. We have over 120 clients, our minimum investment is \$10,000. It does not have to be an even amount, and we allow you to add or withdraw to your account. Many people have added more to their accounts as they see the returns and have more comfort. We borrow your money from you and pay a monthly interest of 10%. Most people like to have the interest added in and then it compounds each month. It creates incredible growth rates (\$25k will compound to \$78460 in 12 months, it takes 25 months to go from \$100k to \$1mil). How we do it is on the foreign exchange market. We trade the GBP (British Pound) and the JPY (Japanese Yen). . . . “We work on margin. If I have \$10000 on deposit, I can trade up to \$1mil, so it doesn’t take much movement to make a large amount of money.”

“Have you ever wondered how your local bank can buy the real estate, pay the electric, all the employees in the local branch, the main offices for accounting, dividends on savings accounts; yet they give you free checking to have your money on deposit?? They utilize our money to trade on the foreign exchange, and pay us a fraction of a percent for monthly savings, or 5% annually for a CD. JP Morgan has offered this type of trading platform that [*sic*] available to high net worth investors with \$10 mil in cash or more. . . . .most of us have not been given the opportunity to invest like we are millionaires.”

57. When Investor AP provided this and other information to FLAG, he stated in an email that the trading account records co-conspirator 1 attached to the February 28, 2009 email, showed approximately a 30% return per month.
58. Investor AP was induced to invest with BOTFLY based on these statements and the attached falsified DB trading account statement, which showed a profit of \$33,657.43, when in reality, for that month, the account lost \$1,022.59.
59. Also in the email sent by co-conspirator 1 to Investor AP on or about February 28, 2009, co-conspirator 1 attached another statement supposedly from DB account 3108 that contained forex trades dating from December 31, 2008, to February 1, 2009. The statement is an Excel spreadsheet that contains a completed trade in the GBP/JPY spread, ticket number 06377022 and a volume of 400K or 400,000. This trade showed a profit of \$37,587.06.
60. When I compared the statement that co-conspirator 1 sent to Investor AP with the genuine statements for DB account 3108, I found that ticket number 06377022 had a volume of only 200,000 trades, which yielded a net profit of \$18,451.53. The falsified statement emailed by co-conspirator 1 to Investor AP on or about February 28, 2009, falsely showed a net profit for this trade of \$37,587.06, which was overstated by \$19,135.53 ( $\$37,587.06 - \$18,451.53 = \$19,135.53$ ).
61. Investor AP invested a total of \$38,000 in BOTFLY and never withdrew any money.

#### X. Risk of Flight

62. Based on LEWALSKI’s actions and access to stolen investor funds, I have probable cause to believe that LEWALSKI is a flight risk. In addition to the BOTFLY accounts, LEWALSKI opened a trading account at DB in London in his own name. He also opened one or more trading accounts

in Switzerland in his own name. He caused more than \$1 million in misappropriated investor funds to be deposited into these off-shore accounts.

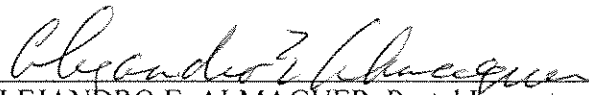
63. When the State of Florida filed its civil enforcement action on or about April 1, 2010, LEWALSKI fled the country. On or about April 2, 2010, LEWALSKI boarded a private chartered Gulfstream IV jet brokered by Atlantis Jets Airlines from Gainesville, FL to Brussels, Belgium. LEWALSKI was scheduled to return to the U.S. on April 9, 2010, but failed to show up for his return flight. He paid for the private jet flight, which cost \$172,744, with BOTFLY investor monies. After arriving in Belgium, the evidence demonstrates that LEWALSKI travelled to France, among other places.
64. On or about April 4, 2010, LEWALSKI sent an email to investors that stated, "I am still in Europe with access to trading funds."
65. On or about April 6, 2010, LEWALSKI wrote an open letter to his investors in response to the FLAG's civil action. In that letter, LEWALSKI denied the charges levied against him by the complaint and in the press. In the letter, LEWALSKI made reference to his accounts in the U.S. being frozen but observed, "fortunately [I] had cards from my overseas accounts to rely on for expenses, etc." LEWALSKI further stated he had trading accounts in six countries. LEWALSKI also told investors that he wanted to "sit down with the powers that be along with my attorney and straighten this out. But the recent 'Orwellian' totalitarian tactics of law enforcement and seizing business and personal monies and properties with a 'guilty until proven innocent' formula ... makes me believe that we are indeed losing more and more of our rights and freedom every day." LEWALSKI made no effort to inform his investors about the true fate or location of their funds, nor did he take responsibility for his actions.
66. On or about April 10, 2010, co-conspirator 1 sent an email to BOTFLY's investors, attaching a letter from LEWALSKI. In the letter, LEWALSKI discussed his efforts to retain legal counsel and explained his presence in Europe. He falsely promised to return "soon" and stated that he "merely need[ed] a few extra days here to make phone calls without fear of being thrown out of my home without any assets etc."
67. In an email dated on or about April 22, 2010, LEWALSKI instructed the concierge at the Mandarin Oriental Hotel to cease forwarding mail to LEWALSKI's Florida address.
68. In an email dated on or about April 29, 2010, to the concierge at the Mandarin Oriental Hotel, LEWALSKI stated that he had opened a Société Générale bank account and expected a letter with a PIN to be sent to his condo at the Mandarin. LEWALSKI also stated that he was in Geneva, Switzerland.
69. In an email dated on or about September 29, 2010, LEWALSKI told the concierge at the Mandarin that "we are on our boat in Cannes [France] with limited email..."
70. Since the filing of the FLAG's civil action, LEWALSKI has continued to solicit investor funds and has obtained at least \$50,000 from one investor for his legal defense fund. In other emails from September 2010, LEWALSKI made reference to hiring UK counsel and to obtaining funds for his legal defense.

71. LEWALSKI has made no effort to cooperate with the resolution of the civil case. Rather he has fled and hired lawyers to fight the case, including filing a motion to dismiss.
72. LEWALSKI has a pattern of disregarding legal obligations, including failing to file tax returns (per his own admission) and failing to register to sell securities or trade in commodities with the SEC, CFTC, or State of Florida.
73. On or about October 23, 2010, LEWALSKI and his girlfriend traveled back to the U.S. on an American Airlines flight from Charles De Gaul (CDG) airport in Paris, France. According to officials at ICE, he has a flight to return to Paris booked for November 15, 2010.
74. While in the U.S. most recently, LEWALSKI has been staying at the condominium he rented using investor funds at the Mandarin Oriental Hotel. Two of the vehicles purchased by LEWALSKI with investor funds have not yet been located or recovered by the receiver.

**XI. Conclusion**

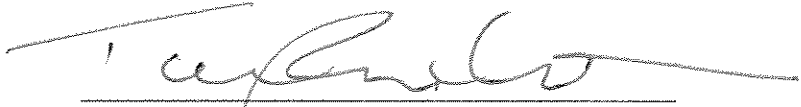
75. Based upon the foregoing, I believe there is probable cause that DAVID RICHARD LEWALSKI committed wire fraud, in violation of 18 U.S.C. § 1343 (Wire Fraud).

Further Affiant sayeth not.

  
ALEJANDRO E. ALMAGUER, Postal Inspector  
United States Postal Inspection Service

SUBSCRIBED and SWORN TO before me

on this 2 day of November, 2010

  
HONORABLE THOMAS B. McCOUN, III  
United States Magistrate Judge