

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

MARC A. FREEDMAN,

Defendant.

Civil Action No.
07-3263-DKC

COMPLAINT

Plaintiff Securities and Exchange Commission (the "Commission") alleges as follows:

SUMMARY

1. This matter involves a scheme to defraud investors by defendant Marc A. Freedman, a former officer and co-owner of TriCapital Advisors, Inc. ("TriCapital"), an investment adviser registered with the Commission.
2. From 1999 through June 2005, Freedman misappropriated approximately \$2.38 million from three TriCapital clients, falsely representing to the clients that the funds had been invested for them, or had been used to pay investment advisory fees owed to TriCapital. In order to conduct and conceal his fraud, Freedman created and distributed to clients false account statements and other documents, and made additional material misrepresentations and omissions of material fact in correspondence and oral statements to these clients.

3. Freedman transferred the stolen client funds to brokerage or bank accounts controlled by him, and then used the funds to pay his own personal expenses, as well as to repay two TriCapital clients he had previously defrauded.

4. By knowingly or recklessly engaging in the conduct described in this Complaint, defendant Freedman violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C §§ 80b-6(1) and 80b-6(2).

JURISDICTION AND VENUE

5. The Commission brings this action pursuant to Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b), Sections 21(d) and (e) of the Exchange Act, 15 U.S.C. §§ 78u(d) and (e), and Section 209(d) of the Advisers Act, 15 U.S.C. § 80b-9, to enjoin such acts, transactions practices and courses of business, and for other appropriate relief.

6. This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and Section 214 of the Advisers Act, 15 U.S.C. § 80b-14.

7. Certain of the acts, transactions, practices, and courses of business constituting the violations alleged herein occurred within the District of Maryland and elsewhere, and were effected, directly or indirectly, by making use of the means and instruments of transportation and communication in interstate commerce, or the means and instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange.

DEFENDANT

8. Marc A. Freedman, age 49, resides in Gaithersburg, Maryland. Freedman was an officer and part-owner of TriCapital Advisors, Inc., a registered investment adviser, from 1993 until his resignation in May 2006. During all relevant times, Freedman served as TriCapital's president, chief compliance officer, and operations manager.

FACTS

9. In his positions at TriCapital, in addition to managing investment accounts for his own clients, Freedman managed the firm's bank and brokerage accounts, maintained the firm's operating budget, paid TriCapital's expenses, and initiated distributions to clients. Freedman also created reports detailing quarterly management fees earned by TriCapital, which were used by Freedman and another individual to calculate their quarterly compensation based upon the fees generated by their respective clients. Freedman used his control of these accounts and records to steal from his clients for several years without detection.

Investor A

10. In 1994, Investor A became a TriCapital client, and invested approximately \$750,000 in retirement funds with TriCapital. Investor A was referred to Freedman by his accountant, and he understood that Freedman would manage his retirement account by making low-risk investments.

11. In a series of transactions in 1999 and 2000, without Investor A's knowledge, Freedman sold nearly all of the holdings in Investor A's TriCapital account, fraudulently withdrawing approximately \$785,000 in cash and securities. Freedman never re-invested the

funds taken from Investor A's account for Investor A's benefit, but instead Freedman used them to pay his own personal expenses and debts.

12. Over time, Investor A became aware that he was not receiving account statements reflecting his investments and, having failed to receive an adequate explanation from Freedman, ultimately demanded the liquidation of his account in March 2003. In an attempt to conceal his theft, Freedman falsely told Investor A that his money was invested in a real estate investment trust that matured in December 2003, at which time Investor A would receive a payout, including an eight percent annual return.

13. In support of this deception, Freedman sent Investor A a false document that he had created, titled "Account Valuation Statement," that purported to reflect Investor A's holdings in the contrived real estate investment trust Freedman described as "First Trust Capital Appreciation Notes 2003," supposedly purchased between 1997 and 1999.

14. Freedman maintained his deception of Investor A and eventually, in March 2004, repaid him \$1,048,545, supposedly representing the original investment plus profits. In reality, in order to pay Investor A, as he had promised, Freedman stole the amounts needed from another TriCapital client, Investor C, as described below.

Investor B

15. From March 2002 through June 2004, Freedman misappropriated approximately \$375,000 from the TriCapital account of Investor B, a young, disabled woman who used her TriCapital account for living expenses. Freedman served as co-trustee of the account, together with Investor B's brother, who had engaged Freedman to manage Investor B's account and to pay

Investor B's expenses from the TriCapital account. As co-trustee of the account, Freedman had authority to write checks. In March 2002, the account had a value of approximately \$480,000.

16. During this time period, Freedman periodically sold securities from Investor B's account and converted the proceeds to his own personal use. In order to obtain Investor B's funds, Freedman transferred the sale proceeds to himself, using TriCapital's bank and brokerage accounts, under the guise of monthly management fees that ranged between \$5,000 and \$65,000.

17. To further conceal his fraudulent conduct, Freedman entered false information into TriCapital's transaction ledger to make it appear as though he had used the proceeds from the sales of securities in Investor B's account to make multiple purchases of another security, identified as "First Trust 200." However, the First Trust 200 securities did not exist and the purchases that Freedman detailed in the transaction ledger never occurred.

18. Freedman further concealed his theft from others at TriCapital by omitting the "management fees" he charged to Investor B from the quarterly reports he prepared that were supposed to include all management fees charged by the firm for that period.

19. Freedman also used an entity named Washington Asset Consulting Group ("Washington Asset"), a shell company that he owned, which had no legitimate business operations, to further perpetrate his fraud. In June 2004, Freedman wrote a \$5,000 check from Investor B's account and deposited the funds into a Washington Asset bank account that he controlled.

20. Freedman used the funds he misappropriated from Investor B for a variety of his own personal expenses, including, among other things, to pay large credit card bills, buy cars, fund shopping trips, and pay for his daughter's college expenses.

21. Freedman stopped taking money from Investor B only after he had nearly completely depleted the account. In March 2004, when the account value was less than \$2,000, Freedman deposited \$45,000 into the account, which he characterized in the monthly statement as a "fee adjustment." He deposited another \$9,000 into the account in July 2005. The source of the funds for these deposits, however, was money Freedman had misappropriated from another TriCapital client, Investor C, described below.

Investor C

22. In March 2004, Freedman misappropriated \$1.2 million from Investor C, an elderly TriCapital client. Freedman managed several TriCapital investment accounts opened by Investor C.

23. In March 2004, Freedman supposedly sold to Investor C a \$1.2 million investment he called a "Principal Protected Equity Note" (the "Note"), which, in reality, was nothing more than a fictitious security created by Freedman and purportedly offered by Freedman's shell company, Washington Asset. Freedman described the Note in a supposed offering document as an unsubordinated, secured, contractual obligation of Washington Asset with a return on investment based upon the S&P 500 index and a maturity date of April 2005.

24. Freedman never invested Investor C's funds in the Note, as promised. Instead, on or about March 18, 2004, Freedman transferred \$1.2 million from Investor C's brokerage account to a Washington Asset bank account that Freedman controlled.

25. In March 2005, Freedman stole an additional \$20,000 from Investor C by withdrawing funds directly from Investor C's TriCapital account.

26. Freedman never invested the money supposedly intended for the Note or the additional \$20,000 withdrawn in March 2005. Instead, Freedman used most of Investor C's money to make payments to Investors A and B, as previously described in this Complaint, converting the balance to his own personal use.

27. Specifically, on or about March 19, 2004, Freedman paid \$1,048,545 to Investor A, using Investor C's money. In March 2004, again using Investor C's money, he deposited \$45,000 into Investor B's TriCapital account, and, in July 2005, similarly deposited \$9,000 into Investor B's account. In addition, Freedman also used \$117,000 of Investor C's money for a variety of his own personal expenses, including, among other things, vacations, cars, credit card payments, and college expenses.

FIRST CLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder

28. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 27, inclusive, as if the same were fully set forth herein.

29. From 1999 through June 2005, defendant Freedman, by engaging in the conduct described above, directly or indirectly, in connection with the purchase or sale of securities, and by use of the means or instrumentalities of interstate commerce, or the mails, or the facilities of a national securities exchange:

- (a) employed devices, schemes or artifices to defraud;

(b) made untrue statements of material fact, or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and/or

(c) engaged in acts, practices, or courses of business which operated or would operate as a fraud or deceit upon any person.

30. By reason of the foregoing, defendant Freedman violated Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder.

SECOND CLAIM FOR RELIEF

Violations of Section 17(a) of the Securities Act

31. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 30, inclusive, as if the same were fully set forth herein.

32. From 1999 through June 2005, defendant Freedman, by engaging in the conduct described above, in the offer or sale of a security, by the use of a means or instrument of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, has:

(a) employed devices, schemes or artifices to defraud;

(b) obtained money or property by means of untrue statements of material fact or omitted 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/or

(c) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon the purchaser.

33. By reason of the foregoing, defendant Freedman violated Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

THIRD CLAIM FOR RELIEF

Violations of Sections 206(1) and 206(2) of the Advisers Act

34. The Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 33, inclusive, as if the same were fully set forth herein.

35. From 1999 through June 2005, defendant Freedman, directly or indirectly, in connection with the conduct of business as an investment adviser, by using the mails or any means or instrumentality of interstate commerce:

(a) employed devices, schemes or artifices to defraud clients or prospective clients; and/or

(b) engaged in transactions, practices, or courses of business which operated or would operate as a fraud or deceit upon any client or prospective client.

36. By reason of the foregoing, defendant Freedman violated Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2).

WHEREFORE, the Commission respectfully requests that this Court:

I.

Issue an injunction permanently restraining and enjoining defendant Freedman from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), Section 10b of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder, and Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§ 80b-6(1) and 80b-6(2).

II.

Order such other further relief as the Court may deem just and appropriate.

Respectfully submitted,

s/

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