

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK, :

-against- : Indictment No. 1710/2004

THEODORE C. SIHPOL III, :

Defendant. :

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COUNT ONE

THE GRAND JURY, by this indictment, accuse the defendant of the crime of **SCHEME TO DEFRAUD IN THE FIRST DEGREE, in violation of Penal Law § 190.65(1)(a)**, committed as follows:

The defendant, in the County of New York and elsewhere, during a period from in or about May 2001 to in or about July 2003, engaged in a scheme constituting a systematic ongoing course of conduct with intent to defraud ten and more persons and to obtain property from ten and more persons by false and fraudulent pretenses, representations and promises, and so obtained property from one and more such persons as follows:

During the period charged herein, defendant was employed as a securities broker in the Private Client Services unit of Banc of America Securities, LLC, a subsidiary of Bank of America, N.A. located at 9 West 57th Street, New York, New York.. Private Client Services (“PCS”) targeted high net worth individuals to open brokerage accounts at Banc of America Securities, LLC. In the spring of 2001, as a Vice President in PCS, defendant solicited and successfully established a client relationship with a hedge fund entity, Canary Capital Partners (“Canary”). Canary informed defendant that it desired to frequently buy and sell mutual fund shares in the brokerage account it established with defendant, a practice known as “market timing”. Defendant, in turn, arranged for Canary to market time mutual fund shares of

Nations Funds Trust, a mutual fund family affiliated with Bank of America, N.A..

Defendant also arranged to provide Canary with an electronic trading platform that enabled Canary to enter mutual fund exchanges until as late as 8:30 p.m., yet still obtain a mutual fund share price set as of 4:00 p.m.

Prior to the establishment of the electronic trading platform, Canary mutual fund trade orders were transmitted manually to PCS. During this period, defendant allowed Canary to trade after 4:00 p.m. and still obtain the 4:00 p.m. price through a contrivance. Before 4:00 p.m., frequently at midday, defendant prepared and time-stamped order tickets purportedly reflecting unconditional trade orders from Canary, but which were, in fact, only “proposed” trade orders. After 4:00 p.m. Canary would place the actual order either by “confirming” or “cancelling” the earlier proposals.

In several tape recorded telephone conversations between defendant and Canary in May 2001 and, thereafter in March 2003, the manual ticket and electronic trading scheme was detailed, inter alia, in three conversations. The first, taking place on or about May 10, 2001, was between defendant and a representative of Canary:

* * *

Canary: Okay, great. We will be able, even before we get electronically, we will be able to send that, um, the fax to you, by around 6 o'clock.

Defendant: If you could do it, they actually need to drop it by 5:30 is their latest time.

Canary: It's 5:30, their latest time –

Defendant: Yes, so if you could get it to me by 5:00-ish just to make sure that I have enough time to write it, and that gives them little pad time as well.

Canary: You got it.

Defendant: So 5:00 is - - 5:00 is great. And we'll make sure that, you know, just to let you know, they want to see stamped tickets or – they want to see tickets that are stamped before 4 o'clock because we are doing it manually.

Canary: Right.

Defendant: So I'm just going to stamp a bunch of tickets every day. That's all . . .

* * *

The second conversation, taking place on or about May 11, 2001, was also between defendant and a representative of Canary:

Canary: Hi Ted its [Male #1].

Defendant: Hey, [Male #1].

Canary: Yeah the one thing, I did want to talk, I didn't want to have other ears on board necessarily, - -

Defendant: Yeah

Canary: - - is what I thought I would do is send you uhm a copy you know, [Female #1] and [Male #2] also, all three of you- -

Defendant: Mmm - -

Canary: - -on a daily basis, you know, a proposed, you know, what trades we think we're gonna do if we're gonna do it.

Defendant: Oh..that would be huge...

Canary: And that way you can, you know, I could send this to you, probably by, you know, 2, 2:30

Defendant: Uh huh...

Canary: That way you could time stamp them then I'll call you up like about 4:30, quarter to five saying put them through...

Defendant: Yes.

Canary: ...or put them in the garbage.

Defendant: Or..yeah, exactly and basically what I did is in anticipation of that...

Canary: Uh huh...

Defendant: ...I basically, you know, I put a reminder on [Female #1's] Outlook and mine and just said hey, you know what, at the beginning of every day you know 'market on open', stamp five tickets.

Canary: Right.

Defendant: And worst case scenario is we divide the tickets in half and, you know, write on that one.

Canary: Right...

Defendant: To be honest with you...

Canary: ...This way you have plenty of time to write them up and its just a matter do you drop them, or where you drop them, is it in the account or do you drop them into the trash.

Defendant: Exactly, you know, do you rip them in half and toss them. And the bottom line is too, [Male #1], I mean, as far as the time stamp is concerned, you know how that works...

Canary: Oh, absolutely and that's why I figured by me sending all three of you an e-mail, some of you will get the e-mail during the day and I'll actually you know...

Defendant: Uh huh...

Canary: ...I'll answer a conf. , someone confirm it back, yes we received it...

Defendant: Sure..

Canary: ... and then we know its handled and you guys don't have any worry about compliance...

Defendant: Yeah

Canary: ... or anything, and you're all covered too.

Defendant: Right.

Canary: Because I don't want, I want to make sure that everybody is covered how they have to be covered

Defendant: Absolutely, absolutely and you know, time stamp., I mean worst case, worst case come to worst, between you and I, ah, you know, technician has the key if you follow me...

Canary: I understand...

Defendant: Good.

* * *

The third conversation, taking place in or about March, 2003, was also between defendant and a representative of Canary:

* * *

Defendant: Ah, one thing, if it ever comes up, between you and I, you need to know – I'm sure you know the right answer, but it came up today in conversation. You guys make all the investment decisions before 4 o'clock, correct?

Canary: Absolutely.

Defendant: Okay, good. That's all I need to know.

Canary: How did it come up? I'm just curious.

Defendant: It came up because in looking at the system that you have through broker dealer clearing, you have the ability to execute trades up until 5:30.

Canary: Right.

Defendant: So [Male#3], in looking at this trade, trying to cover his ass, came to me and said, you – look, these guys – if Canary ever gets audited and it comes out there before 5:30, they make decisions after the market closes there could be real problems as us being their brokers and not have done our due diligence. And I said look, I've been in their office and I've seen their ability to watch the tape on a trade by trade basis, so every tick, their model is updated on how they would execute the trade if the market were to close at the given moment.

Canary: Uh - huh.

Defendant: And that's how they make all their investment decisions. And all of them are made before 4 o'clock. And he said okay....

* * *

COUNT TWO

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **SCHEME TO DEFRAUD IN THE FIRST DEGREE, in violation of Penal Law § 190.65(1)(b)**, committed as follows:

The defendant, in the County of New York and elsewhere, during a period from in or about May 2001 to in or about July 2003, engaged in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person and to obtain property from more than one person by false and fraudulent pretenses, representations and promises, and so obtained property with a value in excess of one thousand dollars from one and more such persons.

COUNT THREE

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **GRAND LARCENY IN THE FIRST DEGREE, in violation of Penal Law § 155.42**, committed as follows:

The defendant, in the County of New York and elsewhere, during a period from in or about May 2001 to in or about September 2001, stole property having a value in excess of \$1 million from an owner thereof, the Nations Funds Trust.

COUNT FOUR

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **GRAND LARCENY IN THE FIRST DEGREE, in violation of Penal Law § 155.42**, committed as follows:

The defendant, in the County of New York and elsewhere, during a period from in or about September 2001 to in or about July 2003, stole property having a value in excess of \$1 million from an owner thereof, the Nations Funds Trust.

COUNT FIVE

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **GRAND LARCENY IN THE FIRST DEGREE, in violation of Penal Law § 155.42**, committed as follows:

The defendant, in the County of New York and elsewhere, during a period from in or about February 2002 to in or about July 2003, stole property having a value in excess of \$1 million from an owner thereof, the PIMCO Funds.

COUNT SIX

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **GRAND LARCENY IN THE FIRST DEGREE, in violation of Penal Law § 155.42**, committed as follows:

The defendant, in the County of New York and elsewhere, during a period from in or about October 2002 to in or about July 2003, stole property having a value in excess of \$ 1 million from an owner thereof, the MFS Family of Funds.

COUNT SEVEN

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **GRAND LARCENY IN THE FIRST DEGREE, in violation of Penal Law § 155.42**, committed as follows:

The defendant, in the County of New York and elsewhere, during a period from in or about October 2002 to in or about July 2003, stole property having a value in excess of \$1 million from an owner thereof, Janus Investment Fund.

COUNT EIGHT

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **GRAND LARCENY IN THE FIRST DEGREE, in violation of Penal Law § 155.42**, committed as follows:

The defendant , in the County of New York and elsewhere, during a period from in or about March 2003 to in or about July 2003, stole property having a value in excess of \$ 1 million from an owner thereof, Alger Fund.

COUNT NINE

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **GRAND LARCENY IN THE FIRST DEGREE, in violation of Penal Law § 155.42**, committed as follows:

The defendant, in the County of New York and elsewhere, during a period from in or about June 2003 to in or about July 2003, stole property having a value in excess of \$1 million from an owner thereof, RS Investment Trust.

COUNT TEN

AND THE GRAND JURY, by this indictment, further accuse the defendant of a **VIOLATION OF GENERAL BUSINESS § 352-c(5)**, committed as follows:

The defendant, in the County of New York and elsewhere, during a period from in or about May 2001 to in or about July 2003, intentionally engaged in schemes constituting a systematic ongoing course of conduct with intent to defraud ten or more persons and to obtain property from ten and more persons by false and fraudulent pretenses, representations and promises, and so obtained property from one and more such persons while engaged in inducing or promoting the issuance, distribution, exchange, sale, negotiation or purchase of securities.

COUNT ELEVEN

AND THE GRAND JURY, by this indictment, further accuse the defendant of a **VIOLATION OF GENERAL BUSINESS § 352-c(6)**, committed as follows:

The defendant, in the County of New York and elsewhere, during a period from on or about May 2001 to on or about July 2003, intentionally engaged in fraud, deception, concealment, suppression, false pretense and fictitious and pretended purchase and sale, and made material false representations and statements with intent to deceive or defraud, while engaged in the exchange, sale, negotiation, or purchase within and from New York of a security, and thereby wrongfully obtained property with a value in excess of \$250.00.

COUNT TWELVE

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about May 16, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records, to wit: a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT THIRTEEN

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about May 16, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records, to wit: a faxed copy of a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT FOURTEEN

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about June 1, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records, to wit: a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT FIFTEEN

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about June 1, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records, to wit: a faxed copy of a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT SIXTEEN

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about June 20, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records, to wit: a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT SEVENTEEN

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about June 20, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records, to wit: a faxed copy of a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT EIGHTEEN

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about July 17, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records, to wit: a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT NINETEEN

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about July 17, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records, to wit: a faxed copy of a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT TWENTY

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about July 25, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records, to wit: a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT TWENTY-ONE

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about July 25, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records, to wit: a faxed copy of a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT TWENTY-TWO

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about August 1, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records, to wit: a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT TWENTY-THREE

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about August 1, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records, to wit: a faxed copy of a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT TWENTY-FOUR

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about July 16, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records, to wit: a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT TWENTY-FIVE

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about July 16, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records, to wit: a faxed copy of a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT TWENTY-SIX

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about August 22, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records, to wit: a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT TWENTY-SEVEN

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about August 22, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records, to wit: a faxed copy of a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT TWENTY-EIGHT

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about August 23, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records, to wit: a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT TWENTY-NINE

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about August 23, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records, to wit: a faxed copy of a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT THIRTY

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about August 24, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records, to wit: a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT THIRTY-ONE

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about August 24, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records, to wit: a faxed copy of a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT THIRTY-TWO

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about August 28, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records, to wit: a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT THIRTY-THREE

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about August 28, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records, to wit: a faxed copy of a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT THIRTY-FOUR

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about August 31, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records, to wit: a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT THIRTY-FIVE

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about August 31, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, made and caused to be made a false entry in the business records, to wit: a faxed copy of a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT THIRTY-SIX

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about August 22, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, altered, erased, obliterated, deleted, removed and destroyed a true entry in the business records, to wit: a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT THIRTY-SEVEN

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about August 23, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, altered, erased, obliterated, deleted, removed and destroyed a true entry in the business records, to wit: a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT THIRTY-EIGHT

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about August 24, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, altered, erased, obliterated, deleted, removed and destroyed a true entry in the business records, to wit: a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT THIRTY-NINE

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about August 28, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, altered, erased, obliterated, deleted, removed and destroyed a true entry in the business records, to wit: a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

COUNT FORTY

AND THE GRAND JURY, by this indictment, further accuse the defendant of the crime of **FALSIFYING BUSINESS RECORDS IN THE FIRST DEGREE, in violation of Penal Law § 175.10**, committed as follows:

The defendant, in the County of New York and elsewhere, on or about August 31, 2001, with intent to defraud and to commit another crime and to aid and conceal the commission thereof, altered, erased, obliterated, deleted, removed and destroyed a true entry in the business records, to wit: a mutual funds exchange trade ticket, of an enterprise, Bank of America Securities, LLC.

ELIOT SPITZER

Attorney General
State of New York