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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

July 2010 Grand Jury

**12CR 0918BEN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAMES T. MICELI (1),  
DOUGLAS McCLAIN, JR. (2),  
JEFFREY T. SPANIER (3),

Defendants.

Case No. \_\_\_\_\_

INDICTMENT

Title 18, U.S.C., Sec. 371 - Conspiracy;  
Title 18, U.S.C., Sec. 1341- Mail Fraud;  
Title 18, U.S.C., Sec. 1343 - Wire Fraud;  
Title 15 U.S.C., Secs. 78j(b) and 78ff - Securities  
Fraud; Title 18, U.S.C., Sec. 1956 - Money  
Laundering; Title 18, U.S.C., Sec. 1957- Money  
Laundering; Title 18, U.S.C. Sec. 2 - Aiding and  
Abetting; Title 18, U.S.C., Secs. 981, 982, and  
984; Title 28, U.S.C., Sec. 2461(c) - Criminal  
Forfeiture

The Grand Jury charges:

INTRODUCTORY ALLEGATIONS

At all times material to this Indictment

1. Defendant JAMES T. MICELI was a resident of Poway, California.
2. Defendant DOUGLAS McCLAIN, JR was a resident of Savannah, Georgia.
3. Defendant JEFFREY T. SPANIER was a resident of Delray, Florida.
4. Argyll Equities, LLC was a corporation formed under the laws of the State of Texas and purported to do business in San Diego, California and Savannah, Georgia. Defendant JAMES T. MICELI was the Chief Executive Officer of Argyll Equities, LLC and Defendant DOUGLAS McCLAIN, JR. was the President.

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1           5.       SW Argyll Investments, LLC was a corporation formed under the laws of the State of  
2 Texas and purported to do business in San Diego, California and Savannah, Georgia. Defendant JAMES  
3 T. MICELI was the Chief Executive Officer of SW Argyll Investments, LLC and Defendant DOUGLAS  
4 MCCLAIN, JR. was the President.

5           6.       The Argyll Group, LLC was a corporation formed under the laws of the State of Texas  
6 and purported to do business in San Diego, California and Savannah, Georgia. Defendants JAMES T.  
7 MICELI and DOUGLAS MCCLAIN, JR. were principals in the Argyll Group, LLC.

8           7.       The Argyll entities referred to paragraphs 4 through 6 (hereinafter, collectively referred  
9 to as "ARGYLL") were represented to the public by Defendants JAMES T. MICELI, DOUGLAS  
10 MCCLAIN, JR., JEFFREY T. SPANIER, and others, as an institutional lender with significant assets  
11 that was in the business of making loans to corporate executives and other individuals and which would  
12 accept stock (either restricted or unrestricted) as collateral for the loans ARGYLL made.

13           8.       Argyll Aviation, LLC ("Argyll Aviation") was a corporation formed under the laws of  
14 the State of Oregon. Defendant JAMES T. MICELI was an officer of Argyll Aviation. Argyll Aviation  
15 held title to a 1980 Cessna Citation II aircraft, registration #N650BP.

16           9.       Argyll Biotechnologies, LLC ("Argyll Bio") was a corporation formed under the laws  
17 of the State of Delaware and purported to do business in San Diego, California. Defendant JAMES T.  
18 MICELI was the Chief Executive Officer of Argyll Bio and Defendant DOUGLAS MCCLAIN, JR. was  
19 the President.

20           10.      Immunosyn Corporation, Inc. ("Immunosyn") was a corporation formed under the laws  
21 of the State of Delaware and purported to do business in San Diego, California, and Chicago, Illinois.  
22 Defendant DOUGLAS MCCLAIN, JR. was Immunosyn's Chief Financial Officer. Defendants JAMES  
23 T. MICELI, DOUGLAS MCCLAIN, JR., and others, represented to members of the public that  
24 Immunosyn was in the business of conducting FDA-approved clinical trials of a drug referred to as  
25 SF-1019 which was purported to be the next cure for terminal illnesses such as cancer, AIDS, and  
26 Multiple Sclerosis.

27           11.      Dynasty Energy, LLC was a corporation formed under the laws of the State of Nevada  
28 and is controlled by Defendant JAMES T. MICELI.

1           12.    3M Energy Resources, LLC (“3M Energy”) was a corporation formed under the laws of  
2 the State of Delaware and was controlled by Defendants JAMES T. MICELI and DOUGLAS  
3 MCCLAIN, JR. 3M Energy purported to operate a coal mine in Beverly, Kentucky.

4           13.    3M Management Resources, LLC was a corporation formed under the laws of the State  
5 of Delaware and was controlled by Defendants JAMES T. MICELI and DOUGLAS MCCLAIN, JR.

6           14.    Amerifund Capital Finance, LLC was a corporation formed under the laws of the State  
7 of Florida and was owned and controlled by Defendant JEFFREY T. SPANIER.

8           15.    Amerifund Capital Group, LLC was a corporation formed under the laws of the State of  
9 Florida and was owned and controlled by Defendant JEFFREY T. SPANIER.

10          16.    The Amerifund entities described in paragraphs 14 and 15 (hereinafter collectively  
11 referred to as “AMERIFUND”) purported to operate a loan brokerage business specializing in  
12 originating stock loans for business executives, and was represented to members of the public to be the  
13 “retail” arm of ARGYLL.

14          17.    Federal securities laws and regulations promulgated by Congress and the United States  
15 Securities and Exchange Commission (“SEC”) require publicly-traded companies to make timely and  
16 accurate reports which are made available to the public, place certain restrictions on the free trading of  
17 shares in public companies, and require certain categories of individual investors to provide timely and  
18 accurate reporting to the SEC of the registration and transfer of shares. In particular, federal securities  
19 laws and regulations place restrictions on the sale of shares by persons who are insiders of the public  
20 company. Under SEC Rule 144, insiders must register their intent to sell shares with the SEC through  
21 a registration statement before they can sell the shares in the open market. These rules and regulations  
22 reflect the judgment of Congress and the SEC that timely disclosure about the purchase and sale of  
23 securities by insiders of the public company is information material to investors in the company’s  
24 securities.

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**Count 1**

[18 U.S.C. § 371]

**Conspiracy**

(Against All Defendants)

18. The allegations set forth in paragraphs 1 through 17 above are realleged and incorporated by reference as if fully set forth herein.

19. Beginning in at least January 2004 and continuing through the date of this Indictment, within the Southern District of California and elsewhere, defendants JAMES T. MICELI, DOUGLAS MCCLAIN, JR., JEFFREY T. SPANIER, and others known and unknown to the grand jury, knowingly conspired and agreed with each other, and persons known and unknown to the grand jury, to commit offenses against the United States, to wit: mail fraud, in violation of Title 18, United States Code, Section 1341; wire fraud, in violation of Title 18, United States Code, Section 1343; and securities fraud, in violation of Title 15, United States Code, Sections 78j and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

20. It was the purpose and object of the conspiracy to devise a scheme and artifice to defraud and obtain money from borrowers and clients of ARGYLL and AMERIFUND by means of false, fraudulent and material pretenses, representations, promises and omissions of material fact.

**Methods and Means by Which Objects of the Conspiracy Were to be Accomplished**

21. In furtherance of the conspiracy and to effect the objects thereof, Defendants JAMES T. MICELI, DOUGLAS MCCLAIN, JR., and JEFFREY T. SPANIER utilized the following methods and means, among others:

a. Defendants JAMES T. MICELI, DOUGLAS MCCLAIN, JR., JEFFREY T. SPANIER, and others, would induce potential borrowers to pledge stock the borrowers owned in publicly traded securities to ARGYLL as collateral for loans by false, fraudulent, and misleading representations that ARGYLL had substantial independent sources of cash to lend.

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1           b. Defendants JAMES T. MICELI, DOUGLAS MCCLAIN, JR., JEFFREY T.  
2 SPANIER, and others, would induce potential borrowers to pledge stock the borrowers owned in  
3 publicly traded securities to ARGYLL as collateral for loans by false, fraudulent, and misleading  
4 representations that their stock would not be sold unless the borrower defaulted on the loan.

5           c. Defendants JAMES T. MICELI, DOUGLAS MCCLAIN, JR., JEFFREY T.  
6 SPANIER, and others, would induce potential borrowers to execute documents transferring shares the  
7 borrowers owned in publicly traded securities to ARGYLL by making false, fraudulent, and misleading  
8 representations that their shares would be held by ARGYLL in safekeeping and would only be used for  
9 hedging purposes and not sold.

10           d. Defendants JAMES T. MICELI, DOUGLAS MCCLAIN, JR., JEFFREY T.  
11 SPANIER, and others, would induce borrowers to execute documents transferring shares the borrowers  
12 owned in publicly traded securities to ARGYLL by making false, fraudulent, and misleading  
13 representations that ARGYLL, as a lender, would abide by all securities laws, including Rule 144 which  
14 restricts affiliated persons from selling publicly traded securities outside of certain guidelines and  
15 reporting requirements.

16           e. Defendants JAMES T. MICELI, DOUGLAS MCCLAIN, JR., JEFFREY T.  
17 SPANIER, and others, would induce borrowers to execute documents transferring shares the borrowers  
18 owned in publicly traded securities to ARGYLL by failing to disclose that ARGYLL was paying  
19 substantial back-end incentive fees from the sale of the borrowers' collateral to SPANIER in return for  
20 introducing the borrower to ARGYLL.

21           f. Defendants JAMES T. MICELI, DOUGLAS MCCLAIN, JR., JEFFREY T.  
22 SPANIER, and others, would induce borrowers to execute documents transferring shares the borrowers  
23 owned in publicly traded securities to ARGYLL by failing to disclose that ARGYLL intended to sell  
24 their stock in order to fund their loans, or loans made to other borrowers.

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1 a. On or before February 27, 2004, SPANIER negotiated a loan agreement with  
2 borrower GS in which GS pledged 500,000 shares of common stock GS held in ATP Oil and Gas  
3 Corporation, a publicly traded company listed on the National Association of Securities Dealers  
4 Automated Quotation System ("NASDAQ"), as collateral for a \$1.5 million loan from ARGYLL.

5 b. On or about April 20, 2004, MCCLAIN, JR. executed a loan agreement negotiated  
6 by SPANIER with borrower LP in which LP pledged 1.19 million shares of common stock LP held in  
7 Mace Security International, Inc. ("MSI"), a publicly traded company listed on the NASDAQ, as  
8 collateral for a \$4.1 million loan from ARGYLL.

9 c. Between June 2004 and December 2005, MICELI and MCCLAIN, JR. executed  
10 14 loan agreements with Servicios Directivos Servia S.A. de C.V. ("SDS") in which SDS pledged a total  
11 of 14,178,193 publicly traded American Depository Receipts of Grupo TMM S.A. de C.V. ("TMM") as  
12 collateral for loans totaling \$23,157,078.

13 d. Between June 2004 and January 2006, MICELI and MCCLAIN, JR. sold the  
14 TMM stock pledged by SDS in order to fund the 14 loans made by ARGYLL to SDS between June 2004  
15 and December 2005.

16 e. On or before December 16, 2008, SPANIER requested, on behalf of ARGYLL,  
17 that borrower JC pay off a loan that JC obtained from ARGYLL in the amount of \$3,462,500.

18 f. On or about May 8, 2009, MICELI, SPANIER, and MCLAIN, JR. sent an e-mail  
19 to JC in which they assured JC that stock he had pledged for his loan would be returned to him.

20 g. On or about November 30, 2009, MICELI and MCCLAIN, JR. opened a financial  
21 account at Morgan Stanley (Account 04-HOCTL-6) in the name of SW Argyll Investments, LLC.

22 h. On or about December 2, 2009, MCCLAIN, JR. executed a loan agreement  
23 negotiated by SPANIER with borrower SW in which SW pledged 700,000 shares of common stock that  
24 SW owned in Diversified Developers Realty ("DDR"), a publicly traded company on the New York  
25 Stock Exchange ("NYSE"), as collateral for a \$4.3 million loan from ARGYLL.

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1 i. Between December 4, 2009 and December 12, 2009, MICELI and MCCLAIN,  
2 JR. sold the DDR stock pledged by SW in order to fund the \$4.3 million loan, and disbursed the excess  
3 proceeds to MICELI, MCCLAIN, JR., SPANIER, and others.

4 j. On or about December 10, 2009, MICELI and MCCLAIN, JR. wire transferred  
5 \$410,977 to SPANIER of which \$273,480 was a back end fee that was not disclosed to SW prior to  
6 executing the loan agreement with ARGYLL.

7 k. On or about January 5, 2010, MICELI executed a loan agreement negotiated by  
8 SPANIER with borrower JH in which JH pledged exercisable options to 3,250 shares of common stock  
9 in Emeritus Corporation ("ESC"), a publicly traded company on the NYSE, as collateral for a  
10 \$46,117.50 loan from ARGYLL.

11 l. On or about January 8, 2010, MCCLAIN, JR. and SPANIER prepared documents  
12 which were executed by JH which transferred JH's options to 3,250 shares of ESC stock to ARGYLL's  
13 brokerage account at First Discount Brokerage.

14 m. On or about January 12, 2010, MICELI and MCCLAIN, JR. exercised the options  
15 pledged by JH and purchased the ESC stock pledged by JH.

16 n. On or about January 14, 2010, MICELI and MCCLAIN, JR. sold the ESC  
17 common stock acquired through the options pledged by JH to fund the loan to JH and made an  
18 undisclosed additional payment to SPANIER.

19 o. On or about March 4, 2010, MCCLAIN, JR. executed a loan agreement negotiated  
20 by SPANIER with borrower KY in which KY pledged 1 million shares of common stock KY held in  
21 China Armco Metals, Inc. ("CNAM"), a publicly traded company on the NYSE, as collateral for a \$4.68  
22 million loan from ARGYLL.

23 p. On or about April 7, 2010, MICELI and MCCLAIN, JR. sold some of the CNAM  
24 stock pledged by KY in order to fund the \$4.68 million loan.

25 q. On or about April 9, 2010, MICELI and MCCLAIN, JR. wire transferred  
26 \$425,000 to SPANIER of which \$178,000 was a back end fee for the KY loan which was not disclosed  
27 to KY prior to executing the loan agreement.

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1           r.       On or about April 23, 2010, MICELI executed a loan agreement negotiated by  
2 SPANIER with borrower DJ in which DJ pledged 6,000,000 shares of common stock DJ held in  
3 Imaging3 (“IMMGG”), a public company traded on the Over the Counter Bulletin Board (“OTCBB”),  
4 as collateral for a \$1.32 million loan from ARGYLL.

5           s.       Between May 12, 2010 and May 26, 2010, MICELI and MCCLAIN, JR. sold  
6 some of the IMMGG stock pledged by DJ in order to fund the \$1.32 million loan.

7           t.       On or about May 26, 2010, MICELI and MCCLAIN, JR. wire transferred  
8 \$186,000 to SPANIER of which \$120,000 was a back-end fee for the DJ loan which was not disclosed  
9 to DJ prior to executing the loan agreement.

10          u.       On or about April 27, 2010, MICELI and MCCLAIN, JR attempted to redeem  
11 Placer County Water Bonds represented to be valued at approximately \$15 million which had been  
12 pledged as collateral for a loan made by ARGYLL to TN.

13          v.       On or about April 22, 2010, MICELI executed a loan agreement negotiated by  
14 SPANIER with borrower TP in which TP pledged 500,000 shares of common stock TP held in  
15 Searchlight Minerals, Inc. (“SM”), a publicly traded company listed on the OTCBB, as collateral for a  
16 \$270,000 loan from ARGYLL.

17          w.       On or about May 7, 2010, MICELI and MCCLAIN, JR. sold all of TP’s SM  
18 stock in order to fund the loan, and disbursed the excess proceeds to MICELI, SPANIER, and others.

19          x.       On or about June 16, 2010, MCCLAIN, JR executed a second loan agreement  
20 negotiated by SPANIER with borrower KY in which KY pledged an additional 1.3 million shares of  
21 CNAM stock as collateral for a \$2.6 million loan from ARGYLL.

22          y.       Between June 9, 2010 and June 16, 2010, MICELI and MCCLAIN, JR. sold the  
23 CNAM stock pledged by KY in order to fund the \$2.6 million loan.

24          z.       On or about June 24, 2010, MICELI and MCCLAIN, JR. wire transferred  
25 \$338,910 to SPANIER of which \$214,500 was a back-end fee for the second KY loan which was not  
26 disclosed to KY prior to executing the loan agreement.

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1           aa.     On or about March 15, 2011, MICELI executed a loan agreement negotiated by  
2 SPANIER with borrower RS in which RS pledged 750,000 shares of common stock RS held in VU1  
3 Corporation (“VU1”), a publicly traded company listed on the OTCBB, as collateral for a \$207,900 loan  
4 from ARGYLL.

5           bb.     Between March 21, 2011 and March 28, 2011, MICELI and MCCLAIN, JR. sold  
6 some of RS’s VU1 stock to fund the loan to RS.

7           cc.     On or about March 30, 2011, MICELI and MCCLAIN, JR. wire transferred  
8 \$26,895 to SPANIER of which \$16,500 was a back-end fee for the RS loan which was not disclosed to  
9 RS prior to executing the loan agreement.

10          dd.     On or about February 18, 2011, MCCLAIN, JR .executed a loan agreement  
11 negotiated by SPANIER with borrower FB in which FB pledged 52,246 shares of common stock that  
12 FB held in First PacTrust Bancorp, Inc. (“FPTB”), a publicly traded company listed on the NASDAQ,  
13 as collateral in exchange for a \$557,726.05 loan from ARGYLL.

14          ee.     Between March 23, 2011 and March 29, 2011, MICELI and MCCLAIN, JR. sold  
15 all of FB’s FPTB stock.

16          ff.     On or about March 30, 2011, MICELI and MCCLAIN, JR. wire transferred  
17 \$38,244.07 to SPANIER of which \$15,935.03 was a back-end fee for the FB loan which was not  
18 disclosed to FB prior to executing the loan agreement.

19          gg.     On or about March 31, 2011, MCCLAIN, JR executed a loan agreement  
20 negotiated by SPANIER with borrower CW in which CW pledged 1,000,000 shares of common stock  
21 that CW held in Cubic Energy, Inc.(“QBC”), a publicly traded company listed on the NYSE Amex  
22 Equities exchange (“NYSE Amex”), as collateral for a \$358,000 loan from ARGYLL.

23          hh.     Between April 4, 2011 and May 9, 2011, MICELI and MCCLAIN, JR. sold all  
24 of CW’s QBC stock.

25          ii.     On or about April 12, 2011, MCCLAIN, JR. executed a loan agreement negotiated  
26 by SPANIER with borrower SV in which SV pledged 1,300,000 shares of common stock that SV held  
27 in Elephant Talk Communication, Inc. (“ETAK”), a publicly traded company listed on the OTCBB, as  
28 collateral for a \$1.9 million loan from ARGYLL.



Count	Date	Sender	Addressee	Item
2	2/25/2010	SW Beachwood, Ohio	ARGYLL San Diego, CA	Check
3	8/26/2010	SW Beachwood, Ohio	ARGYLL San Diego, CA	Check
4	10/7/2010	KY San Mateo, CA	ARGYLL San Diego, CA	Check
5	1/5/2011	KY San Mateo, CA	ARGYLL San Diego, CA	Check
6	2/8/2001	TP Cottonwood, AZ	ARGYLL San Diego, CA	Check
7	2/23/2011	SW Beachwood, Ohio	ARGYLL San Diego, CA	Check
8	3/29/2011	FB San Diego, CA	Amerifund Boca Raton, FL	Promissory Note

All in violation of Title 18, United States Code, Sections 1341 and 2.

**Counts 9-23**

[Title 18 U.S.C. Sec. 1343 and 2]

**Wire Fraud**

(Against All Defendants)

26. The allegations set forth in paragraphs 1 through 17, and 21 through 22 above are realleged and incorporated by reference as if fully set forth herein.

27. Beginning in at least January 2004 and continuing to the date of this Indictment, in the Southern District of California, and elsewhere, defendants JAMES T. MICELI, DOUGLAS MCCLAIN, JR., and JEFFREY T. SPANIER, devised and intended to devise a material scheme to defraud as to material matters and to obtain money from persons by materially false and fraudulent pretenses, representations, promises, or material omissions of fact, as described in paragraphs 21 through 22 of Count 1.

Execution of Material Scheme by Wire Communications

28. On or about the dates set forth below, within the Southern District of California, and elsewhere, defendants JAMES T. MICELI, DOUGLAS MCCLAIN, JR., and JEFFREY T. SPANIER, for the purpose of executing the aforementioned material scheme to defraud and to obtain money and property by false and fraudulent pretenses, representations, promises, did transmit and cause to be transmitted, in interstate and foreign commerce, by means of wire, radio, and television communication, the writings, signs, signals, pictures, and sounds set forth below:

Count	Date	Sender	Addressee	Communication
9	12/02/2009	James Miceli/Argyll San Diego, CA	Morgan Stanley New York, New York	Facsimile instructing Morgan Stanley to wire transfer \$4,316,403 to SW/National City Bank, Ohio to fund loan
10	12/10/2009	SW ARGYLL BofA Acct. # 0526 San Diego, CA	Amerifund Iberia Bank Acct. # 0663 (formerly Sterling Bank) Delray Beach, FL	Wire transfer in the amount of \$410,977.00
11	1/15/2010	SW ARGYLL BofA Acct. # 3952 San Diego, CA	BofA Acct. #5996 Mercer Island, WA	Wire transfer in the amount of \$17,714.13 to fund loan to JH
12	4/9/2010	SW ARGYLL BofA Acct. # 3952 San Diego, CA	U.S. Bank Acct # 2266 Portland, OR	Wire transfer in the amount of \$4,683,500.00 to fund first loan to KY
13	4/9/2010	SW ARGYLL BofA Acct # 3952 San Diego, CA	Amerifund Iberia Bank Acct # 0663 (formerly Sterling Bank) Delray Beach, FL	Wire transfer in the amount of \$425,000

14	5/17/2010	SW ARGYLL Morgan Stanley Acct 04-HOCTL New York, New York	SW ARGYLL BofA Acct # 3952 San Diego, CA	Wire transfer of \$3,000,000 from the proceeds of the sale of stock pledged as collateral
15	5/18/2010	SW ARGYLL BofA Acct # 3952 San Diego, CA	Amerifund Iberia Bank Acct # 2968 (formerly Sterling Bank) Delray Beach, FL	Wire transfer in the amount of \$402,892.80
16	6/24/2010	SW ARGYLL BofA Acct # 3952 San Diego, CA	U.S. Bank Acct # 2266 Portland, OR	Wire transfer in the amount of \$2,363,790 to fund second loan to KY
17	6/24/2010	SW ARGYLL BofA Acct # 3952 San Diego, CA	Amerifund Iberia Bank Acct # 2968 (formerly Sterling Bank) Delray Beach, FL	Wire transfer in the amount of \$338,910
18	12/23/2010	SW ARGYLL BofA Acct # 3952 San Diego, CA	JP Morgan Chase Acct. # 4295 New York, NY	Wire transfer in the amount of \$955,501 to SW
19	2/16/2011	SW ARGYLL BofA Acct # 3952 San Diego, CA	Deutsche Bank Acct# 5766 New York, NY	Wire transfer in the amount of \$726,180 to fund first loan to SV
20	3/22/2011	SW ARGYLL BofA Acct # 3952 San Diego, CA	First Financial Bank # 0910 Westchester, OH	Wire transfer in the amount of \$436,006.46 to fund part of FB loan

21	4/8/2011	SW ARGYLL BofA Acct # 3952 San Diego, CA	American National Bank # 1519 Rockwall, TX	Wire transfer in the amount of \$358,150 to fund CW loan
22	5/3/2011	SW ARGYLL Morgan Stanley Acct 04-HOCTL New York, New York	SW ARGYLL BofA Acct # 3952 San Diego, CA	Wire transfer in the amount of \$1,036,543.55 from the proceeds of the sale of stock pledged as collateral
23	5/11/2011	SW ARGYLL Bank of America Acct # 3952 San Diego, CA	Amerifund Iberia Bank Acct # 2968 (formerly Sterling Bank) Delray Beach, FL	Wire transfer in the amount of \$158,196.24

All in violation of Title 18, United States Code, Sections 1343 and 2.

**Count 24**

[15 U.S.C. §§ 78j(b) and 78ff]

**Securities Fraud**

29. The allegations set forth in paragraphs 1 through 17, and 21 through 22 above are realleged and incorporated by reference as if fully set forth herein.

30. Beginning in or around January 2004, and continuing up to the date of this Indictment, in the Southern District of California and elsewhere, Defendants JAMES T. MICELI, DOUGLAS MCCLAIN, JR., and JEFFREY T. SPANIER, did knowingly and willfully, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of the securities of DDR, CNAM, SM, ETAK, IMMGG, FPTB, QBC, and VU1 in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material fact and omitting to state facts necessary in order to make the statements made, in light of the circumstances

1 under which they were made, not misleading; and (c) engaging in acts, practices, and courses of  
2 business which operated and would operate as a fraud and deceit upon purchasers of securities.

3 All in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of  
4 Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2.

5 **Counts 25-28**

6 (Against Defendant MICELI)

7 [Title 18 U.S.C. Sec. 1956 (a)(1)(B)(i)]

8 **Money Laundering - Concealment**

9 31. On or about the dates listed below, within the Southern District of California and  
10 elsewhere, knowing that the property detailed below represented the proceeds of some form of unlawful  
11 activity, defendant MICELI, knowingly conducted the below listed financial transactions affecting  
12 interstate commerce which involved the proceeds of specified unlawful activity, to wit, mail, wire and  
13 securities fraud as described in paragraphs 1 through 30 of this Indictment, knowing that the financial  
14 transactions were designed in whole or in part to conceal and disguise the nature, location, source,  
15 ownership and control of said proceeds of said specified unlawful activity.

Count	Date	Financial Transaction
25	06/28/2010	Transfer of \$100,000 from SW ARGYLL Bank of America Acct. #3952 to Miceli Bank of America Acct. #8807
26	06/29/2010	Transfer of \$200,000 from SW ARGYLL Bank of America Acct. #3952 to Miceli Bank of America Acct. #8807
27	09/01/2010	Transfer of \$15,000 from SW ARGYLL Bank of America Acct. #3952 to Miceli Bank of America Acct. #8807
28	02/14/2011	Transfer of \$35,000 from SW ARGYLL Bank of America Acct. #3952 to ARGYLL Aviation Bank of America Acct. # 1757

25 All in violation of Title 18, United States Code, Section 1956(a)(1)(B)(i).

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**Counts 29-32**

(Against Defendant SPANIER)

[Title 18 U.S.C. Sec. 1957]

**Money Laundering-Criminally Derived Proceeds**

32. On or about the dates listed below, within the Southern District of California and elsewhere, defendant JEFFREY T. SPANIER did knowingly engage in monetary transactions in criminally derived property of a value greater than \$10,000, which property was in fact derived from specified unlawful activity, to wit, mail, wire and securities fraud as described in paragraphs 1 through 30 of this Indictment.

Count	Date	Financial Transaction
29	05/19/2010	Check in the amount of \$250,000 drawn on Amerifund Iberia Acct. # 2968 deposited into Amerifund Wachovia acct. #6242
30	5/27/2010	Check in the amount of \$250,000 drawn on Amerifund Iberia Acct. # 2968 deposited into Amerifund Wachovia acct. #6242
31	6/25/2010	Check in the amount of \$400,000 drawn on Amerifund Iberia Acct. # 2968 deposited into Amerifund Wachovia acct. #6242
32	7/6/2010	Check in the amount of \$100,000 drawn on Amerifund Iberia Acct. # 2968 deposited into Amerifund Wachovia acct. #6242

All in violation of Title 18, United States Code, Section 1957.

**Counts 33-35**

(Against Defendants MICELI and MCCLAIN, JR.)

[Title 18 U.S.C. Sec. 1957 &amp; 2]

**Money Laundering-Criminally Derived Proceeds**

33. On or about the dates listed below, within the Southern District of California and elsewhere, defendants MICELI and MCCLAIN, JR. did knowingly engage in monetary transactions in criminally derived property of a value greater than \$10,000, which property was in fact derived from specified unlawful activity, to wit, mail, wire and securities fraud as described in paragraphs 1 through 30 of this Indictment.

Count	Date	Financial Transaction
33	7/6/2010	Transfer from SW ARGYLL Bank of America acct. #3952 to Woodforest National Bank acct. # 5706 in the amount of \$25,000
34	4/28/2011	Transfer from SW Argyll Bank of America acct.# 3952 to JP Morgan Chase acct # 4073 in the amount of \$20,000
35	5/31/2011	Transfer from SW ARGYLL Bank of America acct.# 3952 to JP Morgan Chase acct # 4073 in the amount of \$20,000

All in violation of Title 18, United States Code, Section 1957.

Criminal Forfeiture Allegation 1

[Title 18, United States Code, Sections 981(a)(1)(A), 981(a)(1)(C), 984 and  
Title 28, United States Code, Section 2461(c)]

34. Counts 1 through 35 are realleged and incorporated herein by reference as though set forth in full for the purpose of charging criminal forfeiture pursuant to the provisions of Title 18, United States Code, Sections 981(a)(1)(A), 981 (a)(1)(C), 984, and Title 28, United States Code, Section 2461(c).

35. As a result of the commission of the foregoing offenses alleged in Counts 1 through 35 of this Indictment, defendants JAMES T. MICELI, DOUGLAS MCCLAIN, JR., JEFFREY T. SPANIER shall forfeit to the United States any and all property, real and personal, which constitutes or is derived from proceeds traceable to those offenses, or property involved in a transaction in violation of section 1956 or 1957, including but not limited to:

Securities Brokerage Accounts

- a. All monies, funds, securities and credits in 1st Discount Brokerage Account xxx-xxxxx-18-RR900, in the name of SW ARGYLL Investments, LLC.
- b. All monies, funds, securities and credits in Morgan Stanley Smith Barney Account xx-xx152-9, in the name of ARGYLL Equities, LLC.
- c. All monies, funds, securities and credits in Morgan Stanley Smith Barney Account xx-xxCTL-6, in the name of SW ARGYLL Investments, LLC.

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- d. All monies, funds, securities, and credits in BMA Securities Account xxx-xxxxx-xx RR R3D, in the name of SW ARGYLL Investments, LLC.
- e. All monies, funds, securities, and credits in Ascendant Capital Markets, LLC Account xxx-xxxxxRR-9AZ in the a name of SW ARGYLL Investments, LLC.

**Financial Accounts at Bank of America**

- f. All monies, funds and credits in Bank of America Account (BofA) xxxxx-x0526, in the name of ARGYLL Equities, LLC.
- g. All monies, funds and credits in Bank of America Account (BofA) xxxxx-x3952, in the name of SW ARGYLL Investments, LLC.
- h. All monies, funds and credits in Bank of America Account (BofA) xxxxx-x1757, in the name of ARGYLL Aviation, LLC.
- i. All monies, funds and credits in Bank of America Account (BofA) xxxxxxxx-9758, in the name of Dynasty Energy.
- j. All monies, funds and credits in Bank of America Account (BofA) xxxxx-x8807, in the name of James T. Miceli and Dona M. Miceli.

**Financial Accounts at JP Morgan Chase**

- k. All monies, funds and credits in JP Morgan Chase Account xxx-xx1638-1, in the name of James Miceli or Dona Miceli.
- l. All monies, funds and credits in JP Morgan Chase Account xxxxxxxx4073, in the name of Stephen D. Ferrone or Sharon Vaughn.

**Financial Accounts at Wachovia Bank**

- m. All monies, funds and credits in Wachovia Bank Account xxxxxxxx6242, in the name of Amerifund Capital Finance, LLC.
- n. All monies, funds and credits in Wachovia Bank Account xxxxxxxx7113, in the name of Jeffrey Spanier.
- o. All monies, funds and credits in Wachovia Bank Account xxxxxxxx6481, in the name of Regina Spanier.

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**Financial Accounts at Iberia Bank**

- p. All monies, funds and credits in IberiaBank (formerly Sterling Bank) Account xxxxxx0663, in the name of Amerifund Capital Finance, LLC.
- q. All monies, funds and credits in IberiaBank (formerly Sterling Bank) Account xxxxxx2968, in the name of Amerifund Capital Finance LLC.

**Financial Accounts at Suntrust Bank**

- r. All monies, funds and credits in SunTrust Account xxxxxxxxxxx8460, in the name of Douglas McClain.

**Vehicles**

- s. 2010 Ferrari, VIN # ZFF65LJA7A0173201, registered to James Miceli, 14440 Cypress Point, Poway, California 92064.

**Vessel**

- t. 2008 Advantage Party Cat, Hull # AVIP4654G708, registered to Andrew M. Abdulwahab, 15821 Ventura Blvd., Suite 500, Encino, California; beneficial owner: James Miceli, 14440 Cypress Point, Poway, California 92064.
- u. 2008 Extreme Tri Axle Carrier, VIN # 5DBBB36398R000001, registered to Andrew M. Abdulwahab, 8819 Apache Loop, Parker, Arizona 85344; beneficial owner: James Miceli, 14440 Cypress Point, Poway, California 92064.

**Aircraft**

- v. 1980 Cessna Citation II and Maintenance Log, Serial # 550-0118, Registration # N650BP, registered to ARGYLL Aviation LLC, 4225 Executive Square, Suite 260, La Jolla, California 92037.

**Jewelry**

- w. One 14 karat diamond bracelet purchased on or about September 1, 2010 from Unicorn Jewelry & Watch Boutique, 16781 Bernardo Center Drive, San Diego, California 92128.

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- d. All monies, funds, securities, and credits in BMA Securities Account xxx-xxxxx-xx RR R3D, in the name of SW ARGYLL Investments, LLC.
- e. All monies, funds, securities, and credits in Ascendant Capital Markets, LLC Account xxx-xxxxxRR-9AZ in the a name of SW ARGYLL Investments, LLC.

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- g. All monies, funds and credits in Bank of America Account (BofA) xxxxxx-x3952, in the name of SW ARGYLL Investments, LLC.
- h. All monies, funds and credits in Bank of America Account (BofA) xxxxxx-x1757, in the name of ARGYLL Aviation, LLC.
- i. All monies, funds and credits in Bank of America Account (BofA) xxxxxxxx-9758, in the name of Dynasty Energy.
- j. All monies, funds and credits in Bank of America Account (BofA) xxxxxx-x8807, in the name of James T. Miceli and Dona M. Miceli.

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- l. All monies, funds and credits in JP Morgan Chase Account xxxxxxxx4073, in the name of Stephen D. Ferrone or Sharon Vaughn.

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Aircraft

v. 1980 Cessna Citation II and Maintenance Log, Serial # 550-0118, Registration # N650BP, registered to ARGYLL Aviation LLC, 4225 Executive Square, Suite 260, La Jolla, California 92037.

Jewelry

w. One 14 karat diamond bracelet purchased on or about September 1, 2010 from Unicorn Jewelry & Watch Boutique, 16781 Bernardo Center Drive, San Diego, California 92128.

x. One 18 karat gold diamond necklace purchased on or about September 1, 2010 from Unicorn Jewelry & Watch Boutique, 16781 Bernardo Center Drive, San Diego, California 92128.

39. In the event that any property, real or personal, involved in the offenses described in Counts of this indictment, or any property traceable to such property, as a result of any act or omission of the defendants:

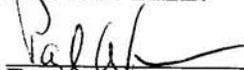
- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, third parties;
- (3) has been placed beyond the jurisdiction of the courts;
- (4) has been substantially diminished in value; or
- (5) has been co-mingled with other property which cannot be divided without

difficulty, any other property of the defendant, up to the value of \$51,000,000 shall be forfeited to the United States pursuant to Title 18, United States Code, Section 982, and Title 21, United States Code, Section 853.

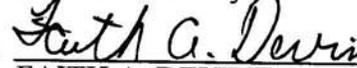
All in violation of Title 18, United States Code, Section 982 (a)(1).

DATED: March 9, 2012.

▲ TRUE BILL:

  
\_\_\_\_\_  
Foreperson

LAURA E. DUFFY  
United States Attorney

By:   
\_\_\_\_\_  
FAITH A. DEVINE  
Assistant U.S. Attorney

UNITED STATES OF AMERICA  
SOUTHERN DISTRICT OF FLORIDA

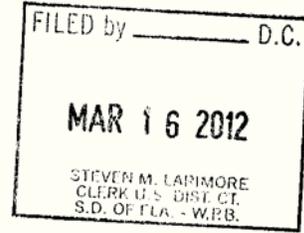
CASE NO. 12-8099-JMH

UNITED STATES OF AMERICA,  
Plaintiff,

v.

*Spanier*  
~~JEFFREY T. SPARNER,~~

Defendant.



**WARRANT OF REMOVAL**

- A(n)  Complaint
- Indictment
- Information
- Probation Violation Warrant
- Supervised Release Violation Warrant
- Bench Warrant
- Violation of Pretrial Release Warrant

having been filed in the SOUTHERN DISTRICT OF CALIFORNIA charging the above named defendant with 18:371, 1341A, 1343, & 15:78&78ff, and the defendant having

- been arrested
- surrendered

in the Southern District of Florida, having had an initial appearance before the Court and having:

- waived further hearing
- been given a hearing in accordance with Fed.R.Crim.P. 40.

having not posted the bail as set by the Court, the defendant is hereby committed to the custody of the United States Marshal for removal to the District where the charge is pending and delivery to the United States Marshal for that District or his lawfully authorized representative.

**DONE AND ORDERED** at West Palm Beach, Florida this 16th day of MARCH, 2012.

*James M. Hopkins*  
\_\_\_\_\_  
JAMES M. HOPKINS  
UNITED STATES MAGISTRATE JUDGE

- c: AUSA
- Defense
- Pretrial Services
- US Probation
- U.S. Marshal (2 certified copies)

# Poway man charged in \$51M stock-loan fraud scheme

<http://pomeradonews.com/2012/03/16/poway-man-charged-in-51m-stock-loan-fraud-scheme/>

March 20, 2012

SAN DIEGO (CNS) – A federal indictment unsealed in San Diego Thursday charges a Poway man and two out-of-state business associates with securities fraud, money laundering and other criminal counts in connection with an alleged \$51 million stock-loan fraud scheme.

James T. Miceli allegedly conspired with Douglas A. McClain Jr. of Savannah, Ga., and Jeffrey R. Spanier of Delray Beach, Fla., to defraud borrowers through a company called “Argyll,” which they falsely represented as an institutional lender with significant cash to loan to corporate executives and others.

According to prosecutors, Miceli, 48, McClain, 38, and Spanier, 46, fraudulently induced borrowers to pledge stock they held in publicly traded companies as collateral for loans by falsely promising that those assets would not be sold unless there was a default, when in fact the defendants intended to sell them in order to fund the loans and other business ventures.

The indictment further alleges that Miceli, McClain and Spanier fraudulently induced borrowers to make quarterly interest payments on their loans to Argyll by failing to disclose that the stock the borrowers’ pledged as collateral for the loans was already sold.

Additionally, Miceli, McClain and Spanier are charged with engaging in manipulative and deceptive practices and deceiving purchasers of publicly traded securities.

Miceli, McClain, and Spanier allegedly violated federal law by falsely representing that Argyll would comply with Regulation 144, which restricts affiliated persons from selling publicly traded securities, and by failing to disclose to borrowers that Argyll was paying substantial back-end incentive fees to Spanier from the fraudulent sale of the borrowers’ stock.

The indictment seeks the forfeiture of \$51 million, including cash and securities held in brokerage accounts, a Ferrari, an Advantage “Party Cat” boat, a Cessna Citation corporate jet and diamond jewelry.

Miceli’s next court appearance, a detention hearing, is scheduled for Tuesday. McClain and Spanier were expected to be transferred to San Diego in the coming weeks, according to prosecutors.

**Short URL:** <http://pomeradonews.com/?p=22549>

# United States District Court

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

**NOT FOR PUBLIC VIEW**

V.

**WARRANT FOR ARREST**

Jeffrey T. Spanier (3)

CASE NUMBER: 12CR0918-BEN

To: The United States Marshal  
and any Authorized United States Officer

YOU ARE HEREBY COMMANDED to arrest

Jeffrey T. Spanier (3)

Name

and bring him or her forthwith to the nearest magistrate to answer a(n)

- Indictment
- Information
- Complaint
- Order of Court
- Violation Notice
- Probation Violation Petition
- Pretrial Violation

charging him or her with (brief description of offense)

18:371 - Conspiracy; 18:1341 and 2 - Mail Fraud; Aiding and Abetting; 18:1343 and 2 - Wire Fraud; Aiding and Abetting; 15:78j(b) and 78ff - Securities Fraud; 18:1957 - Money Laundering-Criminally Derived Proceeds

In violation of Title See Above United States Code, Section(s) \_\_\_\_\_

W. Samuel Hamrick, Jr.

Name of Issuing Officer

Clerk of the Court

Title of Issuing Officer

s/A. Finnell 

Signature of Deputy

3/9/2012 San Diego, CA

Date and Location

Bail fixed at \$ \_\_\_\_\_ No Bail \_\_\_\_\_ by The Honorable Magistrate Judge Nita L. Stormes

Name of Judicial Officer

### RETURN

This warrant was received and executed with the arrest of the above-named defendant at \_\_\_\_\_

DATE RECEIVED	NAME AND TITLE OF ARRESTING OFFICER	SIGNATURE OF ARRESTING OFFICER
DATE OF ARREST		

*Handwritten initials*

1 DEAN M. CONWAY  
2 ConwayD@sec.gov  
3 SCOTT W. FRIESTAD  
4 FriestadS@sec.gov  
5 JULIE M. RIEWE  
6 RieweJ@sec.gov  
7 JACOB D. KRAWITZ  
8 KrawitzJ@sec.gov

9 Attorneys for Plaintiff  
10 SECURITIES AND EXCHANGE COMMISSION  
11 100 F Street, N.E.  
12 Washington, DC 20549  
13 Telephone: (202) 551-4412 (Conway)  
14 Facsimile: (202) 772-9332 (Conway)

15 **UNITED STATES DISTRICT COURT**  
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 SECURITIES AND EXCHANGE  
18 COMMISSION,

19 Plaintiff,

20 v.

21 SW ARGYLL INVESTMENTS, LLC (d/b/a  
22 ARGYLL INVESTMENTS, LLC),  
23 JAMES T. MICELI,  
24 DOUGLAS A. MCCLAIN, JR.,  
25 AMERIFUND CAPITAL FINANCE, LLC,  
26 and JEFFREY SPANIER,

27 Defendants.

Case No. '12CV0646 L WVG

**COMPLAINT FOR VIOLATIONS OF THE  
FEDERAL SECURITIES LAWS**

**DEMAND OF JURY TRIAL**

28 Plaintiff Securities and Exchange Commission (the "Commission"), for its Complaint  
against SW Argyll Investments, LLC (d/b/a Argyll Investments, LLC) ("Argyll"), James T. Miceli  
("Miceli"), Douglas A. McClain, Jr. ("McClain"), AmeriFund Capital Finance, LLC  
("AmeriFund"), and Jeffrey Spanier ("Spanier"), alleges as follows:

### SUMMARY OF THE ACTION

1  
2 1. This case involves a fraudulent purported stock-collateralized loan business run by  
3 Argyll, which is controlled by Miceli and McClain. Since 2009, Argyll has induced at least nine  
4 affiliates of issuers to transfer ownership of millions of shares of publicly traded stock as collateral  
5 for purported loans based on a false promise to return the shares to borrowers upon repayments of  
6 the loans. Unbeknownst to the borrowers, however, Argyll sold their pledged shares (in  
7 unregistered transactions for which no exemption applied) before or soon after funding the loans –  
8 and, in many cases, used the proceeds from the collateral sales to fund the loans. Because Argyll  
9 agreed to loan 30 to 50 percent less than the market value of the shares transferred, it retained  
10 substantial proceeds, even after funding each loan. It also received interest payments. As a result  
11 of this scheme, Argyll received more than \$8 million in unlawful gains. Argyll attracts potential  
12 borrowers, among other ways, through its network of brokers, including AmeriFund, whose  
13 president is Spanier.  
14

15  
16 2. Through their actions, Argyll, Miceli, and McClain violated Section 10(b) of the  
17 Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5  
18 promulgated thereunder [17 C.F.R. § 240.10b-5]; Section 15(a) of the Exchange Act [15 U.S.C. §  
19 78o(a)]; and Sections 5(a) and 5(c) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§  
20 77e(a) and 77e(c)], and AmeriFund and Spanier violated Section 15(a) of the Exchange Act [15  
21 U.S.C. § 78o(a)].  
22

### JURISDICTION AND VENUE

23  
24 3. This Court has jurisdiction over this action pursuant to Sections 20 and 22 of the  
25 Securities Act [15 U.S.C. §§ 77t and 77v] and Sections 21(d), 21(e), and 27 of the Exchange Act  
26 [15 U.S.C. §§ 78u(d), 78u(e), and 78aa]. Defendants, directly or indirectly, made use of the means  
27 or instrumentalities of transportation or communication in interstate commerce, or the mails, or the  
28

1 facilities of a national securities exchange in connection with the transactions, acts, practices, and  
2 courses of business alleged in this Complaint.

3 4. Venue in this District is proper pursuant to Section 22 of the Securities Act [15  
4 U.S.C. § 77v] and Section 27 of the Exchange Act [15 U.S.C. § 78aa]. Defendants transact  
5 business in the Southern District of California, and certain of the acts, practices, and courses of  
6 business constituting the violations of the federal securities laws alleged herein occurred within  
7 this judicial district.  
8

9 **DEFENDANTS**

10 5. SW Argyll Investments, LLC (d/b/a Argyll Investments, LLC) is a Texas limited  
11 liability company located in San Diego, California, and is affiliated with The Argyll Group. Argyll  
12 is jointly owned by James T. Miceli and Douglas A. McClain, Jr.

13 6. James T. Miceli, age 48, is a resident of Poway, California. Miceli is a member and  
14 the Chief Executive Officer of Argyll.

15 7. Douglas A. McClain, Jr., age 37, is a resident of Savannah, Georgia. McClain is a  
16 member and the President of Argyll.  
17

18 8. AmeriFund Capital Finance, LLC is a Florida limited liability company located in  
19 Boca Raton, Florida. Spanier is the sole member of AmeriFund.

20 9. Jeffrey Spanier, age 46, is a resident of Delray Beach, Florida. Spanier is the  
21 President and sole member of AmeriFund.  
22

23 **RELATED ENTITIES**

24 10. The Argyll Group is a group of Texas and Delaware limited liability companies  
25 jointly controlled by Miceli and McClain. SW Argyll Investments, LLC (d/b/a Argyll Investments,  
26 LLC) is one of The Argyll Group's companies.  
27  
28

**FACTS**

**DEFENDANTS' FRAUDULENT SCHEME,  
MISREPRESENTATIONS, AND MISLEADING OMISSIONS**

**A. The Stock Based Loan Program**

11. Miceli and McClain control The Argyll Group, a group of Texas and Delaware limited liability companies involved in "Private Equity Investment Banking and Corporate Finance." Argyll, one of The Argyll's Group's companies, provides stock-based lending services.

12. Argyll attracted potential customers through referrals from individuals or entities that hold themselves out as stock loan brokers. Argyll paid these stock loan brokers origination, broker, and "back-end" fees that were based upon the size of the loan transaction.

13. Since 2009, Argyll, directly or through its brokers, made both recourse and non-recourse loans to individuals or entities who pledged as collateral shares (often, restricted shares) of publicly traded stock.

14. AmeriFund and Spanier brokered numerous transactions for Argyll's stock loan program. As part of this brokerage activity, Spanier solicited and negotiated loans that induced the borrowers to pledge shares as collateral for stock sales. From at least 2009, Argyll paid approximately \$2 million in fees to AmeriFund and Spanier as compensation for brokering Argyll's stock loans.

15. When a potential borrower contacted Argyll directly or, more often, through a broker like AmeriFund's Spanier, Argyll typically offered to loan 50% to 70% of the market value of the shares that the borrower proposed to use as collateral, depending on factors such as trading market, volume, and price volatility. If the potential borrower accepted the loan proposal, Argyll sent the borrower (or his or her broker) a "Loan Agreement," "Pledge Agreement," "Promissory Note," and other documents, such as instructions on how to transfer the stock collateral to Argyll (collectively, the "Loan Package").

1 16. Pursuant to the Promissory Note, the borrower agreed to transfer ownership of his  
2 or her shares to Argyll. In exchange, Argyll agreed to fund the borrower's loan one to three days  
3 after the "Strike Price" (i.e., the collateral's five day Volume Weighted Average Price (VWAP)  
4 through the day preceding the closing date) was determined, all documents were executed, and the  
5 collateral was delivered to Argyll or its custodial brokerage account.

6 17. If Argyll funded the loan, the borrower agreed to make quarterly interest-only  
7 payments to Argyll, based on a fixed interest rate. The lengths of the loans were generally fixed  
8 and were typically three years. Many of the loans also contained a "lockout" provision that  
9 prohibited the borrower from prepaying the loan until a specified period elapsed, usually twelve or  
10 eighteen months after date of the Loan Agreement.  
11

12 18. The standard Loan Package did not permit Argyll to sell the collateral except in the  
13 event of default. According to the Loan Agreement's section entitled "Lender's Right to  
14 Collateral":  
15

16 At any time after the date first above written and after Borrower's delivery to Lender of the  
17 Collateral, Lender shall be entitled from time to time, in its sole discretion to take any of  
the following actions with respect to the collateral.

- 18 (a) Hold all or a portion of the Collateral as security for the obligations  
hereunder and under the Note, and pursuant to the Pledge Agreement. . . ;  
19 or  
(b) Lend all or a portion of the Collateral, free and clear of any lien or  
20 encumbrances . . . ; or  
(c) Pledge, encumber, hypothecate all or a portion of the Collateral free and  
21 clear of any lien or encumbrances . . . ; or  
(d) Commingle the Collateral with other assets or securities of the Lender.

22 19. Moreover, at least one Loan Agreement contained the following additional  
23 provision: "Lender shall not sell any of the Collateral unless an Event of Default had occurred and  
24 is continuing." (Emphasis added).  
25

26 20. Miceli and McClain told borrowers orally (and reiterated in the Loan Packages) that  
27 Argyll would engage only in "hedging" transactions in connection with the loan to minimize its  
28

1 risk of an increase or decrease in collateral value. Argyll, however, did not enter into any hedging  
2 transactions; it simply sold the collateral outright to fund its loans.

3 21. Upon repayment of the loan, Argyll agreed to return the borrowers' shares within  
4 twenty days. If the collateral decreased in value during the life of the loan, the borrower at  
5 repayment would receive the fair market value of the collateral originally provided to Argyll (i.e.,  
6 Argyll would return the initially pledged collateral). If the collateral increased in value during the  
7 life of the loan, the borrower would receive the original collateral (minus any hedging costs  
8 incurred by Argyll) thereby receiving the benefit of any appreciation in price.  
9

10 **B. Argyll's Purported Stock-Collateralized Loan Business is a Fraudulent Scheme**

11 22. Argyll's purported stock-collateralized loan business is a fraudulent scheme  
12 perpetrated by Miceli and McClain to acquire shares of publicly traded stock from borrowers at a  
13 30% to 50% discount to their then-current market value, to sell the shares for full market value in  
14 order to fund the loan, and to use the remaining proceeds from the sale of the collateral for their  
15 own benefit. Miceli and McClain, through Argyll's Loan Packages and communications with  
16 borrowers, made false statements and omitted to state other important facts in connection with this  
17 scheme, including lying to borrowers and their representatives about Argyll's selling their  
18 collateral prior to any default.  
19

20 23. Miceli and McClain are joint owners of Argyll. As the sole officers and directors of  
21 Argyll, they were the only individuals to sign the Loan Packages on Argyll's behalf. They are also  
22 the sole signatories on Argyll's bank and brokerage accounts and control all of Argyll's trading  
23 and banking activities.  
24

25 24. Miceli, McClain, and Argyll did not disclose to borrowers that it intended to sell  
26 substantially all of a borrower's shares within days of closing their loans, and, in most cases,  
27 explicitly told borrowers that their collateral would not be sold unless a default occurred. In one  
28

1 instance, McClain specifically told an attorney who negotiated several Argyll stock loan  
2 transactions for the borrower that Argyll would not sell the collateral shares.

3 25. Argyll had no independent source of funds other than the borrowers' collateral and  
4 could not lend money without selling the collateral, meaning that, in many cases, Argyll sold the  
5 collateral prior to closing the loan, and used the proceeds to fund the loan.

6 26. In addition, Miceli, McClain, and Argyll misrepresented to borrowers that Argyll  
7 would return shares to them upon the borrowers' repayment of the loan. The Loan Agreement  
8 stated that Argyll would return "the appropriate number of shares that constitutes the Collateral" to  
9 borrowers who repay their loans. Instead, Argyll sold all of the shares that it received from the  
10 borrowers, but did not set aside any cash reserves to repurchase and return shares to the borrowers  
11 who repaid their loans pursuant to the Loan Agreement.

12 27. Altogether, Argyll sold virtually all of the pledged collateral, prior to any default.  
13 Miceli and McClain used the sales proceeds remaining after funding Argyll's loans to, among  
14 other things, pay their personal expenses.  
15

16 28. Argyll' stock sales accounted for the vast majority of its revenue.  
17

### 18 **C. Specific Examples of Defrauded Borrowers**

#### 19 **Victim A**

20 29. Victim A is the former Chairman and Chief Executive Officer of a New York Stock  
21 Exchange listed-company involved in the development, leasing, and management of real estate  
22 ("Company A"). Sometime in 2008 or 2009, Victim A received an unsolicited telephone call from  
23 Spanier in which Spanier offered to broker a stock-collateralized loan.  
24

25 30. In September 2009, Victim A applied for a stock-collateralized loan through  
26 Spanier/AmeriFund, who referred him to Argyll. Victim A entered into a three-year loan  
27 agreement with Argyll (dated December 1, 2009), in which he pledged 700,000 shares of Company  
28

1 A's stock as collateral. At closing, Victim A's shares had a value of \$6,846,000. Argyll agreed to  
2 loan Victim A 65% of the stock's value, resulting in a loan of \$4,449,900 with an annual interest  
3 rate of 4%. McClain executed the loan agreement on behalf of Argyll, which paid Spanier and  
4 AmeriFund a \$407,337 fee for brokering the loan (representing a 3% origination fee that Argyll  
5 subtracted from Victim A's loan proceeds and a 4% "back-end" fee paid by Argyll).

6 31. On December 3, 2009, Victim A transferred 700,000 shares of Company A to  
7 Argyll, which provided Victim A with a \$4,316,403 loan (representing the remainder of the \$4.4  
8 million loan after Argyll had subtracted AmeriFund's/Spanier's origination fee of \$133,497) that  
9 same day. In addition to Argyll's standard loan agreement language, Victim A's agreement  
10 contained the added provision that the "[l]ender shall not sell any of the Collateral unless an Event  
11 of Default has occurred or is continuing." Nonetheless, Argyll sold all of the Company A shares  
12 between December 4 and December 10, 2009, generating approximately \$6.5 million in proceeds.  
13 Argyll profited approximately \$1.6 million from the transaction.

14 32. In October 2010, Victim A sought to repay the loan and retrieve the Company A  
15 shares he had pledged as collateral. Victim A provided written notice to Argyll and requested wire  
16 transfer instructions to repay the loan on December 1, 2010 – the first day that the Loan Agreement  
17 permitted him to prepay. The Loan Agreement required Argyll to return the shares to him no more  
18 than twenty days after he repaid the loan. As of December 1, 2010, however, the market price of  
19 Company A's stock was \$13.08 per share, meaning that Argyll would need to pay approximately  
20 \$9 million to purchase in the market the Company A shares (which it had sold a year earlier for  
21 only \$6.5 million) to return to Victim A. Rather than disclosing to Victim A that Argyll had sold  
22 his collateral, McClain instead offered to increase Victim A's loan by \$1 million, lower the loan's  
23 interest rate from 4% to 2.25%, and reduce the prepayment penalty. In exchange, Victim A agreed  
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1 to extend the “lockout period” by six months. Victim A accepted this offer and agreed to the new  
2 loan provisions; Miceli executed the agreement for Argyll.

3 33. Neither Miceli nor McClain disclosed to Victim A that Argyll had sold all of his  
4 Company A shares in December 2009 within one week of receiving them.

5 34. On April 20, 2011, Victim A provided Spanier with notice of his intent to repay the  
6 loan upon expiration of the second lockout period (June 2, 2011). Spanier forwarded the notice to  
7 McClain the following day.  
8

9 **Victim B**

10 35. Victim B is the President, Chief Executive Officer, and Chairman of the Board of  
11 Directors of an American Stock Exchange-listed company involved in the development,  
12 production, and exploration of crude oil and natural gas (“Company B”). On March 30, 2011,  
13 Victim B entered into a three-year loan agreement with Argyll (dated March 8, 2011) for which he  
14 pledged 1 million shares of Company B. McClain executed the loan agreement – which did not  
15 permit Argyll to sell the collateral – on Argyll’s behalf.  
16

17 36. AmeriFund and Spanier brokered Victim B’s loan, and Argyll paid  
18 AmeriFund/Spanier a total fee of \$51,350 in connection with the loan transaction.

19 37. On April 1, 2011, Victim B transferred 1 million shares of Company B to Argyll.  
20 Argyll began selling Victim B’s shares, and by the time Argyll funded the \$377,000 loan on April  
21 8, 2011, it had already sold almost 400,000 shares for proceeds of approximately \$261,000. Argyll  
22 sold the remaining shares over the course of the next month and, by May 9, 2011, it had sold all 1  
23 million shares, for total proceeds of approximately \$620,000. Argyll profited approximately  
24 \$192,000 from the transaction.  
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1 **C. Defrauded Borrowers of Argyll**

2 38. The following chart identifies some of the borrowers Argyll defrauded:

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<b>Date of Loan Agreement</b>	<b>Number of Shares Pledged</b>	<b>Loan Amount</b>	<b>Argyll Signatory on Loan Agreement</b>
12/1/2009	700,000	\$4,449,900	McClain
3/8/2011	1,000,000	\$377,000	McClain
3/3/2010	1,000,000	\$4,930,000	McClain
4/15/2010	1,220,000	\$1,537,200	Miceli
2/12/2011	52,246	\$557,726.05	McClain
12/22/2009	3,250	\$46,117.50	Miceli
10/18/2010	750,000	\$307,125	McClain
11/8/2010	800,000	\$236,880	McClain
1/19/2011	750,000	\$207,900	Miceli
4/16/2010	6,000,000	\$1,320,000	Miceli
9/29/2010	6,000,000	\$528,000	Miceli
2/11/2011	490,000	\$735,000	McClain
3/4/2011	490,000	\$764,400	Miceli

20 **ARGYLL'S SALES OF COLLATERAL SHARES**  
 21 **WERE NOT REGISTERED WITH THE COMMISSION**

22 39. The Borrowers identified in Paragraph 38, above, were all affiliates of issuers and  
 23 pledged restricted shares to Argyll as collateral for their stock loans.

24 40. Rather than retain the shares as collateral as the Loan Agreements required, Argyll,  
 25 at the direction of Miceli and McClain, sold the shares into the public markets soon after receiving  
 26 them.

1 41. These distributions were done without effective registration statements and were not  
2 exempt from registration.

3 **THE DEFENDANTS ACTED AS UNREGISTERED BROKERS OR DEALERS**

4 42. Argyll, along with Miceli and McClain who acted through Argyll, during all  
5 relevant times were neither registered as, nor associated with, a registered broker or dealer.

6 43. Amerifund, along with Spanier who acted through AmeriFund, during all relevant  
7 times were neither registered as, nor associated with, a registered broker or dealer.

8 **FIRST CLAIM FOR RELIEF**

9  
10 **Violation of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5**  
11 **Thereunder [17 C.F.R. § 240.10b-5] By Argyll, Miceli, and McClain**

12 44. The Commission re-alleges and incorporates by reference each and every allegation  
13 in paragraphs 1 through 43, inclusive, as if they were fully set forth herein.

14 45. By engaging in the conduct described above, Argyll, Miceli, and McClain,  
15 knowingly or recklessly, in connection with the purchase or sale of securities, directly or indirectly,  
16 by the use of the means or instrumentalities of interstate commerce, or the mails, or the facilities of  
17 a national securities exchange:

- 18 a. employed devices, schemes, or artifices to defraud;
- 19 b. made untrue statements of material facts or omitted to state material facts  
20 necessary in order to make the statements made, in the light of the  
21 circumstances under which they were made, not misleading; and/or  
22 c. engaged in acts, practices, or courses of business which operated or would  
23 operate as a fraud or deceit upon any person in connection with the purchase  
24 or sale of any security.  
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1 46. By engaging in the foregoing conduct, Argyll, Miceli, and McClain violated Section  
2 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-  
3 5].

4 **SECOND CLAIM FOR RELIEF**

5 **Aiding and Abetting and Control Person Liability for Violations of Section 10(b)**  
6 **of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 Thereunder [17 C.F.R. §**  
7 **240.10b-5] By Miceli and McClain**

8 47. The Commission re-alleges and incorporates by reference each and every allegation  
9 in paragraphs 1 through 46, inclusive, as if they were fully set forth herein.

10 48. By engaging in the conduct described above, Argyll, knowingly or recklessly, in  
11 connection with the purchase or sale of securities, directly or indirectly, by the use of means or  
12 instrumentalities of interstate commerce, or the mails, or the facilities of a national securities  
13 exchange:

- 14 a. employed devices, schemes, or artifices to defraud;
- 15 b. made untrue statements of material facts or omitted to state material facts  
16 necessary in order to make the statements made, in the light of the  
17 circumstances under which they were made, not misleading; and/or  
18 c. engaged in acts, practices, or courses of business which operated or would  
19 operate as a fraud or deceit upon any person in connection with the purchase  
20 or sale of any security.  
21

22 49. Miceli and McClain, knowingly or recklessly, provided substantial assistance to  
23 Argyll in connection with its violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)]  
24 and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

25 50. Miceli and McClain were controlling persons of Argyll for the purposes of Section  
26 20(a) of the Exchange Act [15 U.S.C. § 78t(a)].  
27  
28



**FOURTH CLAIM FOR RELIEF**

**Violation of Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)]  
by Argyll, Miceli, McClain, AmeriFund, and Spanier**

57. The Commission re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 56, inclusive, as if they were fully set forth herein.

58. By engaging in the conduct described above, Argyll, Miceli, McClain, AmeriFund, and Spanier, directly or indirectly, made use of the mails or means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce, the purchase or sale of securities, without being registered as a broker or dealer with the Commission, or being associated with a broker or dealer registered with the Commission.

59. By engaging in the foregoing conduct, Argyll, Miceli, McClain, AmeriFund, and Spanier violated Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)].

**PRAYER FOR RELIEF**

WHEREFORE, the Commission respectfully requests that the Court enter a Final Judgment:

**I.**

Finding that the Defendants violated the securities laws as alleged herein;

**II.**

Permanently enjoining Argyll, Miceli, and McClain from violating Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)], and Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§ 77e(a) and 77e(c)];

**III.**

Permanently enjoining AmeriFund and Spanier from violating Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)];

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IV.

Ordering Defendants to disgorge the unlawful profits derived from the activities set forth in this Complaint, together with prejudgment interest thereon;

V.

Ordering Argyll, Miceli, and McClain to pay a civil penalty pursuant to Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] and Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)]; and ordering AmeriFund and Spanier to pay a civil penalty pursuant to Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)]; and

VI.

Granting such other and further relief as the Court may deem just, equitable, and necessary.

Respectfully submitted,

By: s/ Dean M. Conway

Dean M. Conway  
Scott W. Friestad  
Julie M. Riewe  
Jacob D. Krawitz

Attorneys for Plaintiff  
SECURITIES AND EXCHANGE  
COMMISSION  
100 F Street, NE  
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Facsimile: (202) 772-9332  
E-mail: ConwayD@sec.gov

Dated: March 15, 2012

JS 44 (Rev. 12/07)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

Securities and Exchange Commission

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Dean Conway, U.S. Securities and Exchange Commission, 100 F Street, NE Washington DC 20549 (202) 551-4412

**DEFENDANTS**

SW Argyll Investments, LLC (d/b/a Argyll Investments, LLC).  
James T. Miceli, Douglas A. McClain, Jr., AmeriFund Capital

County of Residence of First Listed Defendant San Diego County, Cal.  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'12CV0646 L WVG

Unknown

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
- 2 U.S. Government Defendant
- 3 Federal Question (U.S. Government Not a Party)
- 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**V. ORIGIN** (Place an "X" in One Box Only)

- 1 Original Proceeding
- 2 Removed from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):  
15 U.S.C. §§ 78j(b), 77e(a), 77e(c), and 78o(a)

Brief description of cause: violations of federal securities laws

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ \_\_\_\_\_ CHECK YES only if demanded in complaint:  
 JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**

(See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: 03/15/2012 SIGNATURE OF ATTORNEY OF RECORD: /s/ Dean Conway

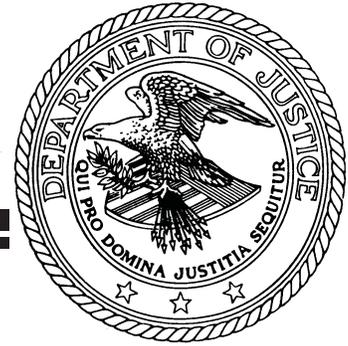
**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

# ***NEWS RELEASE***

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***OFFICE OF THE UNITED STATES ATTORNEY  
SOUTHERN DISTRICT OF CALIFORNIA  
San Diego, California***

***United States Attorney  
Laura E. Duffy***

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***Assistant U. S. Attorney Faith A. Devine (619) 546-6784***

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***For Immediate Release***

**THREE INDIVIDUALS CHARGED IN \$51 MILLION STOCK LOAN FRAUD SCHEME**

**NEWS RELEASE SUMMARY - March 15, 2012**

United States Attorney Laura Duffy announced the unsealing of a criminal indictment today charging James T. Miceli, Douglas McClain, Jr. (“McClain”), and Jeffrey Spanier with one count of conspiracy, seven counts of mail fraud, fifteen counts of wire fraud, one count of securities fraud, eleven counts of money laundering, and criminal forfeiture in connection with their participation in a \$51 million stock loan fraud scheme.

According to the indictment, Miceli and McClain operated several entities that did business in San Diego, California and Savannah, Georgia under the name “Argyll.” Spanier operated a loan brokerage business in Florida under the name “Amerifund.” According to the indictment, Miceli, McClain, and Spanier conspired to defraud the public and borrowers by falsely representing that Argyll was an institutional lender with significant cash to lend to corporate executives and other individuals. According to the indictment, Miceli, McClain, and Spanier fraudulently induced borrowers to pledge stock they held in publicly traded companies as collateral for loans by falsely representing that the borrowers’ stock would not be sold unless

there was a default on the loan and failing to disclose that Argyll intended to sell the borrowers' stock in order to fund the loans as well as other business ventures of Miceli and McClain. The indictment further alleges that Miceli, McClain, and Spanier also fraudulently induced borrowers to make quarterly interest payments on their loans to Argyll by failing to disclose that the stock the borrowers' pledged as collateral for the loans was already sold by Argyll.

The indictment also charges Miceli, McClain, and Spanier with engaging in manipulative and deceptive devices which operated as a fraud and deceit upon purchasers of publicly traded securities. According to the indictment, federal securities laws and the United States Securities and Exchange Commission ("SEC") place restrictions on the sale of stock by insiders of publicly traded companies. The indictment charges Miceli, McClain, and Spanier with violating these laws by falsely representing that Argyll would comply with Regulation 144, which restricts affiliated persons from selling publicly traded securities and failing to disclose to borrowers that Argyll was paying substantial back-end incentive fees to Spanier from the fraudulent sale of the borrowers' stock.

The indictment seeks the forfeiture of \$51 million, including cash and securities held in brokerage accounts, a Ferrari, an Advantage Party Cat vessel, a Cessna Citation corporate jet, and diamond jewelry.

This case is being investigated by the Federal Bureau of Investigation-San Diego Division and the United States Postal Inspection Service.

Defendant Miceli is next scheduled to be in court on Tuesday, March 20, 2011 at 9:00 a.m., before Magistrate Judge Ruben B. Brooks for a detention hearing. Defendants McClain and Spanier are expected to be transferred to San Diego in the coming weeks.

**DEFENDANTS**

**Case Number: 12cr0918BEN**

James T. Miceli  
Douglas A. McClain, Jr.  
Jeffrey R. Spanier

## SUMMARY OF CHARGES

- Count 1 Title 18, United States Code, Section 371 - Conspiracy  
Maximum Penalties: Five years' imprisonment, a fine of \$250,000,  
and three years' supervised release.
- Counts 2-8 Title 18, United States Code, Section 1341 - Mail Fraud  
Maximum Penalties: 20 years' imprisonment, a fine of \$250,000,  
and three years' supervised release.
- Counts 9-23 Title 18, United States Code, Section 1343 - Wire Fraud  
Maximum Penalties: 20 years' imprisonment, a fine of \$250,000,  
and three years' supervised release.
- Count 24 Title 15, United State Code, Sections 78j(b) and 78ff - Securities Fraud  
Maximum Penalties: 20 years' imprisonment, a fine of \$250,000,  
and three years' supervised release.
- Counts 25-28 Title 18, United States Code, Section 1956 - Money Laundering  
Maximum Penalties: 20 years' imprisonment, a fine of \$250,000,  
and three years' supervised release.
- Counts 29-35 Title 18, United States Code, Section 1957 - Money Laundering  
Maximum Penalties: 10 years' imprisonment, a fine of \$250,000,  
and three years' supervised release

## AGENCIES

Federal Bureau of Investigation  
United States Postal Inspection Service

**An indictment is not evidence that the defendants committed the crimes charged. The defendants are presumed innocent until the Government meets its burden in court of proving guilt beyond a reasonable doubt.**

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## **SEC Sues California Executives Over Stock-Lending Fraud Claims**

By Joshua Gallu on March 15, 2012

The U.S. Securities and Exchange Commission sued Argyll Investments LLC and two of its executives over claims they defrauded officers and directors at public companies in an \$8 million stock-lending scheme.

James T. Miceli and Douglas A. McClain Jr. acquired stock from at least nine corporate officers since 2009 at a discount as collateral for loans, saying the shares would only be sold if they defaulted, the SEC said in a statement today. Instead, they sold shares for full market value to fund the loans and used the proceeds for their own personal benefit, the SEC said.

The SEC also accused brokerage AmeriFund Capital Finance LLC and its owner, Jeffrey Spanier, of violating securities laws by facilitating several transactions for California-based Argyll without being registered as a broker-dealer.

“Miceli and McClain thought they had devised a foolproof way to make substantial risk-free profits, but their purported business model was nothing more than an illegal get-rich-quick scheme,” Scott Friestad, an associate director in the SEC’s enforcement division, said in a statement.

Pat Swan, an attorney for McClain at law firm Jones Day, declined immediate comment, saying he hasn’t yet reviewed the complaint. Phone calls to Michael Attanasio, an attorney for Miceli, and Mark Perry, who represents Spanier and AmeriFund Capital, weren’t immediately returned.

According to the SEC, Miceli and McClain promised the borrowers they would return the shares when the loans were repaid. Rather than retaining the shares as required, they sold them without the borrowers’ knowledge before or soon after funding the loans, the SEC said.

Because Argyll typically loaned the borrowers 30 percent to 50 percent less than the current market value of the shares, the company retained substantial proceeds even after funding the loans, the SEC said. As a result, Argyll reaped more than \$8 million in unlawful gains, according to the agency.

The SEC also accused Miceli, McClain and Argyll of selling the collateral shares, which were restricted securities, into the public markets in unregistered transactions.

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## Moneynews

# SEC Accuses California Executives of Stock-Lending Fraud

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### By:

The U.S. Securities and Exchange Commission sued Argyll Investments LLC and two of its executives over claims they defrauded officers and directors at public companies in an \$8 million stock-lending scheme.

James T. Miceli and Douglas A. McClain Jr. acquired stock from at least nine corporate officers since 2009 at a discount as collateral for loans, saying the shares would be sold only if they defaulted, the SEC said in a complaint filed Thursday in U.S. District Court in San Diego. Instead, they sold shares for full market value to fund the loans and used the proceeds for their own personal benefit, the SEC said.

The SEC also accused brokerage AmeriFund Capital Finance LLC and owner Jeffrey Spanier of facilitating transactions for California-based Argyll without registering as a broker-dealer.

"Miceli and McClain thought they had devised a foolproof way to make substantial risk-free profits, but their purported business model was nothing more than an illegal get-rich-quick scheme," Scott Friestad, an associate director in the SEC's enforcement division, said in a statement.

Pat Swan, a San Diego-based attorney for McClain at law firm Jones Day, declined immediate comment, saying he hasn't yet reviewed the complaint. Phone calls to Spanier at his AmeriFund office and to Michael Attanasio, an attorney for Miceli, weren't immediately returned.

The SEC is seeking permanent injunctions, disgorgement of ill-gotten gains with prejudgment interest, and financial penalties, according to the agency's statement.

### Substantial Proceeds

According to the SEC, Miceli and McClain promised the borrowers they would return the shares when the loans were repaid. Rather than retaining the shares as required, they sold them without the borrowers' knowledge before or soon after funding the loans, the SEC said.

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