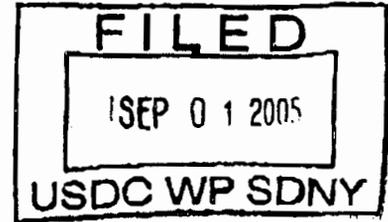


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COPY



UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :  
 Plaintiff, :

VERIFIED COMPLAINT

05 Civ.

- v -

ALL ASSETS OF BAYOU ACCREDITED :  
 FUND, LLC; BAYOU AFFILIATES :  
 FUND, LLC; BAYOU NO LEVERAGE :  
 FUND, LLC; BAYOU SUPERFUND, LLC; :  
 BAYOU SECURITIES, LLC; BAYOU :  
 MANAGEMENT, LLC; AND BAYOU :  
 FUND LLC, :

**05 CIV. 7722**

**Judge McMahon**

INCLUDING, BUT NOT LIMITED TO, :  
 APPROXIMATELY \$100,010,673.68 :  
 ON DEPOSIT AT BANK OF AMERICA :  
 IN THE NAME OF THE ARIZONA STATE :  
 TREASURER AND REFERENCED AS :  
 SW 2005-001633, :

AND ALL INTEREST AND OTHER :  
 PROCEEDS TRACEABLE THERETO, :

Defendants in Rem.

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Plaintiff United States of America, by its attorney,  
 David N. Kelley, United States Attorney for the Southern District  
 of New York, for its complaint alleges, upon information and  
 belief, as follows:

I. JURISDICTION AND VENUE

1. This action is brought by the United States of America pursuant to 18 U.S.C. §§ 981(a)(1)(C) and 984, seeking the forfeiture of all right, title and interest in all assets of Bayou Accredited Fund, LLC; Bayou Affiliates Fund, LLC; Bayou No Leverage Fund, LLC; Bayou Superfund, LLC; Bayou Securities, LLC; Bayou Management, LLC; and Bayou Fund LLC (hereinafter referred to collectively as "Bayou"), including, but not limited to, approximately \$100,010,673.68 on deposit at Bank of America in the name of the Arizona State Treasurer pursuant to a seizure order issued by a judge of the Superior Court of the State of Arizona in and for the County of Maricopa (the "Seized Funds") (hereinafter referred to collectively as the "Defendants in Rem"). Forfeiture is sought on the grounds that the Defendants in Rem constitute or are derived from proceeds traceable to mail fraud, in violation of 18 U.S.C. § 1341; wire fraud, in violation of 18 U.S.C. § 1343; and securities fraud, in violation of 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5.

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1345 and 1355.

3. Venue is proper pursuant to 28 U.S.C. § 1355 because acts and omissions giving rise to the forfeiture occurred in the Southern District of New York.

## II. PROBABLE CAUSE FOR FORFEITURE

4. An investigation conducted by the Federal Bureau of Investigation ("FBI"), the United States Securities and Exchange Commission ("SEC"), the Commodity Futures Exchange Commission ("CFTC") and the United States Attorney's Office for the Southern District of New York has disclosed that between in or about 1998 and in or about August 2004, Bayou misrepresented the value of its assets and caused these misrepresentations to be disseminated to current and prospective investors. These false and misleading statements and representations induced new investors to invest in Bayou and lulled existing investors into retaining their investments in Bayou. Thus, all of the assets of Bayou, including but not limited to the Seized Funds, constitute the proceeds of criminal activity, including wire, mail and securities fraud, in violation of 18 U.S.C. §§ 371, 1341 and 1343, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5.

### Background

5. At all times relevant to this action, Bayou Accredited Fund, LLC, Bayou Affiliates Fund, LLC, Bayou No Leverage Fund, LLC, and Bayou Superfund, LLC were hedge funds managed and controlled by Samuel Israel III and/or Daniel Marino. In addition, Bayou Securities, LLC, Bayou Management LLC and Bayou Fund LLC were related entities under substantially the same management and control. Bayou Securities, LLC is a registered

Broker/Dealer with the NASD that acts primarily as an introducing broker for the funds. Bayou Management LLC, a New York limited liability company, managed the funds. Bayou Fund LLC, also a New York limited liability company, was formed for the purpose of trading in securities.

6. According to materials distributed by Bayou, Bayou was formed in or about June 1996, by Samuel Israel III, and certain of the funds were opened to investors in or about January 1997. The purpose of the funds was to "invest in equity securities, financial and options thereon, put and call options and interest rate sensitive instruments traded on U.S. exchanges."

7. According to materials distributed by Bayou, since its founding, Israel has been the Chief Executive Officer and Chief Investment Officer of Bayou Management LLC and, as such, was responsible for the investment management and operations of Bayou. Israel conducted his securities trading out of Bayou's office in Stamford and a location in Westchester County. Daniel Marino is a certified public accountant who became Bayou's Chief Financial Officer and Chief Operating Officer and performed these functions from Bayou's inception.

8. According to Bayou documents and witnesses, Bayou mailed to investors, among others, quarterly financial statements that reflected the amount that investor had contributed to the

fund and the purported accumulated gain or loss on that investment. In addition, on an annual basis, management mailed financial statements and a report of independent certified public accountants, which purported to disclose the true financial condition of the funds.

9. From in or about 1998 through in or about August 2005, Bayou perpetrated a fraud on its investors, among others, in that the financial statements and other documents that it mailed and faxed to investors and others contained materially false statements that, among other things, overstated gains, understated losses, and reported gains where there were losses. For example, the "audited" financial statements for the year ended 12/31/03 reported that the Bayou Superfund had approximately \$192,000,000 in assets and a net gain from trading in the amount of approximately \$27,000,000. In truth and in fact, at the end of 2003, the Bayou Superfund had a total value of approximately \$53,600,000 and it lost \$35,000,000 in trading.

10. In furtherance of the scheme to defraud investors and others, a phony accounting firm, named Richmond-Fairfield Associates, was created and held out as an independent certified public accounting firm that purported to audit and certify Bayou's false financial statements. In fact, Richmond-Fairfield Associates was a sham and conducted no audits, independent or otherwise.

11. The effect of these false statements was to induce investors to invest in excess of \$300 million between 1998 and 2005 in the Bayou funds.

The Private Placement Programs

12. According to documents and witnesses, in or about the spring of 2004, when the Bayou funds' financial statements falsely reported assets that were overstated by tens of millions of dollars, Bayou began a series of attempts to conduct transactions that were purportedly legitimate private placement transactions, or "programs," that would produce above-average rates of return - in some cases, 100% per week. These so-called investments required that large sums of money be sent to various foreign and domestic bank accounts. A review of documents relating to these "programs" reveals that the "programs" have some, if not all, of the characteristics of frauds known in the law enforcement community as "prime bank instrument" and "high yield program" frauds.

13. According to bank records, correspondence, other documents, and witnesses, in connection with these "programs," Bayou transferred investor funds to various accounts. Ultimately, at least \$100,001,102.00 in investor funds were transferred to Account No. 2000026084477 in the name of Majestic Capital Management at Wachovia National Bank in Flemington, New Jersey (the "Majestic Account"). The contents of the Majestic

Account were seized pursuant to the Arizona court order described above, and constitute the Seized Funds.

14. The financial transactions conducted by Bayou in furtherance of the purported "programs" included the following:

a. In or about April 2004, Bayou caused the transfer of \$150,000,000 from a Bayou account at Citibank in Bronxville, New York, to a securities trading account at Barclay's Bank in London. Thereafter, the approximately \$150,000,000 was returned to Bayou's Citibank account.

b. In or about July 2004, \$120,000,000 was transferred from Bayou's Citibank account to a bank account in Israel's name at Deutsche Postbank in Hamburg, Germany.

c. In or about October 2004, approximately 90,000,000 Euros were transferred from the Postbank account to a Sparkasse Hof account in Germany.

d. In or about December 2004, approximately 90,000,000 Euros were transferred from the Sparkasse Hof account to a securities account in the name of S. Israel, III and Bayou Fund, at ODL Securities in London. From there, in or about April 2005, individuals from Bayou attempted to transfer approximately \$99,191,102 from the ODL account to a Wachovia National Bank account in Hong Kong, but the account number on the wire transfer was actually the number of the Majestic Account.

e. Bayou transferred an additional \$810,000 from a Bayou account to the Majestic Account, for further credit to Golden Summit Investors Group Ltd. and final credit to Bayou Fund.

15. Thereafter, in or about May 2005, the Arizona Attorney General's Office, after conducting an investigation regarding the origin of the \$100,010,673.68 in funds on deposit in the Majestic Account, as well as other accounts held in the name of Majestic Capital Management, and concluding that the funds therein were the proceeds of a fraudulent prime bank instrument scheme, commenced a forfeiture action and took custody of the Seized Funds.

16. Upon entry of a final order forfeiting the Defendants in Rem to the United States, it is the intention of the United States Attorney's Office to request that the forfeited property be distributed *pro rata* to victims of the offenses described herein, pursuant to 21 U.S.C. § 853(i)(1) and 28 C.F.R. Part 9.

### III. CLAIM FOR FORFEITURE

17. Plaintiff repeats, realleges and incorporates by reference herein each and every allegation contained in paragraphs one through sixteen of this Verified Complaint.

18. Pursuant to 18 U.S.C. § 981(a)(1)(C), "[a]ny property, real or personal, which constitutes or is derived from

proceeds traceable to . . . any offense constituting 'specified unlawful activity' (as defined in Section 1956(c)(7) of [title 18]), or a conspiracy to commit such offense," is subject to forfeiture to the United States.

19. "Specified unlawful activity" is defined in 18 U.S.C. § 1956(c)(7), and the term includes any offense listed under 18 U.S.C. § 1961(1). Section 1961(1) lists, among other offenses, violations of 18 U.S.C. § 1341 (relating to mail fraud); violations of 18 U.S.C. § 1343 (relating to wire fraud); and "fraud in the sale of securities."

20. Title 18, United States Code, Section 984 provides, in pertinent part, that

(a)(1) In any forfeiture action in rem in which the subject property is cash, monetary instruments in bearer form, funds deposited in an account in a financial institution (as defined in section 20 of this title), or precious metals -

(A) it shall not be necessary for the Government to identify the specific property involved in the offense that is the basis for the forfeiture; and

(B) it shall not be a defense that the property involved in such an offense has been removed and replaced by identical property.

(2) Except as provided in subsection (b), any identical property found in the same place or account as the property involved in the offense that is the basis for the forfeiture shall be subject to forfeiture under this section.

(b) No action pursuant to this section to forfeit property not traceable directly to the offense that is the basis for the forfeiture may be commenced more than 1 year from the date of the offense.

21. A forfeiture action or proceeding may be brought in "the district court for the district in which any of the acts or omissions giving rise to the forfeiture occurred." 28 U.S.C. § 1355(b)(1)(A). Any court with jurisdiction over a forfeiture action pursuant to Section 1355(b) "may issue and cause to be served in any other district such process as may be required to bring before the court the property that is the subject of the forfeiture action." 28 U.S.C. § 1355(d).

22. The Defendants in Rem are subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C) because there is probable cause to believe that they constitute or are derived from proceeds traceable to offenses constituting specified unlawful activity, to wit, mail fraud, in violation of 18 U.S.C. § 1341; wire fraud, in violation of 18 U.S.C. § 1343; and "fraud in the sale of securities."

23. Title 21, United States Code, Section 853(i), which is applicable to forfeitures under 18 U.S.C. § 981(a)(1)(C), provides in pertinent part:

With respect to property ordered forfeited under this section, the Attorney General is authorized to--

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited

property to victims of a violation of this subchapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section. . . .

24. By reason of the foregoing, the Defendants in Rem became and are subject to forfeiture to the United States of America, pursuant to 18 U.S.C. §§ 981(a)(1)(C) and 984.

WHEREFORE, Plaintiff United States of America prays that process issue to enforce the forfeiture of the Defendants in Rem and that all persons having an interest in the Defendants in Rem be required to appear and show cause why the forfeiture of the Defendant in Rem should not be decreed, that this Court decree forfeiture of the Defendant in Rem to the United States of America for disposition according to law, and that this Court grant plaintiff such further relief as it may deem just and proper, together with the costs and disbursements of this action.

Dated: New York, New York  
September 1, 2005

DAVID N. KELLEY  
United States Attorney for the  
Southern District of New York  
Attorney for the Plaintiff  
United States of America

By:

  
MARGERY B. FEINZIG (MF-0553)  
BARBARA A. WARD (BW-4314)

VERIFICATION

STATE OF NEW YORK )  
COUNTY OF NEW YORK )  
SOUTHERN DISTRICT OF NEW YORK )

CARL A. CATAURO, being duly sworn, deposes and says that he is a Special Agent of the Federal Bureau of Investigation and as such has responsibility for the within action; that he has read the foregoing Verified Complaint and knows the contents thereof, and that the same is true to the best of his own knowledge, information and belief.

The sources of deponent's information and the ground of his belief are official records and files of the United States and information obtained directly and indirectly by deponent during an investigation of alleged violations of Titles 15 and 18, United States Code.

Carl A. Catauro  
CARL A. CATAURO  
Special Agent  
Federal Bureau of Investigation

Sworn to before me this  
1<sup>st</sup> day of September, 2005:

Eva Alexander  
NOTARY PUBLIC

