

ADL/JHY/2011R00263

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	Hon. Dennis M. Cavanaugh
	:	
	:	Crim. No. 12-330
v.	:	
	:	18 U.S.C. §§ 1343 and 2; 15
	:	U.S.C. §§ 78j(b) and
	:	78ff(a); and 17C.F.R. §
	:	240.10b-5
	:	
SHREYANS DESAI	:	

**SUPERSEDING INDICTMENT**

The Grand Jury in and for the District of New Jersey,  
sitting at Newark, charges:

**COUNTS ONE and TWO**  
(Wire Fraud)

**Relevant Parties and Entities**

1. At all times relevant to this Superseding Indictment:
  - a. Defendant SHREYANS DESAI, a resident of Edison, New Jersey, was the founding partner and 50 percent owner of ShreySiddh Capital, LLC ("SSC"). Defendant SHREYANS DESAI did not possess a valid license to trade securities for other individuals.
  - b. SSC was an Iselin, New Jersey-based firm that was not registered with the United States Securities and Exchange Commission ("SEC"), the Financial Industry Regulatory Authority ("FINRA"), the Securities Investor Protection Corporation ("SIPC"), or the National Futures Association ("NFA"). Defendant SHREYANS DESAI nevertheless solicited investments from

individuals through SSC to trade options, futures, and other securities.

c. SSC maintained several trading accounts with Thinkorswim, Inc. ("TOS"), an online investment brokerage company, and then with TD Ameritrade, Inc. ("TD Ameritrade") following the acquisition of Thinkorswim by TD Ameritrade (collectively, the "SSC TOS Accounts").

d. S.P., a resident of Piscataway, New Jersey, was purportedly a partner and 50 percent owner of SSC. In that capacity, S.P. was expected to introduce potential investors to SSC. S.P. did not possess a valid license to trade securities.

e. S.N., a resident of Edison, New Jersey, was a professional hair cutter who entrusted his money to defendant SHREYANS DESAI and SSC. S.N. had little or no experience in options or currency trading.

f. U.D., a resident of Edison, New Jersey, owned and operated a limousine service and entrusted his money to defendant SHREYANS DESAI and SSC. U.D. had little or no experience in options or currency trading.

g. R.M., a resident of Edison, New Jersey, entrusted funds in a tax-deferred retirement account to defendant SHREYANS DESAI and SSC. R.M. had little or no experience in options or currency trading.

h. K.C., a resident of Tuckahoe, New York, was a self-employed golf instructor who entrusted his money to

defendant SHREYANS DESAI and SSC. K.C. had little or no experience in options or currency trading.

i. A.N., a resident of Yonkers, New York, entrusted his money to defendant SHREYANS DESAI and SSC. A.N. had little or no experience in options or currency trading.

j. N.P., a resident of Piscataway, New Jersey and a family acquaintance of defendant SHREYANS DESAI, entrusted funds to defendant SHREYANS DESAI. N.P. had little or no experience in options or currency trading.

#### BACKGROUND

##### A. N.P.'s TOS Account

2. In or around October 2008, defendant SHREYANS DESAI falsely stated to N.P. that he was licensed to trade securities. Defendant SHREYANS DESAI also orally proposed an arrangement in which Defendant SHREYANS DESAI would use N.P.'s money to actively trade options and other securities in an account in N.P.'s name in return for a commission of 50 percent of all profits actually made in that account after the account balance exceeded \$35,000.

3. Relying on these representations, in or about October 2008, N.P. agreed to and did transfer a total of approximately \$30,400 to a TOS account in N.P.'s name (the "N.P. TOS Account"), provided defendant SHREYANS DESAI with electronic access to trade in that account, and agreed to the 50 percent commission arrangement referenced above. Thereafter, in or about June 2009, N.P. transferred an additional \$15,000 into the N.P. TOS Account,

placing those funds within defendant SHREYANS DESAI's control.

4. From in or about October 2008 onwards, defendant SHREYANS DESAI conducted numerous trades of securities in the N.P. TOS Account. At various times during that period, defendant SHREYANS DESAI purposefully misled N.P. into believing that large commissions had been earned through securities trades by defendant SHREYANS DESAI in the N.P. TOS account, instructed N.P. to pay defendant SHREYANS DESAI tens of thousands of dollars in commissions in connection with those trades, and received those commissions while then knowing that the commissions had not been earned.

B. The Investors

5. From in or about June 2009 through at least in or about May 2010, defendant SHREYANS DESAI solicited, and received, through SSC a total of over \$225,000 in funds (the "Investor Funds") from S.N., U.D., R.M., K.C., A.N., and A.N.'s family member, referred to herein as "A.N.Z." (collectively, the "Investors").

6. To induce the Investors to entrust their funds to him and to SSC, as described more fully below, defendant SHREYANS DESAI personally made, or caused another person to make, a series of material misrepresentations to one or more of those Investors. Defendant SHREYANS DESAI also proposed, and one or more of the Investors assented to, an arrangement in which defendant SHREYANS DESAI would actively trade the respective Investor's own money to

buy and sell securities and in return defendant SHREYANS DESAI would receive 50 percent of all profits actually made in that Investor's account.

**The Scheme and Artifice**

7. From no later than in or around October 2008 to at least in or around February 2011, in the District of New Jersey, and elsewhere, defendant

SHREYANS DESAI

did knowingly and willfully devise and intend to devise a scheme and artifice to defraud, and to obtain money and property from, N.P. and one or more of the Investors by means of materially false and fraudulent pretenses, representations and promises, and to do so by means of interstate wire transmissions.

**Object of the Scheme**

8. It was the object of the scheme for defendant SHREYANS DESAI to wrongfully obtain and retain control over the funds of persons who were inexperienced and unsophisticated in certain types of securities trading, so that defendant SHREYANS DESAI could take, and claim, grossly inflated commissions from N.P. and one or more of the Investors, and to otherwise misdirect the monies entrusted to him.

**Manner and Means of the Scheme**

9. At various times relevant to the Superseding Indictment, defendant SHREYANS DESAI obtained money from N.P. and the Investors by misrepresenting to one or more of them his

credentials as an investment advisor and broker, the registration status and logistical capabilities of SSC, the rates of return they could expect if they invested with SSC, and the level of risk in making these securities investments. Having obtained these client funds from N.P. and the Investors, defendant SHREYANS DESAI continued to deceive N.P. and one or more of the Investors about various facts, including the value of their securities investments, the rates of return, and the commissions defendant SHREYANS DESAI claimed to have "earned" on those securities investments. Defendant SHREYANS DESAI then wrongfully took and claimed commissions from N.P. and from one or more of the Investors based on one or more of these misrepresentations.

10. In this manner, defendant SHREYANS DESAI wrongfully caused N.P. to remit tens of thousands of dollars in commissions that had purportedly been earned by defendant SHREYANS DESAI, through trading activities, on N.P.'s investment of approximately \$45,400, and also wrongfully claimed commissions of tens of thousands of dollars from U.D. that defendant SHREYANS DESAI had purportedly earned through trading activities on U.D.'s investment of approximately \$150,000.

Initially Obtaining Money from the Investors

11. Specifically, to initially obtain money from the Investors, defendant SHREYANS DESAI purposefully misrepresented, or caused another to falsely represent, to one or more Investors that:

- a. defendant SHREYANS DESAI was a licensed trader of securities who had worked for TOS or TD Ameritrade;
- b. funds invested with SSC were insured;
- c. the principal amounts provided by Investors were personally guaranteed by defendant SHREYANS DESAI's own funds;
- d. there was no risk of loss of principal; and
- e. the Investors would enjoy high annual returns from the monies entrusted to defendant SHREYANS DESAI, who would trade securities on their behalf.

12. Defendant SHREYANS DESAI also showed various Investors one or more partial statements relating to the N.P. TOS Account, and defendant SHREYANS DESAI created, or caused the creation of, a monthly SSC account statement that purported to be genuine but was, in fact, in the name of a fictitious client identified on the statement as Nirav Shah. This falsified monthly account statement showed an estimated "current" yield of 31.8 percent, and misrepresented that SSC was a member of FINRA and insured by SIPC, which defendant SHREYANS DESAI then knew were false representations.

#### Account Opening Documents

13. In reliance on one or more of these misrepresentations, the Investors entrusted thousands of dollars to defendant SHREYANS DESAI and SSC, and gave defendant SHREYANS DESAI discretion to use their funds to trade securities.

14. Among the documents defendant SHREYANS DESAI caused

one or more Investors to sign was a document that provided that SSC was entitled to a twenty-five percent "management fee" plus a twenty-five percent "performance fee," each of which was payable quarterly.

15. As part of the account opening process, certain identifying information was also required from, and provided to SSC by, one or more of the Investors.

Retaining Investor Money

16. Having initially obtained funds from N.P. and the Investors, defendant SHREYANS DESAI traded various securities and then misrepresented the value of those securities orally and through fabricated documents. These misrepresentations were intended to, and did, allow defendant SHREYANS DESAI to retain control of those funds and to claim commissions of tens of thousands of dollars from N.P and one or more Investors that, in fact, defendant SHREYANS DESAI had not earned and to which he was not entitled.

17. For example, defendant SHREYANS DESAI created, or caused the creation of, an SSC statement that purported to report the activity of \$10,000 that A.N. had entrusted to defendant SHREYANS DESAI and SSC as of July 2010 (the "July 2010 SSC Statement"). On the July 2010 SSC Statement, "04/01/10 to 7/30/10" was identified in several places as the time period covered and, in another place as "3/31/09" through "6/30/09." The July 2010 SCC Statement indicated that A.N.'s \$10,000



investment had increased by more than 60 percent in less than four months, was then generating an estimated current yield of 31.8 percent, and was projected to generate \$35,000 annually - representing three and a half times A.N.'s \$10,000 investment. The July 2010 SCC Statement also contained the false representation that SSC was then a member of FINRA, SIPC, and NFA.

18. By way of further example, defendant SHREYANS DESAI created, or caused the creation of documents concerning U.D., including:

a. a letter dated June 1, 2010, on SSC letterhead, (the "June 2010 SSC Letter") in which defendant SHREYANS DESAI represented that: (i) in less than three months, the "gross" value of U.D.'s investments through SSC had grown from \$150,000 to almost \$260,000; resulting in (ii) some \$50,000 in commissions owed by U.D. to defendant SHREYANS DESAI; which (iii) along with other deductions, left U.D. with a "net" account value of almost \$205,000. The June 2010 SCC Letter also falsely stated that SSC was a member of FINRA and SIPC;

b. an account statement as of October 29, 2010, bearing account number 89157531, and titled "(ShreySiddh)," (the "October 2010 SSC Account Statement"). In an accompanying email, defendant SHREYANS DESAI stated that the October 2010 SSC Account Statement covered the period "from the time when the account was opened tell [sic] now." The contents of the October 2010 SSC

Account Statement represented, among other things, that the "net" value of U.D.'s \$150,000 investments had increased to more than \$400,000 in a period of approximately six months, when defendant SHREYANS DESAI then knew that the current value of that account was far less than \$400,000;

c. an account statement as of November 26, 2010 bearing account number 89157531, and titled "(ShreySiddh)" (the "November 2010 SSC Account Statement"). The contents of the November 2010 SSC Account Statement represented, among other things, that the "net" value of U.D.'s \$150,000 investments exceeded \$400,000, when defendant SHREYANS DESAI then knew that the current value of that account was far less than \$400,000; and

d. a memorandum provided to U.D. on or about November 28, 2010 (the "November 2010 Desai Memo") which: (i) restated the false, inflated account value contained in the November 2010 SSC Account Statement; and (ii) based upon that inflated account value, identified approximately \$132,000 in unpaid commissions owed by U.D. to defendant SHREYANS DESAI, representing more than 80 percent of U.D.'s actual investment. In the November 2010 Desai Memo, defendant SHREYANS DESAI also stated that after paying commissions (and other deductions), the "net" value of U.D.'s investment was approximately \$309,000.

#### Lulling Investors

19. By letter dated December 1, 2010, and again in a face-to-face meeting on or about December 2, 2010, U.D. told defendant

SHREYANS DESAI that U.D. wanted to close his account and receive the \$309,000 net value of that account, as detailed in the November 2010 Desai Memo. In response, defendant SHREYANS DESAI, then knowing that the bulk of these funds did not, in fact, exist in account number 89157531, sought to forestall U.D. by offering to pay U.D. \$309,000 in two installments of approximately \$183,000 and \$126,000, with the first payment by December 8, 2010.

20. Defendant SHREYANS DESAI did not pay the \$183,000 to U.D. on December 8, 2010, or at any time thereafter.

21. A "Settlement Agreement and Release" was later executed by U.D. and defendant SHREYANS DESAI on or about January 22, 2011. This agreement provided that SSC would pay U.D. a total of \$349,000 in specified increments over a 16 month period (the "Payment Schedule").

22. Defendant SHREYANS DESAI did not adhere to the Payment Schedule. Instead, U.D. received two payments totaling approximately \$60,000 from defendant SHREYANS DESAI through late January, 2011, after which all settlement payments to U.D. ceased.

23. On or about February 7, 2011, investigators with the SEC interviewed defendant SHREYANS DESAI concerning SSC and his activities with SSC.

24. Several days later, in or about mid-February 2011, defendant SHREYANS DESAI met with one or more of the Investors

(but not with U.D.) and offered to return their investment principal if they signed an agreement releasing any claims that s/he might have against SSC (the "Investor Releases"). Defendant SHREYANS DESAI then executed, or caused the execution of, a number of Investor Releases agreements, and repaid to the Investors some or all of the principal amounts given by those Investors to SSC in the aggregate amount of no more than \$70,000.

Losses

25. None of the Investors who executed Investor Releases received the trading profits that defendant SHREYANS DESAI had purportedly generated on their behalf. For example, defendant SHREYANS DESAI never paid A.N. the approximately 65 percent profit represented to A.N. as having already been earned on A.N.'s \$10,000 investment in the July 2010 SSC Statement, or the \$35,000 of income projected for calendar year 2010 on that same statement.

26. Defendant SHREYANS DESAI also did not repay or otherwise return to U.D. the remaining \$90,000 of U.D.'s investment principal. Instead, defendant SHREYANS DESAI retained \$90,000 of U.D.'s total investment of approximately \$150,000, without authorization from U.D.

27. Defendant SHREYANS DESAI also did not repay or otherwise return to N.P. the approximately \$72,500 in commissions paid by N.P. to defendant SHREYANS DESAI on N.P.'s total investment of approximately \$45,400.

28. On or about the dates set forth below, for the purpose of executing the above scheme and artifice, in the District of New Jersey, and elsewhere, defendant

SHREYANS DESAI

did cause to be transmitted in interstate commerce writings, signs, signals, and sounds, that is, he caused the transmission by telefax from New York to New Jersey of documents by or in connection with two Investors to either initiate or conduct activity concerning an investment through SSC, as follows:

<u>Count</u>	<u>Nature/Approx. Date of Wire Transmissions</u>
1	Identification documents for A.N.Z. telefaxed on or about March 24, 2010 from New York to SSC in New Jersey in connection with A.N.'s investment through SSC
2	Letter from R.M. telefaxed on or about May 17, 2010 from New York to SSC in New Jersey in connection with a transaction that R.M. wanted to perform with a portion of the funds R.M.had invested through SSC

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

**COUNT THREE**

(Securities Fraud)

1. Paragraphs 1 through 6 and 8 through 27 of Counts One and Two are hereby realleged and incorporated by reference as through set forth fully herein.

**The Securities Fraud Scheme**

2. From in or about October 2008 to in or about February 2011, in the District of New Jersey, and elsewhere, defendant  
SHREYANS DESAI,  
by use of the means and instrumentalities of interstate commerce, the mails, and facilities of national securities exchanges, directly and indirectly, knowingly and willfully used manipulative and deceptive devices and contrivances in contravention of Title 17, Code of Federal Regulations, Section 240.10b-5 ("Rule 10b-5"), in connection with the purchase and sale of securities by (i) employing devices, schemes, and artifices to defraud members of the investing public; (ii) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (iii) engaging in acts, practices, and a course of business which operated and would operate as a fraud and deceit upon individual investors.

In violation of Title 15, United States Code, Sections 78j(b) and 78ff(a); Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

FORFEITURE ALLEGATION

1. The allegations contained in paragraphs 1 through 28 of Counts One and Two, and paragraphs 1 and 2 of Count Three, of this Superseding Indictment are hereby realleged and incorporated by reference for the purpose of noticing forfeitures pursuant to Title 28, United States Code, Section 2461(c).

2. The United States hereby gives notice to the defendant charged in this Superseding Indictment that, upon conviction of an offense charged therein, the government will seek forfeiture, in accordance with Title 28, United States Code, Section 2461(c), and Title 18, United States Code, Section 981(a)(1)(c), of any and all property, real or personal, that constitutes or is derived from proceeds traceable to the violations of Title 18, United States Code, Sections 1343 and 2; Title 15, United States Code, Sections 78j(b) and 78ff(a); Title 17, Code of Federal Regulations, Section 240.10b-5, as alleged in this Superseding Indictment.


3. If by any act or omission of the defendant, any of the property subject to forfeiture described in paragraph 2 herein:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party,
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property that cannot be



subdivided without difficulty, the United States of America will be entitled to forfeiture of substitute property up to the value of the property described above in paragraph 2, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

A TRUE BILL

  
PAUL J. FISHMAN  
United States Attorney

CASE NUMBER: 12-330 (DMC)

**United States District Court  
District of New Jersey**

**UNITED STATES OF AMERICA**

**v.**

**SHREYANS DESAI**

**SUPERSEDING INDICTMENT**

18 U.S.C. §§ 1343 and 2; 15 U.S.C. §§ 78j(b) and 78ff; and 17 C.F.R. § 240.10b-5

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