

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. **16-20595 CR-GAYLES**
18 U.S.C. § 1343
18 U.S.C. § 982(a)(2)(A)

MAGISTRATE
TURNOFF

UNITED STATES OF AMERICA

vs.

JACK KACHKAR,

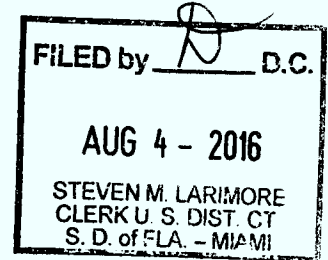
Defendant.

_____ /

INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS



At all times relevant to this indictment:

1. Defendant, **JACK KACHKAR**, served as chairman and chief executive officer (“CEO”) of Inyx, Inc. (“Inyx”) from 2003 to 2007. **KACHKAR** was a Canadian citizen who resided, among other places, in Key Biscayne, Florida.

I. Relevant Entities and Individuals

2. Inyx was a pharmaceutical manufacturing company that maintained corporate offices, among other places, in Miami, Florida. Inyx’s stock was publicly traded on the Nasdaq Over-the-Counter Bulletin Board.

3. Inyx had the following wholly-owned subsidiaries with business operations and pharmaceutical manufacturing facilities:

- Inyx USA, Limited (“Inyx USA”) in Manati, Puerto Rico;
- Inyx Pharma Limited (“Inyx Pharma”) in Runcorn, England; and

- Inyx Europe Limited (“Inyx Europe”), through its subsidiary Ashton Pharmaceutical Limited (“Ashton”), in Ashton-under-Lyne, England.

These subsidiaries will be referred to herein as the “Inyx Subsidiaries,” and together with Inyx, the “Inyx Companies.”

4. Mellon United National Bank (“Mellon Bank”) was a commercial bank and financial institution. Mellon Bank’s accounts were insured by the Federal Deposit Insurance Corporation (“FDIC”). **JACK KACHKAR** maintained his personal accounts and Inyx’s corporate accounts at Mellon Bank in Miami, Florida.

5. HSBC Bank USA, N.A. (“HSBC Bank”) was a commercial bank and financial institution. HSBC Bank’s accounts were insured by the FDIC. **JACK KACHKAR** maintained Inyx’s corporate accounts at HSBC Bank in Miami, Florida.

6. Westernbank Puerto Rico (“Westernbank”) was a commercial bank and financial institution. Westernbank’s accounts were insured by the FDIC.

7. Westernbank Business Credit (“WBC”) was a division of Westernbank that provided asset-based loans to businesses. An asset-based loan is a secured business loan in which the borrower pledges, as collateral for loans, the assets of the borrower’s business.

8. Inyx Employee A was the President and Director of Inyx.

9. Inyx Employee B was the Executive Vice President and Chief Scientific Officer of Inyx.

10. Pharmaceutical Company A was a pharmaceutical company headquartered in Solna, Sweden.

11. Pharmaceutical Company B was a pharmaceutical company headquartered in Hyderabad, India.

12. Pharmaceutical Company C was a pharmaceutical company headquartered in Cambridge, United Kingdom.

13. Pharmaceutical Company D was a pharmaceutical company headquartered in Bagsvaerd, Denmark.

14. Pharmaceutical Company E was a pharmaceutical company headquartered in Bristol, Tennessee.

15. Pharmaceutical Company F was a pharmaceutical company headquartered in Brussels, Belgium.

16. Pharmaceutical Company G was a pharmaceutical company headquartered in Straffordshire, United Kingdom.

II. The Financing Arrangement between Westernbank and Inyx

17. Beginning in early 2005, Westernbank entered into a series of agreements to provide loans and lines of credit to the Inyx Companies in exchange for a security interest in all of the Inyx Companies' assets, including their accounts receivable (together, the "loan agreements," described in more detail below). The term "accounts receivable" in the loan agreements referred to monies owed to one of the Inyx Companies from a customer, as evidenced by a customer invoice.

18. Westernbank agreed to provide funding to the Inyx Companies based on a percentage of the value of each type of asset. For example, Westernbank agreed to advance funds equal to eighty-five percent of the value of accounts receivable.

The Process for Funding Accounts Receivable under the Loan Agreements

19. The loan agreements provided that Westernbank would only advance funds for accounts receivable due and owing the Inyx Companies based on valid customer invoices arising

from an “actual and bona fide” sale and delivery of goods or services to a customer of the Inyx Companies. On a regular basis, Inyx submitted documents to Westernbank that Inyx represented as valid invoices purportedly sent to the Inyx Companies’ customers requesting payment for goods and services provided. Inyx also submitted assignment sheets with the customer invoices transferring the right to receive payment on these invoices from the Inyx Companies to Westernbank.

20. The loan agreements required the Inyx Companies to instruct their customers to make all payments on customer invoices directly to a bank account controlled by Westernbank, known as a “lock box.” Westernbank would use customer payments sent to the lock box to pay down the loans made to the Inyx Companies.

21. The loan agreements further provided that only invoices less than 120 days’ old were eligible as collateral for loans. These agreements required Inyx to submit accounts receivable reports, also known as “AR aging reports,” to Westernbank that set forth the outstanding, unpaid customer invoices owed to Westernbank.

22. Based on invoices submitted and AR aging reports, Westernbank would determine the amount of funds available to loan to the Inyx Companies. Depending on availability, the Inyx Companies would make periodic requests for funding and Westernbank would wire funds to Inyx’s corporate bank account in Miami, Florida.

The Loan History

23. In March 2005, Westernbank entered into a Loan and Security Agreement with Inyx and Inyx USA (the “USA Loan Agreement”) under which Westernbank agreed to lend up to \$46 million, which was secured by collateral of \$10 million from accounts receivable and \$36 million from all other assets (e.g., real estate, machinery, and equipment). **JACK KACHKAR**

signed the USA Loan Agreement on behalf of Inyx and Inyx USA. Inyx USA used the funds from the USA Loan Agreement to acquire and operate a manufacturing facility in Manati, Puerto Rico. Subsequently, Inyx Pharma became a co-borrower under the USA Loan Agreement and Westernbank obtained a security interest in all of the assets of Inyx Pharma.

24. In August 2005, Westernbank entered into a Loan and Security Agreement with Inyx and Inyx Europe (the "UK Loan Agreement") under which Westernbank agreed to lend up to \$36.5 million, which was secured by collateral of \$10 million from accounts receivable and \$26.5 million from all other assets (e.g., real estate, machinery, and equipment). **JACK KACHKAR** signed the UK Loan Agreement on behalf of Inyx and Inyx Europe. Inyx Europe used the funds from the UK Loan Agreement to acquire and operate a manufacturing facility in Ashton-under-Lyne, England.

25. By late 2005, Westernbank had lent the full \$82.5 million available under the USA Loan Agreement and UK Loan Agreement to the Inyx Companies.

26. Starting around November 2005, Inyx executives requested that Westernbank increase the loan limits for accounts receivable under the agreements. From then until around June 2007, Westernbank periodically increased these loan limits. As a result of the increased loan limits, Inyx executives requested and Westernbank provided additional advances of funds to the Inyx Companies.

27. By June 2007, the amount of Westernbank's loan to the Inyx Companies had increased to \$142.5 million, secured mostly by purported accounts receivable of the Inyx Companies.

28. In or around late June 2007, Westernbank declared the Inyx loan in default. Westernbank suffered losses exceeding \$100 million on these loans triggering a series of events

that led to Westernbank's insolvency and ultimate collapse. At the time of Westernbank's collapse, Westernbank was one of the largest banks in Puerto Rico.

COUNTS 1 – 8
Wire Fraud Affecting a Financial Institution
(18 U.S.C. § 1343)

29. Paragraphs 1 through 28 of the General Allegations section of this Indictment are realleged and incorporated herein by reference.

30. From in or around 2005, through in or around June 2007, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

JACK KACHKAR,

did knowingly, and with intent to defraud, devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, and did knowingly transmit and cause to be transmitted, by means of wire communication in interstate and foreign commerce, certain writings, signs, signals, pictures and sounds, all affecting a financial institution, for the purpose of executing the scheme and artifice.

PURPOSE OF THE SCHEME AND ARTIFICE

31. It was the purpose of the scheme and artifice for the defendant to unjustly enrich himself by (a) causing false and fraudulent customer invoices to be submitted as collateral for loans from Westernbank; (b) causing customers to divert payments on invoices to the Inyx Companies' bank accounts instead of the Westernbank lock box account; (c) making false and fraudulent representations to Westernbank executives concerning the repayment of the

Westernbank loans and the value of assets pledged as a guarantee for the loans; and (d) misappropriating and embezzling the proceeds from the fraud for his personal use and benefit.

THE SCHEME AND ARTIFICE

The manner and means by which the defendant sought to accomplish the scheme and artifice to defraud included, among other things, the following:

The Fraudulent Invoice Scheme

32. In or around 2005, **JACK KACHKAR** instructed Inyx's chief financial officer ("CFO") to generate "prebilled" invoices for certain customers of the Inyx Companies for submission to Westernbank. A "prebilled" invoice was an invoice for purported future work based on an agreement with the customer. Despite requests by Inyx's CFO, **KACHKAR** failed to provide Inyx's CFO with documentation of agreements with the customers for the prebilled invoices.

33. In or around December 2005, **JACK KACHKAR** fired an Inyx employee who raised concerns in an email to **KACHKAR** about "potentially . . . fraud[ulent]" actions by Inyx to receive financing from Westernbank.

34. In or around 2006, **JACK KACHKAR** instructed Inyx Employee A and Inyx Employee B to create invoices for work that the Inyx Subsidiaries might generate in the future (the "hypothetical invoices"). At the time, the customer had not agreed to purchase the goods or services set forth in the hypothetical invoices that Kachkar caused to be created. **KACHKAR** falsely and fraudulently represented to Inyx Employee A and Inyx Employee B that Westernbank had agreed to provide financing based on these hypothetical invoices.

35. Based on instructions from **JACK KACHKAR**, Inyx Employee A and Inyx Employee B caused Inyx Pharma and Ashton to generate tens of millions of dollars' worth of

hypothetical invoices relating to numerous pharmaceutical companies, including, among others, Pharmaceutical Companies A, B, C, D, and E, which had not agreed to purchase the goods and services listed in the hypothetical invoices.

36. **JACK KACHKAR** caused Inyx personnel, including Inyx Employees A and B, to submit these hypothetical invoices to Westernbank as purportedly valid and payable invoices under the loan agreements. Each of these hypothetical invoices included a customer address as if it had been sent to the customer and bore a due date as if it were payable on a specific date.

37. In or around November 2006, **JACK KACHKAR** falsely and fraudulently represented to WBC's president that all of the hypothetical invoices were "good" and that the Inyx Companies would be collecting monies from its customers based on the invoices.

38. **JACK KACHKAR** caused the false and fraudulent invoices to be submitted to Westernbank to create the appearance of valid collateral to support additional loan advances from Westernbank under the loan agreements. Based on these invoices, Westernbank advanced tens of millions of dollars to Inyx via wire transfer payments from Westernbank in Puerto Rico to Inyx's bank accounts in Miami, Florida.

The Cash Diversion Scheme

39. In or around December 2006, **JACK KACHKAR** directed Inyx Employee A to instruct certain customers of the Inyx Companies to direct their invoice payments to the Inyx Companies' bank accounts instead of the Westernbank lock box account as required by the loan agreements. Inyx had previously assigned the collection rights for these invoices to Westernbank and directed the customers to remit payment to the lock box account. **KACHKAR** falsely and fraudulently represented to Inyx Employee A that Westernbank was aware of and had agreed to this diversion of funds to the Inyx Companies' accounts.

40. Relying on **JACK KACHKAR's** instructions, Inyx Employee A instructed Pharmaceutical Companies F and G to divert payments on invoices into the Inyx Companies' bank accounts instead of the Westernbank lock box account. As a result, these pharmaceutical companies wired millions of dollars' worth of payments into the Inyx Companies' bank accounts that they would otherwise have paid to the Westernbank lock box account.

Two Sets of Accounts Receivable

41. **JACK KACHKAR** caused the Inyx Companies to maintain two sets of AR aging reports, reflecting outstanding customer invoices. Inyx submitted bogus AR aging reports to Westernbank that included invoices generated from the fraudulent invoice scheme and invoices where payment had fraudulently been diverted to the Inyx Companies in the cash diversion scheme. Meanwhile, the Inyx Subsidiaries maintained internal AR aging reports without these invoices.

42. The bogus AR aging reports that **JACK KACHKAR** caused to be submitted to Westernbank had an outstanding invoice amount owed to Westernbank vastly greater than the Inyx Companies' internal AR aging reports. By March 2007, the bogus AR aging reports provided to Westernbank falsely and fraudulently overstated the true value of Westernbank's accounts receivable collateral by over \$87 million.

The Lulling Scheme

43. As Westernbank began raising concerns about the loans to the Inyx Companies, **JACK KACHKAR** defrauded Westernbank by repeatedly misrepresenting and causing others to misrepresent to Westernbank that an outside lender had agreed to provide funding sufficient to pay off the full amount of the loans to the Inyx Companies. Contemporaneous with these misrepresentations, **KACHKAR** requested and caused others to request additional funding from

Westernbank. Based on **KACHKAR's** false and fraudulent representations, Westernbank continued funding Inyx and delayed certain audits of Inyx.

44. In or around October 2006, **JACK KACHKAR** falsely represented and caused others to falsely represent to WBC executives that a Swiss financial institution had agreed to provide funding sufficient to pay off the entire Westernbank loan by the middle of November 2006. In the month of October 2006, relying on **KACHKAR's** false representation, Westernbank provided approximately \$9.8 million in additional funds to Inyx.

45. In or around November 2006, **JACK KACHKAR** falsely represented and caused others to falsely represent to WBC executives that an American financial institution had agreed to provide funding sufficient to pay off the entire Westernbank loan. In the month of November 2006, relying on **KACHKAR's** false representation, Westernbank provided approximately \$7.9 million in additional funds to Inyx.

46. On or about February 26, 2007, **JACK KACHKAR** caused a fraudulent and forged term sheet to be faxed to Westernbank stating that a Norwegian financial institution had agreed to provide funding sufficient to pay off the entire Westernbank loan. One day later, relying on **KACHKAR's** false representation, Westernbank provided approximately \$1.85 million in additional funds to Inyx.

47. In or around April 2007, **JACK KACHKAR** caused a purported agreement to be sent to Westernbank under which the son of Muammar Gaddafi (Libya's leader) had allegedly agreed to provide funding sufficient to pay off the entire Westernbank loan.

Overstated Assets

48. In or around May 2007, at an in-person meeting with Westernbank executives, **JACK KACHKAR** made a number of fraudulent representations that Westernbank later

determined to be false. **KACHKAR** falsely and fraudulently represented that the \$80 million in ineligible accounts receivable was valid collateral and would be repaid. **KACHKAR** also falsely and fraudulently overstated the value of additional assets (including a copper mine purportedly worth approximately \$1 billion and real estate properties in Miami) that **KACHKAR** promised to pledge to Westernbank to fill the collateral gap. Finally, **KACHKAR** falsely and fraudulently represented that an outside lender would provide financing to pay off Westernbank's loan by the end of June 2007.

49. On or about June 6, 2007, based on the false and fraudulent representations of **JACK KACHKAR**, Westernbank wired approximately \$613,669.25 in additional funds to an Inyx bank account in Miami.

Kachkar's Theft of Loan Proceeds

50. From 2005 through 2007, **JACK KACHKAR** embezzled and misappropriated monies sent by Westernbank by transferring approximately \$25 million in funds from the Inyx accounts to **KACHKAR's** personal account and by transferring approximately \$9.6 million in funds from the Inyx account to a bank account in the name of **KACHKAR's** friend. **KACHKAR** used the proceeds from the scheme to pay for, among other things, multiple high-end real estate properties in Miami, luxury vehicles, and a private jet.

USE OF THE WIRES

51. On or about the dates specified in each count below, the defendant, **JACK KACHKAR**, for the purpose of executing the aforesaid scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing the pretenses, representations, and promises were false and fraudulent when made, did knowingly cause to be transmitted in interstate and foreign commerce, certain

writings, signs, signals, pictures and sounds, all affecting a financial institution, that is, wire transfers, as more particularly described in each count below:

COUNT	APPROX. DATE	DESCRIPTION OF WIRE TRANSMISSION
1	May 15, 2006	Wire transfer of \$825,000 from Westernbank in Puerto Rico to Inyx's Mellon Bank account in Miami, Florida
2	August 17, 2006	Wire transfer of \$1,100,000 from Westernbank in Puerto Rico to Inyx's Mellon Bank account in Miami, Florida
3	September 21, 2006	Wire transfer of \$1,769,000 from Westernbank in Puerto Rico to Inyx's Mellon Bank account in Miami, Florida
4	October 23, 2006	Wire transfer of \$480,000 from Westernbank in Puerto Rico to Inyx's Mellon Bank account in Miami, Florida
5	October 25, 2006	Wire transfer of \$1,110,000 from Westernbank in Puerto Rico to Inyx's Mellon Bank account in Miami, Florida
6	November 7, 2006	Wire transfer of \$575,000 from Westernbank in Puerto Rico to Inyx's Mellon Bank account in Miami, Florida
7	February 27, 2007	Wire transfers of \$1,850,000 from Westernbank in Puerto Rico to Inyx's Mellon Bank account in Miami, Florida
8	June 6, 2007	Wire transfer of \$613,669.25 from Westernbank in Puerto Rico to Inyx's HSBC account in Miami, Florida

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

FORFEITURE ALLEGATIONS
(18 U.S.C. § 982(a)(2)(A))

1. The allegations in Counts 1 through 8 of this Indictment are re-alleged and by this reference fully incorporated herein for the purpose of alleging criminal forfeiture to the United States of America of certain property in which the defendant, **JACK KACHKAR**, has an interest.

2. Upon conviction of a violation of Title 18, United States Code, Section 1343, the defendant shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 982(a)(2)(A), any property constituting, or derived from, proceeds the defendant obtained directly or indirectly, as the result of such violation.

3. The property which is subject to criminal forfeiture includes, but is not limited to, the following: The real property, together with all appurtenances, improvements, attachments thereon and/or therein, which are known and numbered as follows:

- (a) 1435 Brickell Avenue, Unit 3510, Miami, FL 33131-3407;
- (b) 1425 Brickell Avenue, Unit 1A, Miami, FL 33131-3400;
- (c) 445 Grand Bay Drive, Unit 1209, Key Biscayne, FL 33149-1912; and
- (d) 610 S. Mashta Drive, Key Biscayne, FL 33149-1735.

4. If any of the property described above in paragraph 2 of these Forfeiture Allegations, as a result of any act or omission of the defendant:

- (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 which cannot be divided without difficulty,


the United States of America shall be entitled to criminal forfeiture of any other property of the defendant, pursuant to Title 21, United States Code, Section 853(p), up to the value of the property described above in paragraph 3 of these Forfeiture Allegations, as applicable.

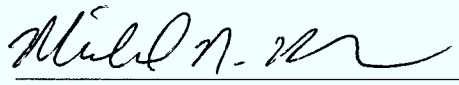
All pursuant to Title 18, United States Code, Section 982(a)(2)(A), and the procedures set forth at Title 21, United States Code, Section 853, as made applicable through Title 18, United States Code, Section 982(b).

A TRUE BILL 

FOREPERSON 


WIFREDO A. FERRER
UNITED STATES ATTORNEY


MICHAEL N. BERGER
Trial Attorney, Fraud Section
Department of Justice
Assistant United States Attorney


B- JOHN MICHELICH
Senior Litigation Counsel, Fraud Section
Department of Justice

UNITED STATES OF AMERICA

CASE NO. _____

vs.

CERTIFICATE OF TRIAL ATTORNEY*

JACK KACHKAR,

Defendant.

_____ /

Superseding Case Information:

Court Division: (Select One)

X Miami Key West
 FTL WPB FTP

New Defendant(s) Yes No
Number of New Defendants
Total number of counts

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.
3. Interpreter: (Yes or No) No
List language and/or dialect _____
4. This case will take 14-15 days for the parties to try.
5. Please check appropriate category and type of offense listed below:

(Check only one)	(Check only one)
I 0 to 5 days <u> </u>	Petty <u> </u>
II 6 to 10 days <u> </u>	Minor <u> </u>
III 11 to 20 days <u> X </u>	Misdem. <u> </u>
IV 21 to 60 days <u> </u>	Felony <u> X </u>
V 61 days and over <u> </u>	

6. Has this case been previously filed in this District Court? (Yes or No) NO

If yes: Judge: Case No. _____

(Attach copy of dispositive order) Has a complaint been filed in this matter? (Yes or No) YES

If yes: Magistrate Case No. _____

Related Miscellaneous numbers: _____

Defendant(s) in federal custody as of _____

Defendant(s) in state custody as of _____

Rule 20 from the _____ District of _____

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? Yes X No

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? Yes X No


MICHAEL N. BERGER
ASSISTANT UNITED STATES ATTORNEY
Court ID No. 5501557

*Penalty Sheet(s) attached

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name **JACK KACHKAR**

Case No:

Counts #: 1-8

Wire Fraud Affecting a Financial Institution

Title 18, United States Code, Section 1343

* **Max. Penalty:** Thirty (30) Years' Imprisonment as to Each Count

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**