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F.#2012R00484

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
U.S. DISTRICT COURT E.D.N.Y.

FILED

CLERK'S OFFICE

★ APR 25 2012 ★

UNITED STATES OF AMERICA **BROOKLYN OFFICE** I N F O R M A T I O N

- against -

Cr. No. 12-224 (JBW)
(T. 18, U.S.C., §§ 371
and 3551 et seq.)

GARTH PETERSON,

Defendant.

- - - - -X

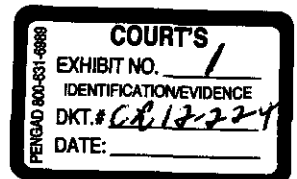
THE UNITED STATES CHARGES:

At all times relevant to this information, unless otherwise stated:

The Defendant and His Employer

1. The defendant GARTH PETERSON was a United States citizen. From 2002 to 2008, PETERSON worked for Morgan Stanley and held various positions, including Managing Director in charge of the Morgan Stanley Real Estate Group's ("MSRE") Shanghai office in the People's Republic of China ("China").

2. Morgan Stanley was a global financial-services firm with more than 61,000 employees worldwide. Its shares were listed on the New York Stock Exchange. Morgan Stanley had a class of securities registered pursuant to Section 12 of the Securities and Exchange Act of 1934 (15 U.S.C. § 78) and was required to file reports with the Securities and Exchange Commission under Section 15(d) of the Exchange Act (15 U.S.C. §



78o(d)). Accordingly, Morgan Stanley was an "issuer" within the meaning of the Foreign Corrupt Practices Act.

3. Morgan Stanley, through MSRE, created and managed real-estate funds (the "MSREFs") for institutional investors and high-net-worth individuals. The MSREFs were organized as limited partnerships in Delaware.

The Foreign Corrupt Practices Act

4. Congress enacted the Foreign Corrupt Practices Act of 1977, as amended, Title 15, United States Code, Section 78dd-1 et seq. ("FCPA"), to prohibit covered persons and entities from acting corruptly in furtherance of an offer, promise, authorization, or payment of money or anything of value to a foreign government official for the purposes of securing any improper advantage, or assisting in obtaining or retaining business for, or directing business to, any person. Persons and entities covered by the FCPA included officers, directors, employees, or shareholders of an "issuer" acting on the issuer's behalf, and "domestic concerns," including citizens, residents, and nationals of the United States.

5. The FCPA also required issuers, including Morgan Stanley, to maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions were executed in accordance with management's general or specific authorization; (ii) transactions were

recorded as necessary to (A) permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (B) maintain accountability for assets; (iii) access to assets was permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets was compared with the existing assets at reasonable intervals, and appropriate action was taken with respect to any differences. 15 U.S.C. § 78m(b)(2)(B).

6. The FCPA specifically prohibited any person from knowingly and willfully circumventing or failing to implement the required system of internal accounting controls or knowingly and willfully falsifying any book, record, or account that issuers were required to keep. 15 U.S.C. §§ 78m(b)(5) and 78ff(a).

Additional Relevant Persons and Entities

7. The city of Shanghai, China, is composed of several governmental districts, including the Luwan District. In December 1994, the Luwan District government incorporated a state-owned, limited-liability corporation, Shanghai Yongye Enterprise (Group) Co. Ltd. ("Yongye"), to operate as the Luwan District government's real-estate-development arm. The Luwan District government owned 100 percent of Yongye's shares. In turn, on the Luwan District government's behalf, Yongye owned much of the land in prime areas in the Luwan District. Among

other things, Yongye also purchased small shares of joint ventures with other investors, such as the MSREFs, and assisted in developing the land in the Luwan District.

8. Because, among other factors, the Luwan District government incorporated and owned Yongye to purchase, hold, manage, and sell the Luwan District government's real-estate investments, and to encourage, facilitate, and coordinate outside investment in the Luwan District, Yongye was an "instrumentality" of the Luwan District government within the meaning of the FCPA.

9. "Chinese Official 1," whose identity is known to the United States, was a senior executive of Yongye from 1995 to late 2006 and previously held a different position as a public official with the Luwan District government. PETERSON and Chinese Official 1 had a close personal relationship before PETERSON joined Morgan Stanley.

10. As a senior executive of Yongye, Chinese Official 1 exercised control over Yongye and had the authority to make certain types of investment decisions for Yongye. As such, Chinese Official 1 was a "foreign official" as that term is defined in the FCPA, 15 U.S.C. § 78dd-1(f)(1).

11. "Canadian Attorney 1," whose identity is known to the United States, was a Canadian citizen and partner with a Canadian law firm that maintained offices in China and elsewhere.

12. Asiasphere Holdings Limited ("Asiasphere") was a shell company incorporated in the British Virgin Islands. Beginning on or before January 1, 2006, Chinese Official 1 owned 47 percent of Asiasphere. During the same period, Canadian Attorney 1 and PETERSON indirectly owned, through another business entity that they controlled, the remaining 53 percent of Asiasphere.

Morgan Stanley's Compliance Program and Internal Controls

13. Morgan Stanley maintained an FCPA compliance program that both frequently trained Morgan Stanley employees and imposed a payment-approval process that was meant to ensure, among other things, that transactions were conducted in accordance with management's authorization and to prevent improper payments, including the transfer of things of value to officials of foreign governments and foreign government instrumentalities.

14. Between 2002 and 2008, Morgan Stanley employed over 500 dedicated compliance officers, and its compliance department had direct lines to Morgan Stanley's Board of Directors and regularly reported through the Chief Legal Officer to the Chief Executive Officer and senior management committees. Morgan Stanley employed dedicated anti-corruption specialists who were responsible for drafting and maintaining policies and procedures; providing anti-corruption training to Morgan Stanley

employees; coordinating with business units firmwide to provide anti-corruption-related advisory services; evaluating the retention of agents; pre-clearing expenses involving non-U.S. government officials; and working with outside counsel to conduct due diligence into potential business partners. Morgan Stanley's compliance personnel regularly surveilled and monitored client and employee transactions; randomly audited selected personnel in high-risk areas; regularly audited and tested Morgan Stanley's business units; and completed additional anti-corruption initiatives by, for instance, aggregating and evaluating expense reports to attempt to detect potential illicit payments. Morgan Stanley also employed regional compliance officers who specialized in particular regions, including China, in order to evaluate region-specific risks.

15. Morgan Stanley provided its employees with a toll-free compliance hotline that was available 24 hours a day, 7 days a week. The hotline was staffed to field calls in every major language, including Chinese.

16. Morgan Stanley required each of its employees annually to certify adherence to Morgan Stanley's Code of Conduct, which included a section specifically addressing corruption risks and activities that would violate the FCPA. Morgan Stanley's standing anti-corruption policy also addressed the FCPA and risks associated with the giving of gifts, business

entertainment, travel, lodging, meals, charitable contributions, and employment.

17. Morgan Stanley's FCPA compliance program included live training presentations, web-based training, and additional FCPA reminders. Between 2000 and 2008, Morgan Stanley held at least 54 trainings for various groups of Asia-based employees on anti-corruption policies, including the FCPA.

18. Between 2002 to 2008, Morgan Stanley trained PETERSON on his duties under the FCPA at least seven times, including providing live and web-based training and a teleconference training session conducted by Morgan Stanley's Global Head of Litigation and Global Head of Morgan Stanley's Anti-Corruption Group. Among other things, Morgan Stanley specifically trained PETERSON that employees of Chinese state-owned entities could be government officials under the FCPA.

19. Morgan Stanley also provided PETERSON at least 35 FCPA compliance reminders. These reminders included FCPA-specific distributions, such as written training materials that PETERSON kept in his office; circulations and reminders of Morgan Stanley's Code of Conduct, which included policies that directly addressed the FCPA; various reminders concerning Morgan Stanley's policies on gift-giving and entertainment; the circulation of Morgan Stanley's Global Anti-Bribery Policy; guidance on the

engagement of consultants; and policies addressing specific high-risk events, including the Beijing Olympics.

20. Morgan Stanley required PETERSON on multiple occasions to certify his compliance with the FCPA and kept those written certifications in PETERSON's permanent employment record.

21. Morgan Stanley also maintained a substantial system of controls to detect and prevent improper payments. These controls required multiple employees to be involved in the approval of any payments above the specific amounts that were mandated in the various contracts between Morgan Stanley and outside companies or individuals. Payments above these amounts could not be made until the following procedures, among others, were completed: an asset manager or acquisition-team member familiar with project activities drafted a contract for the payment; a junior asset manager or junior acquisition-team manager initiated the payment process and sought approval; and an officer-level asset manager or acquisition-team manager with the title of vice-president or above had approved the payment.

22. In instances where MSREF funds were required to make a payment because the project company did not have funds sufficient to make the payment, MSRE required the following (in addition to those steps identified above): a funding request from a junior asset manager to an investment controller; the preparation of a funding-request memorandum by an investment

controller; circulation of the funding-request memorandum to a member of the Financial Control Group; and the Financial Control Group's subsequent approval.

23. Morgan Stanley continually evaluated and improved its compliance program and internal controls. For instance, beginning in 2007, Morgan Stanley engaged in risk-based FCPA auditing intended to detect transactions, payments, and partnerships that suggested increased risks for Morgan Stanley to violate the FCPA. Morgan Stanley checked the efficacy of its controls through various systems, including internal audits and desk reviews that included meetings between employees and compliance personnel to discuss anti-corruption risks. Morgan Stanley compliance personnel regularly reviewed and updated Morgan Stanley's compliance program and policies to reflect regulatory developments and changing risk. Morgan Stanley, in conjunction with outside legal counsel, also annually conducted a formal review of each of its anti-corruption policies.

The Corruption Scheme

Morgan Stanley's Due Diligence Efforts

24. When PETERSON worked at Morgan Stanley, Chinese Official 1 introduced PETERSON and Morgan Stanley to numerous commercial and residential real-estate-development opportunities in Shanghai, including opportunities involving Shanghai-government properties that Yongye owned or developed.

25. During the years preceding the offense conduct, Morgan Stanley engaged in a number of transactions involving Yongye. As PETERSON was aware, in connection with those transactions, Morgan Stanley conducted due diligence into Yongye, Yongye's principals, and two legitimate offshore entities associated with Yongye before 2006. Consistent with Morgan Stanley's established diligence practices, this due diligence included reviewing Chinese government records concerning Yongye; speaking with sources familiar with the Shanghai real-estate market; checking Yongye's payment records and credit references; reviewing litigation records concerning Yongye; conducting a site visit to Yongye's offices; searching media sources concerning Yongye; making a pretextual phone call to Yongye's offices; and running a criminal background check on Yongye's principals.

26. As part of its due diligence, Morgan Stanley learned that Yongye legitimately conducted some of its business through an offshore, Hong Kong holding company called "YYI" ("YYI-HK"). Among other forms of verification, Morgan Stanley previously obtained from Yongye a letter signed by Chinese Official 1, in which Chinese Official 1 designated an account into which Morgan Stanley could pay money due to Yongye.

27. In connection with an earlier project, Yongye had also required Morgan Stanley to pay "YYI" through a bank account in the British Virgin Islands ("BVI"). The bank account was

opened and held by a BVI holding company known as YYI-BVI. As a result, "YY" and "YYI" became Morgan Stanley employees' shorthand terms used to refer to Yongye.

28. Morgan Stanley's due diligence into YYI-BVI included, among other things, using an international law firm to request and review 50 documents from Canadian Attorney 1, who was YYI-BVI's counsel; to interview Canadian Attorney 1, in Canadian Attorney 1's role as YYI-BVI's outside counsel, regarding the documents and other issues; and to interview YYI-BVI's management, including Chinese Official 1, regarding the documents and other issues. At the time, Canadian Attorney 1 represented YYI-BVI as YYI-BVI's attorney, and Chinese Official 1 represented YYI-BVI in Chinese Official 1's capacity as a Yongye senior executive.

Project Cavity

29. In 2004, in a project named "Project Cavity," a MSREF offered to purchase one tower ("Tower Two") of a building initially purchased in 2002 by a group of investors that included Yongye and MSREF as minority investors.

30. As of October 2004, Yongye had agreed to sell Tower Two to another bank, but the sale had not been finalized. Meanwhile, MSREF offered to purchase on an expedited basis the entirety of Tower Two from the group of investors. To consummate the purchase, MSREF was required to obtain consent from Tower

Two's original owners. Chinese Official 1 represented Yongye in connection with Project Cavity, and MSREF needed Chinese Official 1's consent to consummate the sale because Yongye owned an interest in Tower Two and played a role in purchasing, holding, managing, and selling the Luwan District government's real-estate investments, and in encouraging, facilitating, and coordinating outside investment in the Luwan District. On or about November 10, 2004, Chinese Official 1 agreed on behalf of Yongye and the Luwan District government to sell Tower Two to MSREF.

31. In a November 2004 email to his superiors, PETERSON wrote, "[Chinese Official 1] has really gone out of his way to help us on this deal. I hope people understand that very clearly." One of PETERSON's superiors at Morgan Stanley described the acquisition of Cavity as a "huge win for the [Morgan Stanley] team."

32. In a January 2005 email to his Morgan Stanley colleagues, PETERSON described Yongye's role in Project Cavity, writing "we got this deal (at a cheaper price than we ultimately were willing to pay) in the first place because of YY"

33. Yongye and Chinese Official 1, in his capacity as a foreign official, helped MSREF obtain government approvals necessary to complete the purchase of Tower Two. In a September 2005 email to his Morgan Stanley colleagues, PETERSON wrote, "They saved us when we closed the deal.... [Chinese Official 1]

helped us get the [Chinese State Administration of Foreign Exchange] approval, otherwise we would not have been able to close the deal."

34. As Project Cavity was closed, Morgan Stanley considered allowing Yongye to purchase a portion of Tower Two, in an effort to encourage Yongye to work with Morgan Stanley in the future and to solidify Morgan Stanley's relationship with Yongye.

35. PETERSON encouraged Morgan Stanley to allow Yongye to co-invest in Tower Two. In late 2005, to encourage MSRE to sell a stake in Tower Two to Yongye, PETERSON reminded his Morgan Stanley colleagues, "YY gave us this deal. . . . So we owe them a favor relating to this deal." PETERSON intended at the time to give the "favor" to Chinese Official 1 and not Yongye. PETERSON knew at the time that Chinese Official 1, rather than the Luwan District government, would personally invest in Tower Two.

PETERSON's Efforts to Evade Morgan Stanley's Internal Controls

36. Without the knowledge or consent of his superiors at Morgan Stanley, PETERSON sought to compensate Chinese Official 1, while Chinese Official 1 was still a government official, for Chinese Official 1's assistance to Morgan Stanley and PETERSON in Project Cavity. In particular, in 2006, PETERSON arranged for Chinese Official 1 personally to purchase a near six-percent stake in Tower Two at MSRE's lower, 2004 basis rather than the current, 2006 price.

37. While PETERSON knew that Chinese Official 1 was personally investing in Tower Two, PETERSON concealed Chinese Official 1's personal investment from Morgan Stanley. As a result of PETERSON's actions, others within Morgan Stanley falsely believed that, consistent with Morgan Stanley's internal controls and the desire to foster co-investment with Yongye, Yongye itself was investing in Tower Two.

38. To make this investment, PETERSON and Canadian Attorney 1 purchased Asiasphere. PETERSON and Canadian Attorney 1 then falsely represented to others within Morgan Stanley that Asiasphere was an offshore investment vehicle for Yongye, similar to YYI-BVI and YYI-HK. Unbeknownst to Morgan Stanley, Yongye was not an Asiasphere shareholder; rather, PETERSON, Canadian Attorney 1, and Chinese Official 1 were Asiasphere shareholders.

39. In an 18-month period, PETERSON and Canadian Attorney 1 represented to Morgan Stanley numerous times that Yongye itself was investing in Tower Two through Asiasphere. PETERSON and Canadian Attorney 1 made these misrepresentations both during Morgan Stanley's due diligence into Asiasphere and after that due diligence had been completed. PETERSON made and caused to be made these misrepresentations to others within Morgan Stanley, while knowing that Morgan Stanley previously had completed extensive due diligence on Yongye and entities

affiliated with Yongye in connection with other investments involving Morgan Stanley and Yongye.

40. PETERSON used Morgan Stanley's past, extensive due diligence to benefit his own interests and to act contrary to Morgan Stanley's interests. Among other things, and in addition to the numerous direct misrepresentations that PETERSON made concerning Asiasphere's ownership and Yongye's investment in Project Cavity, Project Cavity's Amended and Restated Shareholder Agreement defined "Asiasphere" as "Asiasphere Holdings Limited, a company incorporated and existing under the laws of the British Virgin Islands ('YY' [])." ."

41. In March 2006, PETERSON's misrepresentations culminated in PETERSON, Canadian Attorney 1, and Chinese Official 1's purchase of a 12 percent interest in Tower Two through Asiasphere. Chinese Official 1, known to Morgan Stanley as a Yongye senior executive, signed the shareholder agreement on Asiasphere's behalf. Chinese Official 1's 47 percent ownership interest in Asiasphere, in March 2006, gave Chinese Official 1 a nearly 6 percent stake in the partnership that owned Tower Two.

42. By 2006, Cavity had appreciated significantly and, as a result of Chinese Official 1's secret purchase in 2006 of a near six-percent stake in Tower Two at 2004 prices, Chinese Official 1 had personally realized an immediate paper profit of approximately \$2.88 million. From Chinese Official 1's 2006

purchase to the present, the building's value has increased, thereby increasing the overall value of Chinese Official 1's interest to more than \$2.88 million. Moreover, as part of the shareholder agreement by which Asiasphere purchased a portion of Tower Two, Chinese Official 1, PETERSON, and Canadian Attorney 1 have periodically received partial distributions of Asiasphere's equity in Tower Two.

43. After the 2006 transaction, PETERSON and his co-conspirators continued to falsely represent to Morgan Stanley that Asiasphere was 100 percent owned by Yongye.

CONSPIRACY TO CIRCUMVENT INTERNAL CONTROLS

(18 U.S.C. § 371)

44. In or about and between October 2004 and December 2007, within the Southern District of New York and elsewhere, the defendant GARTH PETERSON, together with others, did knowingly and willfully conspire to circumvent the system of internal accounting controls of Morgan Stanley and Morgan Stanley Real Estate, contrary to Title 15, United States Code, Sections 78m(b)(5) and 78ff(a).

45. In furtherance of the conspiracy and to effect its objects, within the Southern District of New York and elsewhere, the defendant GARTH PETERSON, together with others, committed and caused to be committed, among others, the following:

OVERT ACTS

a. On or about October 28, 2004, PETERSON sent an email to several Morgan Stanley employees in which he explained that Yongye, and not Chinese Official 1, would be acquiring a 12-percent stake in Project Cavity, falsely writing "[j]ust to be clear, [Chinese Official 1] will not 'acquire another 4.5% of shares' from MS. It's Yong Ye"

b. On or about March 5, 2005, PETERSON sent an email in response to an inquiry from a Morgan Stanley superior in which PETERSON falsely represented that Yongye would be acquiring a 12 percent ownership interest in Tower Two.

c. On or about November 10, 2005, PETERSON sent an email to Canadian Attorney 1, copying another Morgan Stanley employee, in which he falsely wrote that "[w]e will start soon on the process of transferring" 12 percent of the offshore holding company for Tower Two's special purpose vehicle to Yongye.

d. On or about November 16, 2005, PETERSON sent an email to several Morgan Stanley employees in response to an email discussing the terms of Yongye's purported investment in Tower Two in which PETERSON wrote, "Everyone pls keep in mind the big picture here. YY gave us this deal. . . . So we owe them a favor relating to this deal. . . . This should be very easy and friendly."

e. On or about March 28, 2006, PETERSON, together with others, caused Asiasphere to send \$2,924,265.00 to MSREF to purchase a 12 percent interest in Tower Two, with the funds sent via interstate and international wire transfer from Asiasphere's account at Shanghai Commercial Bank in Hong Kong to a Morgan Stanley-controlled bank account held at JP Morgan Chase in New York.

f. On or about August 4, 2006, following the completion of Asiasphere's purchase of a 12-percent interest in Tower Two, Canadian Attorney 1 falsely represented, in response to an inquiry from a Morgan Stanley employee, that Asiasphere was owned by Yongye, writing "I confirm, as Asiasphere's counsel in their acquisition of 12% equity interests in [Tower Two], that Asiasphere Holdings Limited is 100% beneficially owned by Shanghai YongYe Enterprise (Group) Co., Ltd., a PRC company"

g. On or about March 7, 2007, PETERSON, together with others, caused Morgan Stanley, from an account held at JP Morgan Chase in New York, to transfer by interstate and international wire \$120,000.00 to an account held by Asiasphere Holdings, Ltd. at Shanghai Commercial Bank Ltd., Hong Kong. This payment constituted a partial distribution to shareholders in Tower Two.

h. On or about March 15, 2007, PETERSON, together with others, caused Asiasphere to transfer by interstate and international wire \$119,980 from Asiasphere's account at Shanghai Commercial Bank in Hong Kong to a Morgan Stanley-controlled bank account held at JP Morgan Chase in New York. This payment constituted a contribution by Asiasphere to Tower Two.

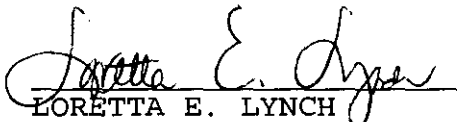
i. On or about December 20, 2007, PETERSON, together with others, caused Morgan Stanley, from an account held at JP Morgan Chase in New York, to transfer by interstate and international wire \$96,000.00 to an account held by Asiasphere Holdings, Ltd. at Shanghai Commercial Bank Ltd., Hong Kong. This payment constituted a partial distribution to shareholders in Tower Two.

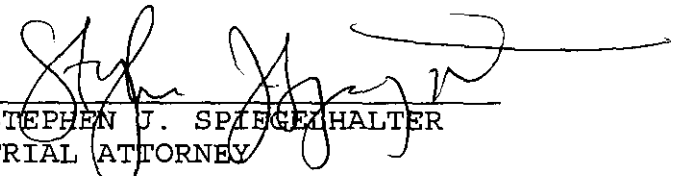
j. On or about March 26, 2008, PETERSON, together with others, caused Morgan Stanley, from an account held at JP Morgan Chase in New York, to transfer by interstate and

international wire \$72,000.00 to an account held by Asiasphere Holdings, Ltd. at Shanghai Commercial Bank Ltd., Hong Kong. This payment constituted a partial distribution to shareholders in Tower Two.

(Title 18, United States Code, Section 371)

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