

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID BLAINE WELLIVER,

Defendant.

INDICTMENT CR 15-234 PAM/BRT

18 U.S.C. § 1341

18 U.S.C. § 1343

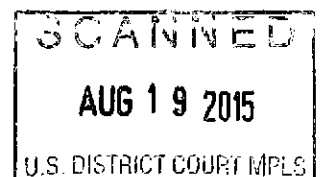
18 U.S.C. § 1957

THE UNITED STATES GRAND JURY CHARGES THAT:

**INTRODUCTION**

1. At all times relevant to this Indictment, defendant David Blaine Welliver was a resident of Minnesota. In 2005, Welliver founded Dblaine Capital, LLC (“Dblaine Capital”). Dblaine Capital was an investment advisory company based in Buffalo, Minnesota, which was registered with the Securities and Exchange Commission (“SEC”) in 2008. At all times relevant to this Indictment, Welliver served as Dblaine Capital’s Chief Executive Officer and Chief Investment Officer, had sole control of Dblaine Capital’s operations and investment advisory services, and had sole control of Dblaine Capital’s bank accounts.

2. In 2009, Welliver organized the Dblaine Investment Trust (“Dblaine Trust”) as an Ohio business trust and registered the Dblaine Trust with the SEC. The Dblaine Trust was comprised of two mutual funds, including the Dblaine Fund. At all times relevant to this Indictment, Welliver acted as the investment adviser to the Dblaine



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Fund, through his company Dblaine Capital, and as the Chairman of the Board of Trustees of the Dblaine Fund and the Dblaine Trust.

3. As an investment adviser, Welliver owed fiduciary duties to the Dblaine Fund and its investors. These duties included the duty of fair and honest dealing, the obligation to act in the Dblaine Fund investors' best interests, the duty to employ reasonable care to avoid misleading investors, and the duty to disclose all material facts to the Dblaine Fund investors.

4. At all times relevant to this Indictment, Lazy Deuce Capital Company, LLC ("Lazy Deuce") was a limited liability company based in Burnsville, Minnesota. At times relevant to this Indictment, Lazy Deuce made short-term, high-interest loans to Dblaine Capital.

#### **DBLAINE CAPITAL AND THE DBLAINE FUND**

5. In 2009 and most of 2010, Dblaine Capital had a small number of individual investment advisory clients and generated less than \$7,000 per year in advisory fees. These fees were Dblaine Capital's only revenues. In December 2009, in an effort to increase Dblaine Capital's business, Welliver created a mutual fund that Dblaine Capital would advise: the Dblaine Fund. As the Dblaine Fund's portfolio manager, Welliver had sole responsibility for selecting investments for the Dblaine Fund.

6. The Dblaine Fund's Prospectus described the Fund as a diversified mutual fund with an investment objective of growth and income. The Dblaine Fund's Prospectus further provided that under normal circumstances, the Fund would invest primarily in equity securities that were trading below their fair values as determined by the adviser,

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Dblaine Capital. According to the Dblaine Fund's Prospectus, the Fund's adviser, Dblaine Capital, employed a proprietary model that used "exhaustive fundamental and technical analysis, and company-by-company research" to identify potential investments.

7. According to the Dblaine Fund's Statement of Additional Information ("SAI"), the Fund was subject to the following investment restrictions which respectively related to portfolio concentration, diversification, and illiquid investments:

- a. the Fund would not invest 25% or more of its total assets in a particular industry or group of industries;
- b. the Fund would not invest more than 5% of its total assets in the securities of a single issuer; and
- c. the Fund would not hold 15% or more of its net assets in illiquid securities.

8. The Dblaine Fund's Prospectus and SAI were included in a registration statement the Dblaine Trust filed with the SEC on December 30, 2010. Welliver signed that registration statement in his capacities as Trustee, President, Principal Executive Officer, Treasurer, and Principal Financial and Accounting Officer of the Dblaine Trust.

9. Throughout most of 2010, the Dblaine Fund's only investors were a small number of Dblaine Capital's advisory clients who had moved a portion of their separate account assets, collectively totaling less than \$500,000, into the Dblaine Fund.

10. In March 2010, in order to increase the Dblaine Fund's net assets, Welliver entered into an agreement in which, in exchange for a payment of approximately \$100,000 by Dblaine Capital to another investment adviser, the Dblaine Fund would

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acquire the assets of two mutual funds, the Bryce Capital Growth Fund and the Bryce Capital Value Fund (collectively, the “Bryce Funds”).

11. Because Dblaine Capital’s advisory business had never generated substantial revenues, it lacked the capital to finance the merger between the Dblaine Fund and the Bryce Funds. As of June 30, 2010, Dblaine Capital had less than \$200 in liquid assets. During the same time period, Welliver had less than \$2,000 in his personal bank accounts, and Welliver personally owed millions of dollars in civil judgments, federal income taxes, and other debts.

12. Through his company Dblaine Capital, Welliver borrowed money from Lazy Deuce to finance the merger between the Dblaine Fund and the Bryce Funds. On or about December 8, 2010, Welliver used funds borrowed from Lazy Deuce to make a \$95,000 payment to the Bryce Funds’ investment adviser, and thereafter the merger was completed. As a result of the merger, the Dblaine Fund’s assets under management increased from approximately \$500,000 to over \$9 million.

13. The Dblaine Fund’s assets were held in a trust account at the Dblaine Fund’s custodian bank. In order to engage in any transactions using the assets of the Dblaine Fund, Welliver was required to send instructions to one or more of the Dblaine Fund’s service providers, including the custodian bank.

#### **THE SCHEME TO DEFRAUD**

14. From at least in or about September 2010 through in or about July 2011, in the State and District of Minnesota and elsewhere, the defendant,

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knowingly and intentionally devised and executed and scheme and artifice to defraud the Dblaine Fund's investors and Dblaine Capital's lender, Lazy Deuce, by means of false and fraudulent pretenses, representations, and promises.

15. It was part of the scheme to defraud that, in or about September 2010, Welliver negotiated an agreement with principals of Lazy Deuce in which Lazy Deuce agreed to make loans to Dblaine Capital. Welliver fraudulently represented to Lazy Deuce that Dblaine Capital would use the borrowed funds to acquire other mutual funds and merge their assets into the Dblaine Fund, which representation was material to Lazy Deuce's decision to lend money to Dblaine Capital.

16. It was further part of the scheme to defraud that in 27 separate transactions between in or about October 2010 and in or about May 2011, through his company Dblaine Capital, Welliver borrowed a total of \$4 million from Lazy Deuce. Aside from the \$95,000 payment to acquire the assets of the Bryce Funds, Welliver did not use any of the other proceeds of the Lazy Deuce loans to acquire mutual funds as he had represented to Lazy Deuce. Instead, Welliver diverted over \$500,000 in proceeds from the Lazy Deuce loans to his own personal use by making the following purchases, among others:

- a. landscaping and interior decorating services for Welliver's personal residence;
- b. a parcel of land adjacent to Welliver's personal residence;
- c. a new vehicle for Welliver's personal use; and
- d. payment of Welliver's son's college tuition.

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Welliver used the remainder of the funds from the Lazy Deuce loans for purposes that included repayments to Lazy Deuce and payment of operating expenses for Dblaine Capital and the Dblaine Fund.

17. It was further part of the scheme to defraud that, in exchange for Lazy Deuce's agreement to lend funds to Dblaine Capital, Welliver agreed to use his position as investment adviser to the Dblaine Fund to cause Dblaine Fund investors' money to be invested back into Lazy Deuce. In exchange for Lazy Deuce's agreement to lend funds to Dblaine Capital, Welliver agreed to invest money from the Dblaine Fund back in Lazy Deuce. However, in order to conceal the nature of this transaction from the Dblaine Fund's investors, its Board of Trustees, and its other service providers, Welliver made these investments into a shell company formed by several Lazy Deuce principals, called Semita Partners LLC ("Semita").

18. It was further part of the scheme to defraud that between on or about December 16, 2010, and on or about April 15, 2011, Welliver caused \$1.725 million in Dblaine Fund investors' money to be invested in Semita. At the time Welliver made the investments in Semita, Welliver knew that Semita was a shell company formed by principals of Lazy Deuce – the same company from which Dblaine Capital had borrowed money – and that Semita had no operations. These facts would have been material to the investors' decisions to maintain their investments with the Dblaine Fund rather than redeem their shares and, in some cases, to continue making regular investments into the Dblaine Fund, yet Welliver did not disclose them to Dblaine Fund investors.

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19. It was further part of the scheme to defraud that beginning on or about December 31, 2010, in order to meet a series of redemptions in the Dblaine Fund, Welliver liquidated nearly all of the stocks held by the Dblaine Fund. Following this liquidation, the Dblaine Fund's only holdings consisted of worthless Semita shares and cash held in a money market account. This fact would have been material to the remaining investors' decisions to maintain their investments with the Dblaine Fund rather than redeem their shares and, in some cases, to continue making regular investments into the Dblaine Fund, yet Welliver did not disclose it to Dblaine Fund investors.

20. It was further part of the scheme to defraud that after using the Dblaine Fund investors' money to obtain loans from Lazy Deuce that he could then divert to his own personal use, Welliver lulled the Dblaine Fund investors into believing that their funds were safe, prevented the discovery of his fraud scheme, and forestalled legal action by the investors by causing the Dblaine Fund's transfer agent to send materially false periodic account statements to the Dblaine Fund investors. These periodic account statements falsely stated that the investors' shares in the Dblaine Fund were worth more than \$11 per share during a time when Welliver knew the Dblaine Fund's only holdings, aside from cash, consisted of Semita shares with no market value.

21. By July 2011, the Dblaine Fund had depleted its cash reserve, held only the worthless shares of Semita, and was no longer able to meet investor redemption requests. Thereafter, the Dblaine Fund suspended redemptions and wrote down the value of its shares to zero. As a result of Welliver's fraud scheme, Dblaine Fund investors lost over \$1.2 million.

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**COUNTS 1-5**  
(Wire Fraud)

22. The Grand Jury hereby realleges and incorporates paragraphs 1 through 21 of this Indictment as if stated in full herein.

23. From at least in or about September 2010 through in or about July 2011, in the State and District of Minnesota and elsewhere, the defendant,

**DAVID BLAINE WELLIVER,**

did knowingly and unlawfully devise and execute a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and concealment of material facts, which scheme and artifice is described above in paragraphs 1 through 21.

24. On or about the dates set forth below, for the purpose of executing and attempting to execute the above-described scheme and artifice to defraud, Welliver knowingly transmitted and caused to be transmitted by means of wire communications in interstate and foreign commerce, certain writings, signs, signals, and sounds, as described below:

Count	Date of Wire (on or about)	Wire
1	12/16/2010	Interstate wire transfer of \$450,000 in Dblaine Fund investor funds from The Huntington Trust via Huntington National Bank to Semita Partners LLC account at Wells Fargo Bank, N.A.
2	12/17/2010	Interstate wire transfer of \$450,000 in Dblaine Fund investor funds from The Huntington Trust via Huntington National Bank to Semita Partners LLC account at Wells Fargo Bank, N.A.



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<b>Count</b>	<b>Date of Wire (on or about)</b>	<b>Wire</b>
3	4/1/2011	Interstate wire transfer of \$375,000 in Dblaine Fund investor funds from The Huntington Trust via Huntington National Bank to Semita Partners LLC account at Wells Fargo Bank, N.A.
4	4/15/2011	Interstate wire transfer of \$450,000 in Dblaine Fund investor funds from The Huntington Trust via Huntington National Bank to Semita Partners LLC account at Wells Fargo Bank, N.A.
5	7/14/2011	“Summary Account Statement” emailed to victim T.B. falsely reporting the value of T.B.’s Dblaine Fund shares as \$11.63/share

All in violation of Title 18, United States Code, Section 1343.

**COUNTS 6-9**  
**(Mail Fraud)**

25. The Grand Jury hereby realleges and incorporates paragraphs 1 through 24 of this Indictment as if stated in full herein.

26. From at least in or about September 2010 through in or about July 2011, in the State and District of Minnesota and elsewhere, the defendant,

**DAVID BLAINE WELLIVER,**

did knowingly and unlawfully devise and execute a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, and concealment of material facts, which scheme and artifice is described above in paragraphs 1 through 21.

27. On or about the dates set forth below, for the purpose of executing and attempting to execute the above-described scheme and artifice to defraud, Welliver knowingly caused to be sent, delivered, and moved by the United States Postal Service

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and commercial interstate carrier, according to the directions thereon, various mailings, items, and things, as described below:

<b>Count</b>	<b>Date of Mailing (on or about)</b>	<b>Mailing</b>
6	12/31/2010	“Account Statement” mailed to victim J.A. falsely reporting the value of J.A.’s Dblaine Fund shares as \$11.33/share
7	12/31/2010	“Account Statement” mailed to victim N.B. falsely reporting the value of N.B.’s Dblaine Fund shares as \$11.33/share
8	12/31/2010	“Account Statement” mailed to victim P.L. falsely reporting the value of P.L.’s Dblaine Fund shares as \$11.33/share
9	2/16/2011	“Summary Account Statement” mailed to victim A.F. falsely reporting the value of A.F.’s Dblaine Fund shares as \$11.29/share

All in violation of Title 18, United States Code, Section 1341.

**COUNTS 10 – 14**  
(Money Laundering)

28. The Grand Jury hereby realleges and incorporates paragraphs 1 through 27 of this Indictment as if stated in full herein.

29. On or about the dates set forth below, in the State and District of Minnesota and elsewhere, the defendant,

**DAVID BLAINE WELLIVER,**

knowingly engaged and attempted to engage in a monetary transaction affecting interstate commerce, in criminally-derived property of a value greater than \$10,000, such property having been derived from a specified unlawful activity, that is, mail fraud and wire fraud, and engaged in the monetary transactions set forth below:

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<b>Count</b>	<b>Date (on or about)</b>	<b>Amount</b>	<b>Description</b>
10	10/21/2010	\$14,503.49	Check payable to Schillewaert Landscaping and Tree Service, Inc., for landscaping services for Welliver's personal residence in Buffalo, MN
11	12/29/2010	\$40,800.00	Check payable to Cokato Motor Sales, for a 2011 Buick LaCrosse registered to Dblaine Capital LLC at Welliver's home address in Buffalo, MN
12	1/4/2011	\$39,581.52	Wire transfer from Dblaine Capital's account at Wells Fargo Bank to Central Land and Title to fund Welliver's purchase of a parcel of land adjacent to his personal residence in Buffalo, MN
13	4/28/2011	\$34,562.08	Check payable to Mary Hickey Interiors for interior design and furniture for Welliver's personal residence in Buffalo, MN
14	4/28/2011	\$17,445.00	Wire transfer from Dblaine Capital's account at Wells Fargo Bank to Rollins College for Welliver's son's college tuition

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

**FORFEITURE ALLEGATIONS**

All counts of this Indictment are hereby realleged and incorporated herein for the purpose of alleging forfeitures.

If convicted of any of the offenses charged in Counts 1 through 9 of this Indictment, the defendant shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461(c), any and all property, real or personal, which constitutes or is derived from proceeds traceable to the violations of Title 18, United States Code, Sections 1341 and 1343.

If convicted of any of the offenses charged in Counts 10 through 14 of this Indictment, the defendant shall forfeit to the United States, pursuant to Title 18, United

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States Code, Section 982(a)(1), any and all real or personal property involved in any such violations, and any and all property traceable to such property.

If any of the above-described forfeitable property is unavailable for forfeiture, the United States intends to seek the forfeiture of substitute property as provided for in Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1), and Title 28, United States Code, Section 2461(c).

A TRUE BILL

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FIRST ASSISTANT  
UNITED STATES ATTORNEY

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FOREPERSON