

THE UNITED STATES ATTORNEY'S OFFICE  
SOUTHERN DISTRICT *of* NEW YORK

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**Department of Justice**

U.S. Attorney's Office

Southern District of New York

FOR IMMEDIATE RELEASE

Friday, May 19, 2017

## **Virginia Man Arrested And Charged In Manhattan Federal Court With \$100 Million Market Manipulation Scheme Involving Fitbit Stock**

Joon H. Kim, the Acting United States Attorney for the Southern District of New York, and Philip R. Bartlett, Inspector-in-Charge of the New York Office of the U.S. Postal Inspection Service ("USPIS"), announced the arrest and unsealing of a complaint charging ROBERT WALTER MURRAY with securities and wire fraud in connection with a scheme to manipulate the public market for the stock of Fitbit, Inc. ("Fitbit") by filing a sham tender offer with the Securities and Exchange Commission ("SEC"). The sham tender offer reported a fictitious bid to purchase all outstanding Fitbit stock at a significant premium to the then-existing market price, resulting in a temporary but significant increase in the price of Fitbit stock on the NASDAQ stock exchange. Given the number of shares outstanding, the sham tender offer resulted in a manipulation of the market by over \$100 million. MURRAY was arrested in Virginia and will be presented in the federal court in Manhattan today.

In a separate action, the SEC filed civil charges against MURRAY.

Acting U.S. Attorney Joon H. Kim said: "As alleged, Robert Walter Murray created a fake tender offer for Fitbit to drive up its share price and then illegally profit from his manipulation of the market. After profiting at the expense of the public, Murray allegedly took elaborate steps to hide that he was behind the fraud. Our Office remains committed to ensuring that the securities markets are fair and free from manipulation. And we thank our partners at the U.S. Postal Inspection Service, as well as the SEC, who are committed to this mission as we are."

USPIS Inspector-in-Charge Philip R. Bartlett said: "Mr. Murray was clever, but not as much as the Fitbit brand he allegedly used when he set out to devise his stock manipulation scheme. In an effort to 'get rich' quick fraudsters believe they can game the system, but this arrest proves that no matter how much thought goes into a devious scheme, you can never outsmart law enforcement."

According to the allegations in the Complaint unsealed in Manhattan federal court:<sup>11</sup>

On or about November 8, 2016, MURRAY, purporting to be an officer at a China-based entity called ABM Capital, filed forms with the SEC requesting access to the SEC's Electronic Data Gathering, Analysis, and Retrieval (or "EDGAR") system. The following day, on or about November 9, 2016, MURRAY submitted a

filing on EDGAR that reported that ABM Capital had offered to purchase Fitbit for approximately \$12.50 a share, a significant premium to the price of Fitbit stock at the time. Fitbit's stock jumped when this filing was made public on EDGAR the following day: while Fitbit's stock closed at approximately \$8.55 a share on November 9, 2016, it reached a high of approximately \$9.27 per share, with significantly increased trading volume, after the tender offer filing was made public. Fitbit, however, had not actually received a tender offer from ABM Capital, and MURRAY's filing was entirely fictitious.

Moreover, MURRAY took significant steps to hide his connection to the tender offer filing. MURRAY used a different name, purporting to be an officer at ABM Capital. And he created a separate email account to register with the SEC and file the sham tender offer, taking care to disguise his actual IP address when accessing it. While logged into that email account, MURRAY visited websites explaining how to use the SEC's EDGAR system and conducted internet searches for similar market-manipulation schemes. Indeed, just days before filing his own sham tender offer with the SEC, MURRAY accessed a Bloomberg article that detailed a similar fraudulent tender offer for stock in Avon Products, Inc. – conduct that led to charges being filed in this District in *United States v. Nedko Nedev*, 16 Cr. 093.

In order to profit from his scheme, MURRAY bought call options for Fitbit stock on or about November 9, 2016. When the sham tender offer became public the following day, MURRAY sold his options for a profit. The options that MURRAY purchased had strike prices near or above the market price of Fitbit stock when they were purchased, and had expiration dates of November 11, 2016, meaning that they were set to expire the day after MURRAY filed his sham tender offer.

\* \* \*

MURRAY is charged with one count of securities fraud and one count of wire fraud. Each of these charges carries a maximum term of 20 years in prison. The charges also carry a maximum fine of \$5 million, or twice the gross gain or loss from the offense. The maximum potential sentences in this case are prescribed by Congress and are provided here for informational purposes only, as any sentencing of the defendant will be determined by the judge.

Mr. Kim praised the exceptional work of the Office's criminal investigators, and thanked the USPIS, the Securities and Exchange Commission, and the SEC office of Inspector General for its assistance.

This case is being handled by the Office's Securities and Commodities Fraud Task Force. Assistant United States Attorney Robert Allen is in charge of the prosecution.

The allegations contained in the Complaint are merely accusations, and the defendant is presumed innocent unless and until proven guilty.

[1] As the introductory phrase signifies, the entirety of the text of the Complaint and the description of the Complaint set forth herein constitute only allegations, and every fact described should be treated as an allegation.

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**Attachment(s):**

[Download u.s. v. robert walter murray complaint.pdf](#)

**Component(s):**

[USAO - New York, Southern](#)

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