

Investing in distress

Asset recovery the goal of new Baltimore-based fund



MAXIMILIAN FRANZ

Jim Little left his job as a partner at a London-based private equity firm to come home to Baltimore to launch Echemus.

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It takes a lot of money to find stolen loot.

Asset recovery lawyer Martin Kenney and his team of investigators spend millions of dollars and several years tracking down and recovering large sums of ill-gotten gains hidden around the world for victims of fraud.

But often, no access to capital can mean limited access to justice for victims who have been wiped clean.

To solve that problem and tap into \$5 billion worth of claims in the team's pipeline, Kenney has launched **Echemus**, an innovative investment fund aiming to raise \$150 million to cover the cost of investigating, seizing and recovering assets, while making money for investors.

Kenney, 49, who is based in the British Virgin Islands because of the large number of fraud cases connected to the Caribbean, has partnered with Baltimore's Jim Little, a private equity veteran, to raise the cash after taking two years to study the need for such a fund.

"If you spend any time at all working in the field of fraud and asset tracing, you learn that there is a surplus of good claims and a surplus of fraud and a surplus of

fraudsters with money they shouldn't have and a lack of money to go after these claims," Kenney said from his office in Tortola.

Little, 38, and Kenney pledged their own assets to get the ball rolling by taking out a \$10 million line of credit. Interest in the fund is high, Little said, given its mix of glamorous fraud hunting and the potential social good that could come of it, although no one has signed on yet.

Four corporate investors — with their own experiences of being defrauded — have each expressed interest in funding half or all of the team's first \$50 million offering, but Little said they want to include smaller players.

In order for Echemus to be exempt from regulation under the Securities and Exchange Commission, its investors must be accredited — deemed financially sophisticated — by the SEC. That group includes banks, insurance companies, trusts with assets of at least \$5 million and individuals with a net worth exceeding \$1 million.

Potential investors are taking particular care with due diligence because of the unknowns of funding asset recovery. Two litigation funds, Juridica Investments and Burford Capital, recently launched on London's Alternative Investment Market,

and Chicago-based Juris Capital, a firm backed by hedge funds, also funds litigation.

"If I'm an investor looking for an investment not tied to the market because it's going up and down and up and down ... there are opportunities in our market," Kenney said. "If this represented a small portion of your investment portfolio, why not take the chance?"

The reputation of Kenney's firm, which has investigated claims of more than \$660 million in 50 jurisdictions, has likely helped to quell fears about investing.

Veil of secrecy

His highly specialized team often works under a veil of secrecy to avoid tipping off fraudsters to their pursuit. After establishing authority from a judge to act as a receiver on a case, Kenney works with an array of specialists, including forensic accountants who study complex money trails, IT analysts who scrub computers to find deleted files, and former federal agents adept at chasing down bad guys.

The team uses legal procedures to gain search orders or to freeze assets in several jurisdictions around the world through their work with the 55 members of FraudNet, an invitation-only network of law firms specializing in fraud and white-collar crime operating through the International Chamber of Commerce. Kenney's team is now working to reclaim billions of dollars for a European bank through two feeder funds in the Virgin

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Islands involved in Bernard Madoff's Ponzi scheme, estimated to be as large as \$65 billion.

Echemus wants to finance 25 high-value claims in commercial fraud, asset recovery and third-party liability, like deep-pocketed lawyers and accountants that may have been complicit in the fraud. The fund will take 30 percent of any money it recovers and split the proceeds with its investors.

Echemus' projections show the fund could offer pretax annual returns of 35 percent for the 10-year investments, net of fees, expenses and carried interest. Echemus expects a minimum portfolio of \$2.6 billion in claims.

But industry experts warn that despite the jaw-dropping claims figures in the fund's pipeline, claim values can often be much larger than the amount that is recovered.

"I think one of the things you have to be so aware of with asset recovery is you could throw the net over the side of the boat and come up with no fish, but you're still paying for the use of the boat," said Paul French, chief operating officer of Threat Management and Protection Inc., a company in Huntington Beach, Calif., that traces and recovers assets.

\$5 million per case

Kenney said he spends an average of \$5 million on each case he pursues, efforts that have occasionally turned up nothing for clients.

Still, French said he thinks the fund is a smart solution to aiding penniless victims of fraud.

"The money that you can burn up tracking stuff internationally in multiple jurisdictions, in some cases, I hate to say it, but it's not worth the client chasing the money," he said. "[The fund] sounds like a very innovative method to identify assets without having anyone go to the poorhouse."

The fund's name is a nod to the heroics of the Greek mythological character Echemus, king of Arcadia, who agreed to battle the warrior Hyllus in single combat to protect his people during the Heraclidean invasion. Echemus killed Hyllus, driving away the invaders for 100 years.

It's that brand of underdog fight that Little said drew him to leave his job as a partner at the London-based private equity firm Arkaga Fund. He had been running Ireland's Cork City Football Club Ltd. for Arkaga when he met Kenney, who was operating Martin Kenney & Co. Solicitors in Ireland.

"Sports are fun, and it's a luxury for someone to be in that position rather than just be in business, but at the same time I had met Martin Kenney and we had been discussing the problem of fraud and I realized it was a pretty expansive social problem," Little said.

The two have had to use their own money to get Echemus off the ground, so Little said it made sense for him to give up his \$4,000-a-month flat in London's tony Belgravia district to return to Baltimore, his hometown.

"My family is here, but to be honest, Baltimore is a very collaborative town when it comes to people in the financial industry," he said. "In New York and London, they're just jealous or they tell you what they're doing."

"In Baltimore I've got a great group of people who rally around my concept," Little said. "The private investment community around here is healthy and collaborative."

A massive market

Fraud has become a massive market. Many cases of fraud go unreported, but from August 2006 through July 2009, 162 incidents of fraud worth \$36.9 billion were reported to the International Chamber of Commerce, not including the Madoff and



Martin Kenney said he is hopeful that the launch of Echemus will give him more opportunities to help victims of fraud.

R. Allen Stanford Ponzi scams. That makes this an exceptionally ripe time for investing in asset recovery.

"The timing is pretty incredible. Fraud occurs all the time, but when you have an economy and a meltdown like we just had, fraud is exposed and it's much more challenging to deal with," said Joe Wielebinski, an attorney with Munsch Hardt Kopf & Harr P.C. in Texas, of the launch of Echemus.

Wielebinski has worked with Kenney on cases through their affiliation with FraudNet. His firm is working on a \$500 million oil and gas Ponzi case with the SEC.

"That's just here in my little neck of the world," Wielebinski said.

"You multiply that by all of the jurisdictions where fraud is going on and you realize that there really is a need for this [fund] if you're going to help victims of financial crimes."

The SEC has ramped up orders to return illegally gained profits in cases it has jurisdiction over, distributing about \$2.5 billion to injured investors in 2009. But many victims are choosing to solicit help from specialty lawyers who have resources to devote to complex asset recovery cases.

Money is an 'afterthought'

Charles Intriago, a former federal prosecutor and now president of the International Association for Asset Recovery, where Kenney is a board member, said federal agencies first look to catch the fraudster, and only go after the money as an afterthought.

"The state and local agencies A) are not trained to pursue these sophisticated

frauds, B) a dirty little secret among the asset recovery field — the state and local forces don't keep any portion of the recovery, because it goes back to the victims ... so there's little interest in pursuing cases," he said, and others agreed.

Kenney and Little have a big interest in investigating claims to make money for investors, but both said pleasing the victims is essential.

"Our goal is to make returns for our investors, but in doing so, victims of fraud will need to have their money recovered," Kenney said.

From an investor's perspective, making more money than Echemus puts out to investigate a case could mean a winning investment, but that would do little to satisfy the victim.

"You need to be cognizant of what is a win," Kenney said. "In a \$1 billion case, recovering \$100 million would be a great

return for Echemus investors, but not for the client. You put in \$5 million, you get \$30 million for investors."

Both Kenney and Little said they are hopeful that the launch of the fund will give them more opportunities to help victims. They have filing cabinets full of letters begging for their help, but they need the money to start rolling in to tackle them.

"We want to win some big cases," Kenney said. "I think that we'll win more and bigger cases by partnership with investors, claim

holders and good professionals. It will supercharge our ability to do our work."

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