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# Och-Ziff Loans Financed Controversial Congo Deals

Hedge-fund firm discloses SEC, Justice Department investigate investments

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By JOHN CARREYROU [CONNECT](#)

Updated April 28, 2014 1:34 p.m. ET

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STATE STREET GLOBAL ADVISORS.



Israeli billionaire Dan Gertler takes a tour of a copper and cobalt mine complex in Democratic Republic of Congo in 2012. *Bloomberg News*

Hedge-fund company [Och-Ziff Capital Management Group](#) OZM +1.00% LLC helped finance controversial African oil and mining deals, a trail of corporate documents shows, and now faces scrutiny from U.S. authorities.

Och-Ziff disclosed in a March filing that the Securities and Exchange Commission and Justice Department are investigating investments by some of its funds "in a number of companies in Africa" under the Foreign Corrupt Practices Act and related laws.

Och-Ziff made two loans totaling \$234 million to companies controlled by Israeli mining magnate Dan Gertler, documents reviewed by *The Wall Street Journal* show. Both loans were routed through offshore companies, the documents show.

On Monday, the firm's stock had fallen about 11% in afternoon trade.

### Och-Ziff's Paper Trail

Hedge fund giant Och-Ziff Capital Management Group LLC helped finance controversial oil and mining deals in the Democratic Republic of Congo, documents pieced together by *The Wall Street Journal* show. Explore some of the documents here.

One of Israel's richest men, Mr. Gertler invests in mines across Africa. Some of his deals have been complicated by legal disputes and criticized for a lack of transparency.

The documents show Och-Ziff's loans helped finance two of Mr. Gertler's ventures in the Democratic Republic of

Disclosure of Property Interests as Affected by the Change: "Securities and Exchange Commission" November 2012 and also filed with the SEC. Registry of Corporate Officers of 1/14 February, 2014

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Congo, where he has acknowledged developing close ties with President Joseph Kabila.

Global Witness, an anticorruption organization, has accused Mr. Gertler of gaining control of his Congo assets under opaque circumstances and at steep discounts to their true worth.

Mr. Gertler's Congo deals also have been criticized by Africa Progress Panel, an organization headed by former United Nations Secretary-General Kofi Annan that advocates equitable and sustainable development in Africa.

Mr. Gertler "vigorously contests any and all accusations of wrongdoing in any of" his Congo dealings, a spokesman for the Israeli billionaire said. "Though we are a private business, we recognize we do have certain disclosure obligations and as our business develops, we are acting to improve our transparency efforts."

It isn't clear what specific information U.S. government investigators are seeking from Och-Ziff. The SEC and Justice Department declined to comment.

With \$40 billion under management, Och-Ziff is one of Wall Street's largest hedge-fund firms. It is also one of the few publicly traded American hedge-fund firms.

The loans to companies controlled by Mr. Gertler include one made in 2008 by an investment fund run jointly by Och-Ziff and South African partners; another was made in 2010 by Och-Ziff itself, according to the documents, which include offshore corporate-registration filings, investment memos and emails.

The loans were made under the oversight of Michael Cohen, then the head of Och-Ziff's London office and one of its most senior executives, the documents show. Mr. Cohen resigned last year after 15 years at the firm.

Mr. Cohen couldn't be reached for comment.

A person familiar with the agreements between Och-Ziff and Mr. Gertler said they included anticorruption clauses that would have triggered immediate repayment if breached. Those clauses never were invoked.



The deals began in early 2008. Two months after going public on the New York Stock Exchange in November 2007, Och-Ziff launched a joint venture with South African partners to invest in African "natural resources and related businesses," according to an Och-Ziff news release.

Och-Ziff contributed all the investment funds to the joint venture; the South African partners contributed some assets and expertise, according to people familiar with the matter.

The joint venture made a \$115 million loan to Mr. Gertler in the spring of 2008, followed by an additional advance of \$9 million, through a company registered in the British Virgin Islands, the documents reviewed by the Journal show and Mr. Gertler's spokesman confirms.

With the money, Mr. Gertler financed a deal that gave him control of a valuable copper and cobalt mine in southern Congo called Kalukundi, the documents show and Mr. Gertler's spokesman confirms.

Och-Ziff and its partners knew how Mr. Gertler planned to use the loan and negotiated substantial control rights over the company Mr. Gertler used to acquire control of the mine, the documents show.

Och-Ziff and its South African partners had "a right to participate in the day-to-day management of" the Gertler company and "visited" the Kalukundi mine in March 2008, according to one document.

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Kalukundi was the subject of an ownership dispute at the time. A Congolese court had confiscated majority rights to the mine from Africo Resources Ltd., a publicly traded Canadian company, and awarded them to a Congolese company in proceedings Africo charged were fraudulent.

In an interview, Tony Harwood, Africo's then-chief executive, said Mr. Gertler approached him with a solution to the dispute: He offered to buy the Congolese company, return the rights to the Kalukundi mine to Africo and then buy majority control of Africo.

Africo agreed to the Gertler offer. The owners of the Congolese company received \$13.5 million as part of the deal.

The Kalukundi dispute "predates" Mr. Gertler's involvement "and we can therefore offer no comment on the circumstances," Mr. Gertler's spokesman said. He added that Mr. Gertler didn't illegitimately use Africo's legal issues for his own advantage.

An official at Congo's Ministry of Mines referred questions about the Kalukundi mining rights to Gécamines, the state-owned mining company that holds minority rights to the mine through a joint venture with Africo. Gécamines didn't respond to requests for comment.

Mr. Harwood said he had no idea the money that financed the transactions came from Och-Ziff. But he said he realized the hedge fund's involvement in early 2009 when Africo, now under Mr. Gertler's control, held a meeting about acquiring another mining company. Och-Ziff representatives attended the meeting, Mr. Harwood said.

The British Virgin Islands company Och-Ziff routed the loan through received \$160 million in August 2012, according to a public filing, implying a return on its loan to Mr. Gertler of \$36 million.

In November 2010, Och-Ziff lent Mr. Gertler \$110 million through a company registered in the Cayman Islands, the documents reviewed by the Journal show and Mr. Gertler's spokesman confirms.

Mr. Gertler's spokesman says the money was primarily used to start developing an oil concession that Mr. Gertler had obtained five months earlier.

That concession, which covered two oil blocks on Lake Albert between Congo and Uganda, also was controversial because the Congolese government had previously awarded it to a British oil company.

Mr. Gertler reimbursed the second Och-Ziff loan in January 2013, the documents show and Mr. Gertler's spokesman confirms. Mr. Gertler's spokesman declined to say how much interest Mr. Gertler paid.

The spokesman said Mr. Gertler "used the loan to deliver substantial investment into" the Lake Albert project.

Write to John Carreyrou at [john.carreyrou@wsj.com](mailto:john.carreyrou@wsj.com)

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By JULIET CHUNG CONNECT

Updated Aug. 5, 2014 8:09 p.m. ET



Daniel Och says 'investor interest in our platforms remains high.' Bloomberg News

When Och-Ziff Capital Management Group (OZM +1.00%) LLC told its shareholders in March it was the subject of a civil and criminal investigation, it didn't separately notify the investors in its hedge funds, according to people familiar with the matter.

Months later, that decision has continued to rankle some of the firm's clients and raise questions about the trade-offs of investing in hedge funds run by public companies, the people said.

The investors say that while they understand Och-Ziff couldn't give them advance word because of restrictions on selective disclosures by public companies, they expected to be contacted independently.

At least one investor pulled money from Och-Ziff because of the way the firm handled the matter, one of the people said.

Och-Ziff is one of the few hedge-fund firms that is publicly traded.

"It's an issue investors have to decide for themselves: Is a hedge fund that has constraints on it because it's part of a public company really what they want?" said Kevin McDonald, founder of Taylor Investment Advisors LP, Greenwich, Conn., which advises clients on hedge-fund investments.

The investigation and Och-Ziff's disclosure of it haven't stopped the firm from attracting more cash. Already one of the industry's biggest firms, Och-Ziff this year pulled in \$4.5

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billion in net new money through Aug. 1, it said Tuesday, outpacing the \$3.1 billion it attracted in all of 2013.

"Investor interest in our platforms remains high," founder Daniel Och said in a quarterly earnings call Tuesday.

The firm reported a profit of \$10.7 million, compared with a year-earlier profit of \$3.8 million. The stock closed Tuesday at \$13.51, down 34 cents.

In a May earnings call, Joel Frank, Och-Ziff's chief financial officer, said the firm was limited in its ability to comment on the continuing investigation. He also said the firm has "constant dialogues" with its fund investors and "we're as transparent as we can be with them."

The topic didn't come up on Tuesday's earnings call.

On March 18, Och-Ziff disclosed in a 173-page regulatory filing that it began receiving subpoenas from the Securities and Exchange Commission and requests for information from the Justice Department in 2011. The investigation "concerns an investment by a foreign sovereign-wealth fund in some of the Och-Ziff funds in 2007 and investments by some of the funds" in Africa, the filing said.

The investigation is part of a probe by the Justice Department and the SEC into whether banks, private-equity firms and hedge funds violated antibribery laws in their dealings with the Libyan Investment Authority.

The Wall Street Journal had previously reported in February that federal investigators had joined a civil probe and that Och-Ziff was among the firms they were examining.

Several investors called Och-Ziff following its March disclosure to ask for details and express their unhappiness with the disclosure process, according to people familiar with the matter.

Private hedge funds, which make up the bulk of the industry, regularly reach out to clients through calls and letters when sharing significant news such as an investigation, leadership change or big investment loss.

Following the financial crisis and the Madoff scandal, investors have higher expectations of increased transparency and communication from their managers. Some even share the details of their holdings with clients daily via special contractual arrangements.

Och-Ziff, because it is publicly traded, must abide by a regulation requiring it to disclose material nonpublic information publicly rather than selectively.

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Other public companies that manage hedge-fund strategies include Fortress Investment Group LLC and distressed-debt investor Oaktree Capital Group LLC.

Some public asset managers acknowledge the potential tension between fund investors and

shareholders.

In their prospectuses, alternative-investment firms often say they will defer to fund investors over stockholders, though the language typically focuses on returns and not disclosure issues.

A former arbitrage whiz at Goldman Sachs Group Inc., Mr. Och started Och-Ziff in 1994 with the Ziff brothers, known for backing early a coterie of investors that includes some of the biggest stars in the hedge-fund industry today.

From its roots managing \$100 million, Och-Ziff 20 years later has grown into a global firm managing \$45.7 billion.

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The OZ Master Fund, its flagship multistrategy fund, returned an average annualized 11.1% after fees for the five years ending in 2013, according to a regulatory filing, compared with 17.9% for the S&P 500, with dividends.

Och-Ziff went public in 2007 and has yet to match its initial public offering price of \$32 a share.

The Ziffs, large shareholders from the start along with Dubai International Capital LLC, have been reducing their 10% stake.

The clients disgruntled about the disclosure issue include some who invested recently, before Och-Ziff's disclosure, according to people familiar with the matter. Newer investors do not have exposure to the deals under investigation, several people said, but many investors consider knowledge of regulatory probes important for fully vetting a money manager.

Write to Juliet Chung at [juliet.chung@wsj.com](mailto:juliet.chung@wsj.com)

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