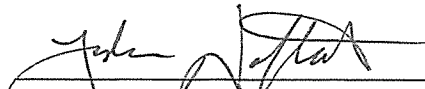


Approved: 
JOSHUA A. NAFTALIS
Assistant United States Attorney

Before: HONORABLE DEBRA FREEMAN
Chief United States Magistrate Judge
Southern District of New York

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: SEALED COMPLAINT
UNITED STATES OF AMERICA :
: Violations of
- v. - : 15 U.S.C. §§ 78j(b), 78ff;
: 17 C.F.R. § 240.10b-5;
FRED ELM, : 18 U.S.C. §§ 371, 1343,
a/k/a "Frederic Elmaleh," and : 1349, 2.
AHMAD NAQVI, :
: COUNTY OF OFFENSE:
Defendants. : NEW YORK
:
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SOUTHERN DISTRICT OF NEW YORK, ss.:

JUSTIN R. KITTELSTAD, being duly sworn, deposes and says that he is a Special Agent with the Department of Homeland Security, Homeland Security Investigations ("HSI") and charges as follows:

COUNT ONE
(Securities Fraud Conspiracy)

1. From at least in or about June 2013 through in or about December 2014, in the Southern District of New York and elsewhere, FRED ELM, a/k/a "Frederic Elmaleh," and AHMAD NAQVI, the defendants, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit offenses against the United States, to wit, to commit securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff.

2. It was a part and an object of the conspiracy that FRED ELM, a/k/a "Frederic Elmaleh," and AHMAD NAQVI, the defendants, and others known and unknown, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, would and did use

and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, ELM and NAQVI, on behalf of their investment adviser, Elm Tree Investment Advisors LLC ("ETIA"), and four private investment funds for which ETIA acted as the fund manager -- Elm Tree Investment Fund, LP (the "Investment Fund"), Elm Tree Emerging Growth Fund, LP (the "Emerging Growth Fund"), Elm Tree 'e'conomy Fund, LP (the "'e'conomy Fund"), and Elm Tree Motion Opportunity, LP (the "Motion Opportunity Fund," collectively the "Elm Tree Funds") -- solicited and caused to be solicited more than \$17 million from investors by making false and misleading statements, failed to invest investors' funds as promised, falsely reported positive trading results and account balances, and converted some of the money to their personal use, in violation of Title 15, United States Code, Sections 78j(b) and 78ff.

Overt Act

3. In furtherance of the conspiracy and to effect the illegal object thereof, the following overt act, among others, was committed in the Southern District of New York and elsewhere:

a. In or about 2014, FRED ELM, a/k/a "Frederic Elmaleh," and AHMAD NAQVI, the defendants, met with Victim-1 in New York, New York regarding an investment in one of the Elm Tree Funds.

(Title 18, United States Code, Section 371.)

COUNT TWO (Securities Fraud)

4. From at least in or about June 2013 through in or about December 2014, in the Southern District of New York and elsewhere, FRED ELM, a/k/a "Frederic Elmaleh," and AHMAD NAQVI, the defendants, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national

securities exchanges, used and employed manipulative and deceptive devices and contrivances in connection with the purchase and sale of securities, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, ELM and NAQVI, on behalf of ETIA and the Elm Tree Funds, solicited and caused to be solicited more than \$17 million from investors by making false and misleading statements, failed to invest investors' funds as promised, falsely reported positive trading results and account balances, and converted some of the money to their personal use.

(Title 15, United States Code, Sections 78j(b) & 78ff;
Title 17, Code of Federal Regulations, Section 240.10b-5;
Title 18, United States Code, Section 2.)

COUNT THREE
(Wire Fraud Conspiracy)

5. From at least in or about June 2013 through in or about December 2014, in the Southern District of New York and elsewhere, FRED ELM, a/k/a "Frederic Elmaleh," and AHMAD NAQVI, the defendants, and others known and unknown, willfully and knowingly did combine, conspire, confederate, and agree together and with each other to violate Title 18, United States Code, Section 1343.

6. It was a part and an object of the conspiracy that FRED ELM, a/k/a "Frederic Elmaleh," and AHMAD NAQVI, the defendants, and others known and unknown, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, for the purpose of executing such scheme and artifice, would and did transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce writings, signs, signals, pictures, and sounds, to wit, ELM and NAQVI, on behalf of ETIA and the Elm Tree Funds, solicited and caused to be solicited more than \$17 million from investors by making false and misleading statements, failed to invest investors' funds as promised, falsely reported positive trading results and account balances, and converted some of the money to their

personal use via e-mail and other interstate wires, in violation of Title 18, United States Code, Section 1343.

(Title 18, United States Code, Section 1349.)

COUNT FOUR
(Wire Fraud)

7. From at least in or about June 2013 through in or about December 2014, in the Southern District of New York and elsewhere, FRED ELM, a/k/a "Frederic Elmaleh," and AHMAD NAQVI, the defendants, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, transmitted and caused to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, ELM and NAQVI, on behalf of ETIA and the Elm Tree Funds, solicited and caused to be solicited more than \$17 million from investors by making false and misleading statements, failed to invest investors' funds as promised, falsely reported positive trading results and account balances, and converted some of the money to their personal use via e-mail and other interstate wires.

(Title 18, United States Code, Sections 1343 and 2.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

8. I have been a Special Agent with HSI for approximately seven years. I am currently assigned to a squad within HSI that is responsible for investigating violations of the federal securities laws, as well as wire, bank, and mail fraud laws and related offenses. I have participated in numerous investigations of these offenses, and I have made and participated in making arrests of numerous individuals for committing such offenses.

9. The information contained in this affidavit is based upon my personal knowledge, as well as information obtained during this investigation, directly or indirectly, from other sources, including documents and information provided to me by others. Because this affidavit is prepared for limited purposes, I have not set forth each and every fact I have learned in connection with this investigation. Where

conversations and events are referred to herein, they are related in substance and in part. Where dates, figures, and calculations are set forth herein, they are approximate.

Relevant Persons and Entities

10. Based on my review of documents provided by ETIA, the Elm Tree Funds, and victims; bank and brokerage account records for accounts affiliated with FRED ELM, a/k/a "Frederic Elmaleh," and AHMAD NAQVI, the defendants, ETIA, and the Elm Tree Funds; and public records (collectively "the Records"), and my interviews of witnesses, I have learned, among other things, the following:

a. At all times relevant to this Complaint, ETIA, an investment manager formed in or about July 2012, was a Florida limited liability company with its principal place of business in Fort Lauderdale, Florida. ELM was the founder and manager of ETIA, and NAQVI was the chief operating officer of ETIA.

b. At all times relevant to this Complaint, ETIA was the investment manager for the Elm Tree Funds, each of which was a private investment limited partnership. ELM was the general partner and fund manager of each of the Elm Tree Funds, and NAQVI was the chief operating officer of each of the Elm Tree Funds.

c. At all times relevant to this Complaint, the Investment Fund was a Delaware limited partnership formed in July 2013 with its principal place of business in Fort Lauderdale, Florida.

d. At all times relevant to this Complaint, the Emerging Growth Fund was a Delaware limited partnership formed in January 2013 with its principal place of business in Fort Lauderdale, Florida.

e. At all times relevant to this Complaint, the 'e'conomy Fund was a Delaware limited partnership formed in October 2013 with its principal place of business in Fort Lauderdale, Florida.

f. At all times relevant to this Complaint, the Motion Opportunity Fund was a Delaware limited formed in May 2014 with its principal place of business in Fort Lauderdale, Florida.

g. At all times relevant to this Complaint, Twitter, Inc. ("Twitter") was a California-based online social media company. On or about November 6, 2013, Twitter's securities began trading under the symbol "TWTR" on the New York Stock Exchange ("NYSE"), which is based in New York, New York.

h. At all times relevant to this Complaint, Alibaba Group Holding Limited ("Alibaba") was a Chinese e-commerce company. On or about September 19, 2014, Alibaba's securities began trading under the symbol "BABA" on the NYSE. At the time, Alibaba's initial public offering ("IPO") was the largest in history.

i. At all times relevant to this Complaint, Square, Inc. ("Square") was a privately-held, California-based payment technology company.

j. At all times relevant to this Complaint, Uber Technologies, Inc. ("Uber") was a privately held, California-based transportation and logistics technology company.

k. At all times relevant to this Complaint, Pinterest, Inc. ("Pinterest") was a privately held, California-based photo-sharing company.

l. At all times relevant to this Complaint, GoDaddy Group, Inc. ("GoDaddy") was a privately-held, Arizona-based internet domain registrar and web hosting company.

m. At all times relevant to this Complaint, Snapchat, Inc. ("Snapchat") was a privately-held, California-based video messaging application company.

n. At all times relevant to this Complaint, Cloudera Inc. ("Cloudera") was a privately-held, California-based data management and analytics company.

o. At all times relevant to this Complaint, Kleiner Perkins Caufield & Byers ("Kleiner Perkins") was a California-based venture capital firm that invested in, among other companies, Twitter, Uber, Square, and Snapchat.

p. At all times relevant to this Complaint, Benchmark Capital ("Benchmark") was a California-based venture capital firm that invested in, among other companies, Twitter, Uber, and Snapchat.

q. At all times relevant to this Complaint, Silver Lake Management, L.L.C. ("Silver Lake") was a California-based venture capital firm that invested in, among other companies, Alibaba and GoDaddy.

r. At all relevant times to this Complaint, Victim-1, Victim-2, and Victim-3 were New York-based individuals and/or affiliated corporate entities that invested in the Elm Tree Funds.

Overview of the Scheme to Defraud

11. Based on my review of the Records and my interviews of witnesses, I have learned, among other things, the following:

a. From at least in or about June 2013 through in or about December 2014, FRED ELM, a/k/a "Frederic Elmaleh," and AHMAD NAQVI, the defendants, perpetrated a scheme to defraud more than 50 investors out of approximately \$17 million by soliciting investments in the Elm Tree Funds by making false and misleading representations, by failing to invest investors' funds as promised, by falsely reporting positive trading results and account balances, and by converting investors' money to their own use.

b. ELM and NAQVI solicited investors in the Elm Tree Funds in two basic ways. Most investors purchased limited partnership interests in the Elm Tree Funds, pursuant to a subscription agreement and private placement memorandum. Other investors purchased promissory notes. ELM and NAQVI made various false and misleading representations in private placement memoranda, subscription agreements, in-person meetings, phone calls, and e-mails, including as set forth below:

i. With respect to the Investment Fund, ELM and NAQVI falsely represented in private placement memoranda that the fund's "primary objective is to utilize equity stock and options strategies to safely and effectively maximize returns superior to comparative investment vehicles." They also guaranteed annual returns of 15 percent.

ii. With respect to the Emerging Growth Fund, ELM and NAQVI falsely represented in private placement memoranda that the fund's "investment objective is to maximize

total return on invested capital by seeking capital gains on equity and equity-related investments in privately-held Internet companies that are characterized by strong revenue growth and profitability or a clear path to profitability." ELM and NAQVI also falsely represented that the fund made pre-IPO investments in Twitter's Series F preferred shares, at a cost of \$10.50 per share and a valuation of \$5.5 billion. They also guaranteed returns of 338 percent.

iii. With respect to the 'e'conomy Fund, ELM and NAQVI falsely represented in private placement memoranda that the fund's "investment objective is to maximize total return on invested capital by seeking capital gains on equity and equity-related investments in privately-held, high-growth, emerging Internet and mobile companies that are characterized by new, innovative and disruptive technologies." ELM and NAQVI also falsely represented that the fund made pre-IPO investments in (a) Alibaba's restricted ordinary shares, at a cost of \$23.88 per share and a valuation of \$60 billion; and (b) Square's Series C preferred shares, at a cost of \$64.50 per share and a valuation of \$2.5 billion. ELM and NAQVI said that the 'e'conomy Fund's expected returns were 250 percent. ELM and NAQVI also falsely represented in promissory notes that the investment proceeds would be used "for the development and eventual commercial release of various internet properties."

iv. With respect to the Motion Opportunity Fund, ELM and NAQVI falsely represented in private placement memoranda that the fund's "investment objective is to maximize total return on invested capital by seeking capital gains on equity and equity-related investments in privately-held, high-growth, emerging Internet and mobile companies that are characterized by new, innovative and disruptive technologies." ELM and NAQVI also falsely represented that the Motion Opportunity Fund made pre-IPO investments in (a) Uber's Series C-2 preferred shares at a cost of \$114.03 per share and a valuation of \$3 billion; (b) Pinterest's Series D preferred shares at a cost of \$12.50 per share and a valuation of \$3.27 billion; and (c) GoDaddy's Class B common shares at a cost of \$129.77 per share and a valuation of \$4.75 billion. ELM and NAQVI said that the Motion Opportunity Fund's expected returns were 300 percent.

v. ELM and NAQVI falsely represented that they had relationships with leading venture capital firms, such as Kleiner Perkins, Silver Lake, and Benchmark, which gave them

access to investments in privately-held, pre-IPO technology companies.

c. In truth and in fact, ELM, NAQVI, ETIA, and the Elm Tree Funds never invested in privately-held, pre-IPO companies. Instead, ELM and NAQVI comingled the approximately \$17 million that was invested in the Elm Tree Funds in a single investment account, and then invested only a portion of the money, approximately \$7.1 million. At no point did any of the Elm Tree Funds return a profit. Instead, for example, between approximately January 2014 and November 2014, the Elm Tree Funds lost approximately \$3.9 million in trading.

d. Moreover, of the investor funds that ELM and NAQVI did not lose in securities trading, ELM routinely converted investor funds to his own use in the form of cash withdrawals and to pay personal expenses, including to purchase a \$1.75 million home, high-end furnishings, and other personal items, such as luxury automobiles, jewelry, and daily living expenses.

e. ELM's conversion of investors' funds was contrary to the representations that ELM and NAQVI made to investors concerning their and ETIA's fees. ELM and NAQVI falsely represented that they and ETIA would take a two percent annual management fee plus twenty percent of any profits that the Elm Tree Funds earned. In truth and in fact, ELM converted investor money that far exceeded the two percent management fee. Moreover, because the Elm Tree Funds never returned a profit, ELM, NAQVI, and ETIA were not entitled to a percentage of any profits.

f. ELM and NAQVI also used approximately \$5.2 million of new investor funds to make payments to earlier investors in a Ponzi-like fashion.

g. To prevent or forestall redemptions, and continue to raise money to fund their scheme, ELM and NAQVI generated fictitious account statements and also made oral and written misrepresentations that their trading strategies were generating consistently positive returns. For example:

i. With respect to the Emerging Growth Fund, ELM and NAQVI falsely represented that the fund's valuation grew to at least approximately \$58 million.

ii. With respect to the 'e'conomy Fund, ELM and NAQVI falsely represented that the fund's valuation grew to at least approximately \$125 million.

iii. With respect to the Motion Opportunity Fund, ELM and NAQVI falsely represented that the fund's valuation grew to at least approximately \$77 million.

h. In truth and in fact, as noted above, ELM and NAQVI only raised approximately \$17 million from investors, of which they invested approximately \$7.1 million and lost approximately \$3.9 million in trading.

Elm and Naqvi Solicit Investors in the Elm Tree Funds

12. Based on my review of the Records and my interviews of witnesses, I have learned, among other things, that FRED ELM, a/k/a "Frederic Elmaleh," and AHMAD NAQVI, the defendant, solicited more than 50 investors to invest approximately \$17 million into the Elm Tree Funds by making false and misleading statements.

Victim-1

13. For example, and as set forth below, beginning in or about mid-2013, FRED ELM, a/k/a "Frederic Elmaleh," and AHMAD NAQVI, the defendant, began to solicit Victim-1 to invest with ETIA in the Elm Tree Funds.

a. On or about June 11, 2013, NAQVI sent Victim-1 a series of e-mails regarding the Emerging Growth Fund, as well as the Investment Fund. In one e-mail, which attached the Emerging Growth Fund's private placement memorandum, NAQVI claimed to have "have secured a limited number of Pre-IPO shares in Twitter," and that the Emerging Growth Fund had a \$10.50 per share basis in Twitter. In another e-mail, NAQVI represented that "[t]he majority of the [Emerging Growth] Fund's capital will be invested in Twitter preferred stock"; and that he (NAQVI), ELM, and ETIA had "key contacts" with venture capital firms, such as Kleiner Perkins and Benchmark, and angel investors in California. In a third e-mail, NAQVI claimed that "[o]ne of our partners in this fund has a very close relationship with a senior partner at Kliener Perkins Caufield Byers [sic]." Based on my interviews of representatives of Kleiner Perkins and Benchmark, I have learned that neither of these venture capital firms had a business relationship with

ELM, NAQVI, or ETIA. Moreover, as noted above, the Emerging Growth Fund never invested in pre-IPO Twitter shares.

b. In or about late August 2013, NAQVI and ELM spoke on the telephone with Victim-1 about investing in the Emerging Growth Fund, and both ELM and NAQVI falsely represented that the fund was investing in pre-IPO Twitter shares.

c. On or about October 9, 2013, Victim-1 made his/her first investment with ETIA, investing \$52,500 by wire transfer in the Emerging Growth Fund.

d. On or about October 29, 2013, ELM sent Victim-1 an e-mail in which he falsely stated that ETIA had "secured" pre-IPO shares in Square and Alibaba, which ELM and NAQVI later falsely claimed would be available through the 'e'conomy Fund.

e. As noted above, Twitter's IPO took place on or about November 6, 2013. Following the IPO, Twitter's stock price rose, and NAQVI subsequently falsely told Victim-1 that ELM, NAQVI, and ETIA had used an options strategy to lock in Victim-1's profits in Twitter. Because the Emerging Growth Fund had not invested in pre-IPO Twitter shares, there were no profits to lock in.

f. On or about November 14, 2013, NAQVI sent an e-mail to Victim-1 that stated: "The size of the 'e'conomy Fund will be approximately \$34 million (Alibaba shares \$21.5 m + Square [\$]12.5 m). For Alibaba, the share price is \$23.88 per share and for Square it is \$64.50 per share. We expect both companies to go public in 2014. We expect strong returns of 50%-100% on both IPOs." These statements were false because, as noted above, the Elm Tree Funds did not invest in pre-IPO shares in Square or Alibaba, and thus there would be no returns to their investors.

g. On or about February 14, 2014, NAQVI sent an e-mail to Victim-1, among others, regarding the 'e'conomy Fund, and attaching a private placement memoranda and subscription agreement. As noted above, these documents falsely represented, among other things, that the fund would invest in pre-IPO shares of technology companies and how ELM, NAQVI, and ETIA charged fees.

h. On or about February 24, 2014, NAQVI sent Victim-1 an e-mail, in which he said: "these ipo funds will make

all of us a couple million or more with very little risk..and that's not bad."

i. In or about early 2014, ELM and NAQVI had an in-person meeting in New York, New York with, among other people, Victim-1, and solicited his/her investment in the Elm Tree Funds, including the 'e'Conomy fund. At that meeting, ELM and NAQVI falsely represented that the fund was investing in pre-IPO Square and Alibaba shares.

j. On or about March 5, 2014, Victim-1 made his/her second investment with ETIA, investing approximately \$100,000 by wire transfer in the 'e'Conomy fund.

k. On or about March 7, 2014, NAQVI sent an e-mail to Victim-1 attaching his/her account statement for the Emerging Growth Fund. The statement indicated that (i) Twitter was valued at \$54.91 per share; (ii) Victim-1's investment in the fund was valued at \$274,550; and (iii) the fund was valued at \$68,115,855. As noted above, the fund did not invest in pre-IPO Twitter shares, thus the values were false and inflated. What is more, while the statement claimed that the fund was valued at approximately \$69 million, this was impossible. The Elm Tree Funds only raised a total of approximately \$17 million, of which approximately \$7.1 million was invested and approximately \$3.9 million was lost in trading. In fact, each of Victim-1's subsequent account statements for his/her investments in the Elm Tree Funds falsely represented that he/she was invested in pre-IPO shares, that the values of his/her investments were increasing, and that the funds' values were increasing.

l. On or about March 9, 2014, NAQVI sent an e-mail to Victim-1 attaching his/her account statement for the 'e'Conomy Fund. The statement indicated that (i) Alibaba was valued at \$53.73 per share and that Square was valued at \$125 per share; (ii) Victim-1's investment in the fund was valued at \$212,469.76; and (iii) the fund was valued at approximately \$72,768,000. As noted above, no such investments were ever made, and the values were thus invented and inflated.

m. On or about May 29, 2014, NAQVI sent an e-mail to Victim-1 attaching various documents related to the Motion Opportunity Fund, including a private placement memorandum and subscription agreement. As noted above, the Motion Opportunity Fund falsely claimed to invest in pre-IPO shares in Uber, Pinterest, and GoDaddy.

n. On or about May 30, 2014, NAQVI sent an e-mail to Victim-1 attaching his/her account statement for the Emerging Growth Fund. The statement indicated that (i) Twitter was valued at between \$40 and \$50 per share; and (ii) Victim-1's investment in the fund was now valued at \$228,200. As noted above, no such investments were ever made, and the values were thus invented and inflated.

o. On or about June 24, 2014, NAQVI sent an e-mail to Victim-1 that stated: "We obtain our shares from our Venture Capital partners in all our deals. We do not buy them from employees or early investors trying to sell shares. When VC's buy shares there is always a group of investors behind them. VC's like Benchmark Partners [sic], Kleiner Perkins, Silver Lakes [sic] in many ways operate like hedge funds. Very similar to our structure. We invest with the VCs behind their umbrella." Based on my interview of representatives of Benchmark, Kleiner Perkins, and Silver Lake, I have learned that none of these venture capital firms had a business relationship with ELM, NAQVI, or ETIA.

p. On or about September 9, 2014, Victim-1 made his/her third investment with ETIA, investing \$60,000 by wire transfer in the Motion Opportunity Fund.

q. On or about December 12, 2014, NAQVI sent an e-mail to Victim-1 attaching his/her account statement for the 'e'conomy Fund. The statement indicated that (i) Alibaba was valued at \$111.64 per share and that Square was valued at \$14.25 per share; (ii) Victim-1's investment in the fund was valued at \$359,954.68; and (iii) the fund was valued at approximately \$125,484,750. As noted above, no such investments were ever made, and the values were thus invented and inflated.

r. On or about December 18, 2014, NAQVI sent an e-mail to Victim-1 attaching his/her account statement for the Motion Opportunity Fund. The statement indicated that (i) Uber was valued at \$62.05 per share, GoDaddy was valued at \$25.52 per share, and Pinterest was valued at \$13.00 per share; (ii) Victim-1's investment in the fund was valued at \$109,346.40; and (iii) the fund was valued at approximately \$77,286,220. As noted above, no such investments were ever made, and the values were thus invented and inflated.

Victim-2 and Victim-3

14. Based on my review of the Records and my interviews of witnesses, I have learned, among other things, that, FRED ELM, a/k/a "Frederic Elmaleh," and AHMAD NAQVI, the defendant, were introduced to Victim-2 and Victim-3 through Victim-1, and that ELM and NAQVI solicited investments from Victim-2 and Victim-3 by making similar false and misleading statements, including as follows:

a. On or about February 14, 2014, NAQVI sent an e-mail to Victim-3, as well as Victim-1, regarding the 'e'conomy Fund, attaching a private placement memoranda and subscription agreement. As noted above, these documents falsely represented, among other things, that the fund would invest in pre-IPO shares of technology companies and how ELM, NAQVI, and ETIA charged fees.

b. On or about March 7, 2014, NAQVI sent an e-mail to Victim-3 in which he falsely represented that the 'e'conomy Fund "is comprised of equity positions in Alibaba Group Holdings Ltd. and Square Inc. Both of these companies are projected to go IPO this calendar year." On or about March 9, 2014, NAQVI sent a similar email to Victim-2. As noted above, the fund did not invest in pre-IPO shares in Alibaba or Square.

c. On or about March 10, 2014, Victim-2 invested approximately \$25,000 by check in the 'e'conomy Fund.

d. On or about April 8, 2014, Victim-3 invested approximately \$100,000 by wire transfer in the 'e'conomy Fund.

e. On or about April 24, 2014, ELM sent an e-mail to Victim-2, in which he said that "capital protection is our key goal at Elm Tree Investment Advisors. As a result, we have employed sophisticated options trading strategies to help secure our profits in Twitter at no cost to our investors." ELM also noted that he expected Alibaba's Schedule S-1 to be filed shortly with the U.S. Securities and Exchange Commission, and that he expected Alibaba's IPO to take place between July and September 2014. ELM stated, "[w]e expect a 3-4 times return on our investment in Alibaba." ELM also claimed, "[w]e have finally secured shares in Uber, Pinterest, and Godaddy [sic]." As noted above, the Elm Tree Funds did not invest in pre-IPO shares in Twitter, Alibaba, Uber, Pinterest, or GoDaddy. Because there were no such investments, there were no profits to lock in.

f. On or about May 8, 2014, ELM sent e-mails to Victim-2 and Victim-3, respectively, soliciting their respective investments in the Motion Opportunity Fund, and falsely representing that the fund would invest in pre-IPO shares in Pinterest, Uber, and GoDaddy.

g. On or about May 9, 2014, ELM sent an e-mail to Victim-3 soliciting his investment in the Motion Opportunity Fund, and falsely representing that the fund would invest in pre-IPO shares in Pinterest, Uber, and GoDaddy.

h. On or about May 29, 2014, NAQVI sent an e-mail to Victim-2, as well as Victim-1, attaching various documents related to the Motion Opportunity Fund, including a private placement memorandum and subscription agreement. As noted above, these documents falsely represented, among other things, that the fund would invest in pre-IPO shares of technology companies and how ELM, NAQVI, and ETIA charged fees. Also on May 29, 2014, NAQVI sent an e-mail to Victim-3 falsely representing that the Motion Opportunity Fund had "secured" pre-IPO shares in Uber, Pinterest, and Go-Daddy, and also attaching a private placement memorandum and subscription agreement.

i. On or about July 11, 2014, Victim-3 invested approximately \$500,000 by wire transfer in the Motion Opportunity Fund.

j. On or about October 7, 2014, NAQVI sent an e-mail to Victim-1 and Victim-2, in which he said: "From this point going forward, information on ETIA and its products will only be disseminated through referrals from our clients and through our professional relationships." NAQVI also said that all potential clients can contact either NAQVI or ELM. NAQVI further claimed that ETIA was announcing a fifth fund: a "new IPO investment product" called "ETOPIA, LP," which NAQVI claimed was an "open ended fund" that would invest in Uber, Snapchat, and Cloudera.

k. As noted above, Alibaba's IPO took place on September 19, 2014. Following the IPO, Alibaba's stock price rose. On or about October 31, 2014, NAQVI sent an e-mail to Victim-3 attaching his/her account statement for the 'e'conomy Fund. In the e-mail, NAQVI falsely stated: "Fred [ELM] has implemented an options strategy in order to protect our position in Alibaba. He monitors the stock daily and makes adjustments accordingly." The statement indicated that (i) Alibaba was valued at \$88.85 per share and that Square was valued at \$14.25

per share; (ii) Victim-3's investment in the fund was valued at \$302,706.20; and (iii) the fund was valued at approximately \$104,973,750. As with Victim-1's account statements, Victim-2's and Victim-3's account statements falsely represented that each was invested in pre-IPO shares, that the value of their investments were increasing, and that the funds' values were increasing.

1. On or about November 9, 2014, NAQVI sent an e-mail to Victim-2 attaching his/her account statement for the 'e'conomy Fund. The statement indicated that (i) Alibaba was valued at \$98.60 per share and that Square was valued at \$14.25 per share; (ii) Victim-2's investment in the fund was valued at \$81,799.55; and (iii) the fund was valued at approximately \$113,748,750. As noted above, no such investments were ever made, and the values were thus invented and inflated.

Elm Misappropriates Investor Funds

15. Based on my review of the Records, I have learned that FRED ELM, a/k/a "Frederic Elmaleh," the defendant, converted a significant portion of investor funds to his personal use. Contrary to the representations that ELM and AHMAD NAQVI, the defendant, made to their victim investors, ELM and ETIA took significantly more than the two percent management fee. In addition, because the Elm Tree Funds did not make any profits during the relevant time period, ELM, NAQVI, and ETIA were not entitled to any profit sharing.

16. For example, during the course of the scheme, FRED ELM, a/k/a "Frederic Elmaleh," the defendant, misappropriated at least approximately \$2 million of the Elm Tree Funds' investor funds for his personal use, including the following:

- a. approximately \$732,000 to pay for a \$1.75 million personal residence in Florida;
- b. approximately \$300,000 for luxury cars, such as a Bentley, a Maserati, and a Range Rover;
- c. approximately \$130,000 for jewelry;
- d. approximately \$55,000 for a local religious organization;

e. approximately \$20,000 for his wife's student loans; and

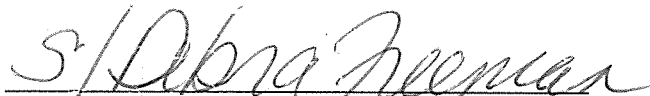
f. everyday expenses, such as credit card bills, utility bills, pet and baby gifts, and medical bills.

WHEREFORE, I respectfully request that arrest warrants be issued for FRED ELM, a/k/a "Frederic Elmaleh," and AHMAD NAQVI, the defendants, and that they be arrested and imprisoned or bailed, as the case may be.



JUSTIN R. KITTELSTAD
SPECIAL AGENT
DEPARTMENT OF HOMELAND SECURITY,
HOMELAND SECURITY INVESTIGATIONS

Sworn to before me this
6th day of April, 2016



HONORABLE DEBRA FREEMAN
CHIEF UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK