

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 9302 / March 14, 2012

INVESTMENT ADVISERS ACT OF 1940
Release No. 3383 / March 14, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-14801

In the Matter of

Laurence Albukerk and
EB Financial Group, LLC,

Respondents.

**ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTION 8A OF THE
SECURITIES ACT OF 1933 AND
SECTION 203(k) OF THE
INVESTMENT ADVISERS ACT OF
1940, MAKING FINDINGS, AND
IMPOSING A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 (“Securities Act”) and Section 203(k) of the Investment Advisers Act of 1940 (“Investment Advisers Act”) against Laurence Albukerk (“Albukerk”) and EB Financial Group, LLC (“EB Financial”) (collectively, “Respondents”).

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing a Cease-and-Desist Order (“Order”), as set forth below.

III.

On the basis of this Order and Respondents' Offer, the Commission finds¹ that:

NATURE OF PROCEEDINGS

1. This proceeding involves two pooled investment funds—EBX FB I, LLC (“EBX FB I”), created May 21, 2010, and EBX FB II, LLC (“EBX FB II”), created November 29, 2010 (collectively, the “EBX FB Funds”)—that were established to satisfy demand for acquiring the securities of privately-held popular technology companies that had not yet issued stock through an Initial Public Offering (“IPO”). Respondents created and advised the EBX FB Funds to acquire, directly or indirectly, pre-IPO shares of Facebook, Inc. (“Facebook”) stock. In the course of offering the EBX FB Funds, Respondents provided investors with offering materials that misrepresented and failed to disclose the full amount of compensation Respondents would earn in the transactions described below.

RESPONDENTS

2. Laurence Albuquerque, age 44, is the sole owner and managing member of EB Financial. Albuquerque has been a registered representative since 2009 and currently holds FINRA Series 7 and 63 licenses through a registered broker-dealer. Since 1999, Albuquerque has served as the managing member of the general partner of five funds that allow entrepreneurs to invest a small portion of their founders' equity into a portfolio of other venture-capital-backed companies. Albuquerque is a resident of San Francisco, California.

3. EB Financial Group, LLC is a California limited liability company wholly owned and managed by Albuquerque, who organized the company on January 16, 2002. EB Financial serves as the investment adviser to the EBX FB Funds, which are pooled investment vehicles, as defined in Rule 206(4)-8 under the Investment Advisers Act, engaged primarily in the business of investing, directly or indirectly, in Facebook securities. Through January 2011, EB Financial raised about \$15.4 million from approximately 90 investors for the two EBX FB Funds. EB Financial is not registered with the Commission in any capacity.

OTHER RELEVANT ENTITIES

4. Zoom Ventures, LLC (“Zoom”) is a California limited liability company organized on March 3, 2003. Zoom is managed by Albuquerque's wife and, prior to the transactions described below, was wholly-owned by the Albuquerque family. Zoom purchased Facebook stock from existing Facebook shareholders and sold interests in Zoom to the EBX FB Funds.

¹ The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

FACTS

Background and the First Two EBX FB I Closings

5. Respondents created the EBX FB Funds to seek investment opportunities in pre-IPO Facebook stock. The operating agreements for the EBX FB Funds provided that, as the funds' Manager, EB Financial had full control over the business and affairs of the funds, including the discretion to make investment decisions for the funds. Among other things, EB Financial would decide the form, price, timing, and terms of any offer to acquire Facebook securities. EB Financial had the authority to determine whether to acquire Facebook securities directly or by acquiring interests in a limited liability company that held only Facebook stock. EB Financial also had the authority to purchase short-term securities with investor funds and discretion to meet requests for distributions before Facebook experienced a liquidation event (typically a merger or an IPO), including by distributing Facebook securities, cash, or other company property.

6. Respondents raised approximately \$5 million in two initial transactions on behalf of EBX FB I. In the first of these transactions, Respondents invited investors to participate in an offering of interests in EBX FB I. On September 7, 2010, Respondents informed investors that EBX FB I would acquire interests in an unrelated limited partnership whose sole activity at the time was holding Facebook stock. EBX FB I completed the purchase of interests in the limited partnership on September 20, 2010.

7. In the second transaction on behalf of EBX FB I, the offering materials informed investors that the fund would acquire units in Zoom in a similar way that EBX FB I previously acquired interests in the first transaction involving an unrelated limited partnership. The offering materials disclosed that Zoom was "affiliated with [EBX FB I] as it is wholly-owned by the Albuquerque family." On October 12, 2010, following Zoom's acquisition of Facebook stock, EBX FB I completed the purchase of interests in Zoom.

8. The offering materials provided to investors in connection with the first two EBX FB I transactions stated that EB Financial would charge five percent of the gross proceeds raised from investors as a "Services Fee," and three percent of any and all distributions to investors as a "Distribution Fee."

The Third EBX FB I Closing in November 2010

9. In the Fall of 2010, Respondents prepared for a third round of investments involving EBX FB I. On October 4, 2010, a broker-dealer with whom Albuquerque is affiliated entered into a Broker Agreement with a Facebook shareholder to assist it to sell its shares of Facebook stock. Albuquerque signed the Broker Agreement on behalf of the broker-dealer. The shareholder agreed to pay a \$0.70 per share broker's fee to the broker-dealer if and when the shareholder consummated a sale of Facebook stock. Under Albuquerque and the broker-dealer's existing agreement, Albuquerque would receive 90 percent of the broker's fee.

10. Respondents introduced Zoom to the Facebook shareholder as a potential purchaser of the stock. On October 6, 2010, Zoom entered into a contract with the Facebook

shareholder to purchase a block of shares at \$13.50 per share. The Facebook shareholder netted \$12.80 per share, equal to the purchase price less the fee due Albuquerque's affiliated broker-dealer.

11. On October 7, 2010, as required by restrictions attached to Facebook stock at its original issuance, the seller notified Facebook of its intention to sell stock to Zoom. Facebook had 30 days to exercise, waive, or allow to expire a right of first refusal on the shares. In other words, Facebook had the right to purchase the stock itself, assign that right to someone other than Zoom, or decline to exercise its rights and so allow Zoom to acquire the stock on the terms to which it had agreed with the seller.

12. Respondents distributed offering materials dated November 1, 2010, to potential investors for the third round of investments in EBX FB I. Albuquerque signed the offering materials as Manager of EB Financial. The offering memorandum stated that EBX FB I "was formed to invest in Facebook Securities offered for sale either directly from shareholders of Facebook or indirectly through intermediaries, including through the purchase of interests in other limited liability companies or limited partnerships that invest in, acquire, hold, and/or distribute Facebook Securities." The offering memorandum made no mention of Zoom, Albuquerque's affiliation with Zoom, the \$13.50 per share price that Zoom had negotiated with the seller, or the broker's fee to be paid to Albuquerque's affiliated broker-dealer.

13. As in the first two EBX FB I transactions, the offering memorandum provided that EBX FB I would pay EB Financial, the Manager, a Services Fee of five percent of the gross proceeds from the sale. In addition, EB Financial would charge EBX FB I a Distribution Fee equal to five percent of any and all distributions to its members. The offering memorandum stated that "[e]xcept for the Services Fee and Distribution Fee, the Manager will not charge any other fees to Members[.]"

14. On November 6, 2010, Facebook's right of first refusal expired, which meant that Zoom was free to complete the transaction with the Facebook shareholder at the previously agreed-upon price of \$13.50 per share. On November 10, 2010, Zoom contracted with EBX FB I to sell Zoom limited liability company interests at \$15.00 per unit. One unit of Zoom corresponded to the price of one share of Facebook stock. In other words, EBX FB I would pay \$1.50 per unit of Zoom more than Zoom paid per share of the Facebook stock.

15. On November 16, 2010, Respondents sent a letter to investors who had previously expressed an interest in investing in EBX FB I, notifying them of EBX FB I's anticipated third closing of its investment in "Facebook Securities at an effective Unit price of \$15.00." The letter asked investors to ratify their decision to invest in EBX FB I at that price within two days. Albuquerque signed the letter in his role as Manager of EB Financial.

16. The letter from Respondents did not explain to investors that EBX FB I was buying interests in Zoom, an entity in which the Albuquerque family had an ownership interest. The letter did not inform investors that Zoom paid \$13.50 per share for its Facebook stock or that Zoom charged an additional \$1.50 per unit to EBX FB I. Nor did the letter disclose that Albuquerque would receive 90 percent of the broker's fee for the sale of Facebook stock to Zoom.

17. On November 22, 2010, the third EBX FB I transaction closed at the equivalent of \$15.00 per share of Facebook stock. On the same day, EBX FB I wired funds raised from investors to Zoom. On November 23, 2010, Zoom then wired the purchase price, less the broker's fee, to the Facebook seller. Zoom separately wired the broker's fee directly to Albuquerque's affiliated broker-dealer, which later paid 90 percent of the total amount to Albuquerque. On or about November 24, 2010, Zoom acquired the shares of Facebook stock and EBX FB I completed the purchase of interests in Zoom.

18. At the close of the transaction, the selling Facebook shareholder received \$12.80 per share. The broker's fee and mark-up charged by Zoom thus increased the price by \$2.20 per share in the third EBX FB I closing. This difference amounted to a 14.6 percent fee in addition to the fees disclosed in the offering memorandum. Nearly all of the increased price went to the Albuquerque family or entities they control.

19. By representing in the offering memorandum that investors would only pay a five percent Services Fee and a five percent Distribution Fee, while failing to disclose the broker's fee, mark-up, and Respondents' affiliation with Zoom, Respondents misrepresented and omitted material facts about their compensation and investor fees in the offering materials. Respondents knew or should have known that the offering materials misrepresented and omitted material facts to investors and prospective investors in EBX FB I.

The EBX FB II Closing in January 2011

20. After the third EBX FB I closing, Albuquerque introduced another Facebook shareholder to Zoom to purchase a block of Facebook stock. On November 24, 2010, Albuquerque's affiliated broker-dealer entered into a Broker Agreement with the Facebook shareholder. Albuquerque signed the Broker Agreement on behalf of the broker-dealer. Under its terms, the Facebook shareholder agreed to pay a \$2.00 per share broker's fee to the broker-dealer if and when the shareholder consummated a sale of Facebook stock, agreeing that the shareholder would receive a net of \$22.00 per share. Under Albuquerque and the broker-dealer's existing agreement, Albuquerque would receive 90 percent of any broker's fee earned on the transaction.

21. Also on November 24, 2010, Zoom entered into a contract with the Facebook shareholder to purchase a block of shares at \$24.00 per share, equal to the sum of \$22.00 per share for the shareholder and the \$2.00 per share broker's fee. As required by restrictions attached to Facebook stock at its original issuance, the Facebook shareholder notified Facebook of his intention to sell stock to Zoom. As in the third EBX FB I closing, Facebook had 30 days to exercise, waive, or allow to expire a right of first refusal on the shares.

22. On November 29, 2010, Albuquerque formed EBX FB II to invest in Facebook securities offered for sale either directly from shareholders of Facebook or indirectly through intermediaries. In all material respects, EBX FB II operated similarly to EBX FB I.

23. Respondents distributed offering materials dated December 1, 2010, to potential investors in EBX FB II. Albuquerque signed the offering materials as Manager of EB Financial. The offering memorandum stated that EBX FB II "was formed to invest in Facebook

securities offered for sale either directly from shareholders of Facebook or indirectly through intermediaries, including through the purchase of interests in other limited liability companies or limited partnerships that invest in, acquire, hold and/or distribute Facebook Securities.” The offering memorandum made no mention of Zoom, Albuquerque’s affiliation with Zoom, the \$24.00 per share price negotiated with the seller, or the broker’s fee to be paid to Albuquerque’s affiliated broker-dealer.

24. The offering memorandum provided that EBX FB II would pay EB Financial, the Manager, a Services Fee of five percent of the gross proceeds from the sale. In addition, EB Financial would charge EBX FB II a Distribution Fee equal to five percent of any and all distributions to its members. The offering memorandum specifically stated that “[e]xcept for the Services Fee and Distribution Fee, the Manager will not charge any other fees to Members[.]”

25. On December 24, 2010, Facebook’s right of first refusal expired, which meant that Zoom was free to complete the transaction with the Facebook shareholder at the previously agreed-upon price of \$24.00 per share. On January 1, 2011, Zoom agreed to sell interests in Zoom to EBX FB II at \$25.00 per unit. One unit of Zoom corresponded to the price of one share of Facebook stock. In other words, EBX FB II would pay \$1.00 per unit of Zoom more than Zoom paid per share of the Facebook stock.

26. On January 7, 2011, Respondents sent a letter to investors who had previously expressed an interest in investing in EBX FB II. The letter, signed by Albuquerque, notified investors that EBX FB II would soon purchase interests in Zoom at \$25.00 per unit. The letter asked investors to ratify their decision to invest in EBX FB II at that price within five days. The letter disclosed that the Albuquerque family had an ownership interest in Zoom. The letter, however, did not explain to investors that Zoom paid \$24.00 per share for its Facebook stock. The letter also did not disclose that Albuquerque would receive 90 percent of the \$2.00 per share broker’s fee on the sale of Facebook stock to Zoom, or that the selling shareholder would receive \$22.00 per share.

27. On January 14, 2011, the EBX FB II transaction closed at the equivalent of \$25.00 per share of Facebook stock. On or around that day, EBX FB II wired funds raised from investors to Zoom. Zoom then wired the purchase price, less the broker’s fee, to the Facebook shareholder. Zoom separately wired the broker’s fee directly to Albuquerque’s affiliated broker-dealer, which later paid 90 percent of the total amount to Albuquerque. EBX FB II simultaneously completed the purchase of interests in Zoom.

28. At the close of the transaction, the selling Facebook shareholder received \$22.00 per share. The broker’s fee and mark-up thus increased the price by \$3.00 per share in the EBX FB II closing. This difference amounted to a 12 percent fee in addition to the fees disclosed in the offering memorandum. Nearly all of the increased price went to the Albuquerque family or entities they control.

29. By representing in the offering memorandum that investors would only pay a five percent Services Fee and a five percent Distribution Fee, while failing to disclose the broker’s fee and mark-up, Respondents misrepresented and omitted material facts about their compensation and investor fees in the offering materials. Respondents knew or should have known that the

offering materials misrepresented and omitted material facts to investors and prospective investors in EBX FB II.

Respondents' Rescission Offers

30. On January 18, 2011, four days after the EBX FB II transaction closed and after Commission staff sent a subpoena seeking information from EB Financial, Albuquerque sent a letter to all EBX FB II investors disclosing that Zoom had purchased Facebook stock at \$24.00 per share and sold interests to EBX FB II at \$25.00 per unit. The letter also explained that Albuquerque was compensated in the sale of the Facebook shares to Zoom through his affiliated broker-dealer, although the amount of the broker's fee was not disclosed. In the same letter, Albuquerque included a rescission offer: "[I]f for any reason you wish to unwind your investment, we will be happy to return your funds in full with no penalties or fees." Respondents did not offer to return any portion of the broker's fee or the mark-up to investors. When presented with the option of unwinding the transaction and giving up their interests in Facebook stock, none of the EBX FB II investors accepted the rescission offer.

31. On January 25, 2011, Albuquerque sent a letter to investors in the third EBX FB I transaction disclosing that Zoom was managed by his wife and that Zoom had purchased the Facebook stock at \$13.50 per share and sold interests to EBX FB I at \$15.00 per unit. The letter also explained that Albuquerque was compensated in the sale of the Facebook shares to Zoom through his affiliated broker-dealer, although the amount of the broker's fee was not disclosed. In the same letter, Albuquerque included a rescission offer: "[I]f for any reason, you wish to unwind your investment, we will be happy to return your funds in full with no penalties or fees." Respondents did not offer to return any portion of the broker's fee or the mark-up to investors. When presented with the option of unwinding the transaction and giving up their interests in Facebook stock, none of the EBX FB I investors accepted the rescission offer.

VIOLATIONS

32. As a result of the conduct described above, Respondents violated Section 17(a)(2) of the Securities Act, which prohibits the receipt of money or property by means of any untrue statement of material fact or omission, and Section 206(4) of the Investment Advisers Act and Rule 206-4(8) thereunder, which prohibit any fraudulent, deceptive, or manipulative act, practice, or course of business by an investment adviser to a pooled investment vehicle.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offer.

Accordingly, pursuant to Section 8A of the Securities Act and Section 203(k) of the Investment Advisers Act, it is hereby ORDERED that:

A. Respondents Albuquerk and EB Financial shall cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act, Section 206(4) of the Investment Advisers Act, and Rule 206-4(8) thereunder.

B. Respondents Albuquerk and EB Financial shall jointly and severally pay disgorgement, prejudgment interest, and a civil monetary penalty as follows:

(1) Respondents shall jointly and severally pay disgorgement in the amount of \$203,287.00 and prejudgment interest in the amount of \$7,212.28 consistent with the provisions of this Subsection B.

(2) Respondents shall jointly and severally pay a civil monetary penalty in the amount of \$100,000.00 consistent with the provisions of this Subsection B.

(3) Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, as amended, a Fair Fund is created for the disgorgement, prejudgment interest, and civil penalty referenced in Paragraph Nos. 1 and 2 of this Subsection B. Regardless whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that in any Related Investor Action, they shall not argue that they are entitled to, nor shall they benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission staff and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against one or both Respondents by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

(4) Respondents shall, within 30 days of the entry of this Order, deposit the full amount of the disgorgement, prejudgment interest, and civil monetary penalty (collectively, the "Distribution Fund") into an escrow account acceptable to the Commission staff. Respondents shall provide the Commission staff with evidence of such deposit in a form acceptable to the Commission staff. If timely deposit of the disgorgement is not made by the required payment date, additional interest shall accrue pursuant to Rule 600 of the Commission's Rules of Practice [17 C.F.R. § 201.600]. If timely deposit of the civil penalty is not made by the required payment date, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

(5) Respondents shall be responsible for administering the Distribution Fund. Respondents shall pay a *pro rata* portion of the Distribution Fund to current and former investors in the EBX FB I transaction that closed on November 22, 2010, and in the EBX FB II transaction that closed on January 14, 2011 (collectively, the "affected investors"), proportionate to each affected investor's investment and pursuant to a disbursement calculation (the "Calculation") that has been

submitted to, reviewed, and approved by the Commission staff in accordance with this Subsection B. No portion of the Distribution Fund shall be paid to any affected investor directly or indirectly in the name of or for the benefit of Respondents.

(6) Respondents shall, within 60 days from the entry of this Order, submit a proposed Calculation to the Commission staff for its review and approval that identifies, at a minimum: (i) the name of each affected investor; and (ii) the exact amount of the payment to be made to each affected investor. Respondents also shall provide to the Commission staff such additional information and supporting documentation as the Commission staff may request for the purpose of its review. In the event of one or more objections by the Commission staff to Respondents' proposed Calculation or any of its information or supporting documentation, Respondents shall submit a revised Calculation for the review and approval of the Commission staff or additional information or supporting documentation within 10 days of the date that Respondents are notified of the objection, which revised Calculation shall be subject to all of the provisions of this Subsection B.

(7) Respondents shall complete the transmission of all amounts otherwise payable to affected investors pursuant to a Calculation approved by the Commission staff within 120 days of the entry of this Order, unless such time period is extended as provided in Paragraph No. 12 of this Subsection B.

(8) If Respondents do not distribute or return any portion of the Distribution Fund for any reason, including an inability to locate an affected investor or any factors beyond Respondents' control, Respondents shall transfer any such undistributed funds to the Commission for transmittal to the United States Treasury after the final accounting provided for in Paragraph No. 10 of this Subsection B is submitted to the Commission staff. Any such payment shall be: (i) made by wire transfer, United States postal money order, certified check, bank cashier's check or bank money order; (ii) made payable to the Securities and Exchange Commission; (iii) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, 100 F Street, N.E., Stop 6042, Washington, DC 20549; and (iv) submitted under cover letter that identifies Laurence Albuquerk and EB Financial Group, LLC as Respondents in these proceedings, and the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Michael S. Dicke, Associate Regional Director, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, California 94104.

(9) Respondents shall be responsible for any and all tax compliance responsibilities associated with the Distribution Fund and may retain any professional services necessary. The costs and expenses of any such professional services shall be borne by Respondents and shall not be paid out of the Distribution Fund.

(10) Within 180 days after the date of entry of this Order, Respondents shall submit to the Commission staff a final accounting and certification of the disposition of the Distribution Fund, which final accounting and certification shall be in a format to be provided by the Commission staff. The final accounting and certification shall include, but not be limited to: (i) the amount paid to each payee; (ii) the date of each payment; (iii) the check number or other

identifier of money transferred; (iv) the date and amount of any returned payment; (v) a description of any effort to locate a prospective payee whose payment was returned or to whom payment was not made for any reason; (vi) any amounts to be forwarded to the Commission for transfer to the United States Treasury; and (vii) an affirmation that Respondents have paid a *pro rata* portion of the Distribution Fund to affected investors, proportionate to each affected investor's investment and pursuant to the Calculation approved by the Commission staff. Respondents shall submit proof and supporting documentation of such payment (whether in the form of fee credits, cancelled checks, or otherwise) in a form acceptable to the Commission staff and under a cover letter that identifies Laurence Albukerk and EB Financial Group, LLC as Respondents in these proceedings and the file number of these proceedings to Michael S. Dicke, Associate Regional Director, San Francisco Regional Office, Securities and Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, California 94104. Respondents shall provide any and all supporting documentation for the accounting and certification to the Commission staff upon its request and shall cooperate with any additional requests by the Commission staff in connection with the accounting and certification.

(11) After Respondents have submitted the final accounting to the Commission staff, the staff shall submit the final accounting to the Commission for approval and shall request Commission approval to send any remaining amount to the United States Treasury.

(12) The Commission staff may extend any of the procedural dates set forth in this Subsection B for good cause shown. Deadlines for dates relating to the Distribution Fund shall be counted in calendar days, except that if the last day falls on a weekend or federal holiday the next business day shall be considered to be the last day.

By the Commission.

Elizabeth M. Murphy
Secretary