

ORIGINAL

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING  
File No. 3-16191

In the Matter of

MICHAEL ROBERT BALBOA,

Respondent.

**DIVISION OF ENFORCEMENT'S MOTION FOR SANCTIONS AGAINST  
MICHAEL R. BALBOA AND SUPPORTING MEMORANDUM OF LAW**

## **PRELIMINARY STATEMENT**

Pursuant to this Court's November 20, 2014 Order ("November 20 Order"), the Division of Enforcement ("Division") respectfully submits this Motion for Sanctions Against Michael R. Balboa ("Balboa" or "Respondent") and Supporting Memorandum of Law. Specifically, the Division requests that the Court issue an order barring Balboa from association with any broker, dealer, investment adviser, municipal securities dealer, municipal adviser, transfer agent, or nationally recognized statistical rating organization.

## **STATEMENT OF FACTS**

Respondent Balboa has been deemed to be in default of the Order Instituting Proceedings in this case ("OIP") "for failing to file an Answer, respond to the Order to Show Cause, or otherwise defend this proceeding." Nov. 20 Order at 1. That Order reminded Balboa "that he may move to set aside the default ... within a reasonable time," Nov. 20 Order at 1, n.1 (citing Rule of Practice 155(b), 17 C.F.R. § 201.155(b)), but Respondent has failed to do so.<sup>1</sup>

A jury convicted Respondent on December 18, 2013 of five criminal counts of fraud—namely, securities fraud, wire fraud, investment adviser fraud, and conspiracy to commit both securities fraud and wire fraud. (OIP at 2.) Those convictions were based on Balboa's scheme to defraud investors by inflating the value of certain securities held by a fund Balboa managed, a scheme that helped that Fund attract approximately \$400 million in new investments. (*Id.*)

At all relevant times, Balboa was a managing director of Millennium Global Investments Limited ("MGIL") and served as the portfolio manager for certain Millennium branded funds (collectively, the "Fund"). (*See* Dec. 30, 2014 Declaration of Michael D. Birnbaum ("Birnbaum

---

<sup>1</sup> As Respondent is currently incarcerated—and therefore no longer resides at the address at which he was served with the OIP—the Division transmitted a copy of the November 20 Order to him on November 25, 2014 to the prison address obtained from the Bureau of Prison's Inmate Locator website.

Decl.”), Ex. A, Superseding Indictment in United States v. Balboa, 12 Cr. 196 (PAC), ¶ 5.)<sup>2</sup> From at least January 2008 through October 2008, Balboa defrauded investors by employing a “scheme to inflate falsely the value of certain ... illiquid securities.” (Id. ¶ 12.) Balboa pretended to obtain independent valuations for certain warrants in the Fund’s portfolio, but in reality the valuations were Balboa’s own inflated figures, which certain co-conspirators passed on to an independent valuation agent as their own “independent” assessments in furtherance of Balboa’s fraud. (Id. ¶ 13.) The false valuations had the effect of inflating the net asset value (“NAV”) of the Fund—an NAV that was then communicated to investors—while Balboa concealed from investors that the purportedly “independent” valuations were actually fake marks that he personally assigned to the warrants at issue. (Id. ¶¶ 18-20.)

Balboa not only defrauded investors through his scheme to inflate the Fund’s NAV, he also worked to deceive everyone from the Fund’s independent valuation agent to the United States and foreign authorities who investigated Balboa’s scheme. For example, he provided a co-conspirator with suggested answers to use when his valuations were questioned by the independent valuation agent. (Id. ¶ 21.) And even after the Funds collapsed, Balboa “concealed his fraudulent scheme from company investigators, the [Fund’s] court appointed liquidator, and United States and foreign law enforcement authorities.” (Id. at ¶ 12.)

## ARGUMENT

### **A. Balboa’s Conviction Establishes the Basis for Administrative Relief**

Section 203(f) of the Investment Advisers Act of 1940 authorizes this Court to bar individuals from “being associated with an investment adviser, broker, dealer, municipal

---

<sup>2</sup> This Court may rely upon the allegations set forth in the superseding indictment as a basis for granting the relief the Division requests. See Matter of Prange, No. 3-16140, 2014 WL 7211677, at \*1 (Initial Decision, Dec. 19, 2014); Matter of Gary L. McDuff, No. 3-15764, 2014 WL 4384138, at 5 n.10 (Initial Decision, Sep. 5, 2014).

securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, if the Commission finds ... [a] bar is in the public interest” and such individual has been convicted of a crime that “involves the purchase or sale of any security ... [or certain other crimes] or conspiracy to commit any such offense.” 15 U.S.C. § 80b-3(f).<sup>3</sup>

That Balboa was convicted of a crime that involved the purchase or sale of a security is beyond dispute. Balboa was convicted of, among other crimes, a criminal violation of Section 10(b) of the Securities Exchange Act of 1934, which, as the Court in Balboa’s criminal trial instructed the Jury, prohibits certain fraud “in connection with the purchase or sale of securities.” (Birnbbaum Decl. Ex. B, Criminal Trial Transcript, at 2250:23-2251:2.<sup>4</sup>) Balboa was also convicted of conspiracy to commit securities fraud. (OIP at 2.)<sup>5</sup> The relevant question before the Court, therefore, is whether barring Balboa from the securities industry is in the public interest.

**B. Barring Balboa from the Securities Industry Serves the Public Interest**

“In analyzing the public interest [the Commission] consider[s], among other things: the egregiousness of the respondent’s actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent’s assurances against future violations,

---

<sup>3</sup> As a bar is a prospective remedy intended to protect the public, “applying ... bars in a follow-on proceeding addressing pre-Dodd-Frank conduct is ‘not impermissibly retroactive.’” Matter of Lawrence Maxwell McCoy, No. 3-15538, 2014 WL 720787, at \*5 (Initial Decision, Feb. 26, 2014) (issuing ten-year “full industry bar” where violative acts ended in 2009, before the July 21, 2010 enactment of The Dodd-Frank Wall Street Reform and Consumer Protection Act, which “added collateral bar sanctions to ... Advisers Act Section 203(f)”) (quoting Matter of John W. Lawton, No. 3-14162, 2012 WL 6208750 (S.E.C. Dec. 13, 2012)).

<sup>4</sup> The “Criminal Trial Transcript” refers to the transcript of the second criminal trial in United States v. Balboa, 12 Cr. 196 (PAC), which began on December 2, 2013.

<sup>5</sup> In light of Respondent’s default, the Court should accept all allegations in the OIP as true. Commission Rule of Practice 155, 17 C.F.R. § 201.155(a); see also Rule 220(c), § 201.220(c) ([a]ny allegation not denied shall be deemed admitted”).

the respondent's recognition of the wrongful nature of his or her conduct, and the likelihood that the respondent's occupation will present opportunities for future violations. Matter of Eric S. Butler, et al., No. 3-13986, 2011 WL 3792730, at \*3 (S.E.C. June 27, 2011) (citing Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981)).

Here, each of the "Steadman factors" favors the imposition of a bar. As the Commission recently reiterated, "[f]idelity to the public interest requires a severe sanction when a respondent's misconduct involves fraud because the securities business is one in which opportunities for dishonesty recur constantly." Matter of Toby G. Scammell, No. 3-15271, 2014 WL 5493265, at \*5 (S.E.C. Oct. 29, 2014) (imposing bar despite certain mitigating factors not present here) (quotation omitted). Balboa's convictions were for multiple counts of fraud based on conduct that was particularly egregious, recurrent and involved a high degree of scienter.

To execute his scheme, Balboa created fictitious valuations for warrants held in the Fund he managed, he recruited and convinced co-conspirators to pass along those false valuations, and kept the real value of the Fund from the investors whose money Balboa sought. (Birnbaum Decl. Ex. A, Superseding Indictment, ¶¶ 12, 13, 18-20.) Balboa's crime was not an isolated occurrence, such as a one-time inflation of a single security, but a scheme that unfolded over many months with multiple securities. (Id. ¶ 12.) As one of the individuals who participated in Balboa's scheme explained at Balboa's criminal trial, the scheme extended both to certain Nigerian warrants and Uruguayan warrants (Birnbaum Decl. Ex. B, at 447:23-448:7; 510:11-21), and did not cease until the Fund collapsed in October 2008. (Id. at 585:9-14.)

Indeed, Balboa's fraud was so egregious that the Court in his criminal case sentenced him to four years in prison, followed by three years of supervised release. (Birnbaum Decl. Ex. C, June 24, 2014 Judgment in United States v. Balboa, at 2-3.) The sanctions imposed in the

criminal case also reflect the considerable injury Balboa inflicted on innocent investors, as the Court determined that Balboa should pay approximately \$390 million to the victims of his crimes as restitution, in addition to a forfeiture order requiring Balboa to pay an additional sum of more than \$2 million. (Birnbaum Decl. Exs. D and E, June 24, 2014 restitution and forfeiture orders, respectively.) See Matter of Gary L. McDuff, No. 3-15764, 2014 WL 4384138, at \*5 (Initial Decision, Sep. 5, 2014) (“The Commission also considers ... the degree of harm to investors and the marketplace resulting from the violation” in determining an appropriate sanction); see also Matter of Michael S. Steinberg, No. 3-15925, 2014 WL 5141532, at \*6 (SEC Oct. 14, 2014) (finding “substantial unlawful profits” of \$1.4 million as evidence of egregiousness of respondent’s fraud).

The criminal case’s Jury verdict makes clear that Balboa acted with scienter, as the Jury was instructed that the securities fraud charges against Balboa required a finding of an “[i]ntent to defraud, [which] means to act knowingly and with the specific intent to deceive.” (Birnbaum Decl., Ex. B, at 2255:15-18.) Balboa’s efforts to conceal his fraud further betray his high degree of scienter. See Scammell, 2014 WL 5493265, at \*6 (finding “intentional acts of concealment ... provide[d] further evidence that [Respondent] acted with a high degree of scienter”).


As for the remaining Steadman factors, Balboa has not offered any assurance against future violations, let alone “sincere” assurances, and he has shown no recognition of the wrongful nature of his conduct. See Matter of James Prange, 2014 WL 7211677, at \*5 (noting respondent’s failure to answer or otherwise defend the allegations brought by the Division—like Balboa here—as evidence of respondent’s failure to acknowledge his wrongful conduct). Respondent’s conduct also indicates he wishes to continue working in the securities industry, as he continued to work in the industry following his indictment. (Birnbaum Decl. Ex. F.)

Finally, a bar would serve the Commission's critical goal of deterrence for which "[c]ollateral bars have long been considered [an] effective" means. See McDuff, 2014 WL 4384138, at \*5.

**CONCLUSION**

The Division of Enforcement respectfully requests that the Court order the sanctions recommended herein against Respondent Michael R. Balboa.

Dated: December 29, 2014  
New York, NY 10281

By:   
Nancy A. Brown  
Michael D. Birnbaum  
Attorneys for the Division of Enforcement  
SECURITIES AND EXCHANGE  
COMMISSION  
New York Regional Office  
Brookfield Place, 200 Vesey Street  
New York, NY 10281  
Tel.: (212) 336-0523 (Birnbaum)  
Email: [BirnbaumM@sec.gov](mailto:BirnbaumM@sec.gov)

ORIGINAL

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING  
File No. 3-16191

In the Matter of

MICHAEL ROBERT BALBOA,

Respondent.



DECLARATION OF MICHAEL D. BIRNBAUM IN SUPPORT OF PLAINTIFF'S  
MOTION FOR SANCTIONS AGAINST MICHAEL R. BALBOA



I, Michael D. Birnbaum, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am employed as Senior Trial Counsel in the Securities and Exchange Commission's Division of Enforcement. I submit this declaration in support of the Division's Motion for Sanctions Against Michael R. Balboa.

2. Appended as Exhibit A hereto is a true and correct copy of the Superseding Indictment in United States v. Balboa, 12 Cr. 196 (PAC) (the "Criminal Action").

3. Appended as Exhibit B hereto is a true and correct copy of certain pages of the Trial Transcript for the second trial in the Criminal Action, which began on December 2, 2013.

4. Appended as Exhibit C hereto is a true and correct copy of the June 24, 2014 Judgment in the Criminal Action.

5. Appended as Exhibits D and E hereto are true and correct copies of the June 24, 2014 restitution and forfeiture orders in the Criminal Action, respectively.

6. Appended as Exhibit F hereto is a true and correct copy of a March 18, 2013 press release about Respondent Balboa's continued efforts to manage investments.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 29, 2014  
New York, NY

  
Michael D. Birnbaum

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA :  
v. :  
MICHAEL BALBOA, :  
Defendant. :

**SUPERSEDING**  
**INDICTMENT**  
S1 12 Cr. 196 (PAC)

- - - - - x

COUNT ONE

(Conspiracy to Commit Securities Fraud)

The Grand Jury charges:

Relevant Persons and Entities

The Hedge Fund

1. At all relevant times, Millennium Global Emerging Credit Fund ("MGECF") was a hedge fund that invested in corporate and sovereign debt instruments in emerging countries.
2. As of in or about October 2007, MGECF primarily consisted of two "feeder" funds: (1) Millennium Global Emerging Credit Fund, Ltd. (the "Offshore Feeder Fund"), which was incorporated in Bermuda; and (2) Millennium Global Emerging Credit Fund, LP (the "U.S. Feeder Fund"), a Delaware limited partnership with a general partner located in Manhattan, New York. A feeder fund is an investment vehicle which pools investors' money and invests it in a "master fund," which makes investments and conducts trades. Both the Offshore Feeder Fund and the U.S. Feeder Fund invested substantially all of their

capital in the "master" fund - Millennium Global Emerging Credit Master Fund, Ltd. (the "Master Fund"), which was incorporated in Bermuda. The Offshore Feeder Fund, the U.S. Feeder Fund, and the Master Fund are collectively referred to as "MGE CF" or the "Hedge Fund."

3. To purchase shares in the Hedge Fund, United States-based investors signed subscription documents, which enabled them to purchase shares in either the U.S. Feeder Fund or the Offshore Feeder Fund for a minimum investment of \$500,000. The subscription documents sent to prospective investors contained wire transfer instructions to a bank account in Manhattan. In addition, certain investors in the Hedge Fund were based in Manhattan.

4. On or about October 16, 2008, the Master Fund and the Offshore Feeder Fund petitioned the Supreme Court of Bermuda for voluntary liquidation, and the U.S. Feeder Fund ceased operating shortly thereafter.

The Defendant

5. At all relevant times, MICHAEL BALBOA, the defendant, served as the portfolio manager for the Hedge Fund and was a Managing Director of Millennium Global Investments Limited ("MGIL"), which was the Investment Manager of the Hedge Fund. BALBOA was based in London, and his responsibilities included selecting the securities in which the Hedge Fund invested.

6. From in or about December 2006 through in or about September 2008, MGIL paid MICHAEL BALBOA, the defendant, approximately \$6.5 million for his portfolio management services to the Hedge Fund, which was based, in part, on the Hedge Fund's performance.

The Independent Valuation Agent

7. The Hedge Fund utilized an independent valuation agent (the "IVA") to determine the Hedge Fund's "net asset value" ("NAV"). The Hedge Fund's NAV is the value of the Hedge Fund's assets less any liabilities and estimated costs of sale/liquidation.

8. The IVA computed on a monthly basis the Hedge Fund's NAV and NAV per share. The IVA used market prices for the Hedge Fund's securities that were current as of the close of the last business day of the month. For the Hedge Fund's illiquid and non-exchange traded securities, the IVA was supposed to value the securities based on mark-to-market quotes ("marks") obtained from outside, independent parties.

9. MGIL used the IVA's price determinations in advising investors about the Hedge Fund's month-end NAV and NAV per share.

Co-Conspirator 1 and Co-Conspirator 2

10. As part of the IVA's valuation process, MICHAEL BALBOA, the defendant, provided the IVA with the names of brokers

who could provide month-end marks for certain of the Hedge Fund's illiquid holdings. Specifically, BALBOA provided the IVA with the names of two co-conspirators not named as defendants herein ("CC-1" and "CC-2").

11. At all relevant times, CC-1 worked at an overseas office of a registered United States broker-dealer, and CC-2 worked at an overseas office of a London-based broker-dealer.

Overview of the Scheme to Defraud

12. From at least in or about January 2008 through in or about October 2008, MICHAEL BALBOA, the defendant, engaged in a scheme to inflate falsely the value of certain of the Hedge Fund's illiquid securities. Furthermore, through in or about March 2011, BALBOA also concealed his fraudulent scheme from company investigators, the Hedge Fund's court-appointed liquidator, and United States and foreign law enforcement authorities.

13. In furtherance of his scheme, BALBOA instructed CC-1 and/or CC-2 – whom BALBOA had identified to the IVA as individuals who could independently mark the illiquid securities – to provide the IVA with substantially inflated prices for the securities. At BALBOA's express direction, CC-1 and CC-2 provided overvalued prices to the IVA, as if they were CC-1's and CC-2's independent assessments, when in reality they were BALBOA's inflated marks.

14. MICHAEL BALBOA, the defendant, did not divulge to investors or prospective investors that BALBOA was the true underlying source for the valuation of the illiquid securities, and that BALBOA was valuing the securities in-house, rather than relying on independent marks. BALBOA engaged in this fraudulent scheme for the purpose of inflating the NAV of the Hedge Fund.

15. From in or about late 2010 through in or about March 2011, to prevent detection of his fraudulent scheme, MICHAEL BALBOA, the defendant, caused and attempted to cause others, including CC-1, to communicate certain false and materially misleading information to MGIL, the Hedge Fund's court-appointed liquidator, and United States and foreign law enforcement authorities.

BALBOA's Scheme Involved Nigerian Warrants

16. The Hedge Fund's sovereign debt holdings included payment-adjusted warrants issued by the Government of Nigeria (the "Nigerian Warrants"). These warrants were financial obligations of the Government of Nigeria. Payments on these warrants were based on the price of oil and were to be made semi-annually.

17. The Hedge Fund purchased 23,500 Nigerian Warrants between January and March 2007, at an average price of \$244 per Warrant, for a total price of approximately \$5.7 million. Between January 2007 and October 2008, known sale and purchase

prices for the Nigerian Warrants, as reflected in marketplace transactions, ranged from a low of \$145 to a high of \$258 per Warrant.

18. MICHAEL BALBOA, the defendant, caused the Nigerian Warrants to be falsely overvalued. Although from January 2007 to October 2008 the Nigerian Warrants traded between \$145 and \$258, CC-1 and/or CC-2, at BALBOA's direction, provided the IVA with marks ranging from \$500 to \$3,500 per Warrant.

19. Notwithstanding the fact that it was MICHAEL BALBOA, the defendant, who directed marks that CC-1 and CC-2 provided to the IVA, the Hedge Fund highlighted the independent role of the IVA in a variety of documents that were sent to investors and prospective investors. These documents included offering memoranda and responses to due diligence questionnaires ("DDQs") utilized by investors. In particular, the Hedge Fund emphasized to investors that the IVA was responsible for valuing the Hedge Fund's assets, and that the Hedge Fund did not value its own assets.

20. For example, in one DDQ published by MGIL and sent to investors, the Hedge Fund noted that "[t]here are no assets valued in house"; "OTC trade prices for illiquid instruments which cannot be valued at [the IVA] are marked to counterparty values and held constant across the month"; "[a]s valuation agent, [the IVA] is responsible for sourcing prices to value the



fund monthly"; and "[the IVA] calculates the NAV of [the Hedge Fund] independently of Millennium Global."

21. In furtherance of the scheme, MICHAEL BALBOA, the defendant, also instructed CC-1 how to address the IVA's anticipated questions about CC-1's significant increased valuations.

a. For example, after CC-1 provided the IVA with a valuation for the Nigerian Warrants that was almost \$1,000 higher than the previous month, the IVA sent an e-mail to CC-1 (on May 14, 2008) stating, "We would like to confirm the [Nigerian Warrant] prices again since its [sic] differing way too much from the last time." Less than an hour later, CC-1 forwarded this e-mail to BALBOA and wrote: "Mike, [IVA] asking for a justification of the Nigeria wrt move from 500 to 1300-1500. . i have no idea. ." BALBOA responded: "[j]ust say that Oil was up and these are tied to oil prices," to which CC-1 replied "perfect." The same day, CC-1 sent a response e-mail to the IVA: "confirmed. . this asset tied to oil prices up tremendously !!!"

b. In a July 16, 2008 e-mail, BALBOA instructed CC-1 to "[p]lease revise [the Nigerian Warrant prices] up to 2240-2440[.] If they ask just say higher oil prices," to which CC-1 responded "ok." Later that same day, CC-1 sent an e-mail to the IVA: "In fact, with oil prices around usd 145 then, those

[referring to the Nigerian Warrant] were 2240-2440[.] Hope that helps (difficult to price)."

22. The IVA assigned month-end marks to the Nigerian Warrants based on the marks that CC-1 and CC-2 provided. From January 2008 to September 2008, the IVA assigned the median marks provided by CC-1 and/or CC-2, which ranged from \$517.50 (for January 2008) to \$3,575 (for September 2008).

23. Because the Hedge Fund held 23,500 Nigerian Warrants, the Hedge Fund's total valuation for the Nigerian Warrants increased from approximately \$12,161,250, in January 2008, to \$84,012,500 in August 2008.

24. Because the IVA used the falsely inflated marks provided by MICHAEL BALBOA, the defendant, to value the Nigerian Warrants, the IVA overstated the Hedge Fund's NAV. These false overstatements were communicated to actual and prospective investors through, among other things, monthly newsletters that outlined the NAV and NAV per share of the Hedge Fund.

#### Statutory Allegations

25. From at least in or about January 2008 through in or about March 2011, in the Southern District of New York and elsewhere, MICHAEL BALBOA, the defendant, 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, securities fraud, in

violation of Title 15, United States Code, Sections 78j(b) and 78ff and Title 17, Code of Federal Regulations, Section 240.10b-5.

26. It was a part and object of the conspiracy that MICHAEL BALBOA, the defendant, and others known and unknown, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails, 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: (1) employing devices, schemes and artifices to defraud; (2) 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 (3) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon other persons, in violation of Title 15, United States Code, Sections 78j(b) and 78ff.

Means and Methods of the Conspiracy

27. Among the means and methods by which MICHAEL BALBOA, the defendant, and others known and unknown, would and did carry out the conspiracy were the following:

a. BALBOA told the IVA to consult with CC-1 and CC-2 to obtain marks for the Nigerian Warrants.

b. BALBOA instructed CC-1 and CC-2 to provide falsely inflated marks for the Nigerian Warrants to the IVA.

c. The IVA relied on these overvalued marks in computing the NAV of the Hedge Fund.

d. BALBOA concealed from investors and prospective investors that BALBOA was the true source for the valuation of the Nigerian Warrants, and that, contrary to the representations in the offering memoranda and DDQs provided to investors, the IVA was not relying on independent marks.

e. BALBOA sought to mislead MGIL investigators, the Hedge Fund's liquidator, and/or law enforcement authorities by causing and attempting to cause certain false or materially misleading information to be communicated through others.

#### Overt Acts

28. In furtherance of the conspiracy and to effect its illegal object, MICHAEL BALBOA, the defendant, and his co-conspirators, committed the following overt acts, among others, in the Southern District of New York and elsewhere:

a. On March 4, 2008, CC-2 sent an e-mail to the IVA with an inflated month-end market price range for the Nigerian Warrants.

b. On May 14, 2008 BALBOA sent an e-mail to CC-1, which instructed CC-1 on how to respond to an inquiry from the IVA.

c. On July 16, 2008, BALBOA sent an e-mail to CC-1, which directed CC-1 to provide the IVA with an inflated month-end price market range for the Nigerian Warrants.

d. On July 16, 2008, CC-1 sent an e-mail to the IVA with an inflated month-end market price range for the Nigerian Warrants.

e. On August 13, 2008, CC-1 sent an e-mail to the IVA with an inflated month-end market price range for the Nigerian Warrants.

f. On September 16, 2008, BALBOA sent an e-mail to CC-1, which directed CC-1 to provide the IVA with an inflated month-end market price range for the Nigerian Warrants.

g. On September 16, 2008, CC-1 sent an e-mail to the IVA with an inflated month-end market price range for the Nigerian Warrants.

h. On October 1, 2008, BALBOA instructed CC-1 during a telephone call to provide the IVA with an inflated month-end market price range for the Nigerian Warrants

i. On October 1, 2008, CC-1 sent an e-mail to the IVA with an inflated month-end market price range for the Nigerian Warrants.

j. In the summer of 2008, BALBOA met with an investor in Manhattan, New York, to discuss the Hedge Fund.

k. From January 2008 to October 2008, BALBOA

caused the Hedge Fund to disseminate to investors, including investors located in Manhattan, New York, on a monthly basis, false statements about its valuation.

l. In October 2010, BALBOA sent three e-mails to CC-1 in advance of CC-1's conversation with MGIL personnel about CC-1's work in connection with the Hedge Fund.

m. In or about February 2011, in advance of CC-1's interview with United States and foreign law enforcement authorities, BALBOA sent CC-1 a FedEx package containing their prior e-mail correspondence.

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

COUNT TWO

(Conspiracy to Commit Wire Fraud)

The Grand Jury further charges:

29. The allegations set forth in paragraphs 1 through 24 and 27 through 28 are repeated and re-alleged as if set forth fully herein.

30. From at least in or about January 2008 through in or about March 2011, in the Southern District of New York and elsewhere, MICHAEL BALBOA, the defendant, and others known and unknown, willfully and knowingly, did combine, conspire, confederate, and agree together and with each other to commit wire fraud, in violation of Title 18, United States Code, Section 1343.

31. It was a part and object of the conspiracy that MICHAEL BALBOA, the defendant, 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, would and did transmit and cause 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, in violation of Title 18, United States Code, Section 1343.

Overt Acts

32. In furtherance of the conspiracy and to effect the illegal object thereof, MICHAEL BALBOA, the defendant, and others known and unknown committed the same overt acts set forth above in Count One of this Indictment, among others, in the Southern District of New York and elsewhere.

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

COUNT THREE

(Securities Fraud)

The Grand Jury further charges:

33. The allegations set forth in paragraphs 1 through 24 and 27 through 28 are repeated and realleged as if set forth fully herein.

34. From at least in or about January 2008 through in or about October 2008, in the Southern District of New York and elsewhere, MICHAEL BALBOA, the defendant, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails, 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 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 other persons, to wit, BALBOA made, and caused to be made, false representations to investors regarding the monthly net asset value of the Hedge Fund, and the manner in which the Hedge Fund's assets were valued.

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



COUNT FOUR

(Wire Fraud)

The Grand Jury further charges:

35. The allegations set forth in paragraphs 1 through 24 and 27 through 28 are repeated and realleged as if set forth fully herein.

36. From at least in or about January 2008 through in or about October 2008, in the Southern District of New York and elsewhere, MICHAEL BALBOA, the defendant, 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, did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, to wit, e-mails and telephone calls, for the purpose of executing such scheme and artifice, to wit, BALBOA instructed CC-1 and CC-2 to provide the IVA with artificially inflated month-end prices for the Nigerian Warrants in order to falsely overstate the monthly net asset value of the Hedge Fund.

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

COUNT FIVE

(Investment Adviser Fraud)

The Grand Jury further charges:

37. The allegations set forth in paragraphs 1 through 24 and 27 through 28 are repeated and realleged as if set forth fully herein.

38. From in or about January 2008 to October 2008, in the Southern District of New York and elsewhere, MICHAEL BALBOA, the defendant, acting as an investment adviser with respect to investors and potential investors in MGECECF or the Hedge Fund, willfully and knowingly, by use of the mails and means and instrumentalities of interstate commerce, directly and indirectly, did: (a) employ devices, schemes, and artifices to defraud clients and prospective clients; (b) engaged in transactions, practices, and courses of business which operated as a fraud and deceit upon clients and prospective clients; and (c) engaged in acts, practices, and courses of business that were fraudulent, deceptive, and manipulative, to wit, BALBOA, through CC-1 and CC-2, provided the IVA with artificially inflated month-end prices for the Nigerian Warrants in order to falsely overstate the monthly net asset value of the Hedge Fund.

(Title 15, United States Code, Sections 80b-6, 80b-17, and Title 18, United States Code, Section 2.)

FORFEITURE ALLEGATIONS FOR COUNTS ONE TO FIVE

39. As the result of committing the securities, wire, and investment adviser fraud offenses alleged in Counts One through Five of this Indictment, MICHAEL BALBOA, the defendant, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses.

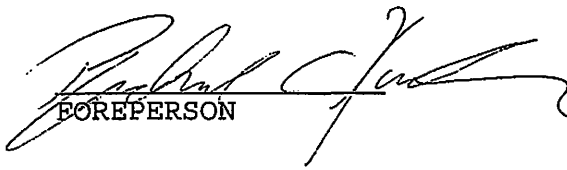
Substitute Asset Provision


40. If any of the above-described forfeitable property, as a result of any act or omission of the defendant,
- a. cannot be located upon the exercise of due diligence;
  - b. has been transferred or sold to, or deposited with, a third person;
  - c. has been placed beyond the jurisdiction of the Court;
  - d. has been substantially diminished in value; or
  - e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any

other property of the defendant up to the value of the  
forfeitable property described above.

(Title 18, United States Code, Section 981(a)(1)(C);  
Title 21, United States Code, Section 853(p);  
and Title 28, United States Code, Section 2461.)

  
FOREPERSON

  
PREET BHARARA (B)  
United States Attorney

---

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

---

UNITED STATES OF AMERICA

- v. -

MICHAEL BALBOA,

Defendant.

---

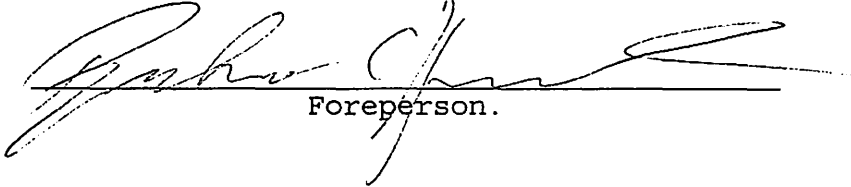
SUPERSEDING  
INDICTMENT

S1 12 Cr. 196 (PAC)

(Title 18 United States Code, Sections 2,  
371, 1343, 1349; Title 15, United States  
Code, Sections 78j(b), 78ff, 80b-6, and  
80b-17)

PREET BHARARA  
United States Attorney.

A TRUE BILL

  
Foreperson.

---

# **EXHIBIT B**

**In The Matter Of:**  
*UNITED STATES OF AMERICA v*  
*MICHAEL BALBOA,*

---

*December 2, 2013*

---

*SOUTHERN DISTRICT REPORTERS*  
*500 PEARL STREET*  
*NEW YORK, NY 10007*  
*212 805-0330*

<p>DC4AABAL6 Daniel - Recross Page 444</p> <p>1 (In Open Court) 2 GILLES DE CHARSONVILLE, 3 called as a witness by the Government, 4 having been duly sworn, testified as follows: 5 DIRECT EXAMINATION 6 BY MR. MILLER: 7 Q. Good afternoon, sir. 8 A. Good afternoon. 9 Q. How old are you? 10 A. I am 51. 11 Q. What country are you a citizen of? 12 A. I am from France. 13 Q. Where are you currently living? 14 A. Sorry. 15 Q. Where are you currently living? 16 A. I live in Madrid in Spain. 17 Q. What languages do you speak, sir? 18 A. I speak French, English, Spanish. 19 Q. Is English your native language? 20 A. No, it's not. 21 Q. Are you fluent in it? 22 A. I consider myself as a fluent but it's not my native 23 language. 24 Q. Are you comfort testifying in it today? 25 A. Yes, I am.</p>	<p>DC4AABAL6 De Charsonville - Direct Page 446</p> <p>1 Q. What do you do for a living, sir? 2 A. I work for a company currently which I just joined roughly 3 two weeks ago called Newscape Capital Group. 4 Q. What do you do for Newscape Capital Group? 5 A. I am part of execution advisory team specialized on fixed 6 income so that would be -- and I am the best on merging side of 7 emerging markets. 8 Q. Emerging markets you said? 9 A. Correct. 10 Q. What does that generally mean? 11 A. Emerging market, fixed income rating that would be Latin 12 America, Eastern Europe and some Asian countries. 13 Q. And you said that you have been in Newscape for the last 14 two weeks. Where were employed prior to the last two weeks? 15 A. Before Newscape I was employed from January 2013 until I 16 joined Newscape in a company called Aalto Invest which is an 17 asset management company in between UK and Switzerland. 18 Q. And before Aalto Invest what did you do? 19 A. Before Aalto Invest I did remain unemployed all over 2012 20 during the year. 21 Q. And prior to 2012 where did you work? 22 A. Prior to 2012 I did work for a small U.S. investment bank, 23 a boutique type of company called BCP Securities LLC for which 24 I worked from summer of 2003 until December 2013 in the 25 European office which was in Madrid, Spain.</p>
<p>DC4AABAL6 De Charsonville - Direct Page 445</p> <p>1 Q. Mr. De Charsonville, when did you arrive here in New York 2 to come here to testify? 3 A. I arrive on Friday last Friday. 4 Q. Sir, how far did you go in school? 5 A. Following high school I studied five years which it lead me 6 to a diploma in French business school, an MBA. 7 Q. And where did you go to high school? 8 A. I went to high school in little town 20 miles north of 9 Paris called Isle Adam. That would be written I-s-l-e, space, 10 A-d-a-m. 11 Q. Did you go no university in France as well? 12 A. Yes, I went to a business school there. 13 Q. Did you get a business degree? 14 A. Yes. 15 Q. When was that? 16 A. 1986. 17 Q. After you got your business degree in 1986 did you 18 subsequently get a graduate degree? 19 A. Well, the same year since this MBA program was an agreement 20 between my business school and a university in San Francisco 21 called USF and this program wrote us during this second and 22 third year of the French business school to go and follow some 23 MBA program in U.S. states. So I did get my MBA more or less 24 at the same date so my degree is a diploma of French business 25 school.</p>	<p>DC4AABAL6 De Charsonville - Direct Page 447</p> <p>1 Q. What was your position there? 2 A. I was a managing director. 3 Q. How did your employment at BCP Securities come to an end? 4 A. In December 2011 I was let go from BCP Securities. 5 Q. Were you let go for cause? 6 A. Yes. I was put on disciplinary -- 7 Q. Why? 8 A. That was following something which happened on this 9 December 2nd. On December 2nd I was charged by the SEC, the 10 U.S. Securities and Exchange Commission. 11 Q. So on December 2, 2011, correct? 12 A. Correct. 13 Q. You were charged by the United States Securities and 14 Exchange Commission? 15 A. Correct. 16 Q. Why were you charged by the Securities and Exchange 17 Commission? 18 A. Well, I was part of a scheme, some sort of a scheme 19 involving manipulating the valuation of a fund built in UK. 20 Q. What fund was that? 21 A. Name of the fund was Millennium Global Emerging Credit 22 fund. 23 Q. And if you can just generally describe very briefly what 24 was the scheme that you were involved in? 25 A. Very briefly it was about manipulation of the valuation of</p>



DC4AABAL6 De Charsonville - Direct Page 448

1 some of the assets held by the funds and that will mean that if  
2 you manipulate a value and give a wrong value and the bond will  
3 be manipulating the net asset of the fund.  
4 Q. Did you do this alone or with anybody else?  
5 A. Did I that with someone else.  
6 Q. Who?  
7 A. Someone was working into this fund called Michael Balboa.  
8 Q. And who is Mr. Balboa?  
9 A. Mr. Balboa is, was the fund manager of the Millennium  
10 Global Emerging Credit fund.  
11 Q. Do you see Mr. Balboa in the courtroom today?  
12 A. Yes, I do.  
13 Q. Can you please describe him?  
14 MR. TACOPINA: Your Honor, we'll stipulate that Mr. De  
15 Charsonville knows Mr. Balboa.  
16 THE COURT: All right. So stipulated.  
17 MR. MILLER: Thank you.  
18 Q. Now, sir, are you married?  
19 A. Yes, I am.  
20 Q. How long have you been married?  
21 A. Nearly 15 years.  
22 Q. Do you have any children?  
23 A. I do.  
24 Q. How old are they?  
25 A. Nearly 15 and 12.

DC4AABAL6 De Charsonville - Direct Page 449

1 Q. Does your wife work outside the home?  
2 A. No, she doesn't.  
3 Q. When you were unemployed as you testified to earlier how  
4 did you support yourself, your wife and your two children?  
5 A. Mainly with my savings since unemployment benefits in Spain  
6 a very low.  
7 Q. Have you ever maintained any bank accounts overseas?  
8 A. Yes.  
9 Q. Where?  
10 A. Well, in, first of all I have been living in Spain. I have  
11 been living in UK during ten years so I kept my account there  
12 and with nothing there and so I work a lot of dormant or  
13 sleeping accounts. When I was in Spain -- well, I am in  
14 Spain -- I opened in 2007 an account in private bank in  
15 Luxembourg which was always declared and the reason was I was  
16 already at that time some doubts about the financial  
17 stabilities of some Spanish banks. And in the 90s in the  
18 beginning of 90s I believe I did -- an account from my father  
19 in Switzerland which he never really used and was kept dormant  
20 or sleepy until 2012 where it was closed at the end of 2012.  
21 Q. Was that declared bank account that you had when you were  
22 living and working in Spain?  
23 A. The account in Luxembourg was always declared to the  
24 Spanish authorities because it was quite an active account.  
25 And the account in Switzerland was never declared to the UK or

DC4AABAL6 De Charsonville - Direct Page 450

1 Spanish authorities since I don't think I had to being I was a  
2 foreigner.  
3 Q. So just to clarify, when you were living in Spain you  
4 didn't think you had to declare your Switzerland account being  
5 a non Spanish person who's living in Spain?  
6 A. Yes. That was confirmed to me by my physicalist.  
7 MR. TACOPINA: Objection.  
8 THE COURT: Overruled.  
9 Q. Has it ever been declared?  
10 A. Yes. It was declared in I believe on November 2012 and  
11 that was following the advice of my physicalist, Mr --  
12 THE COURT: That's the answer of the question.  
13 Q. Was there ever any finding of wrongdoing against you in  
14 connection with that account?  
15 A. No.  
16 Q. Now, with respect to where you were working until very  
17 recently, Aalto Invest, what were your daily duties and  
18 responsibilities there?  
19 A. At Aalto Invest as with the Newscape I was mainly dealing  
20 on emerging mark bonds and there that will be advising clients  
21 and helping them buy or sell in many market situations.  
22 Q. And when you were applying to Aalto for that job did any of  
23 your conduct at the previous job BCP Securities that you told  
24 us about, did that come up?  
25 A. Yes. I told them about my being charged by the SEC in this

DC4AABAL6 De Charsonville - Direct Page 451

1 case.  
2 Q. Did you tell them the whole truth?  
3 A. No, I was not completely truthful with them and I didn't  
4 give the extensive details of my responsibility into that  
5 scheme.  
6 Q. Like what?  
7 A. Well, to enter into the details, I mean I told them you  
8 know, that some of the prices of the bond which I was putting a  
9 variation on were directed by the fund manager. But I did,  
10 either to them that I knew that was specific quotes or marks  
11 were inflated. So I lie about the fact that I knew and I told  
12 them I didn't know and I didn't tell them about all the lies  
13 which I gave during the process about some of the reason and  
14 some of the, about some of reason used into the explanations.  
15 Q. Just to break that down slightly, you mentioned prices that  
16 you were given by the fund manager. Who were you referring to?  
17 A. Mr. Balboa.  
18 Q. And to whom were you taking these prices that Mr. Balboa  
19 gave to you to provide?  
20 A. Well, into those cases it was were Mr. Balboa.  
21 Q. To whom where you providing those prices?  
22 A. Sorry. That was to be given to a company called GlobeOp  
23 which was a valuation company used by the Millennium fund.  
24 Q. Why did you leave this out when you were telling what  
25 happened to your employer?

DC5UBAL2 De Charsonville - direct Page 510

1 A. It was very illiquid but maybe not as illiquid, and the  
2 reason being, at the beginning of 2007 there may have been  
3 prices or quotes on Uruguayan warrant which disappeared maybe  
4 in March or summer of 2007 and then there was nothing at all on  
5 it.  
6 Q. In this mark-to-market process that you described earlier,  
7 what was different about what you did with respect to these two  
8 exceptions that you referred to earlier, the Nigerian and  
9 Uruguayan warrants?  
10 A. Sorry, sir. I misunderstood the question.  
11 Q. Sure. With respect to the Nigerian, Uruguayan warrants how  
12 did your process of marking to market differ from the other 15  
13 or 20 securities that you were working with Mr. Balboa on?  
14 A. Well, in these two particular case, I was -- since I didn't  
15 have access to anything, at some time in 2007, Nigerian, I  
16 didn't have access to information on the screen I was just  
17 putting what Mr. Balboa was directing me to put without  
18 checking.  
19 Q. Did that also basically apply for the Uruguayan, is that  
20 what you are saying?  
21 A. Yes.  
22 Q. Let me ask you about the Nigerian. You said something  
23 about you couldn't see anything on the screen, what screen are  
24 you talking about?  
25 A. I am talking about this particular page quote on ALL-Q and

DC5UBAL2 De Charsonville - direct Page 511

1 sometimes from 2007 there was nothing on the Nigerian warrant.  
2 Q. What about in 2008?  
3 A. Same -- nothing on it.  
4 Q. And this ALL-Q, is that related to Bloomberg?  
5 A. Yes.  
6 Q. You didn't know what the prices on the securities were?  
7 A. Yes.  
8 Q. What if anything did you tell Mr. Balboa, the defendant,  
9 about the difficulties you had in finding any prices for the  
10 Nigerian warrant?  
11 A. Well, that was not in 2008. That was in 2007. And I  
12 believe maybe at the beginning of the year during that process,  
13 there was never any questioning or question about this  
14 particular one since it wasn't on the screen. But at one point  
15 whether it was in March or April or slightly after of 2007,  
16 when going around and coming to Nigeria, looking at the screen,  
17 I find out that there is nothing. And that's how we started,  
18 really, because then I told Mr. Balboa at that particular time,  
19 sorry, Mike, I don't see anything on this one. I can't help  
20 you. And that's when -- again, I am not exactly sure of when  
21 it happened in 2007. That's when he told me that, well,  
22 Gilles, I need a third opinion. Do you mind putting the same  
23 quote as two other brokers just gave me?  
24 Q. You are talking about the Nigerian warrants, you said he  
25 told you had gotten two other brokers to give him quotes on the

DC5UBAL2 De Charsonville - direct Page 512

1 Nigerian warrant?  
2 A. Correct.  
3 Q. Did you know at the time who those other two brokers were?  
4 A. No.  
5 Q. Sitting here today, do you know whether what he told you  
6 about having two other brokers for the Nigerian warrant is  
7 true?  
8 A. No.  
9 Q. What did you do after this conversation that you had with  
10 Mr. Balboa?  
11 A. I decided to agree and do what he was asking me to do.  
12 Q. Did you have an understanding at the time of whether what  
13 you were doing in terms of what you doing of basically taking  
14 his prices for the Nigerian warrant was in any way improper?  
15 A. Yes. I understood it was improper since for the first time  
16 on this particular asset I was going to give something which  
17 was not coming from my own knowledge and was coming from him.  
18 So that was improper.  
19 Q. And you were supposed to be providing an independent  
20 price --  
21 A. Exactly, and that would not be independent anymore.  
22 MR. TACOPINA: Object to the leading.  
23 THE COURT: Overruled.  
24 Q. Mr. De Charsonville, why then did you agree to go along  
25 with Mr. Balboa's request?

DC5UBAL2 De Charsonville - direct Page 513

1 A. Well, again, you know this is a decision that you might  
2 take in one second or two seconds that is going to change your  
3 life forever, but I agreed because, initially, I thought it was  
4 not a big deal -- the process was improper since I didn't know  
5 if -- the quote was not coming from myself but I thought it was  
6 not a big deal, but I did trust him what he was telling me was  
7 true that he had really two quotes from two other brokers, so I  
8 thought it was not a big deal at first, and the simple reason  
9 being that in the beginning of 2007, he was already an active  
10 client, a good client and I wanted to keep him that way.  
11 Q. You said initially you thought it was not a big deal  
12 because when he first told you this he said he had two brokers.  
13 Did there come a time where you did think it was a big deal?  
14 A. I mean after?  
15 Q. Yes.  
16 A. Yes, yes.  
17 Q. So did you want to keep him happy as a client, is that why  
18 you did it?  
19 A. Yes.  
20 Q. When you first started doing this, what was your  
21 expectation as to how often you would be asked to just put down  
22 the price he was telling you?  
23 A. When we had this conversation, we were referring to this  
24 particular time. I thought it would be only for that time.  
25 Q. Did you think that it was going to be repetitive, that it

DC5UBAL4 De Charsonville - direct Page 582

1 A. I said: "Mike, that is the one where we have the 3,000,  
2 4,000. Can you talk to James?"  
3 Q. Why did you ask Mr. Balboa to talk to James?  
4 A. First of all, I was surprised to receive an email from  
5 Millennium and from someone probably at the back office of  
6 Millennium since it was the first time ever. And the reason  
7 why I asked, sent this email to Mr. Balboa, can you talk to  
8 James, because I didn't want to deal with it.  
9 Q. Did Mr. Balboa respond to that email?  
10 A. No, he did not.  
11 Q. Eventually, did he respond?  
12 A. Not on that day, a few days later.  
13 Q. So a few days later.  
14 MR. MILLER: If we could publish Government Exhibit  
15 1223, with your Honor's permission?  
16 THE COURT: Yes. Go ahead.  
17 Q. Is this the email that you referred to that came on October  
18 16, three days later?  
19 A. Correct.  
20 Q. What did Mr. Balboa say to you in this email?  
21 A. In this email, Mr. Balboa is asking question: "Did you  
22 recently reconfirm certain prices with GlobeOp," with a  
23 question mark.  
24 Q. Is there anything that is sort of different about 1223,  
25 particularly below what Mr. Balboa said than the exhibit we

DC5UBAL4 De Charsonville - direct Page 583

1 just looked at 1222?  
2 A. Yes. Previously, we started an exchange between usually  
3 the three of us, meaning Mr. Balboa, GlobeOp and myself.  
4 And in this Exhibit 1223, this email, he is using to  
5 ask me this question is a reply from a research email sent to  
6 all of the clients of BCP.  
7 Q. So he doesn't reply to your question in 1222, he uses a  
8 different email when he sent you the answer?  
9 A. Correct.  
10 Q. He said in this email, "did you recently reconfirm certain  
11 prices with GlobeOp"?  
12 A. Yes.  
13 Q. Did you have a reaction when you received it?  
14 A. Yes.  
15 Q. What was that reaction?  
16 A. It was a reaction of, you know, I was in between -- I was  
17 unhappy about it, I would say.  
18 Q. You were unhappy about it?  
19 A. Yes.  
20 Q. Why was that?  
21 A. Well, because I am receiving an email with a question for  
22 which I know that he has the answer.  
23 Q. What makes you think that you know he has the answer to  
24 this?  
25 A. I guess that is explaining to the answer I'm sending after

DC5UBAL4 De Charsonville - direct Page 584

1 that, but that's because we did talk each time, I did reconfirm  
2 previously, to reconfirm those prices.  
3 Q. Did you have an understanding or belief why Mr. Balboa sent  
4 you this email, Government Exhibit 1223?  
5 A. Yes. And that was the reason why I was unhappy. I was  
6 suddenly becoming aware that he was trying to cover his past  
7 involvement into the pricing of those assets.  
8 So he was trying to pretend that he didn't know, you  
9 know, and asking the question that he didn't know that I had  
10 reconfirmed the price that he had directed me to reconfirm when  
11 in fact he knew.  
12 Q. And that would include the fact that he didn't have your  
13 email on there, right?  
14 A. Correct.  
15 Q. Did you write back?  
16 A. Yes, I did.  
17 MR. MILLER: Could we publish, with your Honor's  
18 permission, Government Exhibit 1224?  
19 THE COURT: Yes.  
20 MR. MILLER: Thank you.  
21 Q. This is dated October 16, correct?  
22 A. Correct.  
23 Q. Who were you sending this email to?  
24 A. This is my reply to his email sent three minutes later in  
25 which I am answering to his question and I write, his question

DC5UBAL4 De Charsonville - direct Page 585

1 was, did you recently reconfirm certain prices with GlobeOp,  
2 and I said, last Tuesday and October 10th the Uruguay and  
3 October 10th the Nigerian warrant after talking to you in both  
4 cases.  
5 Q. What did you mean by that?  
6 A. I was basically saying that he knew that I had reconfirmed  
7 the price since I had been talking to him at each time and used  
8 the price he told me to confirm each time.  
9 Q. Thank you. After October of 2008, did you provide GlobeOp  
10 with additional prices on behalf of Millennium Global?  
11 A. No.  
12 Q. What happened to the fund as of October '08?  
13 A. Sometime in October '08, certain part of October '08, the  
14 fund was liquidated.  
15 Q. How did you learn about that?  
16 A. I learn on Bloomberg News.  
17 Q. Prior to learning about it on Bloomberg News, did you and  
18 Mr. Balboa have any discussions about any problems with the  
19 fund?  
20 A. No.  
21 Q. If you could take a look in the binder that is labeled  
22 "3500 Materials" that is dated 3500-23.  
23 A. Yes.  
24 Q. Do you recognize this?  
25 A. Yes.

DCHAABAL6 Jury Charge Page 2247	DCHAABAL6 Jury Charge Page 2249
<p>1 Indictment, then, any acts done or statements made in 2 furtherance of the conspiracy by persons also found by you to 3 have been members of that conspiracy, may be considered against 4 him. This is so even if such acts were done and statements 5 were made in Mr. Balboa's absence and without his knowledge. 6       However, before you may consider the statements or 7 acts of a co-conspirator in deciding the issue of Mr. Balboa's 8 guilt, you must first determine that the acts and statements 9 were made during the existence, and in furtherance, of the 10 unlawful scheme. If the acts were done or the statements made 11 by someone whom you do not find to have been a member of the 12 conspiracy or if they were not done or said in furtherance of 13 the conspiracy, they may be considered by you as evidence only 14 against the member who did or said them. 15       The Indictment charges that the alleged conspiracy 16 existed from in or about January 2008 through in or about March 17 2011. It is not essential that the Government prove that the 18 conspiracy started and ended in any specific month. Indeed, it 19 is sufficient if you find beyond a reasonable doubt that the 20 charged conspiracy was formed and that it existed for some time 21 within the period set forth in the Indictment, and that at 22 least one overt act was committed by any conspirator in 23 furtherance of the charged conspiracy within that period. 24 Count Two of the Indictment charges Mr. Balboa with 25 participating in a conspiracy to violate the wire fraud</p>	<p>1 January 2008 through in or about October 2008, Michael Balboa 2 willfully and knowingly, directly and indirectly, by use of the 3 means and instrumentalities of interstate commerce and of the 4 mails, did use and employ manipulative and deceptive devices 5 and contrivances in connection with the purchase and sale of 6 securities, in violation of Title 17, Section 240.10b-5, of the 7 Code of Federal regulations, by (a) employing devices, schemes, 8 and artifices to defraud; (b) making untrue statements of 9 material facts and omitting to state material facts necessary 10 in order to make the statements made, in light of the 11 circumstances under which they were made, not misleading; and 12 (c) engaging in acts, practices and courses of business which 13 operated and would operate as a fraud and deceit upon other 14 persons, to wit, Mr. Balboa made and caused to be made false 15 representations to investors regarding the monthly net asset 16 value of his hedge fund and the manner in which his hedge 17 fund's assets were valued. 18       The relevant statute is Section 10(b) of the 19 Securities Exchange Act of 1934. That law provides in relevant 20 part that: 21       It shall be unlawful for any person, directly or 22 indirectly, by the use of any means or instrumentality of 23 interstate commerce or of the mails, or any facility of any 24 national securities exchange. 25       (b) To use or employ, in connection with the purchase</p>
<p>DCHAABAL6 Jury Charge Page 2248</p> <p>1 statute. It re-alleges the same list of overt acts as in Count 2 One. 3       In considering Count Two, you should apply the legal 4 principles on conspiracy that I have just explained to you. 5 Briefly, to remind you, a conspiracy has three elements, each 6 of which must be established beyond a reasonable doubt. 7 First, the existence of an agreement to violate the laws of the 8 United States, here the wire fraud statutes. The wire fraud 9 statute is codified at Title 18, Section 1343 of the United 10 States Code. I will provide more detailed instructions on this 11 when I instruct you on Count Four, which pertains to the 12 substantive crime of wire fraud. 13       Second, that Mr. Balboa knowingly and willfully became 14 a member of the conspiracy. 15 Third, that any one of the conspirators knowingly committed at 16 least one overt act in furtherance of the conspiracy during the 17 life of the conspiracy. 18       Count Three of the Indictment charges Mr. Balboa with 19 committing securities fraud. As I have just told you, a 20 conspiracy is the separate crime of agreeing to violate the law 21 of the United States. Here, the Government contends that the 22 substantive violation of securities fraud occurred. Whereas 23 Count One charges a conspiracy to violate the securities laws, 24 Count Three charges an actual violation of those laws. 25 Count Three alleges as follows: from at least in or about</p>	<p>DCHAABAL6 Jury Charge Page 2250</p> <p>1 or sale of any security registered on a national securities 2 exchange or any security not so registered, any manipulative or 3 deceptive device or contrivance in contravention of such rules 4 and regulations as the SEC may prescribe as necessary or 5 appropriate in the public interest or for the protection of 6 investors. 7       Based on its authority under this statute, the SEC 8 enacted Rule 10b-5, which provides: 9       It shall be unlawful for any person, directly or 10 indirectly, by the use of any means or instrumentality of 11 interstate commerce, or of the mails or of any facility of any 12 national securities exchange, 13       (a) To employ any device, scheme, or artifice to 14 defraud, 15       (b) To make any untrue statement of a material fact or 16 to omit to state a material fact necessary in order to make the 17 statements made, in the light of the circumstances under which 18 they were made, not misleading, or 19       (c) To engage in any act, practice, or course of 20 business which operates or would operate as a fraud or deceit 21 upon any person, in connection with the purchase or sale of any 22 security. 23       To establish a violation of Section 10(b), as charged 24 in Count Three, the Government must prove each of the following 25 elements beyond a reasonable doubt:</p>

DCHAABAL6 Jury Charge Page 2251	DCHAABAL6 Jury Charge Page 2253
<p>1 First, that in connection with the purchase or sale 2 securities, Mr. Balboa did any one or more of the following: 3 4 (a) employed a device, scheme or artifice to defraud; 5 or 6 (b) made an untrue statement of a material fact or 7 omit to state a material fact which made what was said, under 8 the circumstances, misleading; or 9 (c) engaged in an act, practice or course of business 10 that operated, or would operate, as a fraud or deceit upon a 11 purchaser or seller. 12 With respect to this element, it is not necessary that 13 the Government establish all three. Any one is sufficient, but 14 you have to be unanimous on which means or instrument were 15 used. 16 Second, that Mr. Balboa acted knowingly, willfully, 17 and with the intent to defraud; and 18 Third, that Mr. Balboa used or caused to be used any 19 means or instrument of transportation or communication in 20 interstate commerce or the use of the mails in furtherance of 21 the fraudulent conduct. 22 Let's discuss each element. 23 24 The first element that the Government must prove 25 beyond a reasonable doubt is that, in connection with the</p>	<p>1 the intent to deceive. The concealment of material facts in a 2 manner that makes what is said or represented deliberately 3 misleading may also constitute false or fraudulent statements 4 under the statute. 5 The deception need not be based upon spoken or written 6 words alone. The arrangement of the words or the circumstances 7 in which they are used may convey the false and deceptive 8 practice. If there is deception, the manner in which it is 9 accomplished does not matter. 10 The requirement that the fraudulent conduct be "in 11 connection with" a securities transaction is satisfied so long 12 as there was some nexus or relationship between the allegedly 13 fraudulent conduct and the sale or purchase of securities. 14 Fraudulent conduct may be "in connection with" the purchase or 15 sale of securities if you find that the alleged fraudulent 16 conduct "touched upon" a securities transaction. You need not 17 find that Mr. Balboa agreed to actually participate in any 18 securities transaction, if Mr. Balboa agreed to engage in 19 fraudulent conduct that was "in connection with" a purchase or 20 sale. The "in connection with" aspect of this element is 21 satisfied if you find that there was some nexus or relation 22 between the allegedly fraudulent conduct and the sale or 23 purchase of securities. 24 It is no defense to an overall scheme to defraud that 25 Mr. Balboa was not involved in the scheme from its inception or</p>
DCHAABAL6 Jury Charge Page 2252	DCHAABAL6 Jury Charge Page 2254
<p>1 purchase or sale of shares in Mr. Balboa's hedge fund or any of 2 its affiliated entities, Mr. Balboa did any of the following: 3 1) Employed a device, scheme, or artifice to defraud, 4 or 5 2) Made an untrue statement of a material fact or 6 omitted to state a material fact which made what was said, 7 under the circumstances, misleading, or 8 3) Engaged in an act, practice, or course of business 9 that operated or would operate as a fraud or deceit upon the 10 purchaser or seller. 11 The Government does not have to prove all three types 12 of unlawful conduct in connection with the purchase or sale of 13 securities. Any one is enough; but you must be unanimous as to 14 which type of unlawful conduct Mr. Balboa committed. I will 15 now define some of these terms. 16 A device, scheme or artifice to defraud is a plan to 17 accomplish any fraudulent objective. Fraud is a general term 18 that embraces all the various means individuals employ to take 19 advantage of others by manipulative and deceptive acts. The 20 fraudulent or deceitful conduct alleged need not relate to the 21 investment value of the securities involved in this case. 22 A statement, representation, claim or document is 23 false if it is untrue when made and was then known to be untrue 24 by the person making it or causing it to be made. A 25 representation or statement is fraudulent if it was made with</p>	<p>1 played only a minor role with no contact with the investors and 2 purchasers of the securities in question. Nor is it necessary 3 for you to find that Mr. Balboa was the actual seller or 4 offeror of the securities. It is sufficient if Mr. Balboa 5 participated in the scheme or fraudulent conduct that involved 6 the purchase or sale of stock. By the same token, the 7 Government need not prove that Mr. Balboa personally made the 8 misrepresentation. It is sufficient if the Government 9 establishes that Mr. Balboa caused the statement to be made. 10 With regard to the alleged misrepresentations, you must 11 determine whether the statement was true or false when it was 12 made. 13 Next, if you find that there was a false statement or 14 an omitted statement, you must determine whether the 15 misrepresentation or omission was material under the 16 circumstances. A material fact is one that would have been 17 important to a reasonable investor in making an investment 18 decision. In other words, the misstated or omitted fact must 19 have altered the total mix of information available and was of 20 such importance that it could reasonably be expected to cause 21 or to induce a person to invest or not to invest. The 22 securities fraud statute does not prohibit misstatements or 23 omissions that would not be important to a reasonable investor. 24 We use the word "material" to distinguish between the kinds of 25 statements that reasonable investors care about and those that</p>

DCHAABAL6 Jury Charge Page 2255

1 are of no real importance.  
2 It is not a defense to say that the misrepresentation  
3 or omission would not have deceived a person of ordinary  
4 intelligence. If you find that there was a misrepresentation  
5 of material fact, it does not matter whether the intended  
6 victims were gullible buyers or sophisticated investors. The  
7 securities laws protect the gullible and unsophisticated as  
8 well as the experienced investor.  
9 Nor does it matter whether the alleged unlawful scheme  
10 was successful, profitable or otherwise beneficial to Mr.  
11 Balboa. Success is not an element of the crime charged. If  
12 you find that Mr. Balboa expected to or did profit from the  
13 alleged scheme, however, you may consider that in relation to  
14 the element of intent, which I will now explain.  
15 The second element of securities fraud is that Mr.  
16 Balboa acted knowingly, willfully, and with intent to defraud.  
17 To act "knowingly" means to act voluntarily and deliberately,  
18 rather than mistakenly or inadvertently.  
19 To act "willfully" means to act knowingly and  
20 purposely, with intent to do something the law forbids, that is  
21 to say, with bad purpose either to disobey or to disregard the  
22 law.  
23 "Intent to defraud" means to act knowingly and with  
24 the specific intent to deceive.  
25 The question of whether a person acted knowingly,

DCHAABAL6 Jury Charge Page 2256

1 willfully and with intent to defraud is a question of fact for  
2 you to determine, like any other fact question. This question  
3 involves one's state of mind.  
4 As I also stated before, we cannot examine what is  
5 going on in a person's brain; so direct proof of knowledge and  
6 fraudulent intent is not required. Rather, knowledge and  
7 fraudulent intent may be established by circumstantial  
8 evidence, based upon a person's outward manifestations, words,  
9 conduct, and all the surrounding circumstances disclosed by the  
10 evidence and the rational or logical inferences that may be  
11 drawn therefrom. Remember what I told you before-use your  
12 common sense.  
13 The third element of securities fraud is that Mr.  
14 Balboa used or caused to be used an instrumentality of  
15 interstate commerce or the mails in furtherance of the scheme  
16 to defraud or fraudulent conduct.  
17 It is not necessary that Mr. Balboa be directly or  
18 personally involved in any contemplated mailing or use of an  
19 instrumentality of interstate commerce. If the conduct alleged  
20 to be an object of the scheme would naturally and probably  
21 result in the use of the mails or an instrumentality of  
22 interstate commerce, this element is satisfied.  
23 Nor is it necessary that the items sent through the mails or  
24 communicated through an instrumentality of interstate commerce  
25 contain the fraudulent material, or anything criminal or

DCHAABAL6 Jury Charge Page 2257

1 objectionable. The matter mailed or communicated may be  
2 entirely innocent, so long as it is in furtherance of the  
3 scheme to defraud or fraudulent conduct.  
4 The use of the mails or instrumentalities of  
5 interstate commerce need not be central to the execution of the  
6 scheme or even be incidental to it. All that is required is  
7 that the use of the mails or instrumentality of interstate  
8 commerce bear some relation to the object of the scheme or  
9 fraudulent conduct.  
10 The actual purchase or sale of a security need not be  
11 accompanied by the use of the mails or instrumentality of  
12 interstate commerce, so long as the mails or instrumentality of  
13 interstate commerce are used in furtherance of the scheme and  
14 Mr. Balboa is still engaged in actions that are a part of a  
15 fraudulent scheme.  
16 The term "mails" is self-explanatory, and includes  
17 both the U.S. Mail and Federal Express. The term "interstate  
18 commerce" means trade, commerce, transportation, or  
19 communication between any two states or between any foreign  
20 country and any state. This term includes the use of a  
21 telephone, email, or other interstate means of communication.  
22 Count Four charges Mr. Balboa with a substantive count  
23 of wire fraud, i.e. using an interstate wire facility in  
24 furtherance of a fraud. In order to prove Mr. Balboa guilty of  
25 wire fraud, the Government must separately establish beyond a

DCHAABAL6 Jury Charge Page 2258

1 reasonable doubt the following three essential elements:  
2 First, that in or about the times alleged in the  
3 Indictment, there was a scheme or artifice to defraud others of  
4 money or property by false or fraudulent pretenses,  
5 representations, or promises;  
6 Second, that Mr. Balboa knowingly and willfully  
7 devised or participated in the scheme or artifice to defraud,  
8 with knowledge of its fraudulent nature and with specific  
9 intent to defraud; and  
10 Third, that in the execution of that scheme, Mr.  
11 Balboa used, or caused the use by others, of interstate or  
12 foreign wires, as specified in the Indictment.  
13 The first element of wire fraud is the existence of a  
14 scheme or artifice to defraud others of money or property by  
15 means of false or fraudulent pretenses, representations, or  
16 promises.  
17 A "scheme or artifice" is simply a plan for the  
18 accomplishment of an object. A "scheme to defraud" is any  
19 plan, device, or course of action to obtain money or property  
20 by means of false or fraudulent pretenses, representations, or  
21 promises.  
22 "Fraud" is a general term that includes all the  
23 possible means by which a person seeks to gain some unfair  
24 advantage over another person by intentional misrepresentation,  
25 false suggestion or concealing of the truth. That unfair

# **EXHIBIT C**

**UNITED STATES DISTRICT COURT**

**SOUTHERN**

District of

**NEW YORK**

**UNITED STATES OF AMERICA**

**JUDGMENT IN A CRIMINAL CASE**

**V.**

**MICHAEL BALBOA**

Case Number: **1: (1) 12 CR 00196 (PAC)**

USM Number: **66043-054**

Joseph Tacopina / Chad Derek Seigel - 212-227-8877  
Defendant's Attorney

**THE DEFENDANT:**

pleaded guilty to count(s) \_\_\_\_\_

pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

was found guilty on count(s) 1, 2, 3, 4 & 5  
after a plea of not guilty.

**The defendant is adjudicated guilty of these offenses:**

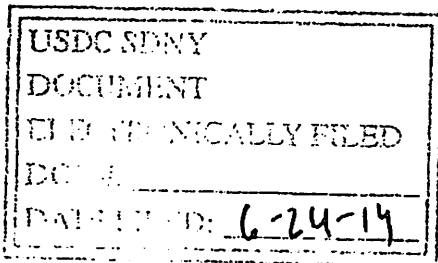
Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 371	Conspiracy to Commit Securities Fraud	12/01/2011	1
18 U.S.C. § 1349	Conspiracy to Commit Wire Fraud	12/01/2011	2
15 U.S.C. § 78j(b) and 78ff; and 17 CFR Section 240.10b-5	Securities Fraud	12/01/2011	3
18 U.S.C. § 1343)	Wire Fraud	12/01/2011	4
15 U.S.C. § 80b-6 and 80b-17	Investment Adviser Fraud	12/01/2011	5

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) \_\_\_\_\_

<input type="checkbox"/> Count(s)	_____	<input type="checkbox"/> is	<input type="checkbox"/> are dismissed on the motion of the United States.
<input checked="" type="checkbox"/> Underlying	<u>Indictment</u>	<input checked="" type="checkbox"/> is	<input type="checkbox"/> are dismissed on the motion of the United States.
<input type="checkbox"/> Motion(s)	_____	<input type="checkbox"/> is	<input type="checkbox"/> are denied as moot.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.



June 23, 2014

Date of Imposition of Judgment

*Paul A. Crotty*

Signature of Judge  
Paul A. Crotty, United States District Judge  
Name and Title of Judge

June 24, 2014

Date Signed



DEFENDANT: MICHAEL BALBOA  
CASE NUMBER: 1: (1) 12 CR 00196 (PAC)

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **Forty-Eight (48) Months on all counts to run concurrently.**

**X** The court makes the following recommendations to the Bureau of Prisons:  
That Mr. Balboa be designated to FPC Pensacola. It is further recommenced that Mr. Balboa be enrolled in RDAP while incarcerated.

- The defendant is remanded to the custody of the United States Marshal.
- The defendant shall surrender to the United States Marshal for this district on or before
  - at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_ .
  - as notified by the United States Marshal.

**X** The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:  
before 2 p.m. on 09/08/2014 .  
 as notified by the United States Marshal.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
a \_\_\_\_\_ , with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL  
By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: MICHAEL BALBOA  
CASE NUMBER: 1: (1) 12 CR 00196 (PAC)

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of : **Three (3) Years on each count to run concurrently.**

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

**STANDARD CONDITIONS OF SUPERVISION**

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment; or if such prior notification is not possible, then within five days after making such change.
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

**DEFENDANT:** MICHAEL BALBOA  
**CASE NUMBER:** 1: (1) 12 CR 00196 (PAC)

### **SPECIAL CONDITIONS OF SUPERVISION**

**The defendant shall provide the Probation Officer with access to any requested financial information**

**The defendant shall not incur new credit charges or open additional lines of credit without the approval of the probation officer.**

**The defendant shall participate in an alcohol aftercare treatment program under a co-payment plan, which may include testing via breathalyzer at the direction and discretion of the probation officer.**

**The defendant is to report to the nearest Probation Office within 72 hours of release from custody.**

**The defendant be supervised by the district of residence.**

DEFENDANT: MICHAEL BALBOA  
 CASE NUMBER: 1: (1) 12 CR 00196 (PAC)  
**CRIMINAL MONETARY PENALTIES**

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 500.00	\$	\$ 390,243,873.92 (see 6/23/14 Order)

The determination of restitution is deferred \_\_\_\_\_. An Amended Judgment in a Criminal Case (AO 245C) will be after such determination.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
TOTALS	\$ _____ \$0.00	\$ _____ \$0.00	

Restitution amount ordered pursuant to plea agreement \_\_\_\_\_

The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

**X** The court determined that:

**X** the interest requirement is waived for  fine **X** restitution.

the interest requirement for  fine  restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: MICHAEL BALBOA  
CASE NUMBER: 1: (1) 12 CR 00196 (PAC)

**SCHEDULE OF PAYMENTS**

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A  Lump sum payment of \$ 500.00 due immediately, balance due
  - not later than \_\_\_\_\_, or
  - in accordance  C,  D,  E, or  F below; or
- B  Payment to begin immediately (may be combined  C,  D, or  F below); or
- C  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D  Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E  Payment during the term of supervised release will commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time;
- F  Special instructions regarding the payment of criminal monetary penalties:

The defendant is to make restitution in the aggregate amount of \$390,243,873.92, payable to the Clerk, U.S. District Court, 500 Pearl Street, New York, NY, 10007, for disbursement to the individuals noted in the sealed "schedule of victims." Restitution payments may be referenced under the defendants name and Social Security number. If the defendant is engaged in a BOP non-UNICOR work program, the defendant shall pay \$25 per quarter toward the criminal financial penalties. However, if the defendant participates in the BOP's UNICOR program as a grade 1 through 4, the defendant shall pay 50 % of his monthly UNICOR earnings toward the criminal financial penalties, consistent with BOP regulations at 28 C.F.R. § 545.11

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several
 

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several and corresponding payee, if appropriate.
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

# **EXHIBIT D**

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>6-24-14</u>
---

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

MICHAEL BALBOA,

Defendant.

**Amended Order of Restitution**

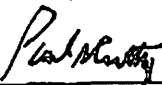
**SI 12 Cr. 196 (PAC)**

Upon the application of the United States of America, by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, Jason H. Cowley and David I. Miller, Assistant United States Attorneys, and William T. Conway, III, Special Assistant United States Attorney, of counsel; the Presentence Investigation Report; the Defendant's convictions on Counts One through Five of the above Indictment, SI 12 Cr. 196 (PAC); and all other proceedings in this case, it is hereby ORDERED that:

**1. Amount of Restitution.** Michael Balboa, the Defendant, shall pay restitution in the total amount of \$390,243,873.92 to the victims of the offenses charged in Counts One, Two, and Four of the Indictment, SI 12 Cr. 196 (PAC). The names, addresses, and specific amounts owed to each victim are set forth in the Schedule of Victims attached hereto. Upon advice of a change of address, the Clerk of the Court is authorized to send payments to the new address without further order of this Court.

2. Sealing. Consistent with 18 U.S.C. §§3771(a)(8) & 3664(d)(4) and Federal Rule of Criminal Procedure 49.1, to protect the privacy interests of victims, the Schedule of Victims attached hereto shall be filed under seal, except that copies may be retained and used or disclosed by the Government, the Clerk's Office, and the Probation Department, as need be to effect and enforce this Order, without further order of this Court.

Dated: New York, New York  
June 23, 2014

  
\_\_\_\_\_  
THE HONORABLE PAUL A. CROTTY  
UNITED STATES DISTRICT JUDGE



# **EXHIBIT E**

USDC SDNY  
DOCUMENT  
ELECTRONICALLY FILED  
DOC #  
DATE FILED: 6-24-14

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
:  
UNITED STATES OF AMERICA  
:  
- v. -  
:  
MICHAEL BALBOA,  
:  
Defendant.  
:  
----- x

~~PRELIMINARY~~ ORDER OF *Pr*  
FORFEITURE/MONEY JUDGMENT

SI 12 Cr. 196 (PAC)

WHEREAS, on March 19, 2013, MICHAEL BALBOA (the "Defendant") was charged in a five-count Superseding Indictment, SI 12 Cr. 196 (PAC) (the "Indictment"), with conspiracy to commit securities fraud, in violation of Title 18, United States Code, Section 371 (Count One); conspiracy to commit wire fraud, in violation of Title 18, United States Code, Section 1349 (Count Two); securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2 (Count Three); wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2 (Count Four); and investment advisor fraud, in violation of Title 15, United States Code, Sections 80b-6, 80b-17, and Title 18, United States Code, Section 2 (Count Five);

WHEREAS, the Indictment included a forfeiture allegation as to Counts One through Five of the Indictment seeking, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, the forfeiture of all property, real or personal, that constitutes or is derived from proceeds traceable to the commission of the offenses alleged in Counts One through Five of the Indictment;

WHEREAS, on December 18, 2013, the Defendant was found guilty, following a jury trial, of Counts One through Five of the Indictment; and

WHEREAS, on June 23, 2014, the Defendant was sentenced and ordered to forfeit \$2,223,000 in United States currency, representing the amount of proceeds that the Defendant obtained as a result of the offenses charged in Counts One through Five of the Indictment;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED THAT:

1. As a result of the offenses charged in Counts One through Five of the Indictment, of which the Defendant was found guilty, a money judgment in the amount of \$2,223,000 in United States currency (the "Money Judgment") shall be entered against the Defendant.

2. Pursuant to Rule 32.2(b)(4) of the Federal Rules of Criminal Procedure, upon entry of this Preliminary Order of Forfeiture/Money Judgment, this Preliminary Order of Forfeiture/Money Judgment is final as to the Defendant, MICHAEL BALBOA, and shall be deemed part of the sentence of the Defendant, and shall be included in the judgment of conviction therewith.

3. All payments on the outstanding Money Judgment shall be made by postal money order, bank or certified check, made payable, in this instance to the "United States Marshals Service," and delivered by mail to the United States Attorney's Office, Southern District of New York, Attn: Money Laundering and Asset Forfeiture Unit, One St. Andrew's Plaza, New York, New York 10007, and shall indicate the defendant's name and case number.

4. Upon execution of this Preliminary Order of Forfeiture/Money Judgment and pursuant to Title 21, United States Code, Section 853, the United States Marshals Service

shall be authorized to deposit the payments on the Money Judgment in the Assets Forfeiture Fund, and the United States shall have clear title to such forfeited property.

5. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, upon entry of this Preliminary Order of Forfeiture/Money Judgment, the United States Attorney's Office is authorized to conduct any discovery needed to identify, locate or dispose of forfeitable property, including depositions, interrogatories, requests for production of documents and the issuance of subpoenas, pursuant to Rule 45 of the Federal Rules of Civil Procedure.

6. The Court shall retain jurisdiction to enforce this Preliminary Order of Forfeiture/Money Judgment, and to amend it as necessary, pursuant to Rule 32.2(e) of the Federal Rules of Criminal Procedure.

7. The Clerk of the Court shall forward three certified copies of this Preliminary Order of Forfeiture/Money Judgment to Assistant United States Attorney Sharon Cohen Levin, Chief, Money Laundering and Asset Forfeiture Unit, One St. Andrew's Plaza, New York, New York 10007.

Dated: New York, New York  
June 23, 2014

SO ORDERED:



---

HONORABLE PAUL A. CROTTY  
UNITED STATES DISTRICT JUDGE

# **EXHIBIT F**



FinancialContent is the trusted provider of stock market information to the media industry.

Dow	17,055.42	S&P 500	1,980.52	10Y Yield	2.56	Bitcoin	619.60	Euro	1.36
↑ +111.61	+0.66%	↑ +3.42	+0.17%	↑ +0.02	+0.91%	↑ +1.30	+0.21%	↓ -0.00	-0.14%

[Markets](#)
[Stocks](#)
[Funds](#)
[Sectors](#)
[Tools](#)

[Overview](#)
[Market News](#)
[Market Videos](#)
[Currencies](#)
[International](#)
[Treasury & Bonds](#)

[Search InvestCenter](#)

[Recent Quotes](#)
[My Watchlist](#)
[Indicators](#)

**Sponsored Financial Commentaries and Offers**



How To Invest \$100, \$1,000 or \$10,000  
[Read More](#)



Meet Warren Buffett's Worst Nightmare  
[Find out more](#)

By: Latest Press Releases and News From I-Newswire.com      March 18, 2013 at 14:55 PM EDT

## Michael Balboa's Talhuddex Foundation Looks to Invest in Emerging Markets Film Industry

Talhuddex Foundation is actively seeking opportunities in the foreign film finance industry outside the United States, focusing specifically in developing countries.

Making movies in developing countries that carries broad global appeal to a wide audience is a great business opportunity given the low costs, amazing modern video technology and the rising class of innovative directors and actors from Latin America, Africa and Asia.

Since the rise of India's Oscar winning Slum Dog Millionaire, the term 'Bollywood' no longer means just B Movies. Making movies in emerging countries is not new.

India's Bollywood and Nigeria's Nollywood rise since the late 1980s, have led to the next round of boutique film industries in Mexico, Thailand, Czech Republic, Costa Rica, China and Romania.

According to the Talhuddex Foundation founder and director, Michael Balboa, "The economics of making movies in emerging markets is phenomenal. To make a movie that costs Hollywood \$30 million, which means it does not have any A-List stars in it, would cost you less than \$5 million to produce in English speaking Nigeria or Belize."

Balboa says he would like to invest in both specific film projects as well as potentially take a stake in a movie production company. With other family offices in Europe, S.America, Asia and Africa, the Talhuddex



Meet Warren Buffett's Worst Nightmare  
[Find out more](#)

**Sponsored Links**

**What makes you so unique?** Discover your story at Ancestry.com with a 14-day free trial. [Ancestry.com](#)



LifeLock® Official Site  
Purchase the LifeLock Ultimate® Plan and Stay Protected  
[LifeLock.com](#)



CNN Money's Free Portfolio Tool One View of Your Stocks, Funds & 401K  
[cnnmoney.com](#)

**Get Quote**  
Symbol or Name



xfinity

**XFINITY® X1 DOUBLE PLAY**

GET STARTED AT

**\$89.99**

a month for 12 months

4X THE INTERNET SPEED  
FREE FOR 1 YEAR

OFFER ENDS 6/22/14

[GET IT NOW](#)

Foundation also looks to expand its investments in projects that share similar goals and visions of the future.

To learn more about Talhuddex Foundation, please visit <http://www.talhuddex.com> for details.

**Company Contact Information**

**Talhuddex Foundation**

Michael Balboa

[info@talhuddex.com](mailto:info@talhuddex.com)

Press Release Service by I-Newswire

Original Source: Michael Balboa's Talhuddex Foundation Looks to Invest in Emerging Markets Film Industry

0 comments [Comments](#)  
FinancialContent Community

[Login](#)

Sort by Best

[Share](#)

[Favorite](#)



Start the discussion...

SIGN IN WITH

d

F

T

G

Sign up for Disqus

OR PICK A NAME



Disqus is a conversation network

Related Stocks:



**Comcast's \$2.2 Trillion Nightmare**

Imagine what cable companies would do if everyone stopped watching...

Well, after some number-crunching, The Motley Fool determined that industry big wigs like Comcast would lose \$2.2 trillion! And tech moguls like Apple and Google are convinced that Comcast's nightmare scenario is approaching faster than you think...

Experts are calling it "The Death of Cable TV." All because 3 little-known companies could allow 99% of Americans to drop their cable bills - and bankrupt Comcast! Just enter your email:

Enter email address...

[Click Here, It's Free!](#)

[Privacy/Legal Information](#)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] N [REDACTED]

[REDACTED]

[REDACTED]