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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

RMW

Chen

16 SECURITIES AND EXCHANGE COMMISSION,

Case No.

C09 01177

17 Plaintiff,

COMPLAINT

18 vs.

RS

19 ALBERT K. HU,
20 ASENQUA, INC.,
21 ASENQUA CAPITAL MANAGEMENT, LLC,
22 AQC ASSET MANAGEMENT, LTD., and
23 FIRESIDE CAPITAL MANAGEMENT, LTD.,
24

25 Defendants.

26 Plaintiff Securities and Exchange Commission ("Commission") alleges:

27 **SUMMARY OF THE ACTION**

28 1. From approximately 2001 through the present, defendant Albert K. Hu has
been defrauding investors in his hedge funds by falsifying investment documents, quarterly
account statements, and other financial statements, and by misappropriating their investment
funds. The false documents Hu provided were designed to give an aura of authenticity to
Hu's hedge funds and to induce investors into believing that credible and reliable
"gatekeepers" safeguarded their investments. Hu raised more than \$5 million in his scheme
to defraud investors.

1 2. Hu claimed to manage hedge funds through at least four entities: defendants
2 Asenqua, Inc., Asenqua Capital Management, LLC, AQC Asset Management, Ltd., and
3 Fireside Capital Management, Ltd. (collectively, the "Asenqua defendants"). Hu, through the
4 Asenqua defendants, organized and managed at least a half-dozen different hedge funds
5 (collectively, the "Asenqua hedge funds").

6 3. Hu touted the success of the Asenqua hedge funds in marketing materials and
7 presentations to investors. To gain investors' confidence, Hu provided them with written
8 investment agreements stating that prominent international law firms served as legal counsel
9 for the Asenqua hedge funds. Hu also claimed that independent auditors and a reputable fund
10 administrator oversaw the management of the Asenqua hedge funds. In addition, Hu and the
11 Asenqua defendants provided quarterly statements to investors purportedly signed by the so-
12 called "Chief Financial Officer" of the Asenqua hedge funds.

13 4. In fact, the gatekeepers were a fiction. The law firms did not represent the
14 Asenqua hedge funds as the written investment agreements stated. The fund administrator
15 and one of the auditors did not, in fact, provide services to the Asenqua hedge funds. The
16 second purportedly independent auditor leased a virtual office, paid for by Hu. Furthermore,
17 Hu and the Asenqua defendants forged the signature of the purported Chief Financial Officer
18 on investor statements.

19 5. Hu misappropriated investors' money by transferring funds out of the Asenqua
20 hedge funds' accounts to other unrelated accounts. Hu has now refused to return investors'
21 funds, and his most recent communications have been from Hong Kong.

22 6. Hu and the Asenqua defendants have violated, and continue to violate, the
23 antifraud provisions of the federal securities laws, by misappropriating investor assets and
24 making materially false and misleading statements in connection with the purchase or sale of
25 securities. The Commission seeks an order enjoining Hu and the Asenqua defendants from
26 further conduct that violates the securities laws and requiring them to disgorge their ill-gotten
27 gains, with prejudgment interest. The Commission also seeks an order requiring Hu to pay
28 civil money penalties.

JURISDICTION

1
2 7. The Commission brings this action pursuant to Sections 20(b) and 20(d) of the
3 Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77t(b) and 77t(d)], Sections 21(d) and
4 21(e) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78u(d) and
5 78u(e)], and Sections 209 and 214 of the Investment Advisers Act of 1940 (“Advisers Act”)
6 [15 U.S.C. §§ 80b-9 and 80b-14].

7 8. This Court has jurisdiction over this action pursuant to Sections 20(b) and
8 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)], Sections 21(d), 21(e) and 27 of
9 the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa], and Sections 209 and 214 of the
10 Advisers Act [15 U.S.C. §§ 80b-9 and 80b-14]. The defendants, directly or indirectly, have
11 made use of the means and instrumentalities of interstate commerce, of the mails, or of the
12 facilities of a national securities exchange in connection with the acts, practices and courses of
13 business alleged in this complaint.

14 9. Venue is proper in this district pursuant to Section 22 of the Securities Act
15 [15 U.S.C. § 77v], Section 27 of the Exchange Act [15 U.S.C. § 78aa], and Section 214 of the
16 Advisers Act [15 U.S.C. § 80b-14]. During much of the period described in this complaint,
17 Hu resided in the Northern District of California, and acts or transactions constituting
18 violations occurred in this district.

19 **INTRADISTRICT ASSIGNMENT**

20 10. Assignment to the San Jose Division is appropriate pursuant to Civil Local
21 Rules 3-2(c) and 3-2(d) because acts and omissions giving rise to the Commission’s claims
22 occurred, among other places in this district, in Santa Clara County.

23 **DEFENDANTS**

24 11. **Albert K. Hu**, age 47, resided in San Jose, California, or in Fremont,
25 California, from approximately 2001 to approximately 2008. Hu served as the president of
26 defendants Asenqua, Inc., Asenqua Capital Management, LLC, Fireside Capital Management,
27 Ltd., and AQC Asset Management, Ltd. Until approximately 2001, Hu formerly served as
28 president of a now-defunct Sunnyvale, California, company.

1 funds took offsetting positions in strong and weak companies in the same market sectors. Hu
2 claimed to investors that his trading strategy lowered investment risk.

3 17. During 2004, to solicit new investments, Hu made particular claims to at least
4 one potential investor about the returns earned by his hedge funds. Hu claimed that his funds
5 managed by defendant Asenqua Capital Management, LLC returned net profits of 41.65
6 percent in 2001, 30.45 percent in 2002, and 34.12 percent in 2003.

7 18. To heighten the sense of exclusivity of his hedge funds, Hu told certain
8 investors that the funds were closed to new investors but that he would make an "exception" if
9 they chose to invest. As a further inducement for other investors, Hu supposedly "waived" the
10 \$1 million minimum investment.

11 19. Hu provided false marketing documents to investors describing the
12 "management team" of the Asenqua hedge funds, including its "Chief Financial Officer." The
13 individual identified as the Chief Financial Officer had been the Chief Financial Officer of a
14 now-defunct Sunnyvale, California, company for which Hu had been president until
15 approximately 2000. The individual identified as the Chief Financial Officer in fact had no
16 association with the Asenqua hedge funds.

17 20. As part of his solicitation, Hu gave investors and potential investors detailed
18 written descriptions of the hedge funds described as "private placement memoranda" and
19 "subscription agreements." According to these documents, Hu and defendant Asenqua, Inc.
20 managed the assets of various Asenqua hedge funds, including the Asenqua Alpha Fund, LP,
21 the Asenqua Beta Fund, LP, and the Asenqua Multi-Strategy Fund, LP.

22 21. In the private placement memoranda and subscription agreements, Hu made
23 representations that prominent international law firms had been retained as counsel to the
24 Asenqua hedge funds. In addition, Hu's documents claimed that independent auditors and a
25 known and reputable fund administrator assisted in the oversight, accounting, and
26 administration of the hedge funds.

27 22. Hu and the Asenqua defendants lied to investors. The prominent international
28 law firms did not, in fact, serve as legal counsel to the Asenqua hedge funds as identified in

1 the private placement memoranda and subscription agreements. Similarly, Hu and the
2 Asenqua defendants had not retained independent auditors or the fund administrator, and the
3 named entities did not provide services to the Asenqua hedge funds.

4 23. By making materially false and misleading representations to investors to
5 solicit their funds, including in marketing documents, the private placement memoranda and
6 subscription agreements, and by omitting to state material facts that were necessary to make
7 representations made not misleading, Hu acted knowingly or recklessly. Each of the Asenqua
8 defendants were controlled by Hu, and each therefore also acted knowingly or recklessly in
9 making material misrepresentations and omissions of material fact to investors to solicit
10 investments.

11 **Hu and the Asenqua Defendants Made Further Misrepresentations**

12 24. According to the investment agreements that each of the eight investors
13 received, each investor purchased a "limited partnership interest" in the Asenqua hedge funds.
14 Defendants represented in the agreements that the investors' funds were to be pooled into
15 various "master funds" controlled by Hu and the Asenqua defendants. Hu promised to
16 execute his investment strategy using the collective investor funds held in each master fund.

17 25. Hu and the Asenqua defendants further represented in the investor agreements
18 that the defendants were to earn fees based on a percentage of the returns on the investments
19 to the funds. Then, after subtracting those fees, Hu and the Asenqua defendants promised that
20 the returns on the investments earned by the funds would be allocated among investors across
21 the Asenqua hedge funds.

22 26. From approximately 2001 into 2008, Hu and the Asenqua defendants provided
23 quarterly statements to investors. In the statements, Hu and the Asenqua defendants almost
24 always claimed that the Asenqua hedge funds had positive net returns. For example, the
25 Asenqua Beta Fund, LP reported a return of more than 22 percent in the second quarter of
26 2003, the Asenqua Alpha Fund, LP also reported a return of more than 22 percent in the
27 second quarter of 2003, and the Fireside LS Fund, LP reported a return of more than 11
28 percent in the fourth quarter of 2005.

1 27. The same quarterly statements also provided purported annual returns, which
2 were similarly almost always positive. For example, according to the statements, the Asenqua
3 Alpha Fund, LP reported a return of nearly 47 percent in calendar year 2001, the Asenqua
4 Beta Fund, LP reported a return of nearly 53 percent in calendar year 2003, the Asenqua
5 Multi-Strategy Fund, LP reported a return of nearly 41 percent in calendar year 2003, and the
6 Fireside LS Fund, LP reported a 20 percent return in calendar year 2006 and a nearly 31
7 percent return in calendar year 2007.

8 28. Each of the quarterly statements that defendants provided to investors
9 purported to bear the signature of the so-called "Chief Financial Officer" of the Asenqua
10 hedge funds. In fact, Hu forged the signature of the person described as the Chief Financial
11 Officer, who was the same individual falsely identified in the Asenqua hedge funds'
12 marketing materials. The individual in fact had no association with the Asenqua hedge funds
13 and did not sign the Asenqua hedge fund statements.

14 29. To substantiate the Asenqua hedge funds' assets and performance, Hu and the
15 Asenqua defendants gave investors audit opinion letters attaching "audited" financial
16 statements for two different Asenqua hedge funds, the Asenqua Alpha Fund, LP and the
17 Asenqua Beta Fund, LP. The financial statements reported identical "net asset values" for
18 calendar year-end 2003 and 2004 for the two funds: \$110,573,431 (2003) and \$140,870,552
19 (2004). The statements also reported identical year-over-year growth of the net asset values
20 for the two funds for calendar year-end 2003 and 2004: 34.12 percent (2003) and 27.40
21 percent (2004).

22 30. The opinion letters stated that the audit firm provided a purportedly
23 "independent" review of the financial statements of the two Asenqua hedge funds. Hu and the
24 Asenqua defendants, however, did not disclose Hu's ties to the supposedly independent
25 auditing firm. Hu, through the Asenqua defendants, opened an account with a company that
26 provides "virtual offices" on behalf of the auditing firm. The virtual office made it appear as
27 if the auditing firm leased office space in San Francisco's financial district. Hu paid for the
28 virtual office on his credit card. By failing to disclose Hu's arrangements on behalf of the

1 auditing firm, Hu and the Asenqua defendants falsely represented that the Asenqua hedge
2 funds' financial statements had been subjected to an "independent" review by an audit firm
3 and misled investors into believing that the statements were reliable.

4 31. By making materially false and misleading representations in the hedge fund
5 statements provided to the investors, and by omitting to state material facts that were
6 necessary to make representations made in the statements not misleading, Hu acted knowingly
7 or recklessly. Each of the Asenqua defendants were controlled by Hu, and each therefore also
8 acted knowingly or recklessly in making material misrepresentations and omissions of
9 material fact to investors in the hedge fund statements.

10 **Hu and the Asenqua Defendants Have Misappropriated Investor Funds**

11 32. Hu and the Asenqua defendants misappropriated investor funds. They did so at
12 various times from 2001 through 2008 by using the funds for unauthorized purposes and
13 transferring them to accounts under Hu's control, and they continue to do so by refusing to
14 return funds in response to investors' requests.

15 33. The investment agreements Hu and the Asenqua hedge funds provided to
16 investors stated that a "master fund" would pool assets from the Asenqua hedge funds and
17 allocate fees and returns among the investors. Hu and the Asenqua defendants, however, did
18 not deposit directly all investor funds into financial accounts held in the name of the master
19 fund specified in the investment agreement.

20 34. For example, in February 2007, two individuals invested approximately
21 \$300,000 in the AQC Fixed Income Arbitrage Fund, LP, an Asenqua hedge fund managed by
22 Hu and defendant AQC Asset Management, Ltd. Within days, Hu transferred \$200,000 of the
23 investors' funds to an account held in the name of an unrelated business in Taipei. Hu and the
24 Asenqua defendants did not inform investors of the transfer.

25 35. In June 2007, Hu transferred \$280,000 of investors' funds out of an account
26 held in the name of defendant Fireside Capital Management, Ltd. into an account designated
27 to hold Hu's personal assets. Hu and the Asenqua defendants did not inform investors of the
28 transfer.

1 36. In 2005, Hu told investors that the Asenqua hedge funds had to be relocated to
2 Singapore. Hu claimed that burdensome tax regulations, as well as “privacy concerns,” made
3 the transfer of the hedge funds, and the investors’ money, out of the United States necessary.

4 37. In connection with the transfer of the Asenqua funds to Singapore, Hu
5 provided certain investors with new private placement memoranda and subscription
6 agreements. The private placement memoranda and subscription agreements included false
7 representations that the new Asenqua hedge fund had retained an independent auditor and a
8 fund administrator, and that a prominent international law firm had been retained as counsel to
9 the new Asenqua hedge fund. At Hu’s direction, investors transferred their prior interests in
10 various Asenqua hedge funds into limited partnership interests in the new Asenqua hedge
11 fund, the Fireside LS Fund, LP. Hu and defendant Fireside Capital Management, Ltd.
12 managed the assets of the Fireside LS Fund, LP.

13 38. On more than 50 occasions from November 2005 to December 2008, Hu
14 transferred investor funds to businesses and persons unrelated to the specified master fund.
15 Hu and the Asenqua defendants did not inform investors of the transfers.

16 39. In 2008, investors requested that Hu and the Asenqua defendants redeem their
17 investments in the Asenqua hedge funds. Hu failed to return any funds to all but two of the
18 eight investors who requested redemption. The two investors received less than they
19 requested, and far less than the value Hu and the Asenqua defendants had represented their
20 investment was then worth.

21 40. By January 2009, Hu stopped returning investors’ telephone calls and e-mail
22 messages. Also, Hu and the Asenqua defendants stopped providing quarterly statements for
23 the Asenqua hedge funds, having provided the last statements in approximately the first or
24 second quarter of 2008.

25 41. In Hu’s last contact with investors, Hu communicated from Hong Kong. In
26 December 2008, Hu told one investor that he is continuing to solicit new investors in the
27 Asenqua hedge funds.
28

1 42. By making materially false and misleading representations to investors in order
2 to transfer their funds, including in the private placement memoranda and subscription
3 agreements, and by omitting to state material facts that were necessary to make
4 representations made not misleading, Hu acted knowingly or recklessly. Furthermore, in
5 misappropriating investor funds, and in making use of investor funds contrary to the disclosed
6 purposes, and in failing to return investor funds, Hu acted knowingly or recklessly. Each of
7 the Asenqua defendants were controlled by Hu, and each therefore also acted knowingly or
8 recklessly in misappropriating investor funds.

9 **FIRST CLAIM FOR RELIEF**

10 *Violations of Section 10(b) of the Exchange Act and Rule 10b-5 by All Defendants*

11 43. The Commission realleges and incorporates by reference Paragraph Nos. 1
12 through 42, above.

13 44. By engaging in the acts and conduct alleged above, Hu and the Asenqua
14 defendants, directly or indirectly, in connection with the purchase or sale of securities, by the
15 use of means or instrumentalities of interstate commerce, or of the mails, or of a facility of a
16 national securities exchange, with scienter: (a) employed devices, schemes, or artifices to
17 defraud; (b) made untrue statements of material fact or omitted to state material facts
18 necessary in order to make the statements made, in light of the circumstances under which
19 they were made, not misleading; and (c) engaged in acts, practices, or courses of business
20 which operated or would operate as a fraud or deceit upon other persons, including purchasers
21 and sellers of securities.

22 45. By engaging in the forgoing conduct, Hu and the Asenqua defendants have
23 violated, and unless restrained and enjoined will continue to violate, Section 10(b) of the
24 Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 [17 C.F.R. § 240.10b-5], thereunder.

25 **SECOND CLAIM FOR RELIEF**

26 *Violations of Section 17(a) of the Securities Act by All Defendants*

27 46. The Commission realleges and incorporates by reference Paragraph Nos. 1
28 through 42, above.

1 47. By engaging in the acts and conduct alleged above, Hu and the Asenqua
2 defendants, directly or indirectly, in the offer or sale of securities, by use of the means or
3 instruments of transportation or communication in interstate commerce or by use of the mails:
4 (a) with scienter employed devices, schemes, or artifices to defraud; (b) obtained money or
5 property by means of untrue statements of material fact or by omitting to state a material fact
6 necessary in order to make statements made, in the light of the circumstances under which
7 they were made, not misleading; and (c) engaged in transactions, practices, or courses of
8 business which operated or would operate as a fraud or deceit upon the purchasers.

9 48. By engaging in the forgoing conduct, Hu and the Asenqua defendants have
10 violated, and unless restrained and enjoined will continue to violate, Section 17(a) of the
11 Securities Act [15 U.S.C. § 77q(a)].

12 **THIRD CLAIM FOR RELIEF**

13 *Violations of Section 206(1) and 206(2) of the Advisers Act by Hu*

14 49. The Commission realleges and incorporates by reference Paragraph Nos. 1
15 through 42, above.

16 50. At all relevant times, Hu acted as an investment adviser, as defined by
17 Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)], to the Asenqua hedge
18 funds and investors in the Asenqua hedge funds.

19 51. By engaging in the acts and conduct alleged above, Hu, directly or indirectly,
20 through use of the means or instruments of transportation or communication in interstate
21 commerce or of the mails, and while engaged in the business of advising others for
22 compensation as to the advisability of investing in, purchasing, or selling securities:
23 (a) employed devices, schemes, and artifices to defraud; and (b) engaged in acts, practices, or
24 courses of business which operated or would operate as a fraud or deceit upon clients or
25 prospective clients.

26 52. By engaging in the forgoing conduct, Hu has violated, and unless restrained
27 and enjoined will continue to violate, Sections 206(1) and 206(2) of the Advisers Act
28 [15 U.S.C. §§ 80b-6(1) and 80b-6(2)].

FOURTH CLAIM FOR RELIEF

Violations of Section 206(4) of the Advisers Act and Rule 206(4)-8 by Hu

53. The Commission realleges and incorporates by reference Paragraph Nos. 1 through 42, above.

54. At all relevant times, Hu acted as an investment adviser, as defined by Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)], to the Asenqua hedge funds and investors in the Asenqua hedge funds.

55. At all relevant times, the Asenqua hedge funds were pooled investment vehicles, as defined by Rule 206(4)-8(b) promulgated under the Advisers Act [17 C.F.R. § 275.206(4)-8(b)].

56. By engaging in the acts and conduct alleged above, Hu, while acting as an investment adviser to a pooled investment vehicle, by the use of the means and instrumentalities of interstate commerce and of the mails, directly and indirectly, has engaged in transactions, practices, and courses of business which operate as a fraud or deceit upon investors in the Asenqua hedge funds. Hu made untrue statements of a material fact or omitted to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the Asenqua hedge funds, and otherwise engaged in acts, practices or courses of business that were fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the Asenqua hedge funds.

57. By engaging in the forgoing conduct, Hu violated Section 206(4) of the Advisers Act [15 U.S.C. § 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Enjoin Hu and the Asenqua defendants temporarily, preliminarily, and permanently from directly or indirectly violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)],

1 Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)], and Rule 10b-5 thereunder [17 C.F.R.
2 § 240.10b-5].

3 II.

4 Enjoin Hu temporarily, preliminarily, and permanently from directly or indirectly
5 violating Sections 206(1), 206(2), and 206(4) of the Advisers Act [15 U.S.C. §§ 80b-6(1),
6 80b-6(2), and 80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8].

7 III.

8 Enter an order freezing the assets of Hu and the Asenqua defendants.

9 IV.

10 Order Hu and the Asenqua defendants to provide a verified accounting of the Asenqua
11 hedge funds, identifying: (i) the location and disposition of all funds received from investors;
12 (ii) the location and disposition of all accounts controlled by defendants or held for their
13 benefit; and (iii) the location and value of all investor, as well as personal or other assets
14 currently held by defendants, or under defendants' control or over which they may exercise
15 actual or apparent authority.

16 V.

17 Order Hu and the Asenqua defendants to repatriate to the territory of the United States
18 all assets and funds received from, or held for the benefit of, investors in the Asenqua hedge
19 funds.

20 VI.

21 Order Hu and the Asenqua defendants to disgorge their ill-gotten gains according to
22 proof, plus prejudgment interest thereon.

23 VII.

24 Order Hu to pay civil penalties pursuant to Section 20(d) of the Securities Act
25 [15 U.S.C. § 77t(d)], Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)] and
26 Section 209(e) of the Advisers Act [15 U.S.C. § 80b-9(e)].

VIII.

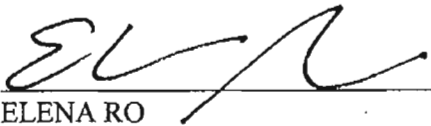
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2 Retain jurisdiction of this action in accordance with the principles of equity and the
3 Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders
4 and decrees that may be entered, or to entertain any suitable application or motion for
5 additional relief within the jurisdiction of this Court.

6 IX.

7 Grant such other and further relief as this Court may determine to be just, equitable,
8 and necessary.

9
10 DATED: March 2, 2009

Respectfully submitted,

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13 _____

ELENA RO

14 Attorney for Plaintiff
15 SECURITIES AND EXCHANGE
16 COMMISSION
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