UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	CRIMINAL NO.: 17-10167
v.	Violations:
RICHARD BOOMGAARDT,	Conspiracy to Commit Wire and Securities Fraud (18 U.S.C. § 371)
Defendant.	Criminal Forfeiture Allegation (18 U.S.C. § 981(a)(1)(C) & 28 U.S.C. § 2461(c))

INFORMATION

The United States Attorney and the Chief of the Fraud Section of the United States Department of Justice charge that:

General Allegations

At times relevant to this Information:

Certain Relevant Persons and Entities

1. Defendant RICHARD BOOMGAARDT was an individual who resided in the United Kingdom.

2. BOOMGAARDT was employed in London, England as a managing director and head of the Transition Management desk for Europe, the Middle East, and Africa ("EMEA") for a financial services company headquartered and with its principal place of business in Boston, Massachusetts that was one of the world's largest asset managers and custody banks (together with its subsidiaries and affiliates, "the Bank"). The Bank was also a global leader in the transition management business, which was part of its Portfolio Solutions Group.

3. Edward Pennings ("Pennings") was an individual who resided in the United Kingdom and was employed by the Bank in its London office as a senior managing director and head of the Bank's Portfolio Solutions Group for the EMEA region. Pennings was BOOMGAARDT's direct supervisor.

4. Ross McLellan ("McLellan") was an individual who resided in Hingham, Massachusetts and was employed by the Bank as an executive vice president, global head of Portfolio Solutions, and president of the Bank's U.S. broker-dealer subsidiary, which was registered with the Securities and Exchange Commission ("SEC"). McLellan worked primarily at the Bank's Boston, Massachusetts headquarters, and was Pennings' direct supervisor.

General Background on the Transition Management Business

5. Large institutional investors – such as pension funds and endowments – often have complex investments consisting of relatively illiquid assets, or positions that due to their sheer size are difficult to unwind without negatively affecting their price. Transition management is, generally, the business of helping such institutions efficiently move their investments between and among asset managers or liquidate large investment portfolios, with the goal of minimizing the costs associated with such "transitions." As a general matter, transition managers have three principal tasks: (1) to assume responsibility for the performance of investment portfolios during transitions; (2) to communicate with incoming and outgoing asset managers about the composition of their respective portfolios; and (3) to facilitate transitions by executing the necessary trades, with the goal of reducing risk and cost for their clients.

6. The performance of a transition is typically measured using a metric called the "implementation shortfall," which is comprised of a number of different types of explicit and implicit costs. When seeking transition management assignments from prospective clients,

transition managers typically prepare an estimate of the implementation shortfall. That estimate is one critical factor, among others, in the awarding of transition management business. After completing the assignment, transition managers typically provide their clients with a post-trade analysis that provides the actual results and assesses the performance during the transition.

7. The relationship between a transition manager and its client, and their respective responsibilities, are typically documented in a contract referred to as a "transition management agreement" ("TMA"). The TMA may govern multiple transitions over the life of a client relationship. Details of specific transition assignments are often set forth in a shorter document referred to as a "Transition Notice" or "Periodic Notice," that contains details of the transition and the transition manager's agreed-upon compensation. In the Bank's case, this compensation was typically either a per-trade charge on securities transactions associated with the transition, referred to variously as "commissions," "markups," "markdowns," or "spreads" (collectively, "commissions"), or a flat fee for the entire transition expressed as a specific number or as a percentage on the value of the portfolio to be transitioned.

The Conspiracy

8. In or about and between February 2010 and September 2011, the defendant, RICHARD BOOMGAARDT, agreed with Pennings and McLellan to engage in a scheme to defraud, and to obtain money and property of certain of the Bank's transition management clients in the EMEA region, by applying hidden commissions to securities trades conducted on behalf of those clients. As part of the conspiracy, BOOMGAARDT, together with Pennings and McLellan, agreed to mislead clients and others about what the Bank was charging for transition management services, by (1) secretly charging commissions on securities trades conducted as part of certain transitions over and above the agreed upon fees for those transitions; (2) actively

concealing the hidden commissions from the affected clients and from others within the Bank; and (3) taking additional steps to cover up what they had done.

Objects of the Conspiracy

9. A principal purpose and object of the conspiracy was to make money for the Bank by secretly overcharging certain transition management clients through the use of hidden commissions on securities that the Bank purchased and sold on their behalf in the course of transitions. Another purpose and object of the conspiracy was to conceal the hidden commissions, including through the use of false and misleading periodic notices, post-trade reports, and other documents.

Manner and Means of the Conspiracy

10. The manner and means by which the defendant, RICHARD BOOMGAARDT, together with Pennings and McLellan, accomplished the objects of the conspiracy, included, among other things, the following:

a. The Bank, at the direction of Pennings and McLellan, agreed to manage transitions for certain clients pursuant to agreed-upon fees – in several cases, a flat fee, and in at least one case, for no fee. In accordance with those agreements, written trading instructions for those transitions distributed to the Bank's traders via wire communications in interstate and foreign commerce generally reflected that the clients were not to be charged commissions on trades executed on their behalf.

b. Notwithstanding those agreements, and the written trading instructions, BOOMGAARDT, Pennings and McLellan directed employees of the Bank to apply commissions to fixed income trades – and, in at least one case, to equities trades – executed on behalf of those clients.

c. BOOMGAARDT, Pennings and McLellan took steps to hide the commissions from their clients, including by directing that the commissions not be broken out in either the implementation shortfall calculation or any other post-trade reports provided to the clients. In at least one instance, BOOMGAARDT and McLellan requested that the Bank's traders provide them with the reported daily high and low prices so that they could determine the amount of the markups to be applied on each security without attracting attention by exceeding the bounds of reported prices.

d. When one of the affected clients inquired about whether it had, in fact, been charged commissions in breach of its agreement with the Bank, BOOMGAARDT, Pennings and McLellan sought to cover up their actions. Among other things, Pennings initially denied that any commissions had been charged, and later – at McLellan's direction – acknowledged only that some commissions had been "inadvertently" charged on securities traded in the United States, but did not disclose that they had, in fact, been intentionally charged, both in the United States and also in Europe. BOOMGAARDT, Pennings and McLellan also sought to mislead the Bank's compliance staff into believing that the commissions had been charged in error and that the amount of the overcharges was limited to the commissions applied on U.S. securities.

Overt Acts Committed in Furtherance of the Conspiracy

11. On or about various dates in or about and between February 2010 and September 2011, the defendant, RICHARD BOOMGAARDT, together with Pennings and McLellan, took the following overt acts, among others, in furtherance of the conspiracy:

The Middle Eastern Sovereign Wealth Fund

12. In or about February 2010, the Bank, at the direction of Pennings and McLellan, offered to conduct a large fixed-income transition for the sovereign wealth fund of a Middle Eastern country (the "Middle Eastern Sovereign Wealth Fund") at no charge.

13. In a telephone call on or about March 2, 2010, Pennings and BOOMGAARDT discussed the plans to charge hidden commissions on the transition, and Pennings instructed BOOMGAARDT not to talk about those plans "with anyone . . . because it's not going to help our story. Don't even share it with the rest of the team, to be honest." BOOMGAARDT responded, in substance, that Pennings would have to interact with someone else on the transition management desk over the course of the transition because he would be away during part of the transition. Pennings replied: "Yeah, OK, but they don't need to know what's in the documentation."

14. On or about June 3, 2010, Pennings told BOOMGAARDT that he had spoken with McLellan, who had indicated that he wanted to "get . . . involved in the [Middle Eastern Sovereign Wealth Fund] deal . . . to see how we can make it nice." Pennings relayed that McLellan said to "take less" on one portion of the portfolio and "take a lot more" on another portion of the portfolio, and that McLellan "said you can still take 1 or 2 on the outgoing side. . . . I mean, no one is going to fucking notice that. . . . it's a rounding error, so no one is going to notice that."

15. In a telephone call among BOOMGAARDT and two U.S.-based traders on or about June 15, 2010, BOOMGAARDT instructed the traders that "before you book out the client side, send the executions across and we will have a look and figure out what levels we want to put on the client side."

16. BOOMGAARDT and McLellan then calculated commissions for the traders to apply to the trades that would keep the Middle Eastern Sovereign Wealth Fund's costs within the intraday high and low prices for the securities, thereby helping to hide the commissions from the client.

The Irish Government Pension Fund

17. In or about December 2010, the Bank proposed to manage a transition for a large public pension fund based in Dublin, Ireland (the "Irish Government Pension Fund") for a flat management fee of 1.25 basis points (0.0125%) of the value of the assets. The proposal specified that there would be no fixed income or equities commissions.

18. In an email to BOOMGAARDT, Pennings noted: "Just to clarify – 1.25 bps is management fee. The extra quarter point makes it look like we actually thought about it and did the calculations . . . . "

19. After the Irish Government Pension Fund awarded the Bank only part of the transition, the Bank negotiated for, and the Irish Government Pension Fund agreed to a slightly higher flat fee. The Periodic Notice for the transition provided that the Bank's fee would be 1.65 basis points (0.0165%) of the value of the assets, plus certain specified costs for foreign exchange transactions.

20. In a subsequent telephone call, Pennings told BOOMGAARDT that "we just need to be very, very creative, which we will," and added: "Make sure it . . . doesn't say anything

about not taking any spreads, because we're going to have to in the U.S." Pennings then instructed BOOMGAARDT not to inform the transition manager assigned to the deal about the hidden commissions.

21. On or about March 23, 2011, BOOMGAARDT reviewed a draft of the post-trade report for the first tranche of the Irish Government Pension Fund transition, and instructed the transition manager to alter the definition of "Commissions" in the report because, according to BOOMGAARDT, "We are charging a flat fee." On or about March 29, 2011, the Bank sent the Irish Government Pension fund the post-trade report with the term "Commissions" removed from the definitions page.

22. Because the Irish Government Pension Fund transition involved a significant amount of equities – for which commissions were ordinarily broken out and reported automatically by the Bank's trading systems – Pennings, McLellan, and others known and unknown to the U.S. Attorney and the Chief of the Fraud Section, devised a plan to conduct the trades in a special trading account ordinarily used to guarantee customers a specific price – the volume weighted average price ("VWAP") – of trades executed over the course of a day. Using the VWAP account, the Bank was able to include a commission of 2 basis points (0.02%) on each of the U.S. equities trades it executed for the Irish Pension Fund, without the commission being broken out on reports sent to the client.

The British Government Pension Fund

23. In or about February 2011, the Bank offered to conduct a fixed-income transition on behalf of a pension fund based in London, England that managed the retirement assets of certain employees of the British government (the "British Government Pension Fund"). The Bank proposed a flat fee of 1.75 basis points (0.0175%) of the value of the assets and promised

to "provide full disclosure" of "all costs incurred in the transition and any additional revenue sources . . . resulting from the transition." In a table breaking down costs associated with the transition, the Bank indicated that no commissions would be applied.

24. On or about March 21, 2011, the instructions sent to traders handling the transition for the British Government Pension Fund provided, in bold-faced lettering, "ZERO COMMS." That same day, in a telephone call with BOOMGAARDT, Pennings said he had just had a call with McLellan in which McLellan "said 'how much do you want to take?' and I said, 'whatever, let's see how we go.'"

25. At the direction of BOOMGAARDT, Pennings and McLellan, in or about March 2011 the Bank ultimately charged the British Government Pension Fund secret commissions of one basis point (0.01%) on all U.S. trades and 2 basis points (0.02%) on all European trades in addition to the agreed-upon flat fee.

26. After the British Government Pension Fund independently learned that markups had been taken on certain U.S. trades, BOOMGAARDT, Pennings, and McLellan took steps to prevent the British Government Pension Fund from learning the truth by falsely telling the British Government Pension Fund and its consultant ("Consultant") that the markups had been applied by mistake and limited to the U.S. On or about August 22, 2011, BOOMGAARDT told Consultant, "I am trying to figure out how we can give them [British Government Pension Fund] comfort that this was a mistake made by our U.S. trading team."

COUNT ONE
(Conspiracy to Commit Wire Fraud and Securities Fraud)

27. The United States Attorney and the Chief of the Fraud Section re-allege and incorporate by reference paragraphs 1 through 26 of this Information and further charge that:

28. In or about and between February 2010 and September 2011, in the District of Massachusetts and elsewhere, the defendant,

RICHARD BOOMGAARDT,

together with Pennings and McLellan, conspired to commit offenses against the United States, to wit:

a. securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a), and Title 17, Code of Federal Regulations, Section 240.10b-5, to wit: knowingly and willfully, by the use of means and instrumentalities of interstate commerce, the mails, and the facilities of a national securities exchange, directly and indirectly to use and employ manipulative and deceptive devices and contrivances in connection with the purchase or sale of securities, in contravention of Rule 10b-5 of the Rules and Regulations promulgated by the United States Securities and Exchange Commission, 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 circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which would and did operate as a fraud and deceit in connection with the purchase and sale of securities; and

b. wire fraud, in violation of Title 18, United States Code, Section 1343, to wit: having devised and intending to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, to transmit and cause to be transmitted by means of wire communications in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing the scheme to defraud.

29. The objectives, manner and means, and overt acts taken in furtherance of the conspiracy charged herein are set forth in paragraphs 9 through 26.

All in violation of Title 18, United States Code, Section 371.

CRIMINAL FORFEITURE ALLEGATION
(18 U.S.C. § 981(a)(1)(C) & 28 U.S.C. § 2461(c))

30. Upon conviction of the offense charged in Count One of this Information, the defendant,

RICHARD BOOMGAARDT,

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(c), any property, real or personal, which constitutes or is derived from proceeds traceable to such offense.

31. If any of the property described in paragraph 30 above, as a result of any act or omission by the defendant,

a. cannot be located upon the exercise of due diligence;

b. has been transferred or sold to, or deposited with, a third party;

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 divided without difficulty,

it is the intention of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of the defendant up to the value of the property described in paragraph 30 above.

All pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

SANDRA MOSER
Acting Chief, Fraud Section
Criminal Division
United States Department of Justice

By: ______________________
AISLING O'SHEA
Trial Attorney

WILLIAM D. WEINREB
Acting United States Attorney
District of Massachusetts

By: ______________________
STEPHEN E. FRANK
Assistant U.S. Attorney

Dated: 6-6-17

JS 45 (5/97) - (Revised U.S.D.C. MA 3/25/2011)

Criminal Case Cover Sheet **U.S. District Court - District of Massachusetts**

FILED IN CLERKS OFFICE 2017 JUN 6 PM 1 12 U.S. DISTRICT COURT DISTRICT OF MASS.

Place of Offense: **Category No.** II **Investigating Agency** FBI

City Boston **Related Case Information:**

County Suffolk

Superseding Ind./ Inf. ______ Case No. 17-10167
Same Defendant ______ New Defendant ______
Magistrate Judge Case Number ______
Search Warrant Case Number ______
R 20/R 40 from District of ______

Defendant Information:

Defendant Name Richard Boomgaardt Juvenile: ☐ Yes ☑ No

Is this person an attorney and/or a member of any state/federal bar: ☐ Yes ☑ No

Alias Name ______

Address (City & State) Sevenoaks, Kent, United Kingdom

Birth date (Yr only): 1973 SSN (last4#): ______ Sex M Race: White Nationality: Canada/Netherlands

Defense Counsel if known: Mark Rosman Address 1700 K Street NW, Fifth Floor

Bar Number ______ Washington, D.C. 20006

U.S. Attorney Information:

AUSA Stephen E. Frank Bar Number if applicable 568455

Interpreter: ☐ Yes ☑ No List language and/or dialect: ______

Victims: ☑ Yes ☐ No If yes, are there multiple crime victims under 18 USC§3771(d)(2) ☐ Yes ☑ No

Matter to be SEALED: ☐ Yes ☑ No

☐ Warrant Requested ☑ Regular Process ☐ In Custody

Location Status:

Arrest Date ______

☐ Already in Federal Custody as of ______ in ______ .
☐ Already in State Custody at ______ ☐ Serving Sentence ☐ Awaiting Trial
☐ On Pretrial Release: Ordered by: ______ on ______

Charging Document: ☐ Complaint ☑ Information ☐ Indictment

Total # of Counts: ☐ Petty ______ ☐ Misdemeanor ______ ☑ Felony 1

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☑ **I hereby certify that the case numbers of any prior proceedings before a Magistrate Judge are accurately set forth above.**

Date: June 6, 2017 Signature of AUSA: ______

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District Court Case Number (To be filled in by deputy clerk): ______________________

Name of Defendant RICHARD BOOMGAARDT

U.S.C. Citations

	Index Key/Code	Description of Offense Charged	Count Numbers
Set 1	18 USC 371	CONSPIRACY TO COMMIT OFFENSES AGAINST THE UNITED STATES	1
Set 2	18 USC 981(a)(1)(C)	FORFEITURE ALLEGATION	
Set 3			
Set 4			
Set 5			
Set 6			
Set 7			
Set 8			
Set 9			
Set 10			
Set 11			
Set 12			
Set 13			
Set 14			
Set 15			

ADDITIONAL INFORMATION: ______________________