

Approved: Edward A. Imperatore
EDWARD A. IMPERATORE
Assistant United States Attorney

Before: THE HONORABLE JAMES L. COTT
United States Magistrate Judge
Southern District of New York

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UNITED STATES OF AMERICA : COMPLAINT
- v. - : Violations of
JOHN AFRIYIE, : 15 U.S.C. §§ 78j(b) &
 : 78ff; 17 C.F.R. §§
 : 240.10b-5 & 240.10b5-2; 18
Defendant. : U.S.C. § 2
 : COUNTY OF OFFENSES:
- - - - - x New York

SOUTHERN DISTRICT OF NEW YORK, ss.:

SAMUEL MOON, being duly sworn, deposes and says that he is a Special Agent with the Federal Bureau of Investigation ("FBI") and charges as follows:

COUNT ONE
(Securities Fraud)

1. From on or about January 28, 2016, through on or about February 17, 2016, in the Southern District of New York and elsewhere, JOHN AFRIYIE, the defendant, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, and of the mails and the facilities of national securities exchanges, in connection with the purchase and sale of securities, used and employed manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2, by: (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon persons, to wit, on the basis of material, non-public information that

AFRIYIE obtained through his employment at a private investment fund in New York, New York, AFRIYIE executed and caused to be executed profitable transactions in the securities of ADT Corporation ("ADT").

(Title 15, United States Code, Sections 78j(b) & 78ff; Title 17, Code of Federal Regulations, Sections 240.10b-5 & 240.10b5-2; and Title 18, United States Code, Section 2.)

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

2. I have been a Special Agent with the FBI for approximately five years. I am currently assigned to a squad responsible for investigating violations of the federal securities laws and related offenses. I have participated in investigations of such offenses, and have made and participated in arrests of individuals who have committed such offenses.

3. The information contained in this Complaint is based upon my personal knowledge, as well as information obtained during this investigation, directly or indirectly, from other sources, including, but not limited to: (a) business records and other documents, including trading records, telephone records, records of electronic communications, and Internet Protocol ("IP") address logs, provided by various entities; (b) publicly available documents; (c) conversations with, and reports and documents prepared by, another law enforcement officer; (d) conversations with representatives from the United States Securities and Exchange Commission ("SEC"); and (e) emails, chat messages, and access logs, and other materials provided by the employer of JOHN AFRIYIE, the defendant. Because this Complaint is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I have learned during the course of my investigation. Where the contents of documents and the actions and statements of and conversations with others are reported herein, they are reported in substance and in part. Where figures, calculations, and dates are set forth herein, they are approximate, unless stated otherwise.

Relevant Entities

4. At all times relevant to this Complaint, a private institutional investment fund (hereinafter, the "Fund") provided, among other services, debt financing to clients in connection with mergers and acquisitions.

a. The Fund had 80 employees working in multiple office locations, including in New York, New York.

b. In connection with its business, the Fund was in possession of material, non-public information regarding its clients and potential targets of mergers or acquisitions, such as due diligence memoranda and analyses.

5. At all times relevant to this Complaint, ADT was a publicly traded company that provided residential and business security, fire protection, and alarm monitoring services. ADT was headquartered in Boca Raton, Florida. ADT's securities traded under the symbol "ADT" on the New York Stock Exchange ("NYSE").

6. At all times relevant to this Complaint, Apollo Global Management LLC ("Apollo") was a private equity firm headquartered in New York, New York.

The Defendant and His Employment at the Fund

7. Based on a review of employment records for JOHN AFRIYIE, the defendant, information provided by the Fund, and publicly available information, I have learned that from January 2015 until today, AFRIYIE was employed as an analyst by the Fund in the Fund's New York, New York office. In that role, AFRIYIE was responsible for, among other things, assessing and analyzing potential investments in the area of public equities. As an investment analyst, AFRIYIE had access to, among other materials, electronic files maintained on the Fund's computer server, including files containing material, non-public information.

8. Based on my review of records supplied by the Fund, I have learned that:

a. The Fund's written Code of Business Conduct and Ethics (the "Code") governed, among other things, securities transactions by the Fund's employees and employee conflicts of interest. The Code provided, among other things, that (1) Fund

employees were prohibited from "transact[ing] in the debt or equity securities of any public issuers during [their] employment" without prior approval of the Fund; and (2) "trades will not be allowed for . . . the personal accounts of Employees in the securities issued by a company appearing on the Restricted Securities/Watch List except with approval of the Chief Compliance Officer or another member of the [legal compliance department]. . . . Restrictions with regard to securities on the Restricted Securities/Watch List are also generally considered to extend to options, rights or warrants relating to those securities and any securities convertible into those securities. . . ." The Code also provided an explanation of insider trading law and detailed the Fund's policy against insider trading.

b. On February 2, 2015, as part of his employment with the Fund, JOHN AFRIYIE, the defendant, electronically signed a Fund "Code of Ethics Attestation," stating, in part: "I acknowledge that I have received [the Fund]'s Code of Business Conduct and Ethics (the 'Code'), and attest that I have read, understand and have complied with the Code in all material respects to date and hereby agree to comply with the Code in the future. If I have a question at any time as to the application of the Code, I will consult with a member of [the Fund]'s Legal and Compliance Department. I understand that a violation of the Code can result in disciplinary action (up to and including termination) as well as potential legal liability (criminal and/or civil)."

Summary of the Insider Trading Scheme

9. As set forth below, there is probable cause to believe that JOHN AFRIYIE, the defendant, used material, non-public information that he misappropriated through his employment at the Fund to make and cause to be made profitable options trades in a brokerage account that he controlled. Specifically:

a. As a Fund analyst, AFRIYIE had access to the Fund's network server, which maintained, among other things, electronic shared directory file folders containing material non-public information. AFRIYIE also received "restricted list" emails instructing him and other Fund employees not to trade in the securities of particular companies.

b. In violation of the Fund's policies and in breach of his duties to the Fund and its clients, AFRIYIE accessed material non-public information about Apollo's pending

acquisition of ADT in an electronic shared drive folder on the Fund's network server. AFRIYIE then purchased ADT call options¹ for a total of \$24,254.02, before the public announcement of that transaction. The public announcement of Apollo's acquisition of ADT caused a substantial increase in the price of shares of ADT and a corresponding increase in the value of the call options AFRIYIE had purchased.

c. Shortly after the public announcement of Apollo's acquisition of ADT, AFRIYIE sold certain ADT call options he had previously purchased, thereby profiting on the increase in ADT's stock price.

d. AFRIYIE purchased the ADT call options through a brokerage account in the name of AFRIYIE's mother, which AFRIYIE controlled. AFRIYIE did not reveal his affiliation with the Fund in the account opening documents for the brokerage account or in his communications with the brokerage firm. Nor did AFRIYIE reveal his trades or the existence of this brokerage account to the Fund. From this illegal trading, AFRIYIE earned at least \$1.53 million in realized and unrealized gains.

The Brokerage Account

10. Based on my review of documents maintained by a brokerage firm (the "Brokerage Firm"), I have learned the following:

a. On November 9, 2007, the Brokerage Firm approved an application to open a securities trading account in the name of a female with the last name "Afriyie" ("Individual-1") (the "Brokerage Account"). In the application, Individual-1 was listed as a "[h]omemaker" with a net worth between \$15,000 and \$49,999.²

b. The account opening documents for the Brokerage Account do not indicate that anyone other than Individual-1 had authority to trade in the Brokerage Account.

¹ Based on my training and experience, I know that a call option is an option to purchase stock at a particular price within a specified time period. Purchasing call option contracts is consistent with a belief that the price of the underlying security will increase.

² From my review of law enforcement records, I have learned that Individual-1 is the mother of JOHN AFRIYIE, the defendant.

c. I have obtained trading records for the Brokerage Account back to 2011. Prior to the trades described herein, the records do not reflect any ADT options or equity trades in the Brokerage Account.

The Insider Trading in ADT Call Options

11. Based upon a review of public records, records of the Brokerage Account, Internet service provider records, telephone and IP log records, records supplied by the Fund, including emails and electronic network access logs for JOHN AFRIYIE, the defendant, and a transaction chronology prepared by Apollo, I have learned that:

a. On January 27, 2016, Apollo contacted the Fund to discuss whether the Fund would provide debt financing for a potential transaction involving ADT.

b. On January 27, 2016, at 6:13 p.m., AFRIYIE, using the email address jafriyie@[hedgefund].com (the "AFRIYIE Email Address"), among others, received an internal Fund email bearing the subject "1-Potential Restriction: US-Listed Alarm Monitoring Services Company (\$1-5b market cap)." The email stated that a trading restriction was imposed upon the securities of a "U.S.-listed global provider of alarm monitoring services." The stated "reason" for the restriction was a "financing opportunity in connection with a potential take-private transaction by an Apollo Global portfolio company (~\$11b debt/~\$4b equity)." The email further stated that the "transaction is expected to close in 1H 2016."

c. At market opening on January 28, 2016, ADT was trading at \$29.20 per share.

d. From January 28, 2016 through February 18, 2016, on 177 occasions, the Brokerage Account was accessed over the Internet from an IP address associated with the Fund's New York, New York office.³

³ Connection to the Internet through an ISP is effectuated by means of a modem that is, at any given time, assigned a unique numeric address, or IP address. No two modems connected to the Internet ever have the same IP address at any given time. ISPs typically maintain for discrete periods of time records or "logs" of the IP addresses from which their subscribers have gained access to the Internet. In addition, when an Internet user accesses an Internet site, the entity controlling the site

e. On January 28, 2016, at 9:21 a.m., the Brokerage Account purchased one ADT call option contract with a strike price of \$32 and an expiration date of February 19, 2016 for \$40.78.

f. On January 28, 2016 at 10:16 a.m., AFRIYIE opened a document entitled "ADT - Investment Memo - 04.28.14.docx" in a Fund network file folder labeled "ADT." One minute later, at 10:17 a.m., AFRIYIE opened a file labeled "APO Model.xlsx," in a Fund network file folder labeled "APO." From my training and experience and my participation in this investigation, I understand that "APO" is the ticker symbol for Apollo.

g. On January 28, 2016, at 4:25 p.m., AFRIYIE, at the AFRIYIE Email Address, and other Fund employees received an email from the Fund "Investments Group" email account, with the subject "1-Restricted Securities." The email stated, in sum and substance, and in part, that "ADT Corp" had been added to the "Restricted Securities/Watch List." The email included a list of various securities, including ADT stock, that the Fund prohibited its employees from trading. The list provided ADT's stock symbol and indicated that ADT traded on the NYSE. Consistent with the Fund's Code, this meant that no employee at the Fund could trade in securities related to ADT without prior approval of the Fund.

h. On January 29, 2016, representatives of Apollo and the Fund held an in-person meeting at the Fund's offices in New York, New York, where AFRIYIE worked.

i. On January 29, 2016, AFRIYIE wired \$2,000 into the Brokerage Account from a particular bank account in AFRIYIE's name at a bank in New York, New York (the "AFRIYIE Bank Account").

j. On January 29, 2016, in two separate transactions occurring at 11:04 a.m. and 11:37 a.m., respectively, the Brokerage Account purchased a total of 35 ADT call option contracts with a strike price of \$32 and an expiration date of February 19, 2016 for \$922.39.

k. On January 31, 2016, the Fund entered into a non-disclosure agreement with Apollo and was granted access to an

being accessed often has the ability to record the IP address from which the access is being made.

electronic data room for the ADT transaction. Shortly thereafter, the Fund declined to participate in the transaction.

l. On February 1, 2016, the Brokerage Account purchased 14 ADT call option contracts with a strike price of \$32 and an expiration date of February 19, 2016 for \$380.85.

m. On February 2, 2016, at 9:01 a.m., the Brokerage Account purchased 7 ADT call option contracts with a strike price of \$32 and an expiration date of February 19, 2016 for \$43.42.

n. On February 2, 2016, from 3:57 p.m. until at least 3:58 p.m., AFRIYIE accessed on the Fund network an electronic shared drive file folder relating to the ADT acquisition, labeled "Datarooms\ADT" (hereinafter, the "ADT Network Folder"), in which there were numerous documents containing non-public information about ADT and its business. Within the ADT Network Folder, AFRIYIE opened a series of documents in a sub-folder labeled "Priority Business Diligence," among others, including documents labeled "Internal Discussion Materials," "Integration Plan," "Due Diligence Report," and "Synergy Report."

o. On February 3, 2016, from 9:25 a.m. until at least 3:57 p.m., AFRIYIE again accessed the ADT Network Folder and opened a series of documents in a sub-folder labeled "Priority Business Diligence," among others, including documents labeled "Internal Discussion Materials," "Branch Analysis," and "Synergy Report."

p. On February 4, 2016, from 11:11 a.m. until at least 1:15 p.m., AFRIYIE again accessed the ADT Network Folder and opened a series of documents and spreadsheets in a sub-folder labeled "Financial Model and Analysis," among others, including documents labeled "Internal Discussion Materials," and "Model_1.28.16."

q. On February 5, 2016, AFRIYIE wired \$12,000 into the Brokerage Account from the AFRIYIE Bank Account.

r. On February 5, 2016, between 8:59 a.m. and 11:02 a.m., in five separate transactions, the Brokerage Account purchased 253 ADT call option contracts with a strike price of \$32 and an expiration date of February 19, 2016 for a total of \$1,140.13. On that same date, between 9:13 a.m. and 2:51 p.m., in three separate transactions, the Brokerage Account purchased

700 ADT call option contracts with a strike price of \$33 and an expiration date of March 18, 2016 for a total of \$9,072.68.

s. On February 5, 2016, from 5:04 p.m. until at least 6:35 p.m., AFRIYIE again accessed the ADT Network Folder and opened a series of documents and spreadsheets, including documents labeled "Phase II diligence call center - Responses," "ADT_Options-Outstanding-By-Optioneee," "Basic Shares," and "Conversion Project Q1-16 Update."

t. On February 8, 2016, AFRIYIE wired \$15,000 into the Brokerage Account from the AFRIYIE Bank Account.

u. On February 8, 2016, in two separate transactions, the Brokerage Account purchased 300 ADT call option contracts with a strike price of \$33 and an expiration date of March 18, 2016 for a total of \$3,752.57.

v. In total, from January 28, 2016 through February 9, 2016, in 13 separate transactions, the Brokerage Account purchased a total of 400 ADT call option contracts with a strike price of \$32 and an expiration date of February 19, 2016 for a total of \$3,067.34.

w. In total, from February 5, 2016 through February 12, 2016, in 11 separate transactions, the Brokerage Account purchased a total of 1,624 ADT call option contracts with a strike price of \$33 and an expiration date of March 18, 2016 for a total of \$19,499.

x. From February 11, 2016 through February 12, 2016, in four separate transactions, the Brokerage Account purchased a total of 255 ADT call option contracts with a strike price of \$34 and an expiration date of March 18, 2016 for a total of \$1,687.68.

y. At market close on Friday, February 12, 2016, ADT was trading at \$26.87 per share.

z. On February 16, 2016, ADT issued a press release announcing that ADT had agreed to be acquired by certain funds managed by affiliates of Apollo for \$42.00 per share in an all-cash transaction.

aa. At market close on Tuesday, February 16, 2016, ADT was trading at \$39.64 per share.⁴

bb. On February 17, 2016, the Brokerage Account purchased 5 ADT call option contracts with a strike price of \$33 and an expiration date of March 18, 2016 for a total of \$3,513.87.

cc. On February 17, 2016, the Brokerage Account sold the 400 ADT call option contracts described in sub-paragraph 11(v) above, 705 of the 1,624 ADT call option contracts described in sub-paragraph 11(w) above, and the 255 ADT call option contracts described in sub-paragraph 11(x) above. A profit of \$931,070 was realized in the Brokerage Account when the ADT call option contracts were sold. As of February 17, 2016, the Brokerage Account continued to hold 924 ADT call options, with an unrealized profit of \$600,481.

dd. On February 18, 2016, an individual whom I believe to be JOHN AFRIYIE, the defendant, called the Brokerage Firm in regard to the Brokerage Account.⁵ The call was recorded by the Brokerage Firm. During the call, AFRIYIE provided a user identification code associated with the Brokerage Account. AFRIYIE called to confirm how much "margin" he could obtain based upon "1.5 million cash." Based upon my training and experience and my participation in this investigation, I believe that "1.5 million cash" is a reference to AFRIYIE's profit from the ADT call options.

ee. On February 19, 2016, an individual whom I believe to be JOHN AFRIYIE, the defendant, called the Brokerage Firm in regard to the Brokerage Account. The call was recorded by the Brokerage Firm. During the call, AFRIYIE identified himself as Individual-1 and provided a user identification code associated with the Brokerage Account and the last four digits of Individual-1's social security number. AFRIYIE asked a representative of the Brokerage Firm how he could maximize his profit on the 924 ADT call option contracts that had yet to be sold.

⁴ The NYSE was closed on Monday, February 15, 2016 for Presidents' Day. The NYSE reopened on Tuesday, February 16, 2016.

⁵ On April 13, 2016, I spoke with JOHN AFRIYIE, the defendant. Based upon my conversation with AFRIYIE, I have determined that the voice of the person who called the Brokerage Firm in the calls described in sub-paragraphs 11(dd) and 11(ee) appears to be AFRIYIE's.

12. On the morning of April 13, 2016, JOHN AFRIYIE, the defendant, was placed under arrest.

WHEREFORE, I respectfully request that JOHN AFRIYIE, the defendant, be imprisoned or bailed, as the case may be.

SAMUEL MOON
Special Agent
Federal Bureau of Investigation

Sworn to before me this
13th day of April 2016

HONORABLE JAMES L. COTT
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK