

18 MAG 10 161

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Approved:

ANDREW C. ADAMS / BENET J. KEARNEY
Assistant United States Attorneys

Before: THE HONORABLE ~~KEVIN NATHANIEL FOX~~
United States Magistrate Judge
Southern District of New York

GABRIEL W. LAIBINIS
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

SEALED COMPLAINT

- v. - :

Violations of 18 U.S.C.
§§ 1343, 1344(2), 1348,
1028A(a)(1), and 2

FABIO BRETAS DE FREITAS, :

Defendant. :

COUNTY OF OFFENSE:
NEW YORK

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SOUTHERN DISTRICT OF NEW YORK, ss.:

CHRISTOPHER DELZOTTO, 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
(Wire Fraud)

1. From at least in or about April 2016 up to and including the present, in the Southern District of New York and elsewhere, FABIO BRETAS DE FREITAS, the defendant, 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, transmitted and caused to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, to wit, BRETAS solicited funds from individuals for purported investment in futures markets, but diverted those funds for, among other things, personal expenses rather than investing them.

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

address purporting to belong to Victim-1, but in fact created by BRETAS, to communicate with an auditor from the National Futures Association in connection with an examination of one of BRETAS's purported commodities investment companies.

(Title 18, United States Code, Sections 1028A(a)(1) and 2.)

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

5. I have been a Special Agent with the FBI for approximately nine years. Since 2018, I have been assigned to Squad C-40; in that role, I have focused on investigations of money laundering and financial fraud. Prior to joining C-40, I worked extensively in the area of securities and commodities fraud, as well as other white-collar criminal investigations concerning mail fraud, wire fraud, and money laundering. This affidavit is based upon my personal participation in the investigation, my examination of reports and records, and my conversations with other individuals, including individuals who work for civil regulatory agencies. Because this affidavit 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, statements, and conversations of others are reported herein, they are reported in substance and in part, except where otherwise indicated.

6. As part of my investigation, I have reviewed documents provided by the National Futures Association ("NFA"), which were produced to the NFA by representatives of an entity known as Phynance Capital Investments LLC ("PhyCap"),¹ as well as correspondence between a representative of the NFA and the founder of PhyCap, FABIO BRETAS DE FREITAS, the defendant. I have also spoken with representatives of the NFA. Based on these conversations and my review of documents, I have learned, among other things, that:

a. The NFA has been designated by the Commodity Futures Trading Commission ("CFTC") as a "registered futures association," and acts as a self-regulatory organization for the United States derivatives industry. With certain exceptions,

¹ Based on information provided by the NFA, I have learned that Phynance Capital Investments LLC was formerly known as Phynance Capital Management LLC. For purposes of this Complaint, both entities are referred to as "PhyCap."

the CFTC requires that any firm that is required to register with the CFTC also be a member of the NFA.

b. Beginning in or about November 2017, the NFA conducted an examination of BRETAS and PhyCap in connection with an investigation of false and/or misleading marketing materials respecting futures and commodities investments.

c. In the course of that examination, PhyCap provided the NFA with a copy of what purports to be investor marketing material, which states, among other things:

i. "Phynance Capital Management LLC is a global commodity interest investment manager operating in the U.S. and is registered as a Commodity Trading Advisor ("CTA") as well as a Commodity Pool Operator ("CPO") with the Commodity Futures Trading Commission ("CFTC"). We are a member of the National Futures Association ("NFA") since 2010."

ii. "The company was founded in December 2005 in Brazil when Fabio Bretas, a physicist and the first Brazilian Quant Fund manager, left his position as Senior Portfolio Manager at Bank of Boston Brazil to create his own investment company. In 2011, after six years of hard work and multiple tests, the company launched the SOPhyA (Systematic Opportunistic Phynance Allocator), a software built to trade global high liquid commodity interests."

iii. "Phynance utilizes statistical analysis and mathematical modeling of historical data to develop quantitative systematic methodologies applied to managed futures strategy."

iv. "In April 2016 Phynance officially moved its operations and headquarters to Miami, U.S."

d. In the course of the NFA examination of PhyCap, the NFA learned, among other things:

i. Although PhyCap was being marketed as a sophisticated fund involved in the development of a complex trading software, it had only a *de minimis* amount of funds in its operating account.

ii. FABRIO BRETAS DE FREITAS, the defendant, informed representatives of the NFA, in substance and in part, that PhyCap was developing its technology and engaging

in negotiations to sell certain intellectual property, but had not solicited any investments as of yet.

iii. An entity called "Phy Global Partners Fund LLC" (hereinafter "PGP"), which BRETAS represented was a private equity fund that he created in order to develop intellectual property to be sold to other businesses, had extended over \$700,000 in "loans" to BRETAS and to PhyCap. The funds from these loans were deposited into PhyCap's bank account and BRETAS's personal bank account.

e. With respect to the purported "loans" from PGP, BRETAS, made the following representations to a representative of the NFA ("Auditor-1") by email:

i. On or about May 16, 2018, Auditor-1 wrote to BRETAS, among other things, "Please confirm the plan you and I discussed. Once PGP is paid in full from you, PGP will pay back all PGP creditors['] principal and interest as applicable. This will happen no later than May 30, 2018. Also, you will remove yourself from PGP no later than June 8, 2018. Your removal from PGP will mean you have no further ownership or involvement in PGP." In response, BRETAS wrote, on or about May 16, 2018, among other things, "Yes, it is okay. Confirmed."

ii. On or about May 22, 2018, Auditor-1 wrote to BRETAS at Email Account-1, among other things, "please reply providing an explanation of the source of funds \$737,701.11 used to pay back the PGP loans." In response, BRETAS, wrote, among other things, "The source was from by selling some of my IPs assets like explained before."

iii. On or about May 29, 2018, Auditor-1 wrote to BRETAS, among other things, "Do you have any direct or indirect ownership interest in Absoluta Experiencia LTDA / Absolute Experience LLC?" In response, BRETAS responded, "no."²

² Absolute Experience Fund LLC was, according to statements made by BRETAS to the NFA, including to Auditor-1, a business that had purchased intellectual property from BRETAS and PhyCap, and from which sale BRETAS claimed to have repaid "loans" to PGP and other purported creditors. From my review of records provided by Victim-2, described in more detail in paragraph 9 below, and records relating to bank accounts held by Absolute Experience Fund LLC, I have learned that BRETAS operates the bank accounts of Absolute Experience Fund LLC, is the sole signatory on both

iv. On or about June 1, 2018, BRETAS wrote to Auditor-1 to again represent that he had repaid the purported PGP "loan," as well as PGP's creditors from whom the PGP loan to BRETAS had been sourced. Additionally, BRETAS uploaded to a NFA-controlled website for Auditor-1's review scanned copies of checks purporting to represent those repayments, including a check dated June 1, 2018, in the amount of \$60,967.40 (the "Check"), made out to a particular payee ("Victim-1"), whom BRETAS represented to be a lender to PGP.³ The memo line of the check reads "PGP loan repay."

f. While communicating with BRETAS by email, Auditor-1 also contacted the person whom Auditor-1 believed to be Victim-1 via a separate email account provided to Auditor-1 by BRETAS ("Email Account-1"). From my review of correspondence between Auditor-1 and Email Account-1, I have learned, among other things, that:

i. The signature block on emails sent from Email Account-1, and account name itself, are substantially identical to the name of Victim-1, suggesting that Victim-1 in fact controlled Email Account-1.

ii. On or about March 8, 2018, during the course of the NFA's audit, Auditor-1 wrote the following to Email Account-1: "We are currently conducting an examination of Phynance Capital Management LLC that is operated by Fabio Bretas de Freitas (Fabio). As part of this exam, we became aware of another entity, Phy Global Partners Fund LLC (PGPF LLC) [i.e. PGP]. At our request, Fabio provided your contact information to me. I would like to have a phone call with you at your convenience to briefly discuss your loan to PGPF LLC. Please contact me at your earliest convenience. Also, if you prefer corresponding through email rather than phone, then I can send questions to you." In response, on or about March 17, 2018, the user of Email Account-1 (whom I believe to be BRETAS, as described further below), wrote, among other things: "I did not notice your email before because it is in my span [sic] folder. I not know [sic] exactly what it is, but I am available for your

bank accounts, diverts funds from that entity to his personal bank account, and has solicited investors to fund that entity.

³ BRETAS provided the NFA with a list of individuals whom he represented were creditors of PGP, which included Victim-1.

questions. Please, send me by email because it becomes easier for me."

iii. On or about March 23, 2018, in response to additional questions regarding the purported "loan" from Victim-1, the user of Email Account-1 wrote, among other things: "It [i.e., \$60,000] was a loan for the company [PGP] use [sic] with some on going projects and temporary needs from Fabio . . . He is my most trustable friend."

7. As part of my investigation, I have spoken with Victim-1. Based on these conversations and my review of documents provided by Victim-1, I have learned, among other things, that:

a. On or about October 13, 2017, Victim-1 sent \$60,000 to PGP via two separate wire transfers, one \$40,000 transfer originating from a FDIC-insured bank in the Southern District of New York and one \$20,000 transfer from Victim-1's bank in Florida.

b. The purpose of these transfers was for an investment in PGP's purported investment portfolio; Victim-1 did not intend to provide funds to FABIO BRETAS DE FREITAS, the defendant, or to PGP as a loan.

c. PGP sent Victim-1 several monthly statements purporting to reflect the investment and growth of Victim-1's funds through PGP's efforts. Victim-1 received these monthly statements by email from a particular email address ("Email Account-2").

d. Victim-1 does not control and is not familiar with Email Account-1.⁴

e. Victim-1 did not correspond with Auditor-1 as reflected in the emails from Email Account-1 described in paragraphs 6(f)(i)-(iii) above.

f. Victim-1 did not receive the Check, described in paragraph 6(e)(iv), above.

⁴ Based on my review of records maintained by the service provider for Email Account-1, I have learned that on several occasions, the user of Email Account-1 logged into that account from an IP address the subscriber for which is PhyCap.

g. As of October 16, 2018, Victim-1 was under the continued impression that he was an investor in PGP. Following my conversations with Victim-1, Victim-1 informed representatives of PGP, including BRETAS, that Victim-1 had spoken to the FBI about his investment in PGP and wanted to withdraw his funds from PGP. In response, Victim-1 received an email from a representative of PGP attaching a board resolution of "Global Partners Investors LLC" stating that Global Partners Investors LLC was going to be dissolved on November 16, 2018 and that shareholders would be paid back no later than November 20, 2018. Victim-1 understood the Global Partners Investors LLC was PGP. On or about November 2, 2018, Victim-1 received, by email, a letter from a representative of PGP, on Global Partners Investors LLC letterhead, which informed Victim-1 that his purported investment was valued at \$70,243.38.

h. On or about November 20, 2018, Victim-1 spoke to BRETAS by telephone; BRETAS informed Victim-1 that BRETAS would wire Victim-1's money to Victim-1, but that it would take four days for Victim-1 to receive the wire. As of November 29, 2018, Victim-1 had not received any of this money.

8. As part of my investigation, I have spoken with, and received documents from Victim-2, an "investor" in another vehicle operated by FABIO BRETAS DE FREITAS, the defendant, namely Absolute Experience Fund LLC in which BRETAS falsely disclaimed participation in his correspondence with Auditor-1, as described in paragraph 6(e)(iii) above.⁵ From those conversations and documents, I have learned, among other things, that:

a. Following solicitations by BRETAS beginning in at least in or about June 2017, on or about November 7, 2017, Victim-2 provided approximately \$5,500,000 for the purpose of investing in Absolute Experience Fund LLC, which Victim-2 understood to be a capital management company operated by BRETAS and PhyCap.

⁵ From my review of a publicly accessible media report, I have learned that, among other things, a person appearing to be Victim-2 was reportedly accused by Brazilian law enforcement authorities of facilitating the transfer of proceeds of a public corruption scandal. The same article reports, in substance and in part, that the person appearing to be Victim-2 returned the money that he had transferred to Brazilian law enforcement.

b. Victim-2 has received several monthly statements from Absolute Experience Fund LLC that purport to show his investment's position and growth. These statements appear substantially identical, but for the company name, to the statements provided to Victim-1, described in paragraph 7(c), above. Indeed, the "fine print" disclaimer at the bottom of the monthly statements provided to Victim-2 refer not to Absolute Experience Fund LLC, but to PhyCap.

9. From my review of bank records, I have learned, among other things, that:

a. The \$5,500,000 investment from Victim-2 was paid via wire from a bank account held at a bank headquartered in the Southern District of New York to a bank account held in the name of Absolute Experience Fund LLC.

b. Within seven days of Victim-2's investment, four wires totaling \$39,800 were sent to a bank located in Brazil, referencing "family support" in the wire transfer detail. From my review of records relating to the Absolute Experience Fund LLC bank account, I have identified multiple additional personal expenditures funded through Victim-2's purported "investment," and have identified no activity suggesting the actual investment of any of Victim-2's funds.

10. As part of my investigation, I have spoken with a third investor-victim ("Victim-3"), who also provided funds to FABIO BRETAS DE FREITAS, the defendant, for the purpose of investing in PGP.⁶ Based on these conversations, I have learned, among other things, that:

a. On or about May 26, 2017, Victim-3 sent a \$50,000 check to PGP. On or about January 22, 2018, Victim-3 sent a second check, for \$55,000, to PGP.


b. The purpose of these payments was for an investment in PGP's purported investment portfolio, not a loan.

c. Victim-3 receives monthly statements from PGP, which, as of October 2018, purport to reflect that Victim-3's investment has grown in value to \$120,000. Victim-3 receives these monthly statements via email from Email Address-2.

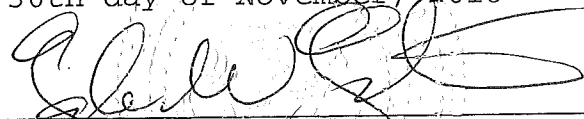
⁶ Victim-3 was not on the list of PGP's "creditors," discussed in footnote 3 above, that FABIO BRETAS DE FREITAS, the defendant, provided to the NFA.

11. Based on my review of records relating to PGP's bank accounts, I have identified no trading activity commensurate with the total amount of funds provided by the three victims described above.

WHEREFORE, deponent respectfully requests that a warrant be issued for the arrest of FABIO BRETAS DE FREITAS, the defendant, and that he be arrested and imprisoned or bailed, as the case may be.


Christopher Delzotto
Special Agent
Federal Bureau of Investigation

Sworn to before me this
30th day of November, 2018



THE HONORABLE GABRIEL W. GORENSTEIN
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK