

Approved:   
SCOTT HARTMAN  
Assistant United States Attorney

Before: <sup>STEWART</sup> HONORABLE STUART D. AARON  
United States Magistrate Judge  
Southern District of New York

19 MAG 11952

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: UNITED STATES OF AMERICA : COMPLAINT  
: :  
: - v. - : Violations of  
: : 18 U.S.C. §§ 2, 371,  
ALAN SEIDEL, and : 1001, 1519; 15 U.S.C.  
BENJAMIN MEKAWAY, : §§ 78q(a) & 78ff; 17  
: C.F.R. § 240.17a-3  
Defendants. :  
: COUNTY OF OFFENSES:  
----- x New York

SOUTHERN DISTRICT OF NEW YORK, ss.:

JOHN CASTRO, JR., being duly sworn, deposes and says that he is a Postal Inspector with the United States Postal Inspection Service ("USPIS") and charges as follows:

COUNT ONE  
(Conspiracy)

1. From at least in or about September 2016 through at least in or about December 2016, in the Southern District of New York and elsewhere, ALAN SEIDEL and BENJAMIN MEKAWAY, the defendants, 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, falsifying and failing to keep books and records of a broker-dealer, in violation of Title 15, United States Code, Sections 78q(a) and 78ff, and Title 17, Code of Federal Regulations, Section 240.17a-3; and destroying, altering, and falsify records in federal investigations, in violation of Title 18, United States Code, Section 1519.

2. It was a part and an object of the conspiracy that ALAN SEIDEL and BENJAMIN MEKAWAY, the defendants, and others known and unknown, willfully and knowingly, did cause a registered broker-dealer to fail to make and keep such records

as the United States Securities and Exchange Commission ("SEC"), by rule, prescribed as necessary and appropriate in the public interest for the protection of investors and otherwise in furtherance of the purpose of the Securities Exchange Act of 1934, in violation of Title 15, United States Code, Sections 78q(a) and 78ff, and Title 17, Code of Federal Regulation, Sections 240.17a-3.

3. It was a further part and an object of the conspiracy that ALAN SEIDEL and BENJAMIN MEKAWAY, the defendants, knowingly did alter, destroy, mutilate, conceal, cover up, falsify, and make a false entry in a record, document, and tangible object with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of a department and agency of the United States, in violation of Title 18, United States Code, Section 1519.

#### Overt Acts

4. In furtherance of the conspiracy and to effect the illegal objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

a. On or about November 23, 2016, BENJAMIN MEKAWAY, the defendant, sent a Seidel & Co., LLC ("Seidel & Co.") accountant a forged brokerage statement reporting that the balance of Seidel & Co.'s account was \$45,866 greater than it was in fact.

b. In or about December 2015, ALAN SEIDEL, the defendant, negotiated a \$1 million loan to Seidel & Co. for the purpose of falsely reporting to the SEC the loan proceeds as a capital contribution.

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

#### COUNT TWO

#### **(Falsifying and Failing to Keep Books and Records of a Broker-Dealer)**

5. From at least in or about September 2016 through at least in or about December 2016, ALAN SEIDEL and BENJAMIN MEKAWAY, the defendants, willfully and knowingly did cause a registered broker-dealer to fail to make and keep such records as the SEC, by rule, prescribed as necessary and appropriate in the public interest for the protection of investors and otherwise in furtherance of the purpose of the Securities

Exchange Act of 1934, to wit, SEIDEL and MEKAWAY caused the broker-dealer they controlled, Seidel & Co., to maintain false net capital records and produce false FOCUS Reports to the SEC.

(Title 15, United States Code, Sections 78q(a) and 78ff; Title 17, Code of Federal Regulation, Sections 240.17a-3; and Title 18, United States Code, Section 2.)

**COUNT THREE**

**(Destruction, Alteration, or Falsification of Records in Federal Investigations and Bankruptcy)**

6. In or about late 2016, ALAN SEIDEL and BENJAMIN MEKAWAY, the defendants, knowingly did alter, destroy, mutilate, conceal, cover up, falsify, and make a false entry in a record, document, and tangible object with the intent to impede, obstruct, and influence the investigation and proper administration of a matter within the jurisdiction of a department and agency of the United States, to wit, SEIDEL and MEKAWAY, in an effort to impede the SEC's ability to ensure that Seidel & Co. maintained adequate net capital, caused that broker-dealer to report false and inflated net capital amounts to the SEC.

(Title 18, United States Code, Sections 1519 & 2.)

**COUNT FOUR**

**(False Statements)**

7. On or about January 4, 2016, in the Southern District of New York, ALAN SEIDEL the defendant, in a matter within the jurisdiction of the executive branch of the Government of the United States, willfully and knowingly did falsify, conceal, and cover up by trick, scheme, and device material facts, and did make materially false, fictitious, and fraudulent statements and representations, to wit, SEIDEL represented to a member of an SEC exam team that Seidel & Co. had fallen below the SEC's net capital requirements because an investor had withdrawn \$1 million in capital when, in truth and in fact, SEIDEL knew that no such investment had been made and that the funds in question were loan proceeds.

(Title 18, United States Code, Sections 1001.)

**COUNT FIVE**  
**(False Statements)**

8. On or about August 7, 2018, in the Southern District of New York, BENJAMIN MEKAWAY, the defendant, in a matter within the jurisdiction of the executive branch of the Government of the United States, willfully and knowingly did falsify, conceal, and cover up by trick, scheme, and device material facts, and did make materially false, fictitious, and fraudulent statements and representations, to wit, MEKAWAY represented to a member of the SEC's enforcement staff that he did not have any physical or electronic copies of Seidel & Co. documents, when, in truth and in fact, as MEKAWAY well knew, he possessed Seidel & Co. computers that contained numerous firm emails and documents.

(Title 18, United States Code, Sections 1001.)

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

9. I have been a U.S. Postal Inspector since May 2019. I am currently assigned to a financial fraud team. I have participated in investigations of a variety of financial frauds and related crimes, and have made and participated in arrests of individuals who have committed such offenses.

10. The information contained in this Complaint is based upon my personal knowledge, as well as conversations with a fellow postal inspector ("Inspector-1"), who, in turn, has reviewed information obtained during this investigation, directly or indirectly, from other sources, including, but not limited to: (a) business records and SEC filings; (b) email communications provided to the SEC and obtained by search warrant; (c) conversations with non-law-enforcement witnesses; (d) conversations with, and reports prepared by, other federal agents; and (e) conversations with SEC representatives. Because this Complaint is being submitted for the limited purpose of establishing probable cause, it does not include all the facts that I or Inspector-1 have learned during the course of this 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 and the Defendants

11. At all times relevant to this Complaint, Seidel & Co. (also referred to as the "Firm") was a Manhattan-based inter-dealer broker registered with the SEC. As an inter-dealer broker, Seidel & Co. acted primarily as an intermediary between institutional broker-dealers trading bonds of various types.

12. At all times relevant to this affidavit, ALAN SEIDEL, the defendant, was the Chief Executive Officer of Seidel & Co., and BENJAMIN MEKAWY, the defendant, was an employee of Seidel & Co. who performed various functions, including participating in the preparation of regulatory filings on behalf of Seidel & Co.

### Regulation of Seidel & Co.

13. At all times relevant to this Complaint, Seidel & Co. was subject to governmental regulation by the SEC, and to industry regulation by the Financial Industry Regulatory Authority ("FINRA").

14. At all times relevant to this Complaint, SEC regulations required Seidel & Co. to maintain net capital reserves of the greater of \$100,000 or six and two-thirds percent of its aggregate indebtedness. See 17 C.F.R. §§ 240.15c3-1(a). If Seidel & Co.'s net capital fell below the required threshold, the Firm was required to notify the SEC of that fact the same day. Once a broker-dealer falls out of its net capital requirement, it becomes subject to the suspension or revocation of its registration.

15. At all times relevant to this Complaint, Seidel & Co. was required to make a record reflecting each expense incurred relating to its business and any corresponding liability, regardless of whether the liability was joint or several with any person and regardless of whether a third party had agreed to assume the expense or liability. See 17 C.F.R. § 240.17a-3(a)(1) and (a)(2).

16. At all times relevant to this Complaint, Seidel & Co. was required to file monthly reports with the SEC. See 17 C.F.R. § 240.17a-5(a)(2)(iv). These reports, known as FOCUS Reports,<sup>1</sup> summarize information concerning a broker-dealer's

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<sup>1</sup> "FOCUS" is an abbreviation for "Financial and Operational Combined Uniform Single."

financial and operational status, including its current net capital contribution. To assist it in making these monthly reports throughout the period relevant to this Complaint, Seidel & Co. retained an external financial and operations principal (the "FinOp"), a person responsible for the Firm's compliance with record keeping, net capital, customer protection and financial reporting rules.

**Obstruction and False Statements**  
**Regarding Seidel & Co.'s Net Capital Compliance**

17. As set forth below, there is probable cause to believe that ALAN SEIDEL and BENJAMIN MEKAWAY, the defendants, caused Seidel & Co. to maintain inaccurate books and records regarding its net capital position and to make false filings with the SEC. There is also probable cause to believe that, in order to cover up the net capital violations and false filings, SEIDEL made false statements to employees of the SEC's Office of Compliance Inspections and Examinations ("OCIE"), when they conducted a regulatory examination of Seidel & Co. in December 2016 and January 2017. There is also probable cause to believe that, in an effort to obstruct an investigation by the SEC's Enforcement Division into potential wrongdoing by Seidel & Co. employees, MEKAWAY made false statements to a member of the SEC's Enforcement Division.

18. First, in monthly FOCUS Reports filed with the SEC reflecting the Firm's financial position at the end of October 2016 and November 2016, ALAN SEIDEL and BENJAMIN MEKAWAY, the defendants, caused Seidel & Co. to falsely represent that it had the requisite net capital to meet its regulatory requirements. In fact, as SEIDEL and MEKAWAY well knew, the net capital of Seidel & Co. fell far below the requisite amount in both months. Specifically, in its filings for month-end October 2016, Seidel & Co. fraudulently represented that its net capital exceeded the minimum amount by: (i) failing to account for a debt of approximately \$104,000 that the firm owed to its landlord, and (ii) falsely inflating the balance of a Firm brokerage account, for which MEKAWAY submitted a forged bank statement to the Firm's FinOp. Subsequently, in order to meet net capital requirements in its filing for November 2016, Seidel and Co. falsely recorded as a capital contribution a \$1 million loan that SEIDEL knew should have been recorded as a liability.

19. Second, when the SEC began in December 2016 to examine Seidel & Co.'s true net capital position, ALAN SEIDEL, the defendant, made false statements to the SEC's exam staff

regarding the \$1 million loan. As discussed below, SEIDEL initially claimed on multiple occasions that the loan was in fact a capital investment. When the SEC sought verification of this fact, SEIDEL acknowledged that the money was in fact a loan but claimed, falsely, that he believed it might be converted to a capital investment.

20. Finally, BENAJAMIN MEKAWAY, the defendant, sought to obstruct an investigation by the SEC's Division of Enforcement into the misconduct at Seidel & Co. by failing to produce relevant documents and emails in response to a subpoena for records and falsely denying that he was in possession of Seidel & Co. records.

#### **Seidel & Co.'s FOCUS Reports in October and November 2016**

21. As part of this investigation, Inspector-1 has reviewed Seidel & Co.'s filings with the SEC, as well as emails recovered from a Seidel & Co. email account used by BENJAMIN MEKAWAY, the defendant. Unless otherwise noted, the information below is drawn from Inspector-1's review of those materials.

22. Based upon her review of Seidel & Co.'s regulatory filings, Inspector-1 has informed me that Seidel & Co., through its FinOp, filed FOCUS reports with the SEC for month-end October 2016 and month-end November 2016, in which the Firm represented that it had net capital in excess of \$100,000. In particular, the FOCUS Report reflecting Seidel & Co.'s financial position as of October 31, 2016, indicated that the firm's net capital exceeded SEC requirements by \$118,457; and the FOCUS Report reflecting the Firm's financial position as of November 30, 2016, indicated that the Firm's net capital exceeded SEC requirements by \$696,784.

#### **Seidel & Co.'s Debt to Its Landlord**

23. From her review of emails obtained from the Seidel & Co. email account used by BENJAMIN MEKAWAY, the defendant, Inspector-1 has learned that beginning in at least June 2016, internal financial records for Seidel & Co. indicated that the firm's largest vendor liability was associated with overdue rent owed to Seidel & Co.'s landlord (the "Landlord"). Indeed, on September 29, 2016, MEKAWAY sent two Seidel & Co. partners (but not the Firm's FinOp) a schedule indicating that the firm's debt to the Landlord totaled \$103,831.97, of which approximately \$90,000 was more than 90 days past due.

24. On October 24, 2016, the FinOp's assistant sent BENJAMIN MEKAWAY, the defendant, two spreadsheets. One of the spreadsheets contained financial tables and the general ledger for Seidel & Co. covering the month of September 2016. The other spreadsheet contained a calculation of the firm's net capital under SEC guidance. The general ledger spreadsheet included a journal entry dated September 30, 2016, reflecting a credit for the full amount of the debt to the Landlord. The memo line for the credit reflects that it was recorded "to correct balance - per owners."

25. The reduction in Seidel & Co.'s recorded debt to the Landlord had the effect of reducing the firm's accounts payable for the month of September and increasing its reported net capital by over \$100,000. The credit also had the effect of changing the amount of Seidel & Co.'s "Occupancy and equipment expenses" as stated on its SSOI from a positive value to a negative value of -\$79,253.

26. On October 24, 2016, the FinOp filed with the SEC Seidel & Co.'s September 2016 FOCUS Report, which, as noted, indicated that the firm's net capital exceeded minimum requirements by 206,061.40.

27. Notwithstanding the journal entries sent to the Firm's FinOp reflecting that the debt to the Landlord was discharged as of September 30, 2016, BENJAMIN MEKAWAY, the defendant, continued to show the debt as a liability in financial tables that he circulated within Seidel & Co. until at least October 11, 2016.

28. On or about November 10, 2016, a FINRA representative emailed the Firm's FinOP to inquire about Seidel & Co.'s September filings and, in particular, the negative value for occupancy equipment and expenses reported in the SSOI. The FinOp forwarded this correspondence to BENJAMIN MEKAWAY, the defendant, the same day.

29. On or about November 17, 2016, BENJAMIN MEKAWAY, the defendant, and the FinOP exchanged a series of emails in which they discussed the language to use in a response to FINRA's inquiry. On or about November 18, 2016, MEKAWAY sent the FinOp a letter on Seidel & Co. stationary purportedly signed by ALAN SEIDEL, the defendant, for forwarding on to FINRA. The letter stated:

In the matter of the balance of \$103,831.97  
between 40 X Owner and Seidel & Co, LLC. The



balance has been settled to our knowledge between all parties due to various reasons such as heating/cooling disputes as well as a severely damaging flood which although several building employees claimed fault, the landlord claimed no liability.

Due to all of the above disputes, it is our understanding that all parties agreed to settle the past due balance.

As such we have relocated to a new location. [SL\_000058652]

30. Based upon her review of documents provided by the Landlord, Inspector-1 has learned that that the representations in the November 17 letter to FINRA were false. The Landlord never agreed to discharge Seidel & Co.'s debt and, in fact, it served Seidel & Co. with a notice of default on November 1, 2016. Moreover, BENJAMIN MEKAWAY, the defendant, received the notice of default himself on November 4, 2016, just days before he represented to FINRA that the parties had settled their disputes.

o **Misrepresentations in the October Filings**

31. On or about November 15, 2016, the FinOp's assistant emailed BENJAMIN MEKAWAY, the defendant, requesting a statement for the Firm's account at a particular brokerage firm ("Brokerage-1") for use in preparing Seidel & Co.'s FOCUS Report for month-end October 2016. The FinOp's assistant sent a follow up email to MEKAWAY on November 21, 2016, with the subject line, "Where are my statements??"

32. After several follow-up emails from the FinOp's assistant, on or about November 23, 2016, BENJAMIN MEKAWAY, the defendant, sent the FinOp an email that attached a pdf document purporting to be the October account statement for Seidel & Co.'s clearing deposit account at Brokerage-1. The document reflected a month end balance in the account of \$195,908.78.

33. Inspector-1 has learned that the statement purporting to be from Brokerage-1 that BENJAMIN MEKAWAY, the defendant, sent to the FinOp's assistant on November 23, 2016, was a forgery. Investigators have obtained from Brokerage-1 directly Seidel & Co.'s October account statement. The month-end balance of the account, as reflected in that document, was \$150,025.28 -

over \$45,000 lower than the balance reflected on the forged statement that MEKAWAY sent the FinOp.

34. Inspector-1 has also reviewed the metadata of the forged statement that BENJAMIN MEKAWAY, the defendant, sent to the FinOp. The metadata reflects that the document was created approximately thirteen minutes before it was sent to the FinOp's assistant.

35. On November 24, 2016, a FinOp's assistant sent BENJAMIN MEKAWAY, the defendant, financial tables reflecting the financial condition of Seidel & Co. as of the end of October 2016. Like the September 2016 financial tables, the financial tables prepared for October 2016 did not reflect any debt that the firm owed to the Landlord. It also reflected the inflated balance of the Brokerage-1 account as a result of the forged statement that MEKAWAY had previously sent to the FinOp's assistant.

36. On or about November 25, 2016, Seidel & Co., though the FinOp, filed the Firm's FOCUS Report for the period ending October 31, 2016. Prior to filing the report, the FinOp sent it to BENJAMIN MEKAWAY, the defendant, for approval.

37. The FOCUS Report for month-end October 2016 calculated that Seidel & Co.'s aggregate indebtedness was \$569,514, that its allowable assets were \$787,971, and that it exceeded the SEC's net capital requirements by \$118,457. In truth and in fact, as reflected above, the firm's net assets were inflated through submission of the altered brokerage statement and its aggregate indebtedness was significantly greater due to the omission from the FOCUS Report of the debt to the Landlord. An analysis by the SEC has shown that, accounting for these two factors, Seidel & Co.'s net capital in the month of October was in reality at least \$90,000 below the amount required by SEC regulations.

#### **Misrepresentations in the November Filings**

38. From reviewing email communication obtained from the Seidel & Co. account of BENJAMIN MEKAWAY, the defendant, Inspector-1 has learned that in or about October 2016, MEKAWAY reached out to a large brokerage firm ("Brokerage-2") in an effort to establish a line that would allow Seidel & Co. to trade fixed income instruments with Brokerage-2. In an email sent on October 28, 2016, a representative of Brokerage-2 informed MEKAWAY that Brokerage-2 would not trade with any

counterparty that could not establish that its net capital exceeded \$1 million.

39. BENJAMIN MEKAWAY, the defendant, forwarded the email regarding Brokerage-2's net capital requirements to another Seidel & Co. employee ("Employee-1") who then forwarded it to an individual who had an indirect ownership interest in Seidel & Co. ("Individual-1"), who is also a principal in a California-based financial services firm (the "California Firm").

40. Internal emails provided by the California Firm indicate that, in order to facilitate Seidel & Co.'s reopening a trading line with Brokerage-2 and other brokers, the California Firm contemplated making a loan to Seidel & Co. Specifically, on or about November 22, 2016, a partner in the California Firm wrote to another partner "I propose [the California Firm] move 1MM USD into the Seidel account, with the clear understanding that Seidel can under no circumstances transfer that cash out of [the account] without our consent. We will leave the 1MM in the account for a few days, get a snapshot of the balance to show the brokers, and then move it out." The other partner responded, "That's fine but I would prefer to leave the \$1m for more than a few days. Few weeks better. It just makes me feel more comfortable and less like massaging statements. I still have an eye on it so it's not like it's going anywhere."

41. Bank records reflect that on or about November 23, 2016, the California Firm wired \$1 million to a brokerage account controlled by Seidel & Co.

42. Email records reflect that immediately after the money was deposited, BENJAMIN MEKAWAY, the defendant, took steps to include the money as capital in Seidel & Co.'s SEC filings. Indeed, the same day the money was deposited, an assistant to the Firm's FinOp sent the FinOp an email, cc'ing MEKAWAY, that said, in relevant part, "[T]hey deposit \$1M into the firm today. As soon as Ben has the backup, he will email it to us."

43. On or about December 12, 2016, Employee-1 used his personal email address to send a promissory note governing the loan from the California Firm to Seidel & Co. to a Gmail address used by ALAN SEIDEL, the defendant. The subject of the email was "[The California Firm Partner's] Note" and the body of the email stated "Read it over let me know."

44. On or about December 23, 2016, Employee-1 forwarded a copy of Seidel & Co.'s FOCUS report for month-end November 2016 to representatives of the California Firm, cc'ing ALAN SEIDEL,

the defendant. The FOCUS Report included among Seidel & Co.'s assets the \$1 million loan proceeds from the California Firm and did not reflect any corresponding liability.

45. The FOCUS Report for month-end November 2016 calculated that Seidel & Co.'s aggregate indebtedness was \$604,164, that its allowable assets were \$1,400,948, and that it exceeded the SEC's net capital requirements by \$696,784. In truth and in fact, as reflected above, the Firm's net assets were inflated due to the fact that the \$1 million dollar loan was recorded as a capital contribution. An analysis by the SEC has determined that, accounting properly for the loan, Seidel & Co.'s net capital in the month of November was in reality at least \$400,000 below the SEC minimum.

46. Bank records reflect that on or about December 21, 2016, \$1 million was transferred out of Seidel & Co.'s account and back into an account of the California Firm.

**SEIDEL's False Statements During the SEC's Examination  
of Seidel & Co.**

47. Inspector-1 has spoken with an SEC employee (the "SEC Employee") who was part of an SEC exam team (the "Exam Team") that conducted an examination of Seidel & Co.'s books and records beginning in late 2016. From those discussions with the SEC Employee, Inspector-1's review of correspondence between the SEC and Seidel & Co. employees, and her review of documents collected from Seidel & Co., Inspector-1 has learned the following:

a. In or about late-November 2016, a member of the Exam Team attempted to contact ALAN SEIDEL, the defendant, by telephone in order to inform him of the examination and to make arrangements to visit the offices of Seidel & Co. Telephone messages left for SEIDEL on November 28, 2016 and November 30, 2016, went unanswered, and, on several occasions, calls to the offices of Seidel & Co. were abruptly terminated after the Exam Team member announced his identity.

b. On or about December 1, 2016, members of the Exam Team made an unannounced visit to the Manhattan offices of Seidel & Co. During the visit, one of the Exam Team members provided a Seidel & Co. employee with a letter setting forth the SEC's request for certain documents relevant to the SEC's examination. A different member of the Exam Team also spoke by

telephone with Seidel & Co.'s compliance officer and informed him of the SEC's plans to conduct an examination of the Firm.

c. Shortly after leaving the Firm's offices, a member of the Exam Team received a voicemail message from SEIDEL in which SEIDEL claimed not to have received the November 28 and November 30 telephone messages. A member of the Exam Team responded by emailing SEIDEL an electronic copy of the SEC's document request and requesting that SEIDEL schedule a meeting with members of the Exam Team early the following week.

d. On or about January 3, 2017, SEIDEL telephoned the lead member of the Exam Team. During the call, SEIDEL explained that in December 2016, a clearing firm that worked with Seidel & Co. (the "Clearing Firm") had withdrawn \$1 million in capital that it had originally invested in November 2016. SEIDEL asserted that as a result of the withdrawal, Seidel & Co. was unable to meet its net capital requirements and that, accordingly, the Firm had ceased operations effective December 30, 2016.

e. On or about January 4, 2017, Exam Team members met with SEIDEL. During the meeting, SEIDEL reiterated that in November 2016 the Clearing Firm had invested \$1 million cash in Seidel & Co. and that it had subsequently decided to reclaim that capital after growing concerned about the Firm's mounting losses.

f. In the late afternoon of January 4, 2017, a member of the Exam Team sent an email to Seidel & Co. requesting documentation regarding the Clearing Firm's November 2016 infusion of capital into Seidel & Co., including "minutes, wire instructions, checks, deposit and withdrawal slips, correspondence, etc."

g. The following day, January 5, 2017, at 9:30 AM, a member of the Exam Team received a telephone call from SEIDEL. During the call, SEIDEL explained that he may not have accurately described the \$1 million cash infusion from the Clearing Firm. Contrary to his earlier description, SEIDEL explained that the \$1 million was in fact the proceeds of a loan that had been provided to Seidel & Co. by a third party whose name SEIDEL claimed not to recall.

48. On or about January 10, 2017, in response to repeated requests by members of the Exam Team, ALAN SEIDEL, the defendant, through his compliance officer, submitted a narrative

account of the loan from the California Firm. Although SEIDEL acknowledged in the narrative that the \$1 million was a loan rather than a capital investment, he claimed, "Based off our discussions with [the California Firm], we expected that this loan could possibly convert into an equity investment in a timely fashion. Unfortunately, after review of our revenue, expenditure, and our financials by [the California Firm], they decided to not move forward, and requested to withdraw their funds from our account . . . ."

49. Inspector-1 has also reviewed the transcript of sworn testimony given by ALAN SEIDEL, the defendant, to the SEC on or about March 5, 2019. In his testimony, SEIDEL acknowledged, in substance and in part, that he always understood the infusion of cash from the California Firm was a loan and that he understood that a loan could not be used to increase the firm's net capital position.

**MEKAWAY's False Statements During the SEC's Enforcement  
Investigation of Seidel & Co.**

50. From speaking with investigators from the SEC's Division of Enforcement, Inspector-1 has learned the following:

a. In or about early 2017, the SEC's Division of Enforcement opened an investigation into Seidel & Co. and its employees focused on potential violations of the SEC's net capital and books and records requirements.

b. On or about July 23, 2018, attorneys from the SEC served BENJAMIN MEKAWAY, the defendant, with a subpoena seeking, among other things, all documents (electronic or otherwise) concerning Seidel & Co.

c. On or about August 7, 2018, MEKAWAY responded to the SEC with an undated letter in which he indicated, "I am not nor have I ever been a custodian of records or a principal in the firm. I do not have any hard or electronic copies. As such I am unable to acquire any of the documents requested."

d. On or about August 15, 2018, an SEC attorney ("Attorney-1") sent MEKAWAY an email emphasizing that the subpoena required MEKAWAY "to 'produce each and every document in your possession, custody, or control, including any documents that are not in your immediate possession but that you have the ability to obtain' . . . regardless of whether you were a principal of Seidel & Co, LLC or served as its custodian of

records." Attorney-1 requested that MEKAWY submit a written response confirming that he understood and had complied with the subpoena's requirements.

e. On or about August 29, 2018, Attorney-1 sent MEKAWY the following follow-up email:

We haven't received anything from you, so I'm writing to follow up. If you have any questions, please let us know and we can set a time to talk by phone. If not, please send us written responses to my questions below.

f. On or about August 29, 2018, Attorney-1 and a colleague had a telephone conversation with MEKAWY. During the conversation, Attorney-1 made clear that the SEC's subpoena to MEKAWY required him to provide any responsive materials, whether on paper or electronic.

g. Following the August 29, 2018 phone call, MEKAWY sent Attorney-1 the following email the same day:

Thank you for clarifying over the phone earlier.

As per our discussion - I am speaking regarding my own behalf and not for anyone else or the company.

To expand on my previous response, I do not currently or prior to your request possess, have custody or control of any documents (hard copy or electronic) requested by your subpoena.

In addition, I am not aware of any documents no longer existing due to being lost, discarded or destroyed.

Benjamin M.

51. Based on her review of text messages produced to the SEC by ALAN SEIDEL, the defendant, Inspector-1 has learned the following:

a. On or about January 26, 2017, following the closure of the Seidel & Co. office, SEIDEL sent a text message


to BENJAMIN MEKAWAY, the defendant, that read in relevant part, "I need the 2016 quick books," "Please help."

b. On or about January 27, 2017, MEKAWY sent SEIDEL a text message that read, "hey, making a backup now, what email should I send it to[?]" SEIDEL responded, providing the Gmail address referenced in paragraph 43 above.

c. On or about August 2, 2018, SEIDEL sent MEKAWY a text message that read, in part, "Ben[,] Is it possible for you to get a copy of the Operating Agreement for Seidel & Co? If not the attorney that drew it up maybe."

52. On or about September 21, 2018, Inspector-1 participated in the execution of a judicially authorized search warrant at the residence of BENJAMIN MEKAWAY, the defendant. During the search, Inspector-1 recovered multiple computers from MEKAWAY's garage that contained documents and materials from Seidel & Co., many of which were responsive to the SEC subpoena. One of the computers in particular, upon inspection, appears to be the computer that MEKAWAY used during his employment at Seidel & Co. On the hard drive of the computer were stored multiple Seidel & Co. emails, including all of the emails quoted or referenced in this complaint to which MEKAWAY was a party.

WHEREFORE, I respectfully request that ALAN SEIDEL and BENJAMIN MEKAWAY, the defendants, be arrested and imprisoned or bailed, as the case may be.

  
\_\_\_\_\_  
JOHN CASTRO, JR.  
Postal Inspector  
U.S. Postal Inspection Service

Sworn to before me this  
23<sup>rd</sup> day of December 2019

  
\_\_\_\_\_  
UNITED STATES MAGISTRATE JUDGE  
SOUTHERN DISTRICT OF NEW YORK