

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

PRESENTENCE INVESTIGATION REPORT

UNITED STATES OF AMERICA) Docket No.: [REDACTED]
)
 vs.)
)
 [REDACTED])
) Sentence Date: 01/19/2021
)

Prepared for: Honorable P. Kevin Castel
Senior United States District Judge

Prepared by: [REDACTED]

Assistant U.S. Attorney
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[REDACTED]

Offense: Count 4:
Obstruction of Justice
18 U.S.C. § 1512(c)
Not more than 20 years' imprisonment/Not more than 3 years' supervised
release/Maximum \$250,000 fine/\$100 special assessment
(Class C Felony)

Release Status: Arrested on January 29, 2019, and released on the following bond and
conditions: \$300,000 bond secured by \$10,000 cash; Pretrial Services
supervision as directed to include mental health evaluation and treatment
as deemed necessary; submit to a drug test following release, and, if

positive, drug testing and treatment; surrender all travel documents and do not make application for new travel documents; travel restricted to the Southern and Eastern Districts of New York; and seek and/or maintain verifiable employment.

On June 29, 2019, Your Honor extended the defendant's travel restrictions to include the District of New Jersey.

Detainers: None.

Codefendants: None.

Related Cases: [REDACTED]

Identifying Data:

Date of Birth: [REDACTED]
Age: 47
Race: Asian
Hispanic Origin: Non-Hispanic origin
Sex: Male

SSN#: [REDACTED]
FBI#: [REDACTED]
USM#: [REDACTED]-054
State ID#: [REDACTED]
Alternate IDs: None.
ICE#: N/A

Education: Master's Degree
Dependents: 0
Citizenship: U.S. Citizen
Immigration Status: N/A

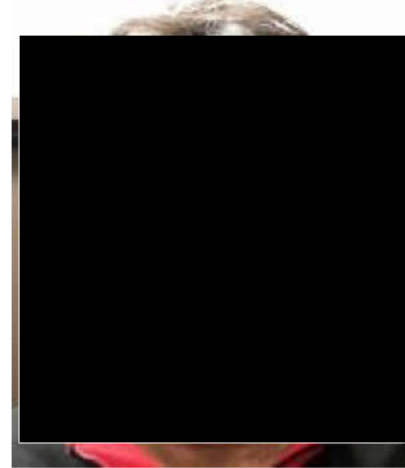
Legal Address:

[REDACTED]

and

[REDACTED]

Alias(es): None.



Restrictions on Use and Redislosure of Presentence Investigation Report. Disclosure of this presentence investigation report to the Federal Bureau of Prisons and redislosure by the Bureau of Prisons is authorized by the United States District Court solely to assist administering the offender's prison sentence (i.e., classification, designation, programming, sentence calculation, pre-release planning, escape apprehension, prison disturbance response, sentence commutation, or pardon) and other limited purposes, including deportation proceedings and federal investigations directly related to terrorist activities. If this presentence investigation report is redislosed by the Federal Bureau of Prisons upon completion of its sentence administration function, the report must be returned to the Federal Bureau of Prisons or destroyed. It is the policy of the federal judiciary and the Department of Justice that further redislosure of the presentence investigation report is prohibited without the consent of the sentencing judge.

PART A. THE OFFENSE**Charges(s) and Conviction(s)**

1. Indictment 19 CR 59 (PKC) was filed in the Southern District of New York on January 28, 2019.
2. Count 1 charges from 2010 up to 2014, in the Southern District of New York and elsewhere, ██████████ and others conspired to commit securities fraud, in violation 15 U.S.C §§ 78j(b) & 78ff, and 17 C.F.R § 240.10b-5, and wire fraud, in violation of 18 U.S.C. § 1343.

(18 U.S.C § 371)

3. Count 2 charges from 2010 up to 2014, in the Southern District of New York and elsewhere, ██████████ made false representations to investors, including through fraudulent altered documents, that investments made through funds controlled by ██████████ were accumulating capital gains, whereas in truth and in fact the investment of those investors' funds had either not taken place or had actually resulted in substantial losses.

(15 U.S.C §§ 78j(b) & 78ff, and 17 C.F.R § 240.10b-5)

4. Count 3 charges from 2010 up to 2014, in the Southern District of New York and elsewhere, ██████████, through emails sent by Individual-1 from New York, New York, to Europe, among other locations, made and caused to be made false representations to investors, including through fraudulently altered documents, that investments made through funds controlled by ██████████ were accumulating capital gains, whereas in truth and in fact the investment of those investors' funds had either not taken place or had actually resulted in substantial losses.

(18 U.S.C § 1343)

5. Count 4 charges that on January 26, 2018, in the Southern District of New York and elsewhere, ██████████ provided false sworn testimony in an official proceeding before the Securities and Exchange Commission regarding his involvement in the creation of false documents and the making of false representations to investors who invested in funds controlled by ██████████ and Individual-1.

(18 U.S.C § 1512(c))

Forfeiture Allegation

6. As a result of committing the offenses alleged in Counts 1 through 4 of this Indictment, ██████████ forfeit to the United States, pursuant to 18 U.S.C. § 981, 21 U.S.C. § 853, and 28 U.S.C. § 2461, all property constituting or derived from the proceeds of the offense.

(18 U.S.C. § 981, 21 U.S.C. § 853, and 28 U.S.C. § 2461)

7. On October 27, 2020, [REDACTED] appeared before the Honorable P. Kevin Castel and pled guilty to Count 4 only, pursuant to a written plea agreement dated October 7, 2020, which stipulates the following:
- a. The November 1, 2018, Sentencing Guidelines Manual applies to this case.
 - b. Pursuant to USSG §2J1.2(a), the base offense level is 14.
 - c. Assuming the defendant clearly demonstrates acceptance of responsibility, a two-level reduction is warranted, pursuant to USSG §§3E1.1(a).
 - d. In accordance with the above, the applicable guideline offense level is 12.
 - e. Based upon the information available to the Government, the defendant has no criminal history points and her Criminal History Category is I.
 - f. Based upon the calculations set forth above, the defendant's Guidelines range is 10 to 16 months' imprisonment (the "Stipulated Guidelines Range"). In addition, after determining the defendant's ability to pay, the Court may impose a fine pursuant to USSG §5E1.2. At offense level 12, the applicable fine range is \$5,500 to \$55,000.
8. Sentencing is scheduled for January 19, 2021.

Related case

9. The matter against [REDACTED] (Unassigned) is pending.

Adjustment to Supervision

10. According to USPSO [REDACTED], the defendant has been generally compliant with his supervision. He has not tested positive for illicit drugs since June 2019 and in December 2020 successfully completed mental health and substance abuse treatment.

The Offense Conduct

11. *The materials used for the Probation Office's presentence investigation include the following: the charging instrument, the plea agreement and information provided by the Government.*
12. The following investigation was conducted by the Federal Bureau of Investigation (FBI).
13. From 2010 through 2014, [REDACTED] and [REDACTED] jointly operated (as partners) a hedge fund called [REDACTED]. [REDACTED] raised money from two investors, "Investor-1" and "Investor-2." Investor-1 was a foreign entity with connections to [REDACTED] family, and Investor-2 was a friend of [REDACTED].
14. In 2009, Investor-1 invested \$9,900,000 in A [REDACTED] Trading was initially successful, but the fund started to lose money in June 2010. At that time, [REDACTED] collectively

provided Investor-1 with documentation that falsely inflated the value of Aberon's assets. In November 2010, Investor-2 invested approximately \$200,000 in [REDACTED] based, in part, on the false information provided by [REDACTED] incorrectly reported to Investor-2, in 2011 and 2012, that the investment had increased in value. Indeed, these funds sat in a brokerage account and did not accrue interest.

15. In August 2011, [REDACTED] continued to misrepresent the value and performance of Aberon's assets, and thus, in August 2011, and again in March 2012, Investor-1 invested approximately \$7,000,000, and \$13,000,000, respectively. [REDACTED] was primarily responsible for interacting with [REDACTED] investors, and thus, he had direct contact with Investor-1, a business run by a family member of [REDACTED] knew and intended that the false documents provided to Investor-1, and agents of Investor-1 would result in millions of dollars for investment. For instance, [REDACTED] was integrally involved in actually making misrepresentations, including creating and maintaining a master spreadsheet reflecting [REDACTED] actual and falsified returns; crafting and editing falsified net asset valuation ("NAV") statements provided to Investor-1 on roughly a monthly basis; and participating with [REDACTED] to fraudulently alter other financial records to deceive auditors hired at the behest of Investor-1 to audit [REDACTED] holdings. For example, in connection with a year end audit of [REDACTED] performance, [REDACTED] gave [REDACTED] auditor falsified documentation. Regarding an audit of [REDACTED] performance, [REDACTED] altered a financial statement from their brokerage firm to reflect that the fund had approximately \$18,300,000 in net equity for the period ending December 31, 2011, when, in truth, the firm had approximately \$7,100,000 in net equity. Additionally, with [REDACTED] forged the signature of their financial broker to validate the falsified records. These documents were provided to [REDACTED] auditor. [REDACTED] and [REDACTED] further agreed to modify [REDACTED] transaction journal to reflect the misrepresentations set forth in the falsified financial statements. This journal was shown to Investor-1's auditing firm to avoid detection of their scheme. [REDACTED] lost all of Investor-1's money in trading activity, which, according to the Government, was \$20,000,000 in fraudulently induced funds (\$30,000,000 in total).
16. In May 2012, [REDACTED] moved the money Investor-2 had invested into [REDACTED] brokerage account, where it was promptly lost. [REDACTED] continued to provide false documents to Investor-2, and reassured Investor-2 that the investment was increasing in value. [REDACTED] participated in creating those false documents to support [REDACTED] assertions. In January 2014, with [REDACTED] knowledge, [REDACTED] had paid Investor-2 more than \$270,000 to putatively cover the investment gains. Investor-2 did not incur a loss.
17. In 2017 and 2018, the United States Securities and Exchange Commission (SEC) opened a formal investigation into Aberon's fraud. As part of that investigation, [REDACTED] was deposed on January 26, 2018. In response to questions regarding [REDACTED] own participation in the operation of Aberon and creation of documents with false statements, [REDACTED] repeatedly lied. One of the lies involved [REDACTED] participation in the altered documents submitted to the auditor, wherein he said that he did not "play any role" "in creating that document."

18. [REDACTED] was arrested on September 18, 2018, and [REDACTED] was arrested on January 29, 2019.

Victim Impact

19. According to the Government, Investor-1 lost \$20 million in fraudulently induced funds (\$30 million in total), and Investor-2 was repaid and did not suffer a loss. Contact information for both victims was not received.

Adjustment for Obstruction of Justice

20. Because the defendant pled guilty to Obstruction of Justice, an adjustment will not be applied.

Adjustment for Acceptance of Responsibility

21. The defendant was interviewed via telephone. Counsel was also present on the call and informed that his client would rely on his plea allocution and would not make any additional statements about his involvement in the instant offense.
22. The Probation Office reviewed the defendant's plea transcript. Based on the defendant's plea of guilty and admission of guilt therein, it appears that an adjustment for Acceptance of Responsibility applies under USSG § 3E1.1.

Offense Level Computation

23. The November 1, 2018, Guidelines Manual, incorporating all guideline amendments, was used to determine the defendant's offense level. USSG §1B1.11.

Count 4: Obstruction of Justice

- | | | |
|-----|--|------------------|
| 24. | Base Offense Level: The guideline for a violation of 18 U.S.C. § 1512(c) is USSG §2J1.2. The base offense level is 14. USSG §2J1.2(a). | <u>14</u> |
| 25. | Specific Offense Characteristics: None. | <u>0</u> |
| 26. | Victim Related Adjustment: None. | <u>0</u> |
| 27. | Adjustment for Role in the Offense: None. | <u>0</u> |
| 28. | Adjustment for Obstruction of Justice: None. | <u>0</u> |
| 29. | Adjusted Offense Level (Subtotal): | <u>14</u> |
| 30. | Chapter Four Enhancement: None. | <u>0</u> |
| 31. | Acceptance of Responsibility: The defendant has clearly demonstrated acceptance of responsibility for the offense. Accordingly, the offense level is decreased by two levels. USSG §3E1.1(a). | <u>-2</u> |

32. **Total Offense Level:**

12

PART B. THE DEFENDANT'S CRIMINAL HISTORY

Juvenile Adjudication(s)

33. None.

Adult Criminal Conviction(s)

34. None.

Criminal History Computation

35. The total criminal history score is zero. According to the sentencing table in USSG Chapter 5, Part A, a criminal history score of zero establishes a criminal history category of I.

Other Criminal Conduct

36. The defendant had an Order of Protection levied against him on July 23, 2019. Said Order expired on January 22, 2020.

Pending Charges

37. None.

Other Arrests

	<u>Date of Arrest</u>	<u>Charge</u>	<u>Agency</u>	<u>Disposition</u>
38.	07/22/2019 (Age 46)	Criminal Mischief Fourth Degree; Case No.: CR-023115- 19QN	Queens County Criminal Court, Queens County, NY	Dismissed.

According to the charging document, on July 22, 2019, in Queens County, New York, the defendant reportedly went to the victim's business wherein he allegedly broke and changed the lock on the door and caused damage to said door. The defendant reportedly admitted that he broke and changed the lock because he needed a key for his mother who owned the building.¹

¹ According to defense counsel, this was a landlord-tenant dispute wherein the defendant was assisting his mother who owned a property, in which a small restaurant (that was closed and appeared to be abandoned) failed to pay rent for over one year and emitted a smell causing neighbor complaints. [REDACTED] unsuccessfully tried to contact the tenant. He then went to the property to change the lock and clean up and was confronted by a person who apparently was the brother of the tenant but was not the tenant. There was no physical confrontation, and [REDACTED] was within his and his mother's rights to change the lock. The person called the police and made a complaint, apparently in an effort to help the tenant. The case was dismissed, and the tenant never reappeared.

PART C. OFFENDER CHARACTERISTICS

39. The following information was obtained during a telephone interview with the defendant on November 9, 2020. Defense counsel was present on the telephone call.

Personal and Family Data

40. As verified by review of his Certificate of Birth Registration, [REDACTED].
41. The defendant apprised that his father passed in 2014. His mother, age 77, resides in Roslyn Harbor, New York. [REDACTED] currently lives with his mother as she is in poor health. [REDACTED] reportedly has hypertension and a gastrointestinal disorder, both of which have resulted in recent hospitalizations.² As stated by [REDACTED], his mother is aware of his pending legal circumstances and is supportive of him.
42. Jain related that he is one of three children. His brother, [REDACTED], lives between Roslyn Harbor, New York, and Seattle, Washington. The defendant said that his brother is a doctor, and his work requires him to travel between the two destinations. Jain's sister, [REDACTED], age 43, resides in Plano, Texas, with her family and is employed as a teacher. According to [REDACTED], he sees his brother weekly and communicates with his sister every two to three months, and they are both aware of his criminal conduct.
43. The defendant recalled an unremarkable childhood. For the first 14 years of his life, he was reared in Smithtown, New York, by his parents. His father was a psychiatrist for New York State, and his mother was a homemaker. The defendant imparted that he had a good relationship with his mother and siblings, but he had an exceptional bond with his father because their personalities were alike. [REDACTED] his family enjoyed cooking, going to the cinema and celebrating holidays together. He also shared that he and his siblings attended decent schools and were respectable students. When Jain was 14 years old, his family moved to Roslyn, New York. The defendant lived with his parents until he was approximately 20 years old.
44. During the presentence interview, Jain shared some significant traumatic events that he experienced as an adult. In 2001, he was employed by [REDACTED] and was working at the World Financial Center on September 11, 2001. Consequently, he suffered some physical ailments and mental anguish. In 2014, his father unexpectedly died. His father's unanticipated death again caused psychological affliction.
45. [REDACTED] is single and does not have any children.
46. The defendant's legal address is [REDACTED], New York, New York, but he represented that he will continue to live with mother at [REDACTED], New York, for the foreseeable future because he is providing care for her. A virtual home

² [REDACTED] has provided the Probation Office with documentation regarding his mother's medical conditions and recent hospitalizations.

inspection of this residence was conducted on November 17, 2020. This single-family home is situated in a residential neighborhood and consists of two floors, a finished basement and a two car garage. The first floor is comprised of a living area, family area, kitchen, dining room, and one and a half baths. There is a deck off the kitchen. The second floor includes four bedrooms and two bathrooms. [REDACTED] occupies his former childhood bedroom. Of note, the basement, which reportedly has a boiler room, two storage rooms, a bathroom, kitchen, and bedroom was not viewed because there are tenants inhabiting this space. The tenants have a German Shepard.

47. [REDACTED] was interviewed on November 25, 2020. She confirmed her son's personal and family data. She advised that she has limited knowledge about her son's physical and mental health because he declines to discuss it with her. [REDACTED] explained that she is in poor physical health, and her son does not talk about his ailments because he does not want to cause her to worry. Indeed, [REDACTED] said that her son has moved into her residence to provide full-time care to her. She is diabetic, has high blood pressure and suffered ministrokes. Consequently, she is unable to drive or tend to her real estate management business. [REDACTED] shared that she has bestowed her son with operating the business, which includes the management of a building and three homes, all of which are in Queens County, New York. He is not compensated for his work because [REDACTED] has loaned him money to pay for his legal fees.
48. [REDACTED] had limited knowledge about the instant offense, but she imparted that her children were raised to abide by the law. She also conveyed that her son would never intentionally do wrong, and he will not reoffend. In view of all that was discussed during the interview, she requested that the Court show leniency when sentencing her son.

Physical Condition

49. [REDACTED] advised that he is 5'11" tall, weighs 165 pounds, has brown eyes and black hair. He did not report to have any tattoos or scars.
50. The defendant stated that he suffers from a variety of medical conditions. Expressly, he said that he has high cholesterol, asthma, gastroesophageal reflux disease, and rhinosinusitis, and he is prescribed medication to address said conditions. As confirmed by review of a letter dated August 7, 2019, [REDACTED] is being treated by the World Trade Center Health Program for his asthma, gastroesophageal reflux disease and chronic rhinosinusitis. A review of [REDACTED] pharmacy list showed that he is prescribed the following: atorvastatin (high cholesterol), albuterol, fluticasone, and Flovent (asthma/sinusitis), and famotidine (reflux). He is also prescribed Chantix, a smoking cessation aid.

Mental and Emotional Health

51. [REDACTED] recalled that in 2013 or 2014, he was prescribed Lexapro by his general practitioner because he was anxious and depressed about his professional career and his father's death. The defendant reportedly stopped taking the medication after approximately six months.
52. Following the defendant's arrest and release for the instant offense, Pretrial Services referred [REDACTED] to St. Mark's Place Institute for Mental Health, Inc., for a psychosocial

[REDACTED]

evaluation. Following this assessment, [REDACTED] was diagnosed with Adjustment Disorder with Anxiety, Cyclothymic Disorder, and Cannabis Dependence, and the evaluator recommended individual co-occurring psychotherapy, a psychiatric evaluation, and psychotropic medication management. Approximately a month thereafter, [REDACTED] was assessed by a psychiatrist. The psychiatrist concurred with the initial evaluator's diagnoses and recommended co-occurring therapy. [REDACTED] commenced therapy following his psychiatric assessment and was successfully discharged from the program on December 18, 2020.

53. [REDACTED] apprised that prior to his arrest (in 2018), he made application for mental health services, specifically, medication through the World Trade Center Health Program. In 2019, his application was approved. The defendant is under the care of [REDACTED], for medication management only, and is prescribed mirtazapine and Klonopin to address his anxiety. A letter from Dr. [REDACTED] dated November 18, 2020, confirmed that [REDACTED] has been under his care since August 23, 2019. The defendant has been diagnosed with post-traumatic stress disorder and depression and is prescribed mirtazapine (depression and anxiety) and clonazepam (panic attacks).
54. During the presentence interview, the defendant imparted that he is in good mental health.

Substance Abuse

55. [REDACTED] disclosed that he has a history of smoking marijuana. He recalled first smoking marijuana when he was in college and described his use of cannabis as recreational. The defendant related that he last smoked marijuana three days after his arrest for this offense.
56. As previously noted, the defendant completed co-occurring therapy at St. Mark's Place Institute on December 18, 2020.
57. Because the interview transpired by telephone, a drug test could not be administered. Of note, [REDACTED] is drug tested by Pretrial Services. To date, he has tested positive for marijuana on three occasions (January 30, 2019, June 24, 2019, and June 28, 2019).

Educational, Vocational and Special Skills

58. As verified by review of Jain's diplomas, he graduated from [REDACTED] High School in New Hyde Park, New York, in 1990; he was bestowed his Bachelors of Science degree (International Business and Accounting) from [REDACTED] University in 1994; and he earned his Master of Business Administration degree from [REDACTED] University in 2000.
59. The defendant said that he previously had a New York Certified Public Accountant license, but it expired in the 1990's.

Employment Record

60. [REDACTED] shared that in 2019, he and his mother established [REDACTED] Management LLC, a real estate company. The defendant said that last year the business, which is principally owned by his mother, operated at a loss. Otherwise, [REDACTED] has not been employed since

2012 and was reportedly financially supported by money in his savings account, which is now depleted, and has since borrowed money from his mother (\$450,000) and refinanced his residence.

61. From roughly 2009 through 2013, [REDACTED] was a partner at [REDACTED] Capital Management, the subject of this offense.
62. The defendant advised that from 2007 through 2009, he worked for [REDACTED] Partners, an Investment Advisor Firm in New York, New York. He recalled earning [REDACTED] annually and left because he disagreed with how the company was operating. Because [REDACTED] worked at this firm more than 10 years ago, employment records were not requested.
63. [REDACTED]'s prior employment included working for three money management firms, [REDACTED] Advisors, [REDACTED]. Prior thereto, he worked Lehman Brothers. Because the defendant worked for these employers more than 10 years ago, employment records were not requested.

Financial Condition: Ability to Pay

64. [REDACTED] submitted a financial affidavit on November 23, 2020, which reflected the following:

Assets:

Checking accounts (6)	\$43,156.00
Brokerage account	\$28,543.00
Real estate (2 properties)	\$1,600,000.00
Total Assets	\$1,671,000.00

Liabilities:

Mortgages (2)	\$240,424.00
Loan (mother -legal fees)	\$450,000.00
Credit cards (2)	\$1,858.00
New York State (taxes)	\$7,000.00
Total Liabilities³	\$699,282.00
TOTAL NET WORTH	\$971,718.00

³ [REDACTED] advised that he is the defendant in a civil suit. The matter remains pending. The plaintiff is seeking \$15,902.00 from [REDACTED].

Monthly Inflows:

Rental income \$3,750.00

Total Inflows: \$3,750.00**Monthly Outflows:**

Mortgage payment \$1,575.00

Co-op maintenance fees \$5,211.00

Groceries \$300.00

Utilities \$80.00

Transportation \$400.00

Clothing \$50.00

Minimum credit card payments \$100.00

Average medical expenses \$100.00

Total Outflows: \$7,816.00**MONTHLY CASH FLOW: (\$4,066.00)**

65. An Equifax report dated November 20, 2020, revealed that the defendant has five active accounts (four revolving, one mortgage) with a total balance of \$242,028, all of which to appear to be in good standing.
66. During the presentence interview, [REDACTED] recalled last paying his personal income taxes and filing a tax return in 2012.⁴ Prior to the final disclosure of the presentence report, the defendant supplied the Probation Office with copies of his prepared tax returns for years 2015 through 2019. Only tax years 2017 through 2019 were included below and reflect the following:⁵

⁴ The defendant advised that taxes were filed for [REDACTED] in 2019.

⁵ Defense counsel advised that these taxes have not yet been electronically filed. [REDACTED] will file the taxes in January 2021, when he is able to do so.

Year	2017	2018	2019
Filing Status	S	S	S
Exemptions	1	1	1
Adjusted Gross Income	\$10,869	-\$1,784	\$20,960
Taxable Income	\$0	\$0	\$0
Total Tax	\$0	\$0	\$0
Payments	\$0	\$0	\$0
Credits	\$0	\$0	\$0
Amount Owed	\$0	\$0	\$0

67. Tax filing information from the IRS was not obtained because as of July 2019, that agency no longer honors mailings of requested transcripts to third parties.
68. We note that [REDACTED] has debt and a negative monthly cash flow, but we also recognize that he has assets. Accordingly, we believe he can pay a minimum fine.

PART D. SENTENCING OPTIONS

Custody

69. **Statutory Provisions:** The maximum term of imprisonment is 20 years. 18 U.S.C. § 1512(c).
70. **Guideline Provisions:** Based upon a total offense level of 12 and a criminal history category of I, the guideline imprisonment range is 10 to 16 months. Since the applicable guideline range is in Zone C of the Sentencing Table, the minimum term may be satisfied by (1) a sentence of imprisonment; or (2) a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention according to the schedule in subsection (e), provided that at least one-half of the minimum term is satisfied by imprisonment. USSG §5C1.1(d).

Impact of Plea Agreement

71. Not applicable.

Supervised Release

72. **Statutory Provisions:** The Court may impose a term of supervised release of not more than three years. 18 U.S.C. § 3583(b)(2).
73. **Guideline Provisions:** Since the offense is a Class C Felony, the guideline range for a term of supervised release is 1 to 3 years. USSG §5D1.2(a)(2).

Probation

74. **Statutory Provisions:** The defendant is eligible for not less than one nor more than five years' probation because the offense is a Class C Felony. 18 U.S.C. § 3561(c)(1). One of

the following must be imposed as a condition of probation unless extraordinary circumstances exist: a fine, restitution, or community service.

75. **Guideline Provisions:** Since the applicable guideline range is in Zone C of the Sentencing Table, the defendant is ineligible for probation. USSG §5B1.1, comment.(n.2).

Fines

76. **Statutory Provisions:** The maximum fine is \$250,000. 18 U.S.C. § 3571(b).
77. A special assessment of \$100 is mandatory. 18 U.S.C. § 3013.
78. **Guideline Provisions:** The fine range for this offense is from \$5,500 to \$55,000. USSG §5E1.2(c)(3).
79. Costs of prosecution shall be imposed on the defendant as required by statute. USSG §5E1.5. In determining whether to impose a fine and the amount of such fine, the Court shall consider, among other factors, the expected costs to the government of any term of probation, or term of imprisonment and term of supervised release imposed. USSG §5E1.2(d)(7) and 18 U.S.C. § 3572(a)(6). These costs may include drug and alcohol treatment, electronic monitoring, and/or contract confinement costs. The most recent advisory from the Administrative Office of the United States Courts, dated September 9, 2020, provides the following monthly cost data:

	<u>Bureau of Prisons Facilities</u>	<u>Community Correction Centers</u>	<u>Supervision by Probation Officer</u>
Daily	\$108.00	\$109.00	\$12.00
Monthly	\$3,280.00	\$3,327.00	\$372.00
Annually	\$39,365.00	\$39,924.00	\$4,465.00

Restitution

80. Not applicable.

Forfeiture

81. As a result of committing the offenses alleged in Counts 1 through 4 of this Indictment, the defendant shall forfeit to the United States, pursuant to 18 U.S.C. § 981, 21 U.S.C. § 853, and 28 U.S.C. § 2461, all property constituting or derived from the proceeds of the offense.
82. Pursuant to Rule 32.2, “[t]he Court must include the forfeiture when orally announcing the sentence or must otherwise ensure that the defendant knows of the forfeiture at sentencing. The Court must also include the forfeiture order, directly or by reference, in the judgment.”

Denial of Federal Benefits

83. Not applicable.

PART E. FACTORS THAT MAY WARRANT DEPARTURE

84. The probation officer has not identified any factors that would warrant a departure from the applicable sentencing guideline range.

PART F. FACTORS THAT MAY WARRANT A SENTENCE OUTSIDE OF THE ADVISORY GUIDELINE SYSTEM

85. Presentation of information in this section does not necessarily constitute a recommendation by the Probation Department.

86. Pursuant to 18 U.S.C. § 3553(a), the Court may consider a sentence outside of the Guidelines Range based upon certain factors including the personal history and circumstances of the defendant, including the defendant's post-arrest conduct, lack of a criminal history and familial responsibilities.

Respectfully Submitted,

[Redacted Signature]

[Redacted Title]

By:

[Redacted Name]

USPO

Approved:

[Redacted Signature]

[Redacted Title]

SUSPO

ADDENDUM TO THE PRESENTENCE REPORT

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
UNITED STATES V. NIKET [REDACTED]**

OBJECTIONS

By the Government

We did not receive any objections from the Government.

By the Defendant

Defense counsel submitted a letter to the Probation Office on December 18, 2020, wherein he advised that the defendant objected to the offense conduct. Specifically, the defendant objects to any reference to the alleged fraud, and his knowledge of the same, because he only pled guilty to the Obstruction of Justice charge. Accordingly, the defendant would like any suggestion of the purported fraud, and his cited involvement in the scheme, removed from the offense conduct.

The Probation Office believes it is necessary to reference the suspected conspiracy in the offense conduct because the information is relevant in delineating the obstruction of justice. Further, counsel asserted that the defendant had limited knowledge about the fraud, but he did not provide the Probation Office with any documentation to support these declarations. Therefore, no changes were made to the offense conduct narrative.

Revisions by the U.S. Probation Officer

In a letter dated December 18, 2020, defense counsel provided an explanation with regards to his client's conduct in paragraph 38. The Probation Office include a footnote to this paragraph that outlines the defendant's account of the incident.

Additional revisions: 8 (sentence date), 10 (pretrial adjustment), 19 (victim information), 52 and 56 (completion of treatment), 66 (taxes), and 67 (fine).

Respectfully Submitted,

[REDACTED]
Chief U.S. Probation Officer

[REDACTED]

By: [REDACTED]
USPO

Approved:

[REDACTED]

[REDACTED]
SUSPO

SENTENCING RECOMMENDATION

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
UNITED STATES V. [REDACTED] (PKC)**

TOTAL OFFENSE LEVEL 12
CRIMINAL HISTORY CATEGORY I

	<u>Statutory Provisions</u>	<u>Guideline Provisions</u>	<u>Recommended Sentence</u>
CUSTODY:	Up to 20 years	10-16 months	Time Served (1 day)
SUPERVISED RELEASE:	Up to 3 years	1-3 years	1 year, 120 hours' community service
PROBATION:	1-5 years	Ineligible	Not recommended
FINE:	Up to \$250,000	\$5,500-\$55,000	\$5,500
RESTITUTION:	Not applicable	Not applicable	Not applicable
FORFEITURE:	Not applicable	Not applicable	Not applicable
SPECIAL ASSESSMENT:	\$100	\$100	\$100

Justification

From 2010 through 2014, [REDACTED] jointly operated (as partners) a hedge fund called [REDACTED] Management. [REDACTED] conspired to commit securities and wire fraud, and [REDACTED] made, and caused to be made, false representations to investors, including through fraudulent altered documents, that investments made through funds controlled by [REDACTED] were accumulating capital gains, whereas in truth and in fact the investment of those investors' funds had either not taken place or had actually resulted in substantial losses. In 2017 and 2018, the United States Securities and Exchange Commission (SEC) opened a formal investigation into [REDACTED]'s fraud. As part of that investigation, [REDACTED] was deposed on January 26, 2018. In response to questions regarding [REDACTED] own participation in the operation of [REDACTED] and creation of documents with false statements, [REDACTED] repeatedly lied. One of the lies involved [REDACTED] participation

[REDACTED] in the altered documents submitted to the auditor, wherein he said that he did not “play any role” “in creating that document.”

The defendant declined to make a statement about his impetus for committing the instant offense. One may suppose that he obstructed justice to conceal the underlying fraud.

This is [REDACTED] first arrest and conviction. He is under Pretrial Services supervision and has been compliant with the terms of his imposed conditions of release, to date. His compliance with the terms of his release indicates that he can be successful under community-based supervision.

[REDACTED] was reared under favorable circumstances and currently lives with his mother, who is unwell, to assist in her care. The defendant is educated and has a history of legitimate employment. Consequently, his involvement in this offense has impeded his ability to continue working in the financial industry. The Probation Office believes that the defendant’s likelihood to reoffend is low, and in the future, he will consider his mother’s dependence on him (she has become unwell since he was criminally charged), education and employment history to lead a law-abiding life.

In careful consideration of the defendant’s post-arrest conduct, lack of a criminal history, and familial responsibilities, we do not believe a custodial sentence is warranted in this case, and thus, we propose a one year term of supervised release with the special condition of 120 hours’ community service and a fine of \$5,500. Furthermore, we recognize that [REDACTED] recently completed co-occurring therapy, but because he has a history of marijuana use and mental health struggles, we recommend the special conditions of outpatient drug and mental health treatment as a precautionary measure. We believe that the combination of the felony conviction, term of supervision, community service, and a fine provides just punishment, repays the community for his criminal conduct, will promote respect for the law, and this sentence will act as a deterrent and a reminder if [REDACTED] should find himself similarly situated again. A \$100 special assessment fee is mandatory.

Pursuant to the Violent Crime Control and Law Enforcement Act of 1994, for offenses committed after September 13, 1994, the court shall require that all offenders on probation, parole, or supervised release submit to one drug test within fifteen days of commencement of probation, parole or supervised release and at least two drug tests thereafter for use of a controlled substance, unless ameliorated or suspended by the court due to its determination that the defendant poses a low risk of future substance abuse as provided in 18 USC 3563 (a) (5) / 3583 (d).

Drug Risk Analysis

[REDACTED] admitted to smoking marijuana. Accordingly, we recommend a condition of outpatient drug treatment.

Recommendation

We respectfully recommend that Your Honor impose a sentence of Time Served to be followed by one-year supervised release to include 120 hours’ community service.

Mandatory Conditions

A period of supervised release is ordered, and the following conditions are mandatory:

You must not commit another federal, state, or local crime.

You must not unlawfully possess a controlled substance.

You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse.

You must cooperate in the collection of DNA, as directed by the probation officer.

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

Standard Conditions

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.

7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. You must follow the instructions of the probation officer related to the conditions of supervision.

Special Conditions

You will participate in an outpatient treatment program approved by the United States Probation Office, which program may include testing to determine whether you have reverted to using drugs or alcohol. You must contribute to the cost of services rendered based on your ability to pay and the availability of third-party payments. The Court authorizes the release of available drug treatment evaluations and reports, including the presentence investigation report, to the substance abuse treatment provider.

You must participate in an outpatient mental health treatment program approved by the United States Probation Office. You must continue to take any prescribed medications unless otherwise instructed by the health care provider. You must contribute to the cost of services rendered based on your ability to pay and the availability of third-party payments. The Court authorizes the release of available psychological and psychiatric evaluations and reports, including the presentence investigation report, to the health care provider.

You must perform 120 hours' community service to be approved by the Probation Officer.

If you are sentenced to any period of supervision, it is recommended that you be supervised by the district of residence.

Fines

We recommend that the defendant pay a fine of \$5,500. This fine shall be paid immediately following sentencing.

Special Assessment

It is further ordered that you must pay to the United States a special assessment of \$100, which shall be due immediately.

Restitution

Not applicable.

Forfeiture

Not applicable.

Voluntary Surrender

The defendant is viewed as a good candidate for voluntary surrender. He has kept all court appearances and has followed all terms and conditions of his pretrial release. He is not viewed as a flight risk or a danger to the community.

Respectfully Submitted,

[REDACTED]

[REDACTED]

By:

[REDACTED]

USPO

Approved:

[REDACTED]

[REDACTED]

SUSPO