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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :
:
- v. - :
:
OMAR AMANAT, :
:
Defendant. :
:
----- x

SEALED INDICTMENT

S5 15 Cr. 536 (PGG)

COUNT ONE

(Conspiracy To Commit Wire Fraud: Maiden Capital Investors)

The Grand Jury charges:

RELEVANT PERSONS AND ENTITIES

1. At all times relevant to this Indictment, OMAR AMANAT, the defendant, was a self-described entrepreneur, filmmaker and investor in media, finance and technology companies.

2. At various times relevant to this Indictment, OMAR AMANAT, the defendant, raised money for Enable Invest Ltd. ("Enable"), an investment company based in Dubai and managed by an individual not named as a defendant herein ("Individual-1"). Certain United States-based bank accounts and entities were affiliated with Enable, including a trading account (the "U.S. Enable Trading Account") and two bank accounts ("U.S. Enable Account-1" and "U.S. Enable Account-2," collectively, "U.S. Enable Accounts").

3. At all times relevant to this Indictment, KIT digital, Inc. ("KITD") was a provider of end-to-end video asset management software and related services, with a focus on Internet Protocol-based interactive media, headquartered in Prague, Czech Republic and New York, New York.

4. At all times relevant to this Indictment, Kaleil Isaza Tuzman ("Tuzman") was the Chairman of the Board of Directors and Chief Executive Officer ("CEO") of KITD and Robin Smyth ("Smyth") was the Chief Financial Officer ("CFO"). At various times relevant to this Information, KITD maintained a U.S.-based bank account (the "KITD Bank Account").

5. From in or about May 2008 to on or about August 12, 2009, KITD's common stock was traded on the OTC Bulletin Board, which is an electronic quotation system for over-the-counter securities that are not listed on a national securities exchange. Beginning on or about August 13, 2009, KITD's common stock was traded on the NASDAQ.

6. On or about November 21, 2012, after an internal investigation led by KITD's audit committee, KITD announced to the investing public that KITD had discovered various errors and irregularities in its historical financial statements and that it would have to issue restated financial statements. In or about December 2012, KITD's stock was delisted from NASDAQ. KITD subsequently declared bankruptcy.

7. From in or about October 2006 to in or about June 2012, Stephen E. Maiden ("Maiden") operated the Maiden Capital Opportunity Fund (the "Maiden Fund") in North Carolina through his investment advisory firm, Maiden Capital LLC ("Maiden Capital"). At all times relevant to this Indictment, Maiden Capital maintained an account at a bank located in North Carolina (the "Maiden Capital Account").

8. At various times relevant to this Indictment, OMAR AMANAT, the defendant, Tuzman, Individual-1, and Maiden, through the Maiden Fund, were each investors in a privately held special purpose investment vehicle (the "KIT SPIV"), which was controlled by Tuzman and invested in KITD.

OVERVIEW OF THE SCHEME TO DEFRAUD MAIDEN CAPITAL INVESTORS

9. Between in or about February 2009 and in or about June 2012, OMAR AMANAT, the defendant, devised and carried out a scheme to hide the fact that investments by Maiden Capital clients in Enable, including investments AMANAT had solicited with false and misleading representations, had been lost. To facilitate the scheme, Maiden, with the knowledge and approval of AMANAT, generated fictitious client account statements that failed to disclose the Enable losses. In addition, AMANAT wired hundreds of thousands of dollars to the Maiden Capital Account to support Maiden Capital, including to allow Maiden to repay investors whose redemption requests could not be forestalled and

thus to continue to keep secret from Maiden investors the Enable losses.

AMANAT SOLICITS INVESTMENTS FOR ENABLE

10. In or about the summer of 2008, OMAR AMANAT, the defendant, introduced Maiden to Tuzman as a potential investor in the KIT SPIV. As a result of AMANAT's introduction, in or about June 2008, Maiden invested approximately \$1 million from the Maiden Fund into the KIT SPIV.

11. In or before July 2008, OMAR AMANAT, the defendant, solicited Tuzman, on behalf of KITD, to invest in Enable. In or about August 2008, KITD invested approximately \$6.5 million in Enable. The majority of these funds were deposited into the U.S. Enable Trading Account. Maiden subsequently learned that Tuzman had redirected the funds from Maiden Capital's investment in the KIT SPIV into Enable, as part of KITD's \$6.5 million investment, without MAIDEN's permission or authorization.

12. The U.S. Enable Trading Account was opened in approximately June 2008. Between June 2008 and September 2008, in excess of \$7 million was deposited into the U.S. Enable Trading Account, including more than \$5.5 million from the \$6.5 million KITD investment. In July, August and September 2008, the U.S. Enable Trading Account realized losses every month and, in total, incurred trading losses in excess of \$5.5 million.

13. Despite the trading losses sustained in the U.S. Enable Trading Account, Individual-1 represented to Maiden that Enable's returns were positive. For example, on or about October 11, 2008, Individual-1 sent an email to Maiden in which Individual-1 stated that Enable "ha[s] been making good profits . . . trading has been smooth and profitable - no huge profits, but with the markets [] going psychotic these days, I am happy to be taking things safe." In truth and in fact, by September 30, 2008, the U.S. Enable Trading Account contained less than \$113,000.

14. In or about November 2008, OMAR AMANAT, the defendant, who was, by that time, well aware that Enable had incurred losses and was unable to meet redemptions, sought an additional \$2 million from Maiden, purportedly for the purpose of investing in Enable. Specifically, on or about November 8, 2008, AMANAT asked Maiden to make a "\$2 million short term (anticipated to be no more than one week) investment into Enable." AMANAT indicated that Enable would hold the cash as "show money" to induce other investments and then would be returned. In reality, AMANAT instead intended to misappropriate Maiden's investment to pay redemptions to Enable investors, thereby concealing the Enable losses.

15. At the behest of OMAR AMANAT, the defendant, Maiden, between November 10, 2008 and November 18, 2008, wired a total

of \$2 million from the Maiden Capital Account to U.S. Enable Account-1. Maiden Capital's investment in Enable was never deposited into the U.S. Enable Trading Account. Instead, AMANAT, contrary to his representations to Maiden, misappropriated a majority of Maiden Capital's funds for his own purposes, including to meet an Enable redemption demand made by Tuzman on behalf of KITD, which had also incurred losses in Enable. Specifically:

a. On or about November 10, 2008, the same day on which Maiden wired \$1 million to U.S. Enable Account-1, AMANAT caused approximately \$650,000 of these funds to be wired to the KITD Bank Account. The next day, Tuzman emailed Individual-1 to acknowledge receipt of the \$650,000 wire and stated that KITD was "still waiting for the \$400,000" wire that had purportedly been sent a week earlier.

b. On or about November 12, 2008, the same day on which Maiden wired \$500,000 to Enable Account-1, AMANAT caused \$400,000 of these funds to be wired to the KITD Bank Account.

c. On or about December 1 and 2, 2008, shortly after Maiden wired a total of another \$500,000 to U.S. Enable Account-1, AMANAT caused approximately \$442,000 to be wired to the KITD Bank Account.

MAIDEN LEARNS OF THE ENABLE LOSSES

16. In or about February 2009, on a telephone call in which OMAR AMANAT, the defendant, Tuzman and Individual-1 participated, Maiden learned that Enable was insolvent and that the Maiden Fund's investment in Enable had been lost. Following this call, Maiden spoke directly with AMANAT, including to express concern that the Enable losses could cause Maiden Capital to collapse. AMANAT reassured Maiden that a solution would be reached to cover up the Enable losses. Shortly thereafter, with AMANAT's knowledge and approval, Maiden began generating fictitious client statements that failed to disclose the Enable losses and were distributed to Maiden Capital investors. Thereafter, on several occasions between 2009 and 2012, AMANAT and Maiden had conversations concerning the fact that Maiden had not disclosed the Enable losses to Maiden Capital investors.

17. Between 2009 and 2011, OMAR AMANAT, the defendant, Maiden, Tuzman, and others, discussed solutions to hide the Enable losses from both investors in Maiden Capital and KITD shareholders. One proposed solution involved AMANAT and Tuzman providing Maiden with shares in the KIT SPIV, which Maiden Capital could then record in the Maiden Fund in place of the Enable investment.

AMANAT LOANS MONEY TO MAIDEN CAPITAL TO PREVENT DISCOVERY OF THE
FRAUD BY MAIDEN CAPITAL INVESTORS

18. In or about April 2011, Maiden received a redemption request from a Maiden Capital investor ("Investor-1") for several hundred thousand dollars. Maiden told OMAR AMANAT, the defendant, about the redemption request, and that Maiden Capital did not have sufficient funds to meet the redemption. In an attempt to conceal the Enable losses from Maiden Capital's investors, on or about June 2, 2011, AMANAT and Maiden entered into a loan agreement (the "June 2011 Loan Agreement") pursuant to which AMANAT agreed to lend up to \$1.25 million to Maiden Capital. Under the terms of the June 2011 Loan Agreement, AMANAT required that Maiden provide AMANAT with a schedule listing the assets held by the Maiden Fund (the "Maiden Fund Schedule"). The Maiden Fund Schedule reflected a cash balance of zero and listed less than \$250,000 in saleable securities, apart from Maiden's ostensible stake in KITD entities. The Maiden Capital Schedule also reflected that Maiden continued to mark the Maiden Fund's Enable investment as worth in excess of \$2.5 million. In truth and in fact, AMANAT, Maiden and Tuzman had known for more than two years that Maiden Capital's Enable investment was worthless.

19. To ensure that Maiden used the funds loaned by OMAR AMANAT, the defendant, to repay investors whose redemption

requests could not be forestalled, AMANAT also required that Maiden resign as the managing member of Maiden Capital. To further exert control over Maiden, AMANAT installed his wife as the managing member of Maiden Capital.

20. On or about June 2, 2011, after the June 2011 Loan Agreement had been executed, OMAR AMANAT, the defendant, wired \$250,000 from U.S. Enable Account-2 to the Maiden Capital Account. The same day, Maiden Capital wired \$250,000 to Investor-1 in partial satisfaction of Investor-1's redemption request.

21. Between on or about June 6, 2011 and on or about December 23, 2011, OMAR AMANAT, the defendant, wired additional funds from U.S. Enable Account-2 to the Maiden Capital Account for the purpose of preventing Maiden Capital from collapsing and exposing the Enable losses.

22. In or about July 2011, during the period when OMAR AMANAT, the defendant, was wiring funds to Maiden Capital, AMANAT, Maiden, Tuzman, and others met in Manhattan in part to discuss the Enable losses. In a text message on the day of the meeting, AMANAT instructed Maiden to demand that Tuzman contribute to a settlement for Maiden's investors, directing Maiden, "[b]e aggressive today: say it doesn't matter who did what. Paint a stark nightmare scenario if your fund goes under . . . Madoff like trustee is appointed—he will quickly realize

all money was lost in KIT Digital and everyone here will be sued. Securities laws violations have occurred. Criminal behavior jail time. Bottom line: fund needs to be made whole or ship will sink."

THE CONSPIRACY

23. From in or about February 2009 through in or about June 2012, in the Southern District of New York and elsewhere, OMAR AMANAT, the defendant, and others known and unknown, willfully and knowingly, combined, conspired, confederated, and agreed together and with each other to commit wire fraud, in violation of Title 18, United States Code, Section 1343.

Object Of The Conspiracy

24. It was a part and an object of the conspiracy that OMAR AMANAT, the defendant, and others known and unknown, willfully and knowingly, 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, would and did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds for the purpose of executing such scheme and artifice, in violation of Title 18, United States Code, Section 1343.

(Title 18, United States Code, Section 1349.)

COUNT TWO

(Wire Fraud)

The Grand Jury further charges:

25. The allegations contained in paragraphs 1 through 22 are repeated and realleged as though fully set forth herein.

26. From in or about February 2009 through in or about June 2012, in the Southern District of New York and elsewhere, OMAR AMANAT, the defendant, willfully and knowingly, 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, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, for the purpose of executing such scheme and artifice, to wit, AMANAT and others schemed to defraud Maiden Capital investors by causing Maiden to make material misrepresentations and to omit material facts to Maiden Capital investors about the status of their investments and by wiring hundreds of thousands of dollars to Maiden Capital in order to pay certain redemptions and forestall Maiden Capital's collapse.

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

COUNT THREE

(Aiding and Abetting Investment Adviser Fraud)

The Grand Jury further charges:

27. The allegations contained in paragraphs 1 through 22 are repeated and realleged as though fully set forth herein.

BACKGROUND ON INVESTMENT ADVISORY FIRMS

28. Maiden Capital, which was an unregistered investment advisory firm, managed portfolios of securities and provided advice on investments for clients. Maiden was the managing member of Maiden Capital and ran the Maiden Fund. Compensation took different forms but typically included a fee based on total assets under management and additional performance-based returns. Pursuant to investment advisory agreements, clients empowered Maiden Capital and Maiden to make investment decisions on their behalf. Maiden, in turn, was obligated to make such decisions based on the best interests of his clients.

29. As described herein, OMAR AMANAT, the defendant, aided and abetted Maiden's fraud on Maiden Capital's investment advisory clients. Rather than disclose the Enable losses to investors in the Maiden Fund, as he was legally obligated to do, Maiden concealed the Enable losses, thereby acting in his own self interest and the interests of AMANAT, his close associate, who did not want the Enable losses to be exposed. By providing Maiden with capital contributions to meet redemption requests,

among other things, knowing that Maiden's investors had been lied to by Maiden about the Enable losses and the status of their investments, AMANAT assisted Maiden in carrying out his fraudulent scheme and helped Maiden to succeed in covering up the losses for over three years.

Statutory Allegation

30. From in or about February 2009 through in or about June 2012, in the Southern District of New York and elsewhere, OMAR AMANAT, the defendant, willfully and knowingly aided and abetted an investment advisor who used the mails and other means and instrumentalities of interstate commerce, directly and indirectly, (a) to employ a device, scheme, and artifice to defraud clients and prospective clients; (b) to engage in a transaction, practice, and course of business which operated as a fraud and deceit upon clients and prospective clients; and (c) to engage in an act, practice, and course of business which was fraudulent, deceptive, and manipulative, to wit, AMANAT aided and abetted fraud by Maiden, an investment advisor, in which Maiden made false and materially omissive statements to investors about the status of their investments and the payment of redemptions.

(Title 15, United States Code, Sections 80b-6 and 80b-17; Title 18, United States Code, Section 2.)

COUNT FOUR

(Conspiracy To Commit Securities Fraud: Market Manipulation)

The Grand Jury further charges:

31. The allegations contained in paragraphs 1 through 22 and 28 through 29 are repeated and realleged as though fully set forth herein.

OVERVIEW OF THE MARKET MANIPULATION SCHEME

32. Between in or about December 2008 and in or about September 2011, OMAR AMANAT, the defendant, Tuzman, Maiden, and others, engaged in efforts to artificially inflate the share price and trading volume of KITD shares. During this time period, during which KITD shares traded on the OTC Bulletin Board and on the NASDAQ, Maiden, at AMANAT and Tuzman's behest, purchased and sold shares of KITD through the Maiden Fund, at times for the purpose of manipulating the stock price and at times for the purpose of creating the illusion of greater volume in the trading for KITD shares.

33. To facilitate the manipulation of KITD shares, OMAR AMANAT, the defendant, Tuzman and a co-conspirator not named as a defendant herein ("CC-1") agreed to compensate Maiden in several ways, including by making investments in, and loaning money to, Maiden Capital, which agreement AMANAT and Tuzman partially fulfilled.

THE WRITTEN AGREEMENT TO MANIPULATE THE MARKET IN KITD SHARES

34. In or about December 2008, OMAR AMANAT, the defendant, Tuzman and Maiden entered into a written agreement (the "Agreement") in which Maiden agreed to purchase at least \$400,000 of common stock in KITD in the open market over the next 30 days through Maiden Capital and to hold it for at least 90 days. Maiden also agreed that he would not seek to redeem Maiden Capital's investments in the KIT SPIV or Enable. Because OMAR AMANAT, the defendant, and Tuzman knew, as of at least December 2008, that Enable had suffered significant losses, this agreement was valuable to both AMANAT and Tuzman. In return, AMANAT agreed to assign a portion of his interest in the KIT SPIV to Maiden Capital. For his part, Tuzman agreed to, among other things, make efforts to induce KITD to retain Maiden Capital to provide various services, and to assign to Maiden Capital a portion of Tuzman's interest in the KIT SPIV. In a second agreement between AMANAT and Tuzman, signed the same day, AMANAT further agreed to facilitate purchases of KITD in open market trading.

35. Shortly after entering into the Agreement, Maiden fulfilled his commitment by acquiring over \$400,000 worth of KITD shares through Maiden Capital.

AMANAT AND TUZMAN INDUCE MAIDEN TO CONTINUE TO MANIPULATE KITD
STOCK PRICE

36. Notwithstanding the fact that Maiden had fulfilled his obligations under the Agreement, OMAR AMANAT, the defendant, and Tuzman induced Maiden to continue to manipulate KITD's stock price based in part on representations that Maiden's continued support of KITD's stock price would facilitate Maiden Capital being repaid, thereby permitting Maiden to hide the Enable losses from Maiden Capital investors.

37. To this end, using in part KITD funds provided by Tuzman and Tuzman's own funds, between February 2009 and September 2011, with the knowledge and approval of Tuzman and OMAR AMANAT, the defendant, Maiden continued to manipulate KITD's stock price, purchasing in excess of \$2 million of KITD shares through Maiden Capital.

THE CONSPIRACY

38. From in or about December 2008 through in or about September 2011, in the Southern District of New York and elsewhere, OMAR AMANAT, the defendant, and others known and unknown, willfully and knowingly combined, conspired, confederated and agreed together and with each other to commit an offense against the United States, namely, fraud in connection with the purchase and sale of securities issued by KITD, in violation of Title 15, United States Code, Sections

78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10b-5.

Object Of The Conspiracy

39. It was a part and object of the conspiracy that OMAR AMANAT, the defendant, and others known and unknown, willfully and knowingly, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, and of the mails, and of the facilities of national securities exchanges, would and did use and employ, in connection with the purchase and sale of securities, manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5 by: (a) employing devices, schemes and artifices to defraud; (b) making untrue statements of material fact and omitting to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; and (c) engaging in acts, practices and courses of business which operated and would operate as a fraud and deceit upon any person, in violation of Title 15, United States Code, Sections 78j(b) and 78ff.

Overt Acts

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

a. On or about December 31, 2008, OMAR AMANAT, the defendant, Tuzman, and Maiden executed an agreement pursuant to which Maiden agreed that Maiden Capital would buy at least \$400,000 of KITD common stock.

b. Between in or about January 2009 and in or about February 2009, Maiden purchased over \$400,000 of KITD common stock through Maiden Capital.

c. In or about March 2011, Maiden bought and sold KITD shares in an effort to artificially inflate the price of KITD shares.

d. In or about July 2011, AMANAT met with Maiden, Tuzman, and others in Manhattan in part to discuss the losses sustained in Enable.

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

FORFEITURE ALLEGATION

41. As a result of committing one or more of the foregoing offenses alleged in Counts One through Four of this Indictment, OMAR AMANAT, the defendant, shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461, all property,

real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses.

Substitute Asset Provision

42. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

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

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

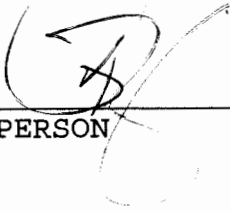
c. has been placed beyond the jurisdiction of the court;

d. has been substantially diminished in value;

e. or has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendant up to the value of the forfeitable property described above.

(Title 18, United States Code, Section 981;
Title 28, United States Code, Section 2461.)



FOREPERSON



PREET BHARARA
United States Attorney

Form No. USA-33s-274 (Ed. 9-25-58)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

OMAR AMANAT,

Defendant.

SEALED INDICTMENT

S5 15 Cr. 536 (PGG)

(18 U.S.C. §§ 2, 371, 1343, & 1349;
15 U.S.C. §§ 80b-6 and 80b-17.)

PREET BHARARA

United States Attorney

Foreperson

Deputy

8/12/16:

*Sealed Indictment, S5 15 Cr. 536 (PGG). returned
Arrest Warrant issued.*

Maas, J.

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January 24, 2020

VIA ECF

The Honorable Paul G. Gardephe
United States District Judge
Southern District of New York
United States Courthouse
40 Foley Square
New York, New York 10007

Re: *United States v. Amanat*, 15 Cr. 536 (PGG)

Dear Judge Gardephe:

This letter is respectfully submitted on behalf of defendant Omar Amanat to alert the Court to newly developed information relevant to new authority and the pending Rule 29 and 33 motions. *Cf.* Fed. R. App. Proc. 28(j); *see also* Fed R. Crim. Proc. 33. The undersigned attorney recently completed a trial before the Honorable William F. Kuntz, in the Eastern District of New York, *United States v. Jean Boustani*, No. 18 Cr. 681 (WFK) (EDNY), in which evidence was introduced that further underscores the Government's failure in this case to introduce sufficient proof of an interstate wire contemplated or sent in furtherance of Counts One and Two, as well as the Government's failure to prove venue. This evidence also goes to the errors in the Government's jury argument highlighted in our February 2018 motion for judgment of acquittal and a new trial.

As we described in our June 2019 letter to Your Honor, the Second Circuit last year issued a clarifying decision regarding the Government's burden in wire fraud cases – *Bascuñán v. Elsaca*, 927 F.3d 108, 122 (2d Cir. 2019) (“There are three “essential elements” to mail or wire fraud: “(1) a scheme to defraud, (2) money or property as the object of the scheme, and (3) use of the mails or wires to further the scheme.” Weaver, 860 F.3d at 94 (citation omitted, emphasis added). These elements make clear that the regulated conduct is not merely a “scheme to defraud,” but more precisely *the use of the mail or wires in furtherance of a scheme to defraud.*”) (emphasis in original). The Court also emphasized that “[f]or this reason, the use of the mail or wires must be essential, rather than merely incidental, to the scheme to defraud. We therefore

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hold that a claim predicated on mail or wire fraud involves sufficient domestic conduct when (1) the defendant used domestic mail or wires in furtherance of a scheme to defraud, and (2) the use of the mail or wires was **a core component** of the scheme to defraud.” *Id.* (emphasis added). This ruling, as we argued in our previous submissions, underscores the Government’s failure at the trial of Mr. Amanat to meet its burden on Counts One and Two.

On December 18, 2018, Your Honor issued an Order requiring the Government to supplement its briefing on the issue raised by Mr. Amanat’s argument that the Government had failed to identify any interstate wire contemplated or sent in furtherance of Counts One and Two. As detailed in Mr. Amanat’s January 3, 2019 Response in Opposition, the Government’s supplemental submission failed to meaningfully address any of the complex issues raised by its failure to introduce sufficient evidence on this point. With regard to Count One, in its December 26, 2018 submission, the Government continued to suggest that a wire fraud conspiracy could be advanced without any contemplated or actual wire being involved in the conspiracy. To the extent that this idea was ever cognizable, *Bascuñán* fatally undermined it. With regard to Count Two, the Government based its arguments regarding “the interstate wire element” on the idea that a JP Morgan Chase account was “associated with an address in Manhattan.” Gov. Dec. 26, 2018 Let. at 4 (“Specifically, the Government introduced evidence that Amanat wired more than \$500,000 to Maiden Capital in North Carolina in 2011 and 2012. Amanat directed these wires from two Enable-affiliated accounts: a JP Morgan Chase account (the ‘Chase Enable Account’) and a First Republic account (the ‘First Republic Enable Account’). The evidence established the Chase Enable Account was associated with an address in Manhattan and the First Republic Enable Account was associated with an address in New Jersey.”). As the defense previously argued before Your Honor, it was improper and unsound for the Government to argue that an inference could be drawn that a wire passed through any of these locations simply because a bank account listed an address at that location.

This point was definitively proven at the *Boustani* trial, which concluded with the acquittal of Mr. Boustani last month on all charges. At that trial, Mr. Timothy Coffey, Vice President in the wire operations department of JP Morgan Chase, offered testimony that was subject to cross-examination by the U.S. Department of Justice. (*Boustani* Tr. at 3778, attached as Exhibit A). Mr. Coffey testified that he had been involved with JP Morgan Chase’s wire transfers since 1988. (*Boustani* Tr. at 3778). Mr. Coffey further offered the following testimony:

- Q In your role, in your experience have you become familiar with how wire transfers are processed at JP Morgan Chase?
- A Yes. My years in the bank have been spent with the initiation of wires, the investigation of wires, the through-put of wires as they move through the applications, and presently right now I'm in the wire fraud space.

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Q Can you tell us what percentage of wire transfers are handled automatically at JP Morgan Chase without any need for any human intervention?

A 98 percent.

Q And do those wire transfers, automated wire transfers, involve servers and computer equipment?

A They do.

Q Are any of the servers that are involved in processing wire transfers at JP Morgan located in the State of New York?

A They are not.

(Boustani Tr. 3778-79) (emphasis added). Mr. Coffey further testified that:

Q Now, you mentioned 98 percent of the wire transfers are handled in an automated fashion, that leaves 2 percent. Can you explain why it is in 2 percent of the circumstances a wire transfer may necessitate some kind of human involvement?

A Sure. If a payment instruction comes into the bank, and the payment application is due to artificial intelligent is to unable to decipher what the intent of the wire was, it will kick out some sort of operator intervention to massage the transaction.

Q To the extent that it requires such massaging, where are the masseuses at JP Morgan located?

A Florida, India and Philippines.

Q Were any of the humans that would be involved in a wire transfer located in New York state?

A No.

(Boustani Tr. 3779-80) (emphasis added).

Finally, Mr. Coffey explained that a specific wire transfer record that the Government had introduced at trial, which specified a location of “JP Morgan Chase bank for Metro Tech Center, Brooklyn, New York” did not indicate that *anything* related to the actual wire in fact happened at that location. (Boustani Tr. 3782) (“Q Did anything relating to this wire transfer in fact happen at Four Metro Tech Center in Brooklyn, New York? A No, it did not.”).

All of this goes to the point that the defense has made repeatedly since the time of the trial with regard to the purported evidence of wire fraud: **there was no cognizable evidence of a contemplated or actual interstate wire introduced at Mr. Amanat’s trial.** Moreover, there was no evidence of an interstate wire that passed through, originated, or terminated in the

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Southern District of New York. The inferences that the Government attempted to argue at trial and in response to Your Honor's Order instructing the Government to provide more information were unsound on their face. The testimony described above shows that these argument were, moreover, simply wrong as a matter of fact. The fact that an address in New York appeared on *some document* related to a wire transfer did not indicate anything involving that transfer occurred in New York.

For all of these reasons, and the reasons articulated in our prior submissions, we respectfully submit that the Court should grant Mr. Amanat's motion for judgment of acquittal. The undersigned is happy, of course, to answer any questions that the Court may have. We appreciate the Court's consideration.

Respectfully submitted,

_____/s/_____

Randall W. Jackson

cc: All Counsel

Coffey - Direct - Schachter

3778

1 THE WITNESS: Yes.

2 THE COURT: Be seated, sir. I'll ask you to pull
3 that microphone in front of you. Speak clearly and directly
4 into it. State your name, spell it, and then counsel will
5 inquire.

6 THE WITNESS: My name is Timothy T-I-M-O-T-H-Y, last
7 name is Coffey, C-O-F-F-E-Y.

8 THE COURT: Counsel, you may inquire.

9 MR. SCHACHTER: Thank you, your Honor.

10 **T I M O T H Y C O F F E Y,**

11 called as a witness, having been first duly
12 sworn/affirmed, was examined and testified as
13 follows:

14 **DIRECT EXAMINATION**

15 **BY MR. SCHACHTER:**

16 Q Good afternoon, Mr. Coffey. Sir, can you please tell the
17 jury what you do for a living?

18 A I work for JP Morgan Chase.

19 Q What do you do?

20 A Vice president in the wire operations department.

21 Q How long have you been involved in some way, shape or
22 form with wire transfers at JP Morgan Chase?

23 A Since 1988.

24 Q In your role, in your experience have you become familiar
25 with how wire transfers are processed at JP Morgan Chase?

Coffey - Direct - Schachter

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1 A Yes. My years in the bank have been spent with the
2 initiation of wires, the investigation of wires, the
3 through-put of wires as they move through the applications,
4 and presently right now I'm in the wire fraud space.

5 Q Can you tell us what percentage of wire transfers are
6 handled automatically at JP Morgan Chase without any need for
7 any human intervention?

8 A 98 percent.

9 Q And do those wire transfers, automated wire transfers,
10 involve servers and computer equipment?

11 A They do.

12 Q Are any of the servers that are involved in processing
13 wire transfers at JP Morgan located in the State of New York?

14 A They are not.

15 Q Now, you mentioned 98 percent of the wire transfers are
16 handled in an automated fashion, that leaves 2 percent. Can
17 you explain why it is in 2 percent of the circumstances a wire
18 transfer may necessitate some kind of human involvement?

19 A Sure. If a payment instruction comes into the bank, and
20 the payment application is due to artificial intelligent is to
21 unable to decipher what the intent of the wire was, it will
22 kick out some sort of operator intervention to massage the
23 transaction.

24 Q To the extent that it requires such massaging, where are
25 the masseuses at JP Morgan located?

Coffey - Direct - Schachter

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1 A Florida, India and Philippines.

2 Q Were any of the humans that would be involved in a wire
3 transfer located in New York state?

4 A No.

5 MR. SCHACHTER: Your Honor, may I publish what is in
6 evidence as 1201A1?

7 THE COURT: You may.

8 MR. SCHACHTER: If we can blow it up, thank you.

9 BY MR. SCHACHTER:

10 Q Sir, do you recognize this to be a document that involves
11 a wire transfer that bears the name JP Morgan Chase bank for
12 Metro Tech Center, Brooklyn, New York. Do you see that?

13 A I do.

14 Q Just to situate the jury, I'll highlight some the
15 portions of the document. Do you see where it says ordering
16 customer?

17 Then it also lists below that the name, First Gulf
18 Bank in Abu Dhabi and Privinvest Ship Building. And it also
19 in addition to listing JP Morgan Chase, it also lists Abu
20 Dhabi Commercial Bank and the name Andrew Pearse. Do you see
21 that? Are you able to make that out on the screen?

22 A Yes.

23 Q Great. And so are you able to say what role, if any, JP
24 Morgan has in connection with this transaction?

25 A JP Morgan Chase is the recipient bank in this transaction

Coffey - Direct - Schachter

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1 to pay funds for the credit to our client Abu Dhabi Commercial
2 Bank.

3 Q When you say the JP Morgan's client is Abu Dhabi
4 Commercial Bank, what does that mean?

5 A They maintain an account with JP Morgan case for U.S.
6 dollars.

7 Q Meaning Abu Dhabi Commercial Bank has a bank account that
8 happens to be at JP Morgan Chase that holds U.S. dollars; is
9 that correct?

10 A That's correct.

11 Q Mr. McLeod, can we highlight further down on this
12 document so we can see in the entire thing, lower, left-hand
13 corner.

14 Do you see where it shows that this document has the
15 name Bank of New York Mellon, do you see that, BNY Mellon?

16 A I do.

17 Q Can you go back to the top of the document, Mr. McLeod?

18 Do you know that Bank of New York Mellon that they
19 had a client called First Gulf Bank?

20 A Correct.

21 Q And is this a relationship that's called correspondent
22 banking? Is that a term that means anything to you?

23 A Yes, it does.

24 Q Is JP Morgan the corresponding bank for Abu Dhabi
25 Commercial Bank?

Coffey - Direct - Schachter

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1 A That's correct.

2 Q Is Bank of New York the correspondent bank for First Gulf
3 Bank?

4 A That is correct.

5 Q Did anything relating to this wire transfer in fact
6 happen at Four Metro Tech Center in Brooklyn, New York?

7 A No, it did not.

8 Q What, sir, is the only actual transfer of money that is
9 reflected in this document?

10 A The movement of funds here is the Bank of New York paying
11 funds to the clearing house of the Federal Reserve for further
12 credit to JP Morgan Chase.

13 Q Is that a transfer of money from Bank of New York in the
14 United States through the Federal Reserve in the United States
15 to an account at JP Morgan Chase in the United States?

16 A That is correct.

17 Q Does this document reflect a transfer of money from Abu
18 Dhabi to the United States?

19 A No, it does not.

20 Q Does this document reflect a transfer of money from the
21 United States to Abu Dhabi?

22 A No, it does not.

23 Q I'd like to show you two additional documents that are
24 already in evidence.

25 Your Honor, may I publish Government's Exhibit

Coffey - Cross - Moeser

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1 1201B2?

2 THE COURT: You may.

3 Q Do you see, sir, that this contains much of the same
4 information as the last exhibit, except a different ultimate
5 beneficiary here, Surjan Singh?

6 A Yes.

7 Q And would your answers to my questions be the same to
8 this document?

9 A Exactly the same.

10 MR. SCHACHTER: Also in evidence Government Exhibit
11 1201C2, may I publish that, your Honor?

12 THE COURT: You may.

13 Q Here do you see, sir, again it's all the same names of
14 entities, but here the only difference is the ultimate
15 beneficiary is Jean Boustani. Do you see that?

16 A That's correct.

17 Q Would your answers to my questions regarding transfers be
18 the same?

19 A Yes, sir.

20 MR. SCHACHTER: No further questions. Thank you.

21 THE COURT: Your witness.

22 CROSS EXAMINATION

23 BY MS. MOESER:

24 Q Good morning, Mr. Coffey.

25 A Good morning. How are you?

Coffey - Cross - Moeser

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1 Q Fine. How are you?

2 A Good.

3 Q Defense counsel asked you a number of questions about a
4 couple of documents. Were those JP Morgan Chase documents?

5 A No, they were not.

6 Q Had you seen those documents before?

7 A I had not; until I was brought into this trial I had not
8 seen them.

9 Q Thank you. Can we bring up Government's Exhibit 1301
10 please. Can we go to the Andrew Pearse tab please,
11 Ms. DiNardo?

12 Mr. Coffey, is this a JP Morgan Chase document?

13 A Yes, it is.

14 Q I believe you were shown a transfer on April 23, is this
15 first line here that same transfer of JP Morgan Chase records?

16 A Yes, correct.

17 Q Is this an international wire JP Morgan Chase?

18 A We deem it an international wire based upon the
19 identifiers of the parties involved.

20 Q Is this a CHIPS transfer?

21 A This an incoming CHIPS deposit.

22 Q Can you tell the jury what CHIPS is?

23 A CHIPS is Clearing House Internet Payment System. A
24 clearing house is an entity where two parties, in this case
25 Bank of New York and JP Morgan Chase, where they don't

Coffey - Cross - Moeser

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1 maintain an account with each other they utilize the clearing
2 house to pay each other.

3 Q And can we bring up 3500-BP-2, Ms. DiNardo?

4 THE COURT: In evidence, you may publish.

5 BY MS. MOESER:

6 Q Mr. Coffey, you don't work for the clearing house, right?

7 A I do not.

8 Q But if the clearing house had its servers in New York
9 City on April 23, 2013, would that payment we saw have gone
10 through New York City?

11 A Using the same logic of our two servers not being in New
12 York City; therefore, the path is outside the city. If the
13 clearing house servers were located in New York City, I would
14 use the same logic and say yes, it goes through the city.

15 Q 1201-B-2, blow up to see the date on the top. Can we
16 bring up 12 --

17 Mr. Coffey, do you see the date November 27, 2013?

18 A I can see that, yes.

19 Q Can we bring up 1301, Ms. DiNardo? Go to the Surjan
20 Singh tab, please.

21 Mr. Coffey, the fourth line down, do you see that?

22 A I do.

23 Q Is that the same transaction here in the JP Morgan Chase
24 records?

25 A That is the JP Morgan Chase record, yes.

Coffey - Cross - Moeser

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1 Q For the same transaction you were just viewing?

2 A I would have to see that again, sorry.

3 Q Could you bring up 1201-B-2, Ms. DiNardo, for a moment?

4 Can you blow it up?

5 A Yes, that's referencing the same transaction, sorry.

6 Q That's okay.

7 Can we go back to 1301, Ms. DiNardo?

8 Is this another international wire transfer,

9 Mr. Coffey?

10 A This is an international wire transfer, incoming CHIPS
11 deposit.

12 Q Incoming CHIPS deposit, is that processed through the
13 clearing house?

14 A That's correct.

15 Q If the clearing house servers are located in New York
16 City, is this transaction processed through New York City?

17 A If the servers were located in New York at the time --

18 THE COURT: Woah, woah. I have a saying here,
19 channel your inner Darth Vader and not your inner Woody Allen
20 Chris Rock, Wanda Sykes, or Andy Hall. You have just gotten
21 past Darth Vader and into the ladder category. Slow it down,
22 sir.

23 THE WITNESS: I was trying to get out of here
24 without that happening.

25 THE COURT: Sorry, almost did. I should have warned

Coffey - Cross - Moeser

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1 you about that.

2 Go ahead.

3 THE WITNESS: Could you ask the question again?

4 Q The question was, Mr. Coffey, if the clearing house had
5 its servers in New York City at the time of this transaction,
6 would this transaction have been processed through New York
7 City?

8 A If the servers were located in New York, yes, it would be
9 through New York City.

10 Q I think that you said to defense counsel that JP Morgan
11 servers are located outside the State of New York, right?

12 A Both servers are located outside of New York state.

13 Q So if the clearing house's servers are in New York state
14 and JP Morgan are outside of New York state, would this be a
15 transaction in interstate commerce?

16 A From a JP Morgan Chase standpoint, every transaction is
17 an interstate transaction because they are written out to both
18 servers at the exact same time. They were written out to one
19 state and at the same time to another state.

20 Q So JP Morgan servers are in two different states and the
21 same time both servers process the transaction?

22 A That's correct.

23 Q Pull up 1201C2, Ms. DiNardo. Blow it up so we can see it
24 better.

25 Do you see the date on this one, Mr. Coffey?

Coffey - Cross - Moeser

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1 A I do, July 7, 2013.

2 Q Do you see the amount?

3 A Looks like a million dollars.

4 Q Scroll down to see the beneficiary, Ms. DiNardo.

5 Do you see the beneficiary there?

6 A I do.

7 Q And can you actually see the ordering customer? Who is
8 that in this payment, Mr. Coffey?

9 A Privinvest Ship Building.

10 Q Where are they located?

11 A Abu Dhabi.

12 Q Ms. DiNardo, can we go to Government's Exhibit 1301
13 please, to the Privinvest Shipment Building tab.

14 And if we scroll down, do you see that transaction I
15 believe it was November 27 -- I confess, I already forgot.

16 A July 7.

17 Q Thank you so much. Is this the same transaction?

18 THE COURT: Don't talk over each other; it's not a
19 cocktail party.

20 MS. MOESER: Apologize, your Honor.

21 Q Is this the same transaction that we just looked at,
22 Mr. Coffey?

23 A That is.

24 Q And is this an international wire transfer?

25 A This is an international wire transfer based upon the

1 identifies.

2 Q Is this a CHIPS payment?

3 A This is an incoming CHIPS deposit.

4 Q Again, if the CHIPS servers are located in New York City,
5 is this a transaction that is processed through interstate
6 commerce through New York City?

7 A If that was the case with the clearing house servers,
8 yes.

9 MS. MOESER: May I have a moment, your Honor?

10 THE COURT: You may.

11 MS. MOESER: No further questions.

12 THE COURT: Redirect?

13 MR. SCHACHTER: We have no further questions.

14 THE COURT: You may step down, sir. Thank you very
15 much.

16 (Whereupon, the witness was excused.)

17 THE COURT: Call your next witness.

18 MR. SCHACHTER: The defense calls Johan Valentijn.

19 THE COURT: Have the witness come forward to be
20 sworn.

21 (Witness takes the stand.)

22 COURTROOM DEPUTY: Raise your right hand. You do
23 solemnly swear or affirm the answers you're about to give to
24 the Court will be the truth, the whole truth, and nothing but
25 the truth so help you God?

1 THE WITNESS: Yes.

2 THE COURT: Be seated. Sir, I'll ask you to move
3 the microphone in front of you. State your name, spell it,
4 and then counsel will inquire.

5 THE WITNESS: My name Johan Valentijn, J-O-H-A-N,
6 V-A-L-E-N-T-I-J-N.

7 THE COURT: You may inquire, counsel.

8 MR. SCHACHTER: Thank you.

9 **J O H A N V A L E N T I J N,**

10 called as a witness, having been first duly
11 sworn/affirmed, was examined and testified as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. SCHACHTER:

15 Q Good afternoon, Mr. Valentijn. Sir, can you please tell
16 the jury what do you do for a living?

17 A Sorry I didn't hear.

18 THE COURT: What do you do for a living.

19 A Sorry. I'm naval architect and marine engineer and ship
20 builder and manager.

21 Q Can you tell us what is a naval architect, what does that
22 mean?

23 A A naval architect is a person that designs vessels, can
24 be any type of vessel. And design the shapes and structures,
25 and the seaworthiness, the stability, the weights, and the