

1 UNITED STATES OF AMERICA
2 Before the
3 SECURITIES AND EXCHANGE COMMISSION
4

5 INVESTMENT ADVISERS ACT OF 1940
6 Release No. 5365/September 24, 2019
7

8 ADMINISTRATIVE PROCEEDING
9 File No. 3-19510
10

11	-----		Answer to the Commission's Order
12			Instituting Administrative Proceeding
13			File No 3-19510
14	In the Matter of:		
15	ALBERT K. HU		Albert K. Hu
16			Pro Se
17			January 6, 2020

18
19 I.

20 Respondent Albert K. Hu respectfully answer, pro se, in good faith and to the best of
21 respondent's recollection and access to the document related to the case, the Commission's Order
22 Instituting Administrative Proceedings, dated September 24, 2019;

23 Specifically, respondent hereby answers the two questions posed in Commission's Order
24 Sections III.A and III.B:

25 III. A whether the allegations set forth in Section II of the Order are true, and for the respondent
26 to establish defenses to such allegations;

27 III.B whether the remedial action is appropriate in the public interest.
28

29 II.
30

1 **Answering the Commission’s allowed defense in Order Section III.A, respondent lists the facts**
2 **stipulated by all parties, and the law in below from II. A to II.L, for the purpose of respondent’s defense**
3 **presented in II.M and II.N. It is respondent’s understanding of the securities law and the deepest**
4 **personal belief in morality and justice that:**

- 5
- 6 **A. Had respondent approached 500 proverbial “widows and orphans” and cheated \$10,000 out**
7 **of each using misrepresentations, the respondent would have no defense.**
- 8 **B. However, as the Commission pointed out in the Order, there were eight victims according to**
9 **the allegations. Not to diminish respondent’s personal responsibility, these eight victims’**
10 **profiles are polar opposite to the “widows and orphans”. Not only are they accredited and**
11 **qualified investors, they are founders and managing partners of other alternative asset**
12 **funds. For example, Mr. Fu-Yuan Lin was himself the founder and the managing partner of**
13 **multiple VC funds and PE funds. He introduced Dr. Verdiell, who sold his startup LightLogic**
14 **for \$400 million to Intel, and, as a result, is himself an experienced VC and hedge fund**
15 **investor. At trial, both the defense and the prosecution stipulated to such facts. According**
16 **to the Commission’s definition, regulations, and relevant rulings, hedge funds are similar to**
17 **the investment clubs for the accredited and sophisticated investors who can afford the risks.**
18 **Limited “partners” to the hedge fund are like club members. They are to be responsible for**
19 **their own due diligence, not asking government NOT to interfere when they are making**
20 **money, and then going to the government crying foul when they suffered losses as in this**
21 **case during the 2008/2009 financial crisis. Limited Partner’s own due-diligence**
22 **responsibility was duly incorporated in the private placement memorandum (PPM) copies**
23 **the eight had received. Both defense and prosecution stipulated to the PPMs.**
- 24 **C. At trial, defense readily admitted to the mistakes in the document, which the prosecution**
25 **called misrepresentation. Defense attorney also presented multiple canceled checks to**
26 **multiple law firms doing legal works for Asenqua/Fireside group, including ones to *Pillsbury***
27 ***Winthrop Shaw Pittman*, as an example. *Pillsbury* is an international securities law firm as**
28 **famous as the ones the prosecution averred; see Attachment 1, Exhibit List Number 7.**
- 29 **D. Upon appeal to the Ninth Circuit Court, respondent’s appellate attorney Vicky Marolt**
30 **Buchanan, after spending close to one year reviewing all the bank records and accounting,**
31 **wrote to respondent that there was no evidence of fraud in her opinion. See Attachment 2.**
32 **Her view was supported by the evidence in her appellate brief dated August 21, 2015, that**
33 **“...the government’s ONLY evidence on this issue [valuation and accounting on where the**
34 **money went] was the testimony of Agent Gregory Fine. Agent Fine was trained in computer**
35 **science and had no training in any type of accounting or valuation let alone hedge fund**
36 **accounting and valuation...His charts [at trial] were no more helpful than having a clerical**
37 **employee enter selected data from some accounts on an Excel spreadsheet....” Attachment**
38 **3, page 10 bottom four lines to page 11 end of the first paragraph. Furthermore, “The**
39 **government understood it needed an expert and accordingly it intended to qualify and call**
40 **Daniel Wunderli as an expert to provide ‘financial analysis testimony’...He [Wunderli] was**
41 **not called...As the court acknowledged at the end of the case, ‘I have NO idea where the**
42 **money went that was invested” See Attachment 3, last paragraph of page 11 to the first**
43 **paragraph of page 12.**

- 1 E. At trial, the lay opinion testimony on accounting and valuation by an FBI agent carried the
2 imprimatur of the weight of FBI. Agent Fine's testimony focused on one Bank of America
3 (BoA) account, number ended in [REDACTED], see ER1984 to ER1991, Attachment 4. Even the
4 choice of the BoA [REDACTED] account was a fundamental mistake. That account was not an asset
5 holding/trading account. It was an office cashiering/administration account, as can be seen
6 from the totality of the account transactions. They include payments for rent, market
7 newsfeed, travel reimbursements, etc. As a common practice in the fund industry, the asset
8 holding/trading account was not given to investors directly, due to bank frauds and other
9 concerns such as the concentration of all asset in one account, one bank. Instead, a
10 cashiering account was given, as in this case, for limited partners' cash in. Furthermore, the
11 fund's use of the funds in that specific cashiering account is NOT restricted to only transfer
12 to the asset holding account, so long as investors cash-ins are duly recorded on the ledger.
13 This fund industry standard practice was also duly disclosed to members of the investment
14 club, as they themselves knew this practice in the administration of their own funds.
15 Defendant's appellate attorney, Mrs. Vicky Buchanan, financial expert and appellate
16 specialist, pointed out in her brief, "this [Agent Fine's testimony] is like using a person's
17 checking account to determine the person's total asset."
- 18 F. Furthermore, Agent Fine's presentation showed only Fu-Yuan Lin's cash in, from January 1
19 2005 to December 31 2005, totaled \$450,000. Agent Fine did not show the respondent's
20 total cash-in to the very same BoA [REDACTED] account during the same 2005 period in 12 separate
21 transfer-ins, totaled \$314,237. BoA [REDACTED] account was a cashiering office management
22 account; whenever the cash is low, respondent transferred cash in. Simple as that.
23 Respondent's trial attorney was surprised by such misrepresentation. He was not prepared.
24 He did not point out to the jury that respondent transferred to the same BoA [REDACTED] account
25 12 times, totaling \$314,237.
- 26 G. There is more. None of the close-to-five-million loss was used by respondent to enrich
27 himself. Instead, using the prosecution's own language, the money was "dissipated" and
28 the court said "I have NO idea where the money went." In another word, the limited
29 partners' cash in into the cashiering accounts was not used to benefit respondent. Although
30 on the surface the cash-in was not directly transferred to the asset holding account, it is in
31 accordance to fund industry practice, which was disclosed to limited partners; as long as the
32 ledgers of limited partners had recorded their cash ins and asset positions. The alleged
33 victims themselves presented to the court precisely their ledgers from the funds recording
34 their cash ins and asset holdings. Furthermore, the respondent had also "chipped in" to the
35 expenses, on the very same account Agent Fine testified, 12 time totaling \$314, 237. *Money*
36 *talks. The records indicate that respondent had followed the terms set out in PPMs, which*
37 *limited partners have received, understood, and accepted. Money talks, respondent showed*
38 *no nefarious intent.*
- 39 H. There is even more. Mr. Lin was an administrative member of respondent's funds. Mr. Lin
40 was a regular attendee in Asenqua/Fireside International Operations Committee meetings,
41 the operation decision making body of Asenqua/Fireside fund as a common practice in the
42 fund industry. See Attachment 5. Lin's own submission, when subpoena by defense
43 attorney, includes co-pay for his insurance and numerous reimbursements as Lin was
44 Asenqua/Fireside employee performing various works for respondent's funds.

- 1 I. In Lin's submission, the attendees of International Operations Committee included Dr.
2 Michael Chuang (PhD from Stanford University). One of the eight victims the Commission
3 has in document includes Dr. Doong, Dr. Chuang's wife. She was senior executive previously
4 in major US, British and Chinese companies and manager of her family's asset.
- 5 J. Therefore, respondent's 9th circuit appellate attorney, Mrs. Vicky Buchanan wrote to
6 defendant that she wished that the trial attorney has spent time to educate the court what
7 a hedge fund is. She wished that the trial attorney protested more robustly the admission
8 of Agent Fine, a layman, to testify on accounting matters. She also wished that the trial
9 attorney had called in multiple expert witnesses. No defense expert was ever called to trial,
10 as the trial record shows. See Attachment 6.
- 11 K. Respondent was arrested in Hong Kong in 2009, this has been mistakenly perceived as
12 respondent's act of escape. This misperception is furthest from the truth. Respondent was
13 born in Taiwan and speaks Mandarin Chinese. Not only both Taiwan and China have NO
14 extradition agreements with the US, respondent would have hidden better in both
15 countries. Respondent would have "escaped" to one of these two countries. Instead,
16 respondent was arrested in Hong Kong in 2009, a Cantonese speaking region HAVING
17 extradition agreement with the US. This fact and other Hong Kong records showed that the
18 respondent was in Hong Kong for business development purpose during 2008/2009 financial
19 crisis. (Hong Kong is an international financial center, in particular for Chinese banks.
20 Chinese banks were minimally impacted during financial crisis when US and western banks
21 were suffering devastating losses and great uncertainty of survivability. I conducted world-
22 wide teleconference from Hong Kong for Asenqua/Fireside group employees. The alleged
23 eight victims knew that.)
- 24 L. The term "materiality" in criminal fraud statute, as oppose to "reliance" and nefarious intent
25 in securities fraud, is confusing in legal practice as the term has been subject to so many
26 interpretations in case laws accumulated over decades. Lin and others, as insiders of the
27 fund and as respondent's colleague, *rely* on their own professional assessment of
28 respondent's investment and operation decision making. The *reliance* was never on which
29 famous international law firms represented which fund. The fact that professional investors
30 like Lin and the other seven, despite incredible amount of misrepresentations over the long
31 years of 2001 to 2009, according to their own claims and proffered by the prosecution
32 again, further proved that *reliance* was never on misrepresentations. The more "numerous
33 misrepresentation" they somehow overlooked from 2001 to 2009, the less credible these
34 investment professionals' claims become. As appellate counsel Mrs. Buchanan pointed out
35 "despite Hu's strenuous objection, the court modified the language [in relation to
36 materiality in such a way]" that was "particularly egregious" because "investors like Mr. Lin
37 and Mr. Verdiell ... [are] qualified investors who have significant financial resources,
38 sophistication and can undertake big risks." Attachment 3, Briefing Page 5, first paragraph.
- 39 M. It is respondent's defense that the evidence presented in the allegations in fact dovetailed
40 with the scenario of sophisticated investors crying foul when they suffered loss during the
41 financial crisis, misleading government agencies in the milieu of the time to act as their
42 collection agents. In multiple Supreme Court and the Committee's decisions, in cases like
43 this, government agencies, including the Commission, need not involve themselves.

1 N. Law professors have written that the way the fraud statutes were written, it often can be
2 easier for one to be convicted of criminal fraud than of securities fraud. The evidence in this
3 case not only does not show criminal intents “beyond reasonable doubt;” in fact, as
4 respondent’s appellate attorney pointed out, the only relevant evidence the government
5 had was an accounting layman FBI agent’s testimony on hedge fund accounting and
6 valuation, bearing the imprimatur of FBI institution credibility. Therefore, it is respondent’s
7 answer that the Commission should contact Ms. Buchanan, who had spent close to one year
8 going over all bank and accounting records seized by FBI in great detail, and should re-
9 consider this case in order to further clarify the issue of criminal fraud vs. securities fraud.
10 Not doing so may cause the Commission to rubber-stamp criminal courts’ decisions.

11
12 III.

13 Answering the Commission’s Order Section III.B, on whether the remedial actions appropriate
14 for public interest, respondent lists below from III.A to III.R the fact and the law in support of penalty, in
15 public interest, proposed by respondent in III.S.

- 16
17 A. The alleged eight victims are all accredited and qualified investors/professional fund
18 managers. None of the victim is the proverbial “widow and orphan.” This is not to diminish
19 respondent’s responsibility. Instead, even if the allegations were true, in considering public
20 interest, respondent’s offense was not against the widows and orphans of the public.
21 B. The respondent was born in Taiwan, not a native speaker of English, has overcome
22 incredible amount of barrier to achieve the performance that MIT admitted respondent into
23 its master degree program with full fellowship. Then based further on the merit of
24 academic performance, MIT granted respondent, with full tuition and stipend support, for
25 PhD study. MIT eventually granted respondent PhD degree in only four (4) years. All this is
26 for a kid from Taiwan, whose English was halting. See Attachment 7.
27 C. MIT’s admission evaluation includes not only academic performance, but also respondent’s
28 contribution to community. Respondent continues the service to the community from then
29 in Taiwan till now after release in San Francisco city. Respondent is now volunteering in
30 Hospitality House (for the homeless) in the Mission area of downtown San Francisco, and in
31 TechSF/Code Tenderloin (for the disfranchised) in the Tenderloin area. Respondent had also
32 participated and contributed in Lakeshore Avenue Baptist Church (LABC) Returning Citizen
33 project and survey.
34 D. After PhD study, the respondent was accepted as tenure-track faculty member of San Jose
35 State University. The respondent did not disappoint the university, as an assistant professor
36 respondent had brought in more than a quarter million dollars funding from National
37 Science Foundation and the semiconductor industry to support the education of students,
38 many are immigrants’ children in San Jose. See Attachment 8.
39 E. At SJSU, respondent developed a new technology and raised \$20 million from venture
40 capital and semiconductor industry to start a high tech firm, Apex, Inc., in Sunnyvale, San
41 Francisco Bay area. The great majority of the \$20 million funding comes from Far Eastern
42 countries, creating jobs and employment locally. Respondent’s fully-paid-for MIT study for

- 1 six years were indirectly supported by US tax payers, totaling order-of-magnitude \$1 million.
2 US tax payers thus received 20 to 1 return on their investment in the education of the
3 respondent. Respondent is grateful for a country that has shown such generosity to a
4 Taiwanese kid then (and now a US citizen).
- 5 F. Throughout the respondent's life, this criminally case is the only alleged misbehavior risen
6 to the felonious level. Respondent does not smoke, drink, nor ever uses any recreational
7 drugs.
- 8 G. Even during the most difficult time inside county jail, defendant had helped and consoled
9 several fellow detainees, who later wrote support letters for respondent post trial. See
10 Attachment 9.
- 11 H. At Federal Prison Camp Lompoc, respondent was head librarian and education clerk.
12 Respondent has been devoted to education and also ito advocating use of renewable
13 energy. See attached certificate of appreciation from the Bureau of Prison education
14 department for respondent's teaching Adult Continuing Education (ACE) Solar Photovoltaic
15 Energy classes to other inmates. Attachment 10.
- 16 I. In the job market, respondent is 58-year old, soon to be 60; with criminal record. Although
17 there should not be ageism in the job market, ageism is still a reality. Although there should
18 be no discrimination against formerly incarcerated according to Fair Chance law and
19 ordinance, such discrimination is still a reality.
- 20 J. Respondent has no asset, no house.
- 21 K. Respondent's job skill is atrophied after 10 years in prison, especially in the fast-changing
22 high-tech industry. The prospect of respondent receiving major income is practically zero.
23 Respondent has just duly completed a Job Readiness Program (JRP) from the Federal
24 criminal court. Attachment 11.
- 25 L. The Commission's disgorgement and interests order is considered as civil penalties,
26 according to *Kokesh v. SEC*, 137 S.Ct. 1635 and *Gabelli v. SEC*, 133 S.Ct. 1216. Furthermore,
27 SEC as a government entity seeking civil penalty is subject to 5-year time bar when a claim
28 based on fraud accrues. *Gabelli* further clarified "accrues" is when the defendant's allegedly
29 fraudulent conduct occurs, "That is the most natural reading of the statute," 1220, Section
30 IIA of *Gabelli*.
- 31 M. The Commission stated in Order Section II.A. 1, this case started from 2001; therefore, in
32 terms of disgorgement and its interest, it is time-barred.
- 33 N. Were the Commission to impose penalty of disgorgement and its interests, it will result in a
34 situation where (1). The victims receive twice their losses, one from federal court
35 restitution, the other from the Commission's disgorgement, (2). A penalty that the
36 respondent has no hope of ever paying, and even the on-going interest alone is way beyond
37 respondent's ability to catch up.
- 38 O. Penalty is to be proportional to the offense and at the level that it will not lead to the
39 financial ruin of the respondent. The principle of lenity, as established by Supreme Court
40 and various courts, should apply here.
- 41 P. During respondent's 10-year incarceration, respondent has abided all rules and committed
42 himself to learning and educating other inmates. Respondent has no prison rule violation in
43 county jail for 3 years; nor in federal camp, 7 years.

- 1 Q. Respondent respectfully ask the Commission to consider the remedial actions in the
2 principle of lenity and in the practical need of allowing respondent to re-enter the society to
3 become a productive citizen again, with sufficient income accumulated for retirement fixed
4 income in the limited remaining years of productivity, so that respondent does not become
5 burden to the society in terms of using public welfare.
6 R. In public interest, respondent proposes that the Commission impose (1) a \$10,000 civil
7 penalty in totality, no disgorgement nor its interests; (2). Three-year ban from the industry,
8 concurrent with respondent's three-year probation.

9

10

11

12 Respectfully,

13 /s/

14 Date: January 6, 2020

15 Albert K. Hu

16

17

Attachment 1

**Respondent's Answer to the Commission's Order Instituting
Administrative Proceeding File No. 3-19510**

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2 CAREY & CAREY
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8 jf@careyandcareylaw.com

9 Attorneys for Defendant ALBERT KEJENG HU

10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 UNITED STATES OF AMERICA,)

CASE NO. CR 09-00487 RMW

14 Plaintiff,)

DEFENDANT ALBERT HU'S
EXHIBIT LIST FOR TRIAL.

15 vs.)

16 ALBERT KEJENG HU,)

Trial Date: June 4, 2012

Time: 1:30 p.m.

17 Defendant.)

Judge: Hon. Ronald M. Whyte

18 Defendant Albert Hu hereby submits his exhibit list for trial, reserving the right to
19 amend or supplement the list as circumstances dictate:

- 20 1. Checks from Asenqua to Bob Lin;
- 21 2. E-mails from Linda Danesh's computer;
- 22 3. Documents supplied by Sean Varah to the SEC, in response to the SEC
23 subpoena;
- 24 4. Michael Choung's e-mails to and from Albert Hu;
- 25 5. Wiring records of Bob Lin's transmission of money into the Fireside account;
- 26 6. The 4 books authored by Bob Lin (in Chinese).
- 27 7. Attorney billing statements and records of legal work performed by law firms
28 on behalf of Asenqua entities or those affiliated with Mr. Hu;
8. The FBI 302 reports for each witness identified in the Government's witness

Attachment 2

**Respondent's Answer to the Commission's Order Instituting
Administrative Proceeding File No. 3-19510**

November 21, 2016

CONFIDENTIAL ATTORNEY CLIENT PRIVILEGED

Mr. Albert Ke-Jeng Hu, Reg. No. [REDACTED]
Federal Prison Camp
[REDACTED] [REDACTED]
Lompoc, CA [REDACTED]

RE: United States v. Hu
Appeal No. 13-10039

Dear Mr. Hu:

[REDACTED]

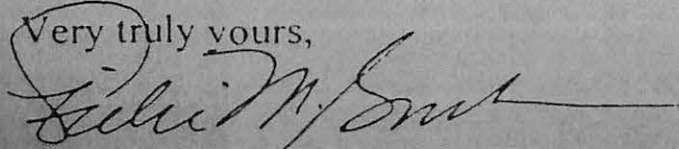
Without Agent Fine's testimony, it is my opinion there was no evidence of fraud. [REDACTED]

[REDACTED]

Please let me know if you have any questions. [REDACTED]

[REDACTED]

Very truly yours,



Vicki Marolt Buchanan

Attachment 3

**Respondent's Answer to the Commission's Order Instituting
Administrative Proceeding File No. 3-19510**

such relationship between Mr. Hu and the two investors, Mr. Lin and Mr. Verdiell.

CONCLUSION

For the foregoing reasons, Albert Ke-Jeng Hu requests the judgment, dated January 13, 2013 and the restitution order dated August 26, 2013 as amended September 5, 2013 be vacated and the case be remanded for a new trial or for resentencing and for such other and further relief as this Court deems just.

Dated: August 21, 2015

s/ Vicki Marolt Buchanan
VICKI MAROLT BUCHANAN
Attorney for
ALBERT KE-JENG HU

those particular representations did not influence their decisions. (GAB 30.) As the government concedes, there were arguments and evidence on both sides of the issue. That is precisely why the failure to accurately instruct the jury was not harmless – there was evidence that would have supported a contrary finding if the instruction had been correct. *See, Neder v. United States*, 527 U.S. 1, 19 (1999).

II. Improper Opinion Testimony of the Value of the Investors' Share of the Hedge Funds Was the Only Evidence that the Investors Were Defrauded.

The ultimate issue in this case was whether Mr. Lin and Mr. Verdiell were defrauded. As the government summarized in its brief, the essence of the case was that Mr. Hu “failed to invest the victims’ money as promised, failed to provide them with the interest they had been guaranteed, and failed to repay their principal when requested.” GAB 8; *see*, ER 1452. Therefore, one of the critical questions was whether the values of Mr. Lin and Mr. Verdiell’s shares in the hedge funds, as represented on the various income statements, were accurate.

This was the ultimate issue and the government’s only evidence on this issue was the testimony of Agent Gregory Fine. Agent Fine was trained in computer science and had no training in any type of accounting or valuation let alone hedge fund accounting and

valuation. (ER 3:426.) Agent Fine’s preparation for his testimony was to review “some of the money” and “a portion of the financial exhibits².” (ER 8:1406, 3:429.) He prepared charts summarizing his review. His charts were no more helpful than having a clerical employee enter selected data from some accounts on an Excel spreadsheet. (ER 8:1406.)

Based on Agent Fine’s summaries, the government asked him if the financial statements given to Mr. Lin and Mr. Verdiell reflected the true value of their holdings in the funds. (ER 3:484.) Mr. Hu objected to Mr. Fine testifying to the value of their holdings. (ER 3:484.) The court overruled the objection. (*Ibid.*) Agent Fine testified, “I do not think they accurately reflect the balance of Mr. Verdiell’s and Mr. Lin’s investment.” (*Ibid.*)

Agent Fine’s value testimony was clearly a subject for a qualified expert under Fed. R. Evid. 702. The government understood it needed an expert and accordingly it intended to qualify and call Daniel Wunderli as an expert to provide “financial analysis testimony

² The financial documents admitted at trial were Exhibits 220-252, 257, 276, and 278, which exceed 7,500 pages. Because of their volume, are not contained in the excerpts of record. It is unknown whether these are all the financial records related to the hedge funds during the time of Mr. Lin and Mr. Verdiell’s investments.

regarding, among other topics, what the defendant did with investors' funds [to] assist the jury to determine a number of facts in issue, such as whether the defendant knowingly and intentionally defrauded those investors." (ER 8:1416.) He was not called and without his testimony the critical question was never answered. As the court acknowledged at the end of the case, "I have no idea where the money went that was invested." (ER 1:10.)

The government responds that Agent Fine's testimony was admissible as lay opinion testimony. (GAB 23.) The government's cases illustrate why Agent Fine's testimony did not qualify as any kind of admissible opinion testimony. With regard to *Teen-Ed, Inc. v. Kimball International*, 620 F.2d 399, 403 (3d Cir. 1980), the government argues that "the court allowed the accountant for Teen-Ed to offer his opinion to lost profits because it was based on his knowledge of Teen Ed's books." Similarly unhelpful is *Mississippi Chemical Corp. v. Dresser-Rand Company*, 287 F.3d 359, 373-74 (5th Cir. 2002). In that case, an accountant was allowed to testify as to lost profits because of his direct knowledge of the business's accounting. In this case, Agent Fine, who testified about the hedge fund's value was not an accountant, did not work for the hedge fund, had no

existence of these particular advisors and employees were critical to these investors, they would have contacted one of them at some point over the years. It is particularly odd that Mr. Lin, who worked for the hedge funds, was not curious why he had never met or seen any of these "critical" employees.

There is no evidence that "Hu used their names to make the funds seem legitimate when it fact they were not" as alleged by the government. (GAB at 5.) That conclusion is pure speculation. The use of the false names does not prove the funds did not exist nor were not legitimate. All it shows is that the consultants and employees were different from the ones listed in the standard form documents. The question is whether those false representations were material.

Case law defines materiality to be whether the statement has a "natural tendency to influence or be capable of influencing, the decision of the decisionmaking [sic] body to which it was addressed." *United States v. Gaudin*, 515 U.S. 506, 509 (1995). Mr. Hu requested that the court use this precise language in the materiality instruction. (ER 8:1412-1413.) Over Mr. Hu's strenuous objection, the court modified the language to change influencing "the decision of the decisionmaking [sic] body to which it was addressed" to influencing

“a potential investor to depart with money.” (ER 2:352.) The difference in language is improper in any situation, but the change is particularly egregious here because the decision makers are not just any “potential investor.” Investors like Mr. Lin and Mr. Verdiell must be qualified investors who have significant financial resources, sophistication, and can undertake big risks. What would influence their decision to invest is substantially different from what would influence the decisions of a novice investor making an ordinary investment.

Rather than address the changed portion of the instruction, the government focuses on the portion of the instruction that talks about the term “capable of influencing” and refers to *United States v. Peterson*, 538 F.3d 1064 (9th Cir. 2008). (GAB at 29.) Mr. Hu does not question this portion of the instruction because it is from *Gaudin*. In addition, *Peterson* reaffirms that in conjunction with a materiality instruction, it is “preferable for the district court to use the definition of materiality approved by the Supreme Court in *Gaudin*.” *Peterson*, 538 F.3d. at 1071.

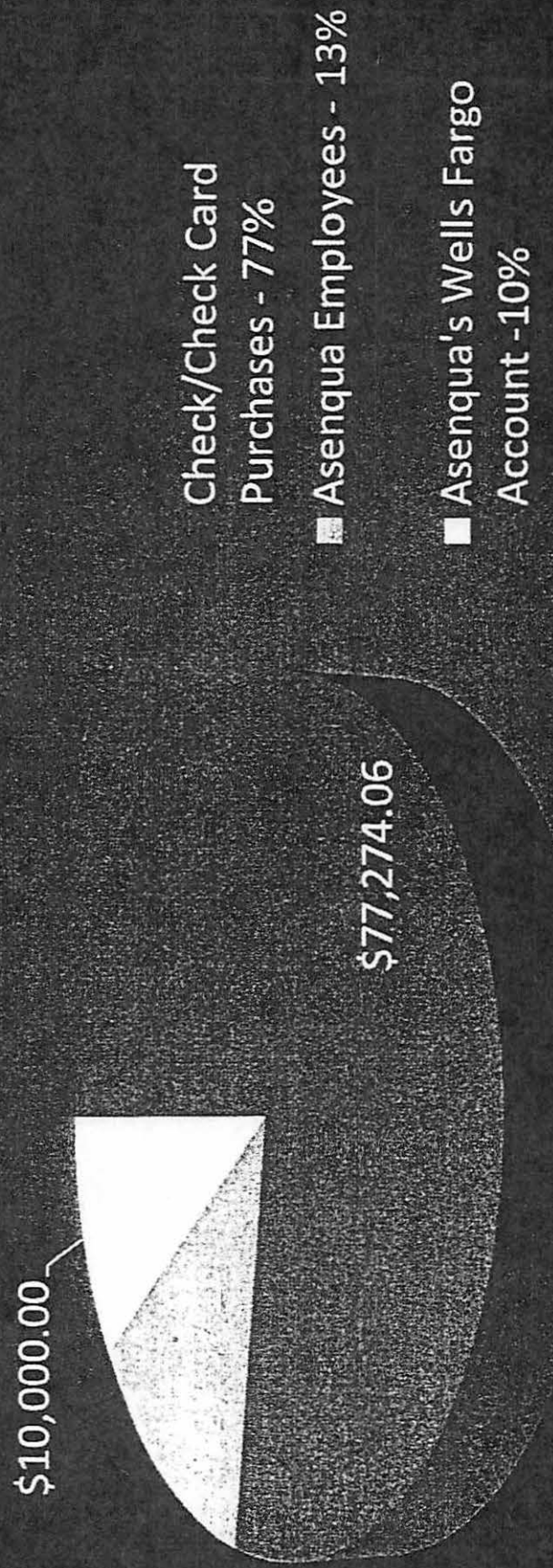
The government next refers to dicta from *United States v. DeGeorge*, 380 F.3d 1203, 1218 (9th Cir. 2004) that “DeGeorge has

Attachment 4

**Respondent's Answer to the Commission's Order Instituting
Administrative Proceeding File No. 3-19510**

Distribution of [REDACTED] 1st \$100,000 Investment

Wire Transfer on February 8, 2005

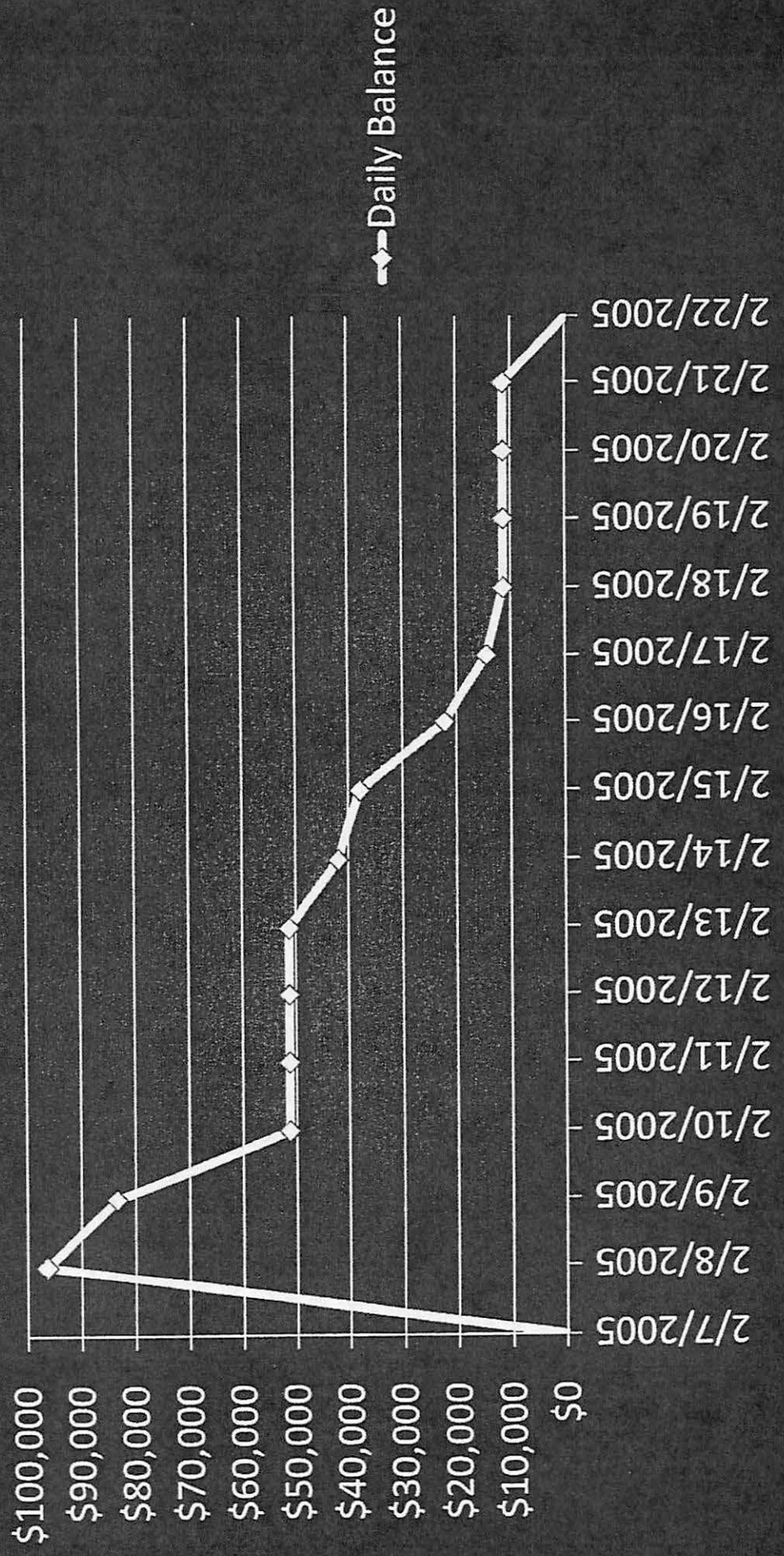


*\$98.78 was used to replenish the overdrawn account
** \$70.00 was spent in bank fees

Bank of America Account [REDACTED]

Daily Balance After Receiving

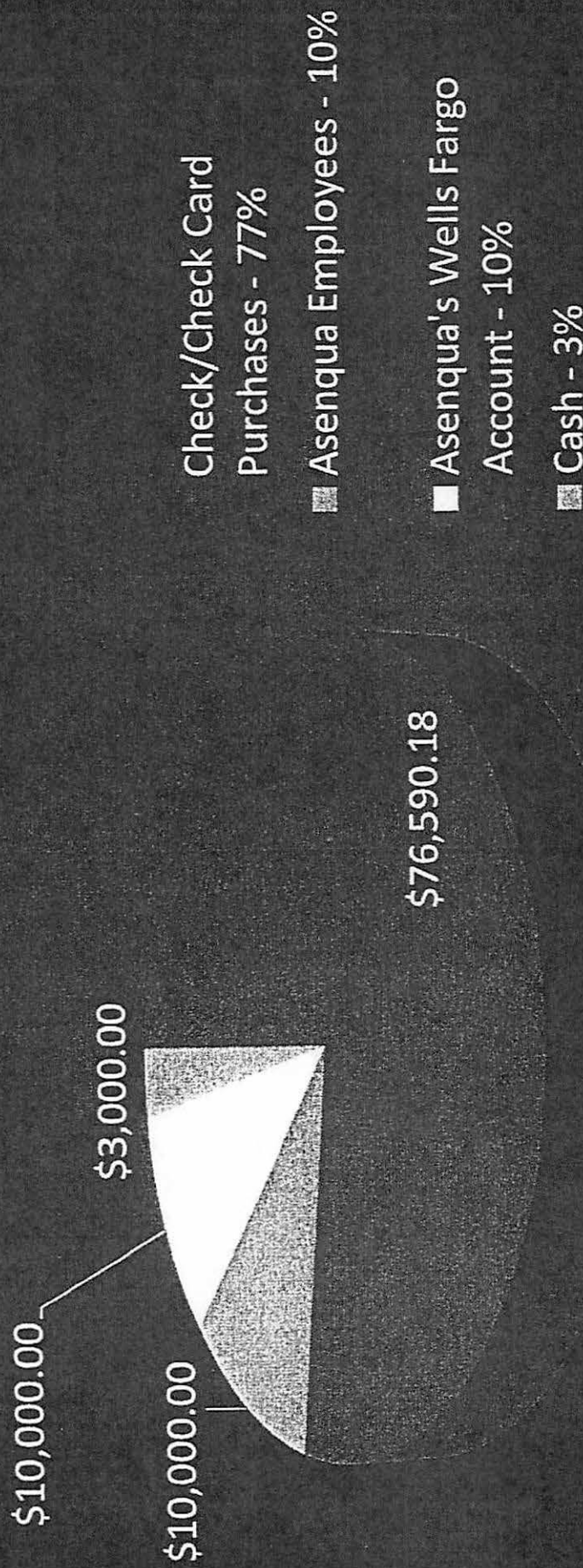
[REDACTED] \$100,000 Wire on February 8, 2005



Total Elapsed Time = 2 weeks

Distribution of [REDACTED] 2nd \$100,000 Investment

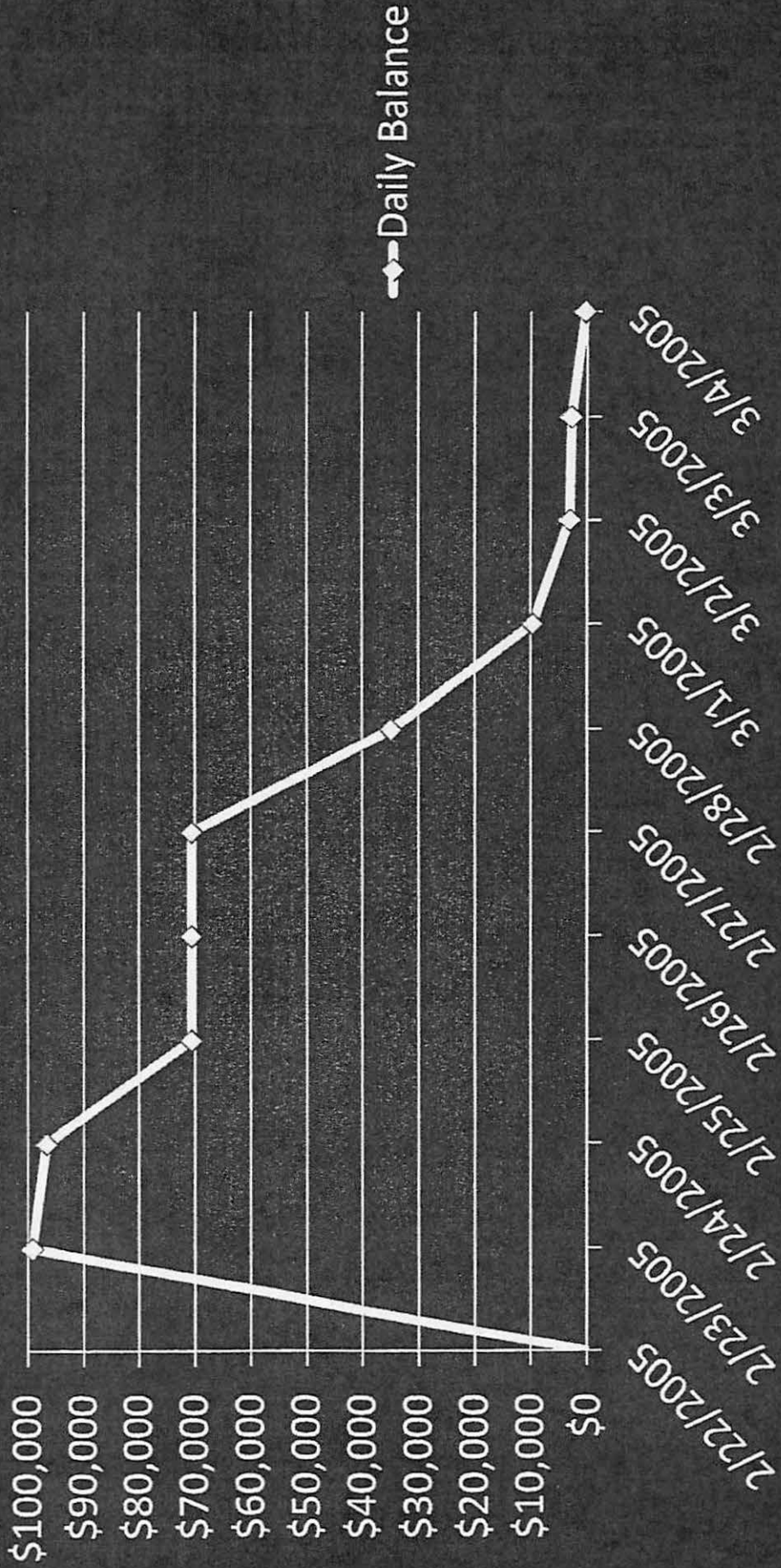
Wire Transfer on February 23, 2005



* \$207.82 was used to replenish the overdrawn account

** \$202.00 was spent in bank fees

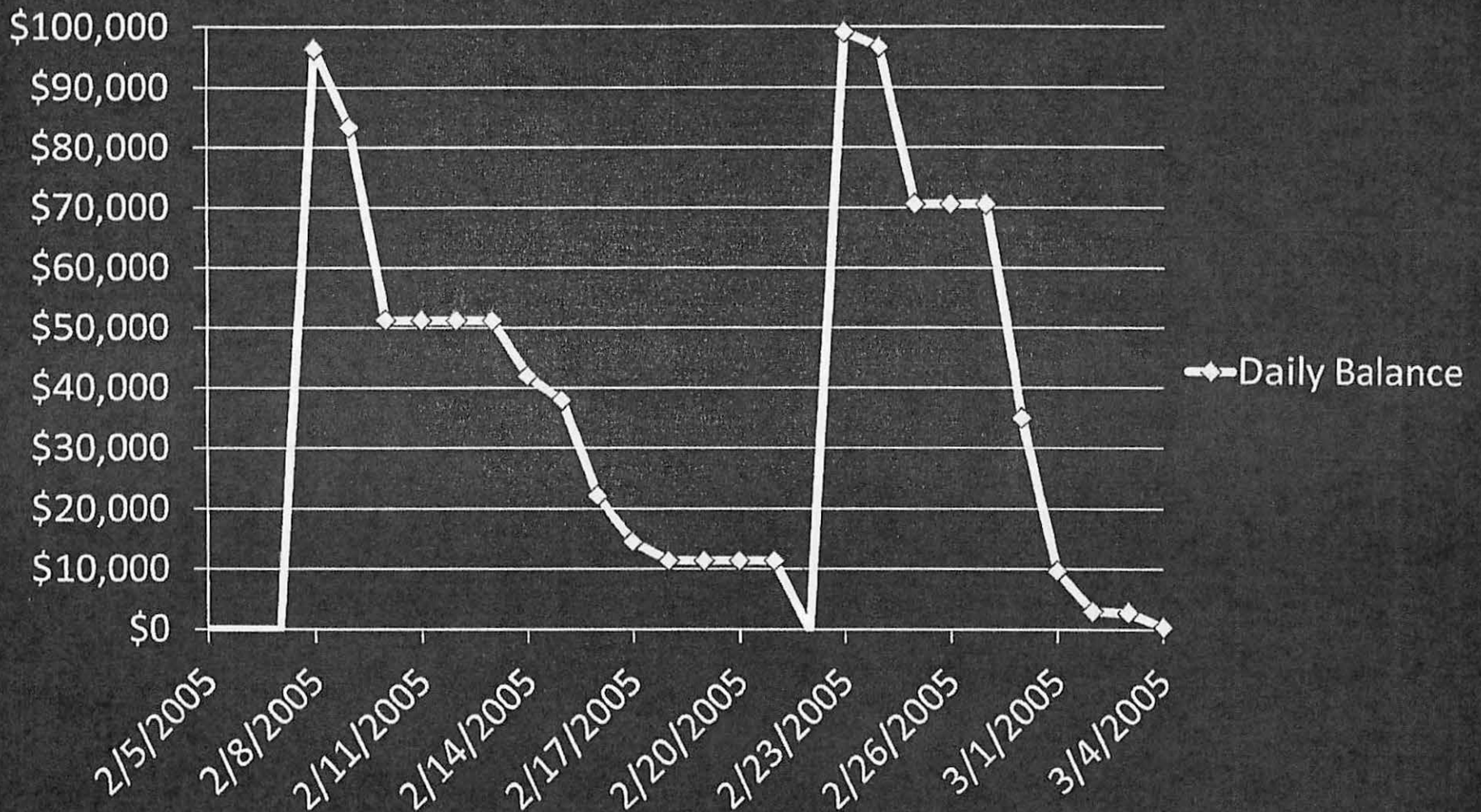
Bank of America Account
Daily Balance After Receiving
\$100,000 Wire on February 23, 2005



Total Elapsed Time = 10 days

Bank of America Account [REDACTED]

Daily Balance from February 5, 2005 to March 4, 2005



Bank of America Account

Daily Balance After Receiving

\$250,000 Wire on July 6, 2005



Total Elapsed Time = 3 weeks

* \$159.53 remained as of 7/26

Miscellaneous Diversions of [REDACTED] July 6, 2005 \$250,000 Investment

Description	Amount
Asenqua Ventures Management First Republic Account	\$7,500
Benf: [REDACTED].sv	\$5,200
[REDACTED]	\$5,000
[REDACTED]	\$5,000
[REDACTED]	\$5,000
Ld Services	\$4,300
[REDACTED]	\$2,500
Asenqua's Wells Fargo Account	\$2,000
Cash	\$907.64
Bank Fees	\$360

Attachment 5

**Respondent's Answer to the Commission's Order Instituting
Administrative Proceeding File No. 3-19510**

AV International Ops

AV-9
July 27th, 2005

Harvard B School
McKenzie
Forms

Attendees: Albert Hu, Sean Varah, Bob Lin, Steve Bond, Linda Danesh

1. Approval of Current Meeting Agenda/Previous Meeting Minutes
2. Review of Previous Actions Items/Project Status

a. Pool of Portable GMs, CFOs, and CEOs

Building a roster.
Sales & Mktg
Operation

b. Silicon Valley office space

Asian office

Research
Fileside Mgmt

3. Agenda Beijing? Singapore? Shanghai? Hong Kong?
offshore Co. → 9/8/05 open.

a. Division Meetings (monthly): vision, strategy, projects, budget, performance evaluation

Venture
Hedge
PE
operation.

b. Summer Asia Trip Follow up

EP0CH/NET Radiant CTrip
Santrum PHS/enai CITIC
Herbang Academy/ICT

c. Next Asia trip planning

— Fund raising; PE; offices

AsiaStar

d. Scheduling for August investment meeting

8/24

e. Others

4. Discussions
5. New Items
6. Adjourn

Piper Jaffery

JB

Lehman Brother

JBoy

- Alcate)

- Integrate operations

AV International Ops

AV-8
July 5th, 2005

Attendees: Albert Hu, Sean Varah, Michael Chuang, Bob Lin, Dennis Kam,
Steve Bond, Linda Danesh

1. Approval of Current Meeting Agenda/Previous Meeting Minutes

2. Review of Previous Actions Items/Project Status

a. Pool of Portable GMs, CFOs, and CEOs

→ Angel Group?
↳ Mentor/Advisor

b. Silicon Valley office space

c. Web hosting, email hosting

3. Agenda

a. Welcoming Accelera Venture (Dennis)

b. Welcoming Bob Lin as Venture Partner

c. Division Meetings (monthly): vision, strategy, projects, budget,
performance evaluation

i. Venture fund division (Sean) (Accelera Ventures in HK)
Digital life style H/SW

ii. Research division (Steve)

iii. Operations division (Linda)

iv. Geography: China division (Andy)

v. ASEAN (headquartered in Singapore) division: (Dennis,
Terrance)

vi. India division: (Divesh, Ashish)

d. Summer Asia Trip

e. July Investment meeting

LIN NEW - 0304

AsenQua, Inc.
 50 California St, Suite 1500
 San Francisco, CA 94111

Deposited
3/1/2006

Statement No.

EXPENSE STATEMENT

Employee

Name	Bob Lin	Emp#	
SSN		Position	
Department		Manager	

Pay Period

From	11/28/2005
To	12/9/2005

Date	Account	Description	Equipment/		Phone/Fax/ Internet	Entertainmen	Hotel	Total
			Transport	Meals				
11/28/05		Home - SFO Airport	\$50.00					\$50.00
11/28 ~ 12/09		Air Ticket (SFO - CHN) Round Trip	\$4,270.00					\$4,270.00
		Self- Paid	-\$1,493.00					-\$1,493.00
11/29 ~ 12/6		Hotel in Beijing (8 days)			Included		\$2,300.00	\$2,300.00
		Self- Paid					-\$2,300.00	-\$2,300.00
12/06/05		Phone Card Charge			\$100.00			\$100.00
12/06/05		Air Ticket (Beijing - Shnaghal)	\$102.50					\$102.50
12/07 ~ 12/09		Shanghai Shangria Hotel & Misc.			Included in hotel		\$926.00	\$926.00
11/4 ~ 11/5		Tax (various meeting, RMB165)	\$43.00					\$43.00
Less than 2/3 of Int'l tickets charged; Less than 1/3 Hotel charged								
			# \$2,972.50 #	\$0.00	\$100.00	\$0.00	\$926.00	\$3,998.50
							Sub Total	\$3,998.50
							TOTAL	\$3,998.50

Approved By

Check All Applied

Reimbursement
 Payment Needed

Payment Note

Check Number: _____
 Date: _____

Office Use Only

1 IN NEW - 007

Hotel



浦东香格里拉大酒店
Pudong Shangri-La
SHANGHAI

Out-of-Pocket for
10-~~7~~ Trips; Only
3 days charged Asengua.

Less than $\frac{1}{3} \approx \underline{\underline{\$925}}$

1 IN. NEW

Mr Bob Fu Yuan Lin
Acorn Campus
310 University Ave
Suite 202

Palo Alto
United States CA

INFORMATION

Room No : 1456
Person(s) : 1
Arrival : 06.12.05 14:54
Departure : 09.12.05 12:01
Cashier/No : [REDACTED]
Page(s) : 1

FRP Type : UMP

Pudong Shangri-La, Shanghai, 09.12.05 08:44

DATE	TEXT	REP#	TIME	DEBITS	CREDITS
06.12.	Transportation a/p-htl	[REDACTED]	15:24	400.00	
06.12.	-Room Charge		00:20	1910.00	
06.12.	-Surcharge		00:20	286.50	
07.12.	Laundry & Valet #1456 : CHECK # [REDACTED]	[REDACTED]	11:19	299.00	
07.12.	-Room Charge		01:28	1910.00	
07.12.	-Surcharge		01:28	286.50	
08.12.	In Room Dining-DN #1456 : CHECK # [REDACTED]	[REDACTED]	22:32	112.70	
08.12.	-Room Charge		23:30	1910.00	
08.12.	-Surcharge		23:30	286.50	
	Total			7401.20	0.00
	Balance			7401.20	

Mileage will be credited to your "Mileage Plus (United Airlines)" account: [REDACTED]

08.11.05

持卡人存根
CARDHOLDER COPY

CHINA WORLD HOTEL
FRONT OFFICE CASHIER
THANK YOU!!!

MEMORIAL NO. [REDACTED]
MEMORIAL NO. [REDACTED]

ISSIP TYPE / NUMBER [REDACTED]

TRANS. TYPE / FL. TIME [REDACTED]
EXP. DATE [REDACTED]
TRACE NO. [REDACTED]
DATE / TIME / DL. 22+ 05 07:57
1188 1188
REF. NO. [REDACTED]

3951.23

China World Hotel
AT CHINA WORLD TRADE CENTER
A SHANGHAI HOTEL

MACROIMAGE SUPER HIGH SPEED OF ISLANDS WATER SERVICES

China World Hotel
AT CHINA WORLD TRADE CENTER
A SHANGHAI HOTEL

Beijing Hotel 1

LIN NEW - 020

T I O N
0514
1
20/07/05 15:32
23/07/05

Cashier/No : [REDACTED]
Page(s) : 1
FFP Type : QNM

China World Hotel, Beijing, 22/07/05 07:55

DATE	TEXT	REF#	TIME	DEBITS	CREDITS
20/07	-Room Charge		00:57	1461.25	
20/07	-Service Charge		00:57	219.19	
21/07	SCENE a Cafe - B'fast	[REDACTED]	08:05	90.80	
	->#514 : CHECK # [REDACTED]				
21/07	Laundry & Valet #514 : CHECK [REDACTED]	[REDACTED]	10:22	251.90	
21/07	Room Service - Lunch	[REDACTED]	13:01	144.90	
	->#514 : CHECK [REDACTED]				
21/07	Paid Out Cash Advance	[REDACTED]	13:28	100.00	
21/07	Misc Charge 2.75% comm	[REDACTED]	13:29	2.75	
21/07	-Room Charge		01:05	1461.25	
21/07	-Service Charge		01:05	219.19	
	Total			3951.23	0.00
	Balance			3951.23	

On your next visit, enjoy our Value Rate package from US\$360
Includes free upgrade to a Deluxe Room, round trip airport transfer, daily breakfast,
laundry and valet service, late check-out and free local calls.

Attachment 6

**Respondent's Answer to the Commission's Order Instituting
Administrative Proceeding File No. 3-19510**

February 4, 2016

Albert Ke-Jen Hu, Reg. No. [REDACTED]
[REDACTED]
Federal Correctional Institution
[REDACTED]
Lompoc, CA [REDACTED]

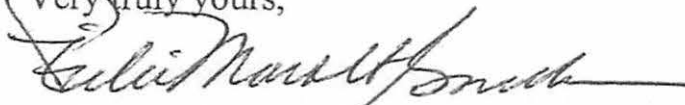
RE: United States v. Hu
Appeal No. 13-10039

Dear Mr. Hu:

[REDACTED]

As I reflected on the case before oral argument, I wish your attorney had spent more time educating the court on hedge funds. This is a case where you should have had a couple experts. I wish your attorney had made a more specific objection on the use of Agent Fine's testimony.

Very truly yours,


Vicki Marolt Buchanan

Attachment 7

**Respondent's Answer to the Commission's Order Instituting
Administrative Proceeding File No. 3-19510**

MASSACHUSETTS INSTITUTE OF TECHNOLOGY

UPON THE RECOMMENDATION OF THE FACULTY
HEREBY CONFERS ON

Albert Ke-Jeng Hu

THE DEGREE OF
DOCTOR OF PHILOSOPHY

IN RECOGNITION OF SCIENTIFIC ATTAINMENTS AND THE ABILITY
TO CARRY ON ORIGINAL RESEARCH AS DEMONSTRATED BY A THESIS
in the field of *Mechanical Engineering* entitled

*An Optimal Bayesian Process Controller for
Flexible Manufacturing Process*

GIVEN THIS DAY UNDER THE SEAL OF THE INSTITUTE AT CAMBRIDGE
IN THE COMMONWEALTH OF MASSACHUSETTS

SEPTEMBER 16, 1992

Chinnouch
SECRETARY



Charles M. Vest
PRESIDENT

Attachment 8

**Respondent's Answer to the Commission's Order Instituting
Administrative Proceeding File No. 3-19510**



TIM KAO—SPARTAN DAILY

Dr. Albert Hu, center, was awarded a research grant for the mechanical engineering department. Steve Wong, left, and He Du are members of Hu's research team. Hu said that without the help of his research team, he would not have received the grant.

Engineering professor keeps SJSU above competition

By Laurel Anderson
Spartan Daily Staff Writer

SEMATECH awarded a \$182,427 research contract to assistant professor Albert Hu, Ph.D., for the mechanical engineering department.

"He practically single-handedly got the grant," William Seto, a mechanical engineering professor said. "We're very happy for him."

SEMATECH is a consortium of the Department of Defense and major US semiconductor companies that include IBM, Intel, Motorola, Hewlett-Packard and AT&T.

SEMATECH distributes money to universities and national labs around the US for research.

Hu is supervising the two-year project as the principal investigator.

"Professor Albert Hu was chosen as he had a part in developing the technology as a student, and because he also worked at

polished against a rotating abrasive pad so that an exact thickness of the wafer's coating can be removed. This removal exposes the tops of "pins" which are then able to make contact with a subsequent deposition of semiconducting material," Hurwitz said.

"Layers of circuitry can be stacked on a semiconductor — the "pins" thus play an important role in linking those layers. Control of coating removal to within tight tolerances is critical to next-generation devices.

"The significance of this project is

"Traditionally San Jose State (was) a teaching college," Hu said. "But with SJSU located in Silicon Valley, we should take advantage of it."

'The significance of this project is SJSU has long been under the shadow of Stanford and UC Berkeley and sometimes SJSU has been perceived as inferior in terms of quality of education.'

Arnold Hurwitz
SEMATECH

The National Semiconductor Corp. Fairchild Research Center located in Santa Clara is providing \$25,000 worth of support for the contract in areas such as equipment and time.

The center is providing the grant in terms of equipment use because the cost of buying equipment is too high, Hu said.

The research will be conducted at SJSU and the experiments will take place at the center.

Attachment 9

**Respondent's Answer to the Commission's Order Instituting
Administrative Proceeding File No. 3-19510**

December 10th, 2012

Dear Honorable Judge Whyte,

I came to know Dr. Albert Hu during a difficult period of my life.

I have been working in Semiconductor Industry in Silicon Valley in a past 15 years.

While we met, we reminisced the rises, falls and changes in Semiconductor Industry

In the past 15 years. He made a point of engaging me in conversations, which helped me tremendously.

I have no knowledge of Dr.Hu's case;

He came across to me, however, to be a simply a good -nature engineer, researcher, scientist ,following

The physics and financial rules as he understand them.

I believe that Albert Hue will continue to be a valuable contributing member of the global Semiconductor Industry and the Silicon Valley community here.

If you have any questions , I can be reached at [REDACTED].

Respectfully,

Leon Baker

12/10/2012

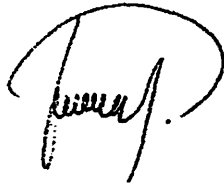
A handwritten signature in black ink, appearing to read 'Leon Baker', with a large, stylized initial 'L'.

EXHIBIT "A" TO FONG DECL.

John Gao

San Jose, CA

Dec. 20, 2012

Honorable Judge Whyte,

I am a researcher at a mobile technology company. I came to know Dr. Albert Hu when I had a difficulty in my family life.

Albert was pleasant and helpful. In his insightful replies to the questions I had then, I found sound and wise way to the solution of my difficulty.

Albert volunteered to talk with me and never imposed on me. To have someone considerate to talk to, it in itself was already a great help. His words reflected good sense of knowledge and life experience.

I have no knowledge of the case against him, I believe, however, he will be a valuable and positive addition to the community here.

If you have further questions, I can be reached at Tel: [REDACTED] Email: [REDACTED]@yahoo.com.

Sincerely,



John Gao

EXHIBIT "A" TO FONG DECL.

[REDACTED]
Sunnyvale, CA [REDACTED]

Honorable Judge Whyte,

Mr. Albert Hu gave me a lot of help when I needed the most. I don't have enough legal knowledge about his case; however, I know he worked very hard to clear his name.

He is concerned about his teenage sons and their education. I hope your honor can give him minimum sentence by law so, that he can go home and be with his family as soon as possibly. If you have any question you can reach me at: [REDACTED]

Sincerely,

Tom Lo

Tom Lo

EXHIBIT "A" TO FONG DECL.

Ning Neil Yu

Stanford, CA

28 November 2012

Honorable Judge Whyte,

My name is Ning Yu. I am currently a fellow at the Economics Department of Stanford University.

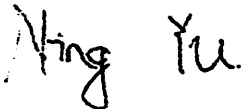
I met Albert Hu at the trough of my life in early 2012. I was fortunate to meet him during those worst days; and now the domestic violence case against me was dismissed. He was compassionate and patient. He counseled me and helped me by listening to me and gave me sound and practical advices.

I have no knowledge of his case. However, Albert as a person had helped me when I was in need without asking anything in return. He is also modest and insightful.

I can be reached at [REDACTED]@stanford.edu or [REDACTED]

I will be happy to answer any question you may have.

Sincerely



N. Neil Yu

PhD Candidate

Stanford University

EXHIBIT "A" TO FONG DECL.

Attachment 10

**Respondent's Answer to the Commission's Order Instituting
Administrative Proceeding File No. 3-19510**

Certificate of Appreciation

██████████
Lompoc, California
Education Department

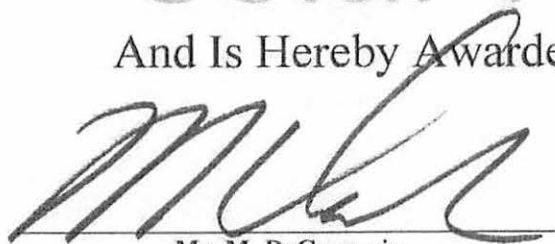
This Certificate Recognizes That

Albert Hu

Has Instructed the 24 Hour Course Entitled

Solar Photovoltaic

And Is Hereby Awarded This Certificate On March 8, 2014.



Mr. M. DeGregorio
Adult Continuing Education Coordinator



Mr. Matthew S. Hoskins
Assistant Supervisor of Education

Certificate # 13160-111

Attachment 11

**Respondent's Answer to the Commission's Order Instituting
Administrative Proceeding File No. 3-19510**



Community. Education. Empowerment.

Job Readiness Program Certificate of Completion

THIS IS AWARDED TO

Albert Hu

For distinguished commitment and participation in the four-week Code Tenderloin Job Readiness program, and completing 48 hours of personal and professional development, resume and interview preparation, and technology industry networking.

Donna Hilliard, Director of Operations

Del Seymour, Founder

Certificate of Service

The filing Respondent's Answer to SEC Order Instituting Administrative Proceeding File No. 3-19510 In
Re: Albert K. Hu is served by **means of Certified Mail** to:

Office of the Secretary
US Securities and Exchange Commission
100 F Street NE, Mail Stop 1090
Washington, DC 20549

And,

John S. Yun
Division of Enforcement
Securities and Exchange Commission
44 Montgomery St., Suite 2800
San Francisco, CA 94104

On January 6, 2020



Albert K. Hu

Respondent