



## II. CONSENTS AND AGREEMENTS

To resolve the remaining issues of the amounts of restitution, disgorgement, and civil monetary penalty (as provided in the Consent Order), without any further judicial proceedings, Defendant Seibert:

1. Consents to the entry of this Supplemental Consent Order Assessing Restitution and a Civil Monetary Penalty Against Defendant Seibert (“Supplemental Consent Order”);
2. Affirms that he has read and agreed to this Supplemental Consent Order voluntarily, and that no promise, other than as specifically contained herein, or threat, has been made by the CFTC or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Supplemental Consent Order;
3. Acknowledges service of the summons and Complaint;
4. Admits the jurisdiction of this Court over him and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2018);
5. Admits the jurisdiction of the CFTC over the conduct and transactions at issue in this action pursuant to 7 U.S.C. § 13a-1;
6. Admits that venue properly lies with this Court pursuant to 7 U.S.C. § 13a-1(e);
7. Waives:
  - (a) Any and all claims that he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2018) and 28 U.S.C. § 2412 (2018), and/or the rules promulgated by the Commission in conformity therewith, Part 148 of the Regulations, 17 C.F.R. pt. 148 (2020), relating to, or arising from, this action;
  - (b) Any and all claims that he may possess under the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, tit. II, §§ 201–53, 110 Stat. 847, 857–74 (1996), (codified as amended at 28 U.S.C. § 2412 and in scattered sections of 5 U.S.C. and 15 U.S.C.), relating to, or arising from, this action;

(c) Any claim of Double Jeopardy based upon the institution of this action or the entry in this action of any order imposing a civil monetary penalty or any other relief, including this Supplemental Consent Order; and

(d) Any and all rights of appeal from this action;

8. Consents to the continued jurisdiction of this Court over him for the purpose of enforcing the terms and conditions of the Consent Order and Supplemental Consent Order and for any other purpose relevant to this action even if Defendant Seibert now or in the future resides outside the jurisdiction of this Court;

9. Agrees that he will not oppose enforcement of this Supplemental Consent Order by alleging that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure and waives any objection based thereon;

10. Agrees that neither he nor any of his agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the Complaint or the Findings of Fact or Conclusions of Law in this Supplemental Consent Order, or creating or tending to create the impression that the Complaint and/or this Supplemental Consent Order is without a factual basis; provided, however, that nothing in this provision shall affect his: (a) testimonial obligations, or (b) right to take legal positions in other proceedings to which the CFTC is not a party. Defendant Seibert shall comply with this agreement, and shall undertake all steps necessary to ensure that all of his agents or employees under his authority or control understand and comply with this agreement; and

11. In *United States v. Seibert*, No. 1:21-CR-00104-RP (W.D. Tex.) (“Criminal Action”), Seibert pleaded guilty to violating 18 U.S.C. §1343 and 18 U.S.C. §1957, and in connection with that plea, on June 3, 2021, entered into a plea agreement [Doc. 3] whereby Seibert agreed and stipulated to the facts recited in the plea agreement and in the Felony Information [Doc. 1] incorporated therein by reference, copies of which are attached as Exhibits

A and B to this Supplemental Consent Order, and those same facts are admitted as if set forth in this Supplemental Consent Order;

12. Agrees to provide immediate notice to this Court and the CFTC by certified mail, in the manner required by paragraph 22 of Part V. of this Supplemental Consent Order, of any bankruptcy proceeding filed by, on behalf of, or against him, whether inside or outside the United States; and

13. Agrees that no provision of this Supplemental Consent Order shall in any way limit or impair the ability of any other person or entity to seek any legal or equitable remedy against Defendant Seibert in any other proceeding. The Court, being fully advised in the premises, finds there is good cause for entry of this Supplemental Consent Order and that there is no just reason for delay. The Court therefore directs the entry of Findings of Fact, Conclusions of Law and a permanent injunction and ancillary equitable relief pursuant to 7 U.S.C. § 13a-1, as set forth herein.

### **III. FINDINGS AND CONCLUSIONS**

14. The Findings of Fact and Conclusions of Law contained in the Consent Order are incorporated herein by reference and given preclusive effect as provided in the Consent Order. In addition, the factual basis for the guilty plea in the Criminal Action contained in the criminal plea allocution is also incorporated herein by reference and given preclusive effect.

### **IV. RESTITUTION AND CIVIL MONETARY PENALTY**

IT IS HEREBY ORDERED that Defendant Seibert shall comply fully with the following terms, conditions, and obligations relating to the payment of restitution and the civil monetary penalty:

**A. Restitution**

15. Defendant Seibert shall pay restitution in the amount of Ten Million Seven-Hundred and Ninety-Four Thousand Five Hundred and Eight Dollars (\$10,794,508) (“Restitution Obligation”). If the Restitution Obligation is not paid immediately, post-judgment interest shall accrue on the Restitution Obligation beginning on the date of entry of this Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Supplemental Consent Order pursuant to 28 U.S.C. § 1961 (2018).

16. Defendant Seibert is currently the defendant in the Criminal Action. For amounts disbursed to Defendant’s participants (referred to as “Investors” in the Criminal Action) as a result of satisfaction of any restitution ordered in the Criminal Action, the Defendant shall receive a dollar-for-dollar credit against the Restitution Obligation. Within ten days of disbursement in the Criminal Action to Defendants’ Investors, Defendant shall, under a cover letter that identifies the name and docket number of this proceeding, transmit to the Chief Financial Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, copies of the form of payment to those participants.

17. The amounts payable to each participant shall not limit the ability of any participant from proving that a greater amount is owed from Defendant Seibert or any other person or entity, and nothing herein shall be construed in any way to limit or abridge the rights of any participant that exist under state or common law.

18. Pursuant to Rule 71 of the Federal Rules of Civil Procedure, each participant of Defendant Seibert who suffered a loss is explicitly made an intended third-party beneficiary of the Consent Order and Supplemental Consent Order and may seek to enforce obedience of the Consent Order and Supplemental Consent Order to obtain satisfaction of any portion of the restitution that has not been paid by Defendant Seibert to ensure continued compliance with any

provision of the Consent Order and Supplemental Consent Order and to hold Seibert in contempt for any violations of any provision of this Consent Order and Supplemental Consent Order.

**B. Civil Monetary Penalty**

19. Defendant Seibert shall pay a civil monetary penalty in the amount of Two Million Two Hundred and Seventy-Eight Thousand Eight Hundred and Fifty-Three Dollars and Fourteen Cents (\$2,278,853.14) (“CMP Obligation”). If post-judgment interest shall accrue on the CMP Obligation beginning on the date of entry of this Supplemental Consent Order and shall be determined by using the Treasury Bill rate prevailing on the date of entry of this Supplemental Consent Order pursuant to 28 U.S.C. § 1961 (2018).

20. Seibert shall pay his CMP Obligation and any post-judgment interest by electronic funds transfer, U.S. postal money order, certified check, bank cashier’s check, or bank money order. If payment is to be made other than by electronic funds transfer, then the payment shall be made payable to the Commodity Futures Trading Commission and sent to the address below:

CFTC  
C/O ESC/AMK-326; RM 265  
6500 S. MacArthur Blvd.  
Oklahoma City, OK 73169  
(405) 954-6569 office  
(405) 954-1620 fax  
9-AMC-AR-CFTC@faa.gov

If payment by electronic funds transfer is chosen, Seibert shall contact Marie Thorne or her successor at the address above to receive payment instructions and shall fully comply with those instructions. Seibert shall accompany payment of the CMP Obligation with a cover letter that identifies Seibert and the name and docket number of this proceeding. Seibert shall simultaneously transmit copies of the cover letter and the form of payment to the Chief Financial

Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581.

**C. Provisions Related to Monetary Sanctions**

21. Partial Satisfaction: Any acceptance by the CFTC or the Monitor of any partial payment of Seibert's Restitution Obligation, Disgorgement Obligation, or CMP Obligation shall not be deemed a waiver of his obligation to make further payments pursuant to this Consent Order, or a waiver of the CFTC's right to seek to compel payment of any remaining balance.

**V. MISCELLANEOUS PROVISIONS**

22. Notice: All notices required to be given by any provision in this Supplemental Consent Order shall be sent certified mail, return receipt requested, as follows:

Notice to **Commission/CFTC**:

Robert T. Howell  
Deputy Director  
Division of Enforcement  
Commodity Futures Trading Commission  
525 West Monroe St.  
Suite 1100  
Chicago, IL 60661

Notice to Defendant Seibert:

David Seibert  
103 Palos Verdes Dr.  
Lakeway, Texas 79734

All such notices to the CFTC shall reference the name and docket number of this action.

23. Change of Address/Phone: Until such time as Seibert satisfies in full his Restitution Obligation and CMP Obligation as set forth in this Supplemental Consent Order, Seibert shall provide written notice to the Commission by certified mail of any change to his telephone number and mailing address within ten (10) calendar days of the change.

24. Entire Agreement and Amendments: The Consent Order and Supplemental Consent Order incorporates all of the terms and conditions of the settlement among the parties hereto to date. Nothing shall serve to amend or modify the Consent Order or Supplemental Consent Order in any respect whatsoever, unless: (a) reduced to writing; (b) signed by all parties hereto; and (c) approved by order of this Court.

25. Invalidation: If any provision of the Consent Order or Supplemental Consent Order or if the application of any provision or circumstance is held invalid, then the remainder of the Consent Order or Supplemental Consent Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

26. Waiver: The failure of any party to the Consent Order or Supplemental Consent Order or of any participant at any time to require performance of any provision of the Consent Order or Supplemental Consent Order shall in no manner affect the right of the party or investor at a later time to enforce the same or any other provision of the Consent Order or Supplemental Consent Order. No waiver in one or more instances of the breach of any provision contained in the Consent Order or Supplemental Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of the Consent Order or Supplemental Consent Order.

27. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action to ensure compliance with the Consent Order and Supplemental Consent Order and for all other purposes related to this action, including any motion by Seibert to modify or for relief from the terms of the Consent Order or Supplemental Consent Order.

28. Injunctive and Equitable Relief Provisions: The injunctive and equitable relief provisions of the Consent Order and Supplemental Consent Order shall be binding upon Seibert,



upon any person under his authority or control, and upon any person who receives actual notice of the Consent Order and Supplemental Consent Order, by personal service, e-mail, facsimile or otherwise insofar as he or she is acting in active concert or participation with Seibert.

29. Counterparts and Facsimile Execution: This Supplemental Consent Order may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties hereto and delivered (by facsimile, e-mail, or otherwise) to the other party, it being understood that all parties need not sign the same counterpart. Any counterpart or other signature to this Supplemental Consent Order that is delivered by any means shall be deemed for all purposes as constituting good and valid execution and delivery by such party of this Supplemental Consent Order.

30. Contempt: Seibert understands that the terms of the Consent Order and Supplemental Consent Order are enforceable through contempt proceedings, and that, in any such proceedings he may not challenge the validity of the Consent Order or Supplemental Consent Order.

31. Agreements and Undertakings: Seibert shall comply with all of the undertakings and agreements set forth in the Consent Order or Supplemental Consent Order.

There being no just reason for delay, the Clerk of the Court is hereby directed to enter this *Supplemental Consent Order Assessing Restitution and A Civil Monetary Penalty Against Defendant David Seibert*.

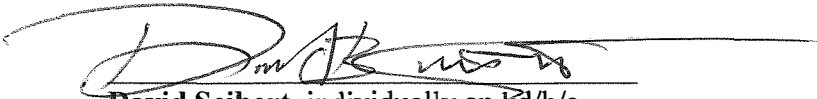
**IT IS SO ORDERED** on this 6th day of July, 2022.



**Robert Pitman**  
**U.S. District Judge**

UNITED STATES DISTRICT JUDGE

CONSENTED TO AND APPROVED BY:



David Seibert, individually and d/b/a SEI-Equity Investments, a/k/a SEI Equity Investments, a/k/a Seibert Equity Investments, and d/b/a Great American Funding, L.L.C., a/k/a Great American Funding Lender Services

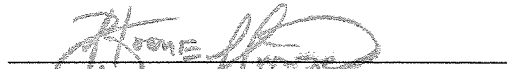
Dated: 5 JAN 22

/s/ Susan B. Padove

**Susan B. Padove**  
**Senior Trial Attorney**  
**Counsel for Plaintiff**  
Commodity Futures Trading Commission  
525 W. Monroe Street  
Suite 1100  
Chicago, IL 60661  
312-596-0544  
312-596-0714 (facsimile)  
spadove@cftc.gov

Dated 03/24/2022

Approved as to form:



Attorney for Defendant David Seibert, individually and d/b/a SEI-Equity Investments, a/k/a SEI Equity Investments, a/k/a Seibert Equity Investments, and d/b/a Great American Funding, L.L.C., a/k/a Great American Funding Lender Services


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Dated: 01/05/2022

**EXHIBIT A**

**FILED**

June 3, 2021

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY:   
DEPUTY

UNITED STATES OF AMERICA

v.

NO. ~~1:21-cr-00104~~ **CR-00104-RP**

DAVID BYRON SEIBERT

**PLEA AGREEMENT**

The United States Attorney's Office for the Western District of Texas ("the government") and the Defendant, David Byron Siebert ("Siebert") and/or (the "Defendant"), personally and by and through her attorney, Brian J. Roark, enter into the following plea agreement pursuant to Rule 11(c)(1) of the Federal Rules of Criminal Procedure:

**1. Defendant's Agreement to Plead Guilty**

The Defendant agrees to plead guilty to Count One of the Information, which charges the Defendant with wire fraud in violation of Sections 1343 of Title 18 of the United States Code; and Count Two of the Information, which charges the Defendant with money laundering in violation of Section 1957 of Title 18 of the United States Code.

**2. Penalties**

The offenses to which the Defendant is pleading guilty subject the Defendant to the following possible penalties:

**Count One – Violation of 18 U.S.C. §1343**

Maximum possible prison term:	20 years without parole
Mandatory minimum prison term:	none
Maximum term of supervised release:	3 years
Maximum fine:	The greatest of \$1,000,000; or twice the pecuniary gain to the defendant; or twice the pecuniary loss to the victims
Mandatory monetary assessment:	\$100
Amount of Restitution:	\$10,794,508.00
Forfeiture:	As set forth below.

**Count Two– Violation of 18 U.S.C. §1957**

Maximum possible prison term:	10 years without parole
Mandatory minimum prison term:	none
Maximum term of supervised release:	3 years
Maximum fine:	The greatest of \$1,000,000; or twice the pecuniary gain to the defendant; or twice the pecuniary loss to the victims
Mandatory monetary assessment:	\$100
Amount of Restitution:	\$10,794,508.00
Forfeiture:	As set forth below.

**If the Court imposes a term of imprisonment on each of these two counts, the Court can order the Defendant to serve the terms of imprisonment consecutively, which means that the Defendant would complete one term of imprisonment before beginning to serve the other term of imprisonment. Therefore, the Court can order the Defendant to serve up to 20 years on Count One, followed by up to 10 years on Count Two, resulting in a total period of incarceration of up to 30 years.**

**The Defendant will not be released on parole from any term of imprisonment that the Court may impose.**

### 3. Sentencing Matters

**a. Court to Determine Sentence:** The Defendant understands that the Court will decide the Defendant’s sentence. The Court will determine the sentence in accordance with 18 U.S.C. § 3553(a), after considering the application of the United States Sentencing Guidelines. The Guidelines are advisory and not binding, but the Court must consider them. Any prediction or estimate of the probable sentencing range or ultimate sentence, whether from the government, the Defendant’s attorney, or the Probation Office, is not a promise, is not binding, and is not an inducement for the Defendant’s guilty plea or waivers. The Defendant will not be permitted to withdraw the Defendant’s guilty plea if the sentence imposed differs from the sentence the Defendant expected or hoped for.

**b. Reservation of Sentencing Rights:** Both the government and the Defendant reserve the rights to: (1) inform the U.S. Probation Office and the Court of all information relevant to determining sentence; (2) dispute facts relevant to sentencing; (3) seek resolution of disputed facts or factors in conference with opposing counsel and the U.S. Probation Office; (4) address the Court at sentencing (consistent with promises by the government concerning recommended

findings and punishment); and (5) ask the Court to depart from the applicable supervisory guideline range based upon aggravating or mitigating factors.

**c. Non-Binding Stipulation Regarding Loss Amounts:** For purposes of determining the Defendant's offense level under the United States Sentencing Guidelines, the parties agree and stipulate that: the loss that resulted from the Defendant's violation of 18 U.S.C. § 1343 was not greater than \$25,000,000. Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, this stipulation does not bind the Court. In other words, the Court may find that those loss amounts are greater than the amounts stated in this paragraph.

**d. Acceptance of Responsibility:** The government will not oppose the maximum applicable downward adjustment for acceptance of responsibility under Section 3E1.1 of the United States Sentencing Guidelines, so long as the Defendant, prior to sentencing, refrains from engaging in any conduct that may demonstrate a lack of acceptance of responsibility, including, but not limited to: violating any condition of release, engaging in obstruction of justice, and/or providing false or misleading statements or information to the Court, U.S. Probation, U.S. Pretrial Services, the United States Attorney's Office, or any law enforcement entity.

**e. Non-Binding Recommendation Regarding Sentence:** The government's attorney will recommend at sentencing a term of imprisonment no greater than the high end of the Guideline range of imprisonment determined by the Court. Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the government's recommendation does not bind the Court. In other words, the Court may impose a term of imprisonment greater than any term of imprisonment that the government recommends.

**f. Concurrent sentences recommended:** Pursuant to Rule 11(c)(1)(B), Federal Rules of Criminal Procedure, the government agrees to recommend to the Court that any terms of imprisonment imposed on Count One and Two of the Information be run concurrent to each other. Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the government's recommendation does not bind the Court. In other words, the Court may decide that the terms of imprisonment will run consecutively, meaning that the Defendant would serve one term of imprisonment in its entirety before beginning to serve the other.

#### **4. Factual Basis for the Guilty**

The Defendant agrees and stipulates that the government's evidence at trial would have established the following facts beyond a reasonable doubt, and he agrees that these facts are true and correct:

##### **Background**

The government hereby incorporates the allegations contained in the Felony Information, and the Defendant agree and stipulates to the allegations contained in the Felony Information as true and correct to include the Background, Object of the Scheme, Manner and Means, and Execution of the Scheme via Wire Transmission and Engaging in Monetary Transactions in Property Derived From Specified Unlawful Activity.

As early as 2016 and continuing until in or about May 2019 (“Relevant Period”), the Defendant received monies from the Investors who relied upon his false and fraudulent representation and material omissions. The Investors included individuals, charitable trust and business entities (the “Investors”).

From the beginning of the Relevant Period, the Defendant misappropriated the Investors’ monies, kept the monies for himself, and never applied the Investors’ monies as he promised. He initially sought investment opportunities with no avail. The Defendant told Investors that he would pool their money to fund short-term, high interest commercial loans, when in fact he did not. Without the Investor’s permission or authorization and with the use of interstate wire transmissions, the Defendant stole these monies and used said monies to (1) make Ponzi payments; (2) to trade futures and option on futures in the commodities market; and (3) for personal expenses.

During the Relevant Period, the Defendant lived and conducted his primary business operations in Lakeway, Texas, within the Western District of Texas. The Defendant operated his business using two relevant businesses: (1) Seibert Equity Investments, aka: SEI Equity Investments (“SEI”); and (2) Great American Funding LLC, aka: Great American Funding Lender Service (“GAF”).

He maintained and controlled several relevant financial accounts to include: (1) Bank of America Account ending in xx0021 (“Seibert’s BOA Account”) is an account registered to David Seibert and Sxxx Seibert (“SS”); (2) Straits Financial Group Account ending in xx0387 (“Seibert’s Straits Account”) is an account held by Seibert and used to trade futures and options in the commodities market; (3) AMEX Account xxxx7-31019 is an account utilized by Seibert (“Seibert’s AMEX Account”), although the master account is assigned to SS. Prior to receiving the first investor deposit on March 23, 2016, the Defendant had cumulative deposits of \$65,923.65 from August 15, 2012 to March 22, 2016 in Seibert’s BOA Account.

The Defendant misrepresented to the Investors that he and his company, GAF, were in the business of making short-term, high interest loans to borrowers in order to make renovations, additions, and/or repairs to existing properties to meet cash needs before permanent financing could be secured. These loans are often referred to as “hard money loans,” bridge loans,” or land loans.” The Defendant advised the Investors that he would be responsible for completing the due diligence, preparation of the loan documents, servicing the loan, and closing. Each loan was represented to be an interest only loan with a balloon payment of all principal after a term of approximately one year. According to the Defendant, the loan was to be secured by a first lien deed of trust on the real property, a security interest on the assets of the debtor, and a personal guarantee.

Once the Investor decided to participate in the Defendant’s fraudulent deals, the Defendant instructed the Investors to either write a check made payable to him personally or, more frequently, to wire the funds to a bank account which he said was held in the name of GAF. In truth, the funds were pooled in Seibert’s BOA Account. During the relevant period, the Defendant stole \$14,993,033.00 from Investors.

After the closing, the Defendant paid some of the Investors monthly “interest” payments on the loans, representing to the Investors they were paid by the borrower in the loan/investment deal. In reality, the payments derived from funds of subsequent Investors, which the Defendant paid out in the manner of a Ponzi scheme. In all, the Defendant used \$4,198,525.00 to pay “returns” to earlier Investors, but the monies actually constituted funds provided by later Investors. Hence, the total amount for restitution, or the net amount, is \$10,794,508.00.

When the loans never came to fruition, he began using the Investor’s monies to trade in commodity interests without disclosing the use to the Investors. On or about March 14, 2017, the Defendant transferred \$25,000 of investor proceeds to Seibert’s Straits Account which represented the initial funding of the commodities account. The Defendant continued to fund, and trade, the commodities account using Investors’ proceeds through April 2019. During this time period, the Defendant used \$8,645,197.51 of Investors’ funds trading commodity interest in a commodity account bearing his name and for his personal use. Seibert lost \$8,334,988.72 of this amount.

Near the end of the Scheme on or about January 8, 2019, the Defendant transferred \$100,000 from the Seibert’s Straits Account to Seibert’s BOA Account at which point he made several lulling payments to Investors. Additionally, on or about April 2, 2019, the Defendant withdrew \$209,000 which represented essentially the remaining balance of Seibert’s Straits Account.

Throughout the Relevant Period, the Defendant used the Investor’s monies for his personal expenses in the amount of \$2,278,853.14. Many of those expenses were incurred with the use of Seibert’s AMEX Account. Some of those expenses included \$330,385.00 cash withdrawals, \$100,572.79 on a Ferrari, \$45,928.73 towards a Maserati, and \$45,700.00 on a yellow diamond engagement ring.

The Defendant failed to disclose to the Investors that instead of using their funds to make bridge loans as he had promised, he was actually pooling their funds with other Investors and using them to make Ponzi payments, trade commodity interests, and use for his personal expenses.



### Count One –Wire Fraud (\$1343)

On or about August 5, 2018, the Defendant sent an email from his personal email account <dseibert@austin.rr.com> to John Harris, Edward Blum, and Donald Clayton. The email was a solicitation for an investment opportunity in El Paso, TX and more specifically at Commerce Park a 120,000 sq. ft. office park. The purported investment was a cumulative loan of \$1,700,000 earning 13% over a year. Pursuant to this email solicitation, the below Investors provided their proceeds as follows:

<b>Investor(s)</b>	<b>Date (on or about)</b>	<b>Amount</b>	<b>Method</b>	<b>From Financial Institution(s)</b>	<b>To Financial Institution</b>
Diana Weil Family Trust	08/13/2018	\$100,000	Wire	JP Morgan Chase, New York, NY	Seibert's BOA Account-Austin, Texas
Nancy Roucher	08/14/2018	\$100,000	Wire	Wells Fargo, San Francisco, CA	Seibert's BOA Account-Austin, Texas
BHW Family LP	08/14/2018	\$100,000	Wire	Citibank, New York, NY	Seibert's BOA Account-Austin, Texas
Donald Clayton	08/15/2018	\$800,000	Wire	Citibank, New York, NY	Seibert's BOA Account-Austin, Texas
Edward Blum	08/15/2018	\$100,000	Wire	Citibank, New York, NY	Seibert's BOA Account-Austin, Texas
John Harris	08/15/2018	\$400,000	Check	Morgan Stanly, Kansas City, MO	Seibert's BOA Account-Austin, Texas

In an effort to reduce any cognitive dissonance on behalf of the Investors, the Defendant claimed to invest \$100,000 of his own money into the deal. In fact, on August 13, 2018, the Defendant sent a follow-up email from his personal email account <dseibert@austin.rr.com> to investor Edward Blum which read:

*Just checking to see if everyone received the wiring info last week and when I can expect funds to arrive so I can confirm closing date.*

*I have these investors listed and amounts:*

- Clayton \$800k*
- Harris \$400k (received)*
- Weil \$200k*
- Roucher \$100k*
- Blum \$100k*
- Seibert \$100k (received)*

*Also, which "Weil" entity will be sending \$200k so I may add proper names to the closing documents.*

*Thank you,*

*David Seibert  
SEI/GAF*

In the email, the Defendant falsely represented that he had already put in his \$100,000 when in fact he had not nor did he ever "invest" in any deal.

On or about October 3, 2018, the Defendant sent an email from his personal email account <dseibert@austin.rr.com> to Investors Edward Blum, Donald Clayton and John Harris. The email was a solicitation for an investment opportunity in Amarillo, Texas and more specifically at Wolflin Point a 15,000 sq. ft mix used retail/office space on 1.5 acres. The purported investment was a cumulative loan of \$1,500,000 earning 12% over a year. Pursuant to this email solicitation, the below Investors provided their proceeds as follows:

<b>Investor(s)</b>	<b>Date (on or about)</b>	<b>Amount</b>	<b>Method</b>	<b>From Financial Institution(s)</b>	<b>To Financial Institution</b>
BHW Family LP	10/11/2018	\$150,000	Wire	JP Morgan Chase, New York, NY	Seibert's BOA Account-Austin, Texas
Donald Clayton	10/12/2018	\$750,000	Wire	Citibank, New York, NY	Seibert's BOA Account-Austin, Texas
John Harris	10/12/2018	\$300,000	Check	Prosperity Bank, Sugar Land, TX	Seibert's BOA Account-Austin, Texas
Gale Foundation Trust	10/12/2018	\$200,000	Check	Hilltop Securities, Dallas, TX	Seibert's BOA Account-Austin, Texas

In an effort to reduce any cognitive dissonance on behalf of the Investors, the Defendant claimed to invest \$100,000 of his own money into the deal. This amount was never contributed by the Defendant.

Part and parcel to his scheme to defraud, the Defendant created closing binders for each investment which contained a purported Loan Agreement, Deed of Trust, Guaranty Agreement, and Assignment of Leases and Rents. Since the investments pertained to real estate, a policy of title insurance and a UCC-1 financing statement were to be obtained and filed. No title insurance policies were obtained, no UCC-1 financing statements were filed and only four (4) Deeds of Trust were filed but even these deeds were filed with errors and/or altered notary stamps and forged signatures.

On or about May 22, 2019, John Harris (“Harris”) was interviewed by law enforcement and provided the following information. He initially met the Defendant in 2007 or 2008, but it wasn’t until 2016 that he first invested. Harris understood that the Defendant was pooling money from Investors to make hard-money loans to borrowers that was to pay interest from 11%-15% over the course of year and then a return of capital at the end of the term in the form of a balloon payment. Each deal would be collateralized by the underlying real estate property and the Investors would enjoy a first lien position. One of the conditions placed on the Defendant was that he [Seibert] invest \$100,000 of his own money into each deal. The money Harris gave to Seibert was specifically an investment to be utilized as was represented and or no other purpose.

Prior to Harris’ interview with law enforcement, the Defendant requested and met with Harris privately. During this conversation the Defendant admitted that he was a thief and had lied and stolen from Harris. The Defendant claimed to have no defense and had lost all the investment money in the futures market.

On or about July 22, 2019, Edward Blum was interviewed by law enforcement and provided the following information. Blum was introduced to the Defendant through Harris, a family friend. Blum eventually spoke to the Defendant who explained that he [Seibert] was providing short term loans to businesses who did not want to wait for traditional financing and could provide short term loans using the borrower’s real estate as the collateral. These loans provided for a return of approximately 12% over the course of a year, paying interest monthly, and a balloon payment at the end of the term. Blum received portfolios of the investment properties which included pictures, borrower information, property appraisals and how the investor monies would be utilized to improve the property. The majority of Blum’s interaction was through email.

### Count Two – Money Laundering (§1957)

Immediately following the investment(s) into the El Paso property at Commerce Park as described in Count One of the Information, on or about August 17, 2018, the Defendant made a \$11,930.86 payment to Seibert's AMEX Account, and the following transfers to Seibert's Straits Account:

Date (on or about)	Amount
08/17/2018	\$200,000
08/31/2018	\$80,000

Immediately following the investment(s) into the Amarillo property at Wolflin Point, the Defendant made a \$29,860.30 payment Seibert's AMEX Account on October 12, 2018 and the following transfers to Seibert's Straits Account:

Date (on or about)	Amount
10/22/2018	\$200,000
10/24/2018	\$300,000
10/24/2018	\$300,000
10/31/2018	\$200,000
11/01/2018	\$200,000

## 5. Government's Agreement

In exchange for the Defendant's agreement to plead guilty, the Defendant's agreement to waive the rights listed in this plea agreement, and any other agreements by the Defendant in this plea agreement, the United States Attorney's Office for the Western District of Texas agrees not to institute additional criminal charges against the Defendant based on the facts set forth in this plea agreement under the heading "Factual Basis for the Guilty Plea."

## 6. Defendant's Waiver of Rights

a. **Advice of Trial Rights.** The Defendant understands that he has the following rights:

- (1) The right to plead not guilty, or having already so pleaded, to persist in that plea;
- (2) The right to a trial by jury;
- (3) The rights at trial to confront and cross-examine adverse witnesses; to be protected from compelled self-incrimination (the right to remain silent); to testify and present evidence; and to compel the attendance of witnesses;
- (4) The right to be represented by counsel – and, if necessary, to have the court appoint counsel at public expense – at trial and at every other stage of the proceeding; and

(5) The right not to be prosecuted unless the grand jury returns an indictment.

**b. Waiver of Trial Rights.** The Defendant understands that, by pleading guilty, he waives and gives up the foregoing rights, except the right to be represented by counsel – and, if necessary, to have the court appoint counsel at public expense – at every stage of the proceeding other than trial. In addition, the Court may require the Defendant to answer truthfully questions about the offense(s), and he may be prosecuted if knowingly makes false statements or gives false answers.

**c. Waiver of Additional Rights.** In addition to giving up the rights described above, the Defendant agrees to give up and waive the following:

(1) **Pretrial Motions:** The Defendant understands that he could raise a number of issues and challenges by pretrial motion, including motions to suppress evidence and to dismiss the charges against her. By entering into this agreement and pleading guilty, the Defendant agrees to give up any and all claims he has made or might have made by pretrial motion, and agrees to the dismissal of any motions that currently are pending.

(2) **Discovery:** The Defendant agrees to give up and waive any claims he may have now or may acquire later to any information possessed by the prosecution team that might be subject to disclosure under discovery rules, including the Federal Rules of Criminal Procedure, the *Jencks* Act, local court rules, and Court Orders, including information that might be considered exculpatory or impeaching under *Brady v. Maryland* and *Giglio v. United States*. The Defendant waives any continuing discovery request and additional discovery. The Defendant also waives all rights to request from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act (5 U.S.C. § 552) or the Privacy Act (5 U.S.C. § 552a).

(3) **Appeal:** The Defendant knowingly and voluntarily waives and gives up the right to appeal his conviction or sentence on any ground, including but not limited to any challenges to the determination of any period of confinement, monetary penalty or obligation, term of supervision and conditions thereof. This waiver includes any appeal right conferred by 18 U.S.C. §3742, except in a case in which the sentence imposed by the Court is greater than the maximum sentence authorized by statute. Moreover, the Defendant waives the right to challenge the sentence imposed, even though he knows the Court has not yet decided what the sentence will be. In sum, the Defendant understands that he cannot challenge the sentence imposed by the Court, even if it differs from any sentencing range or estimate made by the Defendant's attorney, the attorney for the Government, or the Probation Officer. Realizing that he does not know what sentence he will ultimately receive, the Defendant knowingly and voluntarily waives the right to appeal the sentence. The Defendant does so in exchange for the concessions made by the Government in this Agreement, except as otherwise provided herein.

(4) **Collateral Attack:** The Defendant also waives and gives up the right to challenge his conviction or sentence in a post-conviction collateral challenge, including but not limited to a proceeding pursuant to 28 U.S.C. §§ 2241 and 2255; except that the Defendant does not waive the right to challenge the Defendant's sentence based on ineffective assistance of counsel or prosecutorial misconduct. If the Defendant makes a claim of ineffective assistance of counsel,

the Defendant will, by making that claim, waive any right the Defendant may have to the attorney/client privilege arising from counsel's representation of the Defendant.

(5) **Attorney's Fees:** The Defendant hereby stipulates and agrees that he is not entitled to and shall not seek from the United States any attorney's fees he has incurred or will incur in connection with this prosecution.

**7. Defendant's Financial Obligations.**

**a. Wire Fraud, Money Laundering, and Related Relevant Conduct.**

The Defendant agrees that the Court should order his to pay restitution to the victim or victims of the offense alleged in Count One and any related relevant conduct in the amount of \$10,794,508.00.

**b. Cooperation regarding Financial Obligations.**

The Defendant will cooperate with the government as follows:

(1) The Defendant will make a good faith effort to pay any fine, forfeiture, or restitution ordered by the Court.

(2) Before or after sentencing, the Defendant will provide, upon request by the Court, the government, or the U.S. Probation Office, in whatever form requested, accurate and complete financial information, and will submit sworn statements and give depositions under oath concerning all assets and the Defendant's ability to pay. The Defendant agrees to truthfully complete a financial statement form provided by the United States Attorney's Office. The Defendant shall date and sign the form under penalty of perjury to certify that the Defendant's financial statement fully and completely discloses the Defendant's financial condition, including all assets owned or held directly or indirectly, individually or jointly, or in which the Defendant has any legal interest, regardless of title, including any interest held or owned under any other name, trusts, and/or business entities.

(3) The Defendant will surrender and release any assets, money, or other property, whether or not derived from the commission of crimes, as well as any information about assets, money, or other property, in order to satisfy any fine, forfeiture or restitution order entered by the Court. This includes signing any waivers, consents, or releases required by third parties. Also, the Defendant will provide any privacy waivers, consents, or releases requested by the United States Attorney's Office for verification of financial disclosures and authorizes the United States Attorney's Office to inspect and copy all financial documents and information provided by the Defendant to the United States Probation Office or the Courts. Furthermore, the Defendant will identify any transfer of assets made for the purpose of evading or defeating financial obligations, and refrain from making any such transfers. If required to pay restitution, the Defendant will immediately commence the sale of any properties he owns and apply the proceeds of those sales to any order of restitution. The Defendant will take any and all reasonable actions requested by the government to facilitate payment of restitution.

(4) The Defendant shall provide the fully executed financial statement along with any and all supporting documents within [30] days of the Defendant's signature on this plea agreement, and thereafter, the Defendant shall notify the United States Attorney's Office and update the financial statement regarding any material change in the Defendant's economic circumstances within [10] days of the event changing the Defendant's financial condition or upon request of the United States Attorney's Office. The Defendant understands and agrees that the Defendant's financial statement will be used for the collection of any monetary imposition ordered by the Court and for the identification of any property subject to forfeiture.

(5) The parties agree that the Defendant's failure to timely and accurately complete and sign a financial statement, and any update thereto may, in addition to any other penalty or remedy authorized by law, constitute the Defendant's failure to accept responsibility under USSG 3E1.1.

(6) The Defendant certifies that the Defendant has made no transfer of assets in contemplation of this prosecution for the purpose of evading or defeating financial obligations that are created by the Agreement and/or that may be imposed upon the Defendant by the Court. In addition, the Defendant promises that the Defendant will make no such transfers in the future.

(7) The Defendant understands and agrees that any financial obligation imposed by the Court, including a restitution order and/or the implementation of a fine, is due and payable immediately. In the event the Court imposes a schedule for payment of restitution, the Defendant agrees that such a schedule represents a minimum payment obligation and does not preclude the United States Attorney's Office from pursuing any other means by which to satisfy the defendant's full and immediately enforceable financial obligation. The Defendant understands that the Defendant has a continuing obligation to pay in full as soon as possible any financial obligation imposed by the Court.

## **8. Forfeiture**

As part of this Plea Agreement, Defendant David Byron Seibert expressly agrees to immediately and voluntarily forfeit to the United States all right, title, and interest in the following properties which were listed in the Notice of United States of America's Demand for Forfeiture within the Indictment returned against the Defendant, namely:

- Silver Band Breitling Gold Ring Around Face watch;
- Silver Breitling Yellow Face watch;
- Rose Gold & Diamond Bulgari ring;
- \$5,000.00, more or less, in United States Currency; and
- Any and all other items used and/or intended to be used in the commission of the criminal offenses.

hereinafter referred to as the Subject Personal Properties.

## **Money Judgment:**

A sum of money equal to Fourteen Million Nine Hundred Ninety Three Thousands and Thirty Three Dollars (\$14,993,033.00) that represents the properties involved in and/or the amount of proceeds traceable, directly or indirectly, to the violations set forth in Counts One and Two, for which Defendant David Byron Siebert is liable

hereinafter referred to as the Subject Money Judgment.

Defendant agrees not to contest the administrative, civil, and/or criminal forfeiture of the Subject Personal Properties and Subject Money Judgment and further agrees not to assist others in filing a claim or petition.

Defendant further agrees that the facts set forth in the Factual Basis of this Plea Agreement are true and correct, and establish a nexus between the Subject Personal Properties and Subject Money Judgment and the violations of Title 18 U.S.C. § 1343 and Title 18 U.S.C. § 1957, thereby subjecting the Subject Personal Properties to forfeiture pursuant to Title 18 U.S.C. § 981(a)(1)(C) and Title 18 U.S.C. § 982 (a)(1)(C).

Defendant hereby waives the requirements of Fed. R. Crim. P. 32.2 with respect to the imposition of any forfeiture action carried out in accordance with this Plea Agreement. The Defendant waives all constitutional, legal, and equitable defenses to the forfeiture in any proceedings, and further waives direct appeal of forfeiture issues including habeas corpus and those arising under the Excessive Fines Clause.

Defendant further waives all right to a jury trial on forfeiture issues regarding the Subject Properties and Subject Money Judgment.

Defendant further agrees and stipulates as part of this Plea Agreement that the United States is not limited to the forfeiture of the Subject Money Judgment. If the United States determines, at any time, that any of the conditions set forth in Title 21 U.S.C. § 853(p) exist, then the United States shall, at its option, be entitled to forfeiture of any other property (substitute assets) equivalent to the value of the Subject Money Judgment.

## **9. Collateral Consequences**

The Defendant understands that, in addition to the punishments described above, his guilty plea and conviction may have other or “collateral” consequences. These consequences may adversely affect such things as the Defendant’s right to possess firearms and right to vote. The Defendant has discussed with the Defendant’s attorney the punishments and other consequences of pleading guilty, understands that not all of the consequences can be predicted or foreseen, and still wants to plead guilty in this case.

## **10. Breach of Agreement**

If the Defendant violates or breaches any of the terms of the plea agreement, the government will be released from its obligations under this agreement and in its sole discretion may do any or all of the following:



- a. Move to set aside the Defendant's guilty plea and proceed on charges previously filed and any additional charges;
- b. Use against the Defendant any statements or information the Defendant provided during the course of cooperation, at sentencing, or in any prosecution;
- c. Seek additional charges based on false statements, perjury, obstruction of justice, or any other criminal acts committed by the Defendant before or during the Defendant's cooperation, including offenses disclosed during the Defendant's cooperation;
- d. Seek to revoke or modify conditions of release; and/or
- e. Decline to file a motion for a reduced sentence.

## **11. Voluntariness**

In entering into this Plea Bargain Agreement, agreeing to plead guilty, and waiving the rights set forth above, the Defendant understands and affirms the following:

- a. The Defendant has discussed with the Defendant's attorney the charges, the possible punishments upon conviction, the evidence and any defenses to the charges, and the benefits and risks of going to trial.
- b. The Defendant has a right to plead not guilty, and by entering this agreement and pleading guilty, the Defendant is waiving or giving up a number of important rights, described above.
- c. The Defendant has had sufficient time to discuss the case with the Defendant's attorney and is satisfied with the advice given by counsel.
- d. The Defendant's good judgment and ability to understand this plea agreement and its consequences are not impaired or diminished due to the use of alcohol, drugs, or medications, or the effect of any physical, mental, or emotional illness, disease, or injury. The Defendant understands the significance of the proceedings and the importance of the decision to plead guilty and waive rights.
- e. The Defendant enters this agreement and decision to plead guilty voluntarily, and not on account of force, threats, promises or inducements, apart from the promises and inducements set forth in this agreement.
- f. The Defendant agrees to plead guilty because he is guilty of the offense charged.

## **12. Entire Agreement**

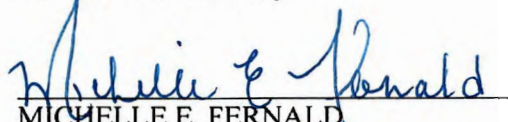
This plea agreement constitutes the entire agreement between the Defendant and the United States Attorney's Office for the Western District of Texas and is binding only upon those parties.

The parties have not made any other promises or inducements or entered into any other agreements. The Court may accept or reject this agreement and may wait to decide whether to accept or reject the agreement until it has reviewed the presentence report. If the Court accepts the agreement but declines to follow any sentencing recommendations or stipulations that the government may make, the Defendant will have no right to withdraw his guilty plea.

Respectfully submitted,

Ashley C. Hoff  
United States Attorney

By:

  
MICHELLE E. FERNALD  
Assistant United States Attorney

Defendant's Signature: I, David Byron Seibert, have carefully read and reviewed the foregoing plea agreement in its entirety. After giving careful and mature consideration to the making of this plea agreement, thoroughly discussing the plea agreement with my attorney, and fully understanding my rights with respect to the pending criminal charge(s), and in reliance upon my own judgment and the advice of my attorney, I freely and voluntarily agree to the specific terms and conditions of the plea agreement. I admit that all of the facts contained in the Factual Basis are true and correct, and that I am guilty of the offense(s) to which I am pleading guilty. Moreover, I am satisfied with my attorney's representation of me in this matter, with the advice my attorney has provided to me, and that my attorney has rendered effective assistance.

  
David Byron Seibert, *The Defendant*

5-27-21  
Date

Defense Counsel Signature: I am counsel for the Defendant, David Byron Seibert, in this case. I have fully explained to the Defendant all of his rights with respect to the pending criminal charge(s). I have carefully reviewed this plea agreement in its entirety with the Defendant and provided the Defendant with my best professional advice. In my opinion, the Defendant's decision to enter into this plea agreement is made freely, voluntarily, and with full knowledge of its obligations and consequences.

  
Brian J. Roark, *Attorney for the Defendant*

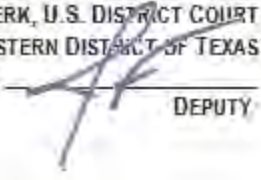
5-27-21  
Date

**EXHIBIT B**

FILED

June 3, 2021

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

CLERK, U.S. DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
BY:   
DEPUTY

UNITED STATES OF AMERICA  
Plaintiff,

v.

DAVID BYRON SEIBERT,  
Defendant.

§  
§  
§  
§  
§

NO. ~~1:21-CR-00104-RP~~ **1:21-CR-00104-RP**

[Violations: Count One: Wire Fraud, 18 U.S.C. §1343; Engaging in Monetary Transactions in Property Derived From Specified Unlawful Activity, 18 U.S.C. §1957.]

Notice of Government’s Demand for  
Forfeiture

FELONY INFORMATION

THE UNITED STATES ATTORNEY CHARGES:

Introduction

1. The following entities (hereinafter referred to individually or collectively as the "Siebert Entities") were formed at the direction of, used by, and/or maintained by, the Defendant, David Byron Siebert (“Seibert”) and/or (the “Defendant”):

a. Seibert Equity Investments, aka: SEI Equity Investments (“SEI”).

According to Comprehensive Business Reports, Seibert Equity Investments is an assumed name entity and was initially registered on or about November 2, 2006. The Standard Industrial Classification Code 6282 listed for this entity is “Investment Advice.” The recorded address for Seibert Equity Investments is 103 Palos Verdes Drive, Lakeway, Texas 78734 (“Seibert’s Residence”).

b. Great American Funding LLC, aka: Great American Funding Lender Service (“GAF”). According to Nevada Secretary of State, GAF is a domestic limited liability company registered in the state of Nevada and was initially registered on or about June 28, 2006. The current business license expired on or about June 30, 2019. The Defendant is listed as a “manager,” and Seibert’s Residence is listed as an address associated with GAF.

c. From at least as early as January 2016, the primary place of business for the aforementioned entities is Lakeway, Texas, located within the Western District of Texas.

2. Since at least 2016, the Defendant promoted and sold interest in several investment opportunities and obtained over \$14 million. These “investments” provided short-term secured loans in return for the promise of high interest from third-party borrowers, when in fact, none of the investments existed.

3. The Defendant used and/or maintained the following accounts:

a. Bank of America Account ending in xx0021 (“Seibert’s BOA Account”) is an account registered to David Seibert and Sxxx Seibert (“SS”). The address associated with this account is Seibert’s Residence. SS is Seibert’s adult aged daughter. This account was represented to be the business and operating account of Great American Funding/Seibert Equity Investments (SEI) but proved to merely be the shared personal bank account of the Defendant and SS.

b. Straits Financial Group Account ending in xx0387 (“Seibert’s Straits Account”) is an account held by David Seibert. The address associated with this account is Seibert’s Residence. Seibert’s Straits Account was an account used to trade futures and

options on futures in the commodities market. Seibert completed a customer application for the above account in or about March 2017. In the account application, Seibert fraudulently claimed to be employed by “Seibert Equity Investments” (SEI) with an individual annual income of \$300,000 and net worth of \$10,000,000. Additionally, Seibert checked “no” when asked “Does any other person or entity have any financial interest in the account?”

c. AMEX Account xxxx7-31019 is an account utilized by Seibert (“Seibert’s AMEX Account”). The master account is assigned to SS, AMEX Account xxxx7-31001. The listed mailing address for both accounts is Seibert’s Residence. Payments to AMEX were made from Seibert’s BOA Account.

### **The Scheme**

4. Beginning at least as early as 2016 and continuing until in or about May 2019, the Defendant devised and intended to devise a scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations and promises.

5. The object and purpose of the Scheme was for the Defendant to enrich himself unjustly and illegally through false, misleading, and fraudulent pretenses, representations, and promises, and material omissions to Investors who were individuals, charitable trust, and business entities (the “Investors”). Beginning as early March 2016 and continuing until May 2019, the Defendant executed a scheme to defraud whereby the Defendant received monies from the Investors who relied upon false and fraudulent representations and material omissions made by the Defendant. In summary, the Defendant told the Investors that he would pool their money to fund short-term, high-interest commercial loans, when in fact he did not. Without permission or authorization, the Defendant stole these monies and used said monies to (1) to make Ponzi

payments; (2) to trade futures and option on futures in the commodities market; and (3) for personal expenses.

6. The Defendant misrepresented to the Investors that he and his company, GAF, were in the business of making short-term, high interest loans to borrowers in order to make renovations, additions, or repairs to existing properties to meet cash needs before permanent financing could be secured. These loans are often referred to as “hard money loans,” “bridge loans,” or “land loans.” The Defendant advised the Investors that he would be responsible for completing the due diligence, preparation of the loan documents, servicing the loan, and closing. Each loan was represented to be an interest only loan with a balloon payment of all principal after a term of approximately one year. According to the Defendant, the loan was to be secured by a first lien deed of trust on the real property, a security interest on the assets of the debtor, and a personal guarantee.

7. It was part of the scheme and artifice that the Defendant made false and fraudulent promises, representations, omissions, and pretenses to solicit the Investors and claimed that the funds would be used to provide short-term secured loans in return for the promise of high interest from third-party borrowers who purportedly would use the loaned funds to make renovations, additions, and repairs to property before permanent financing could be secured. The Defendant represented that he would be responsible for completing the due diligence, preparation of the loan documents, servicing the loan, and closing.

8. It was part of the scheme and artifice that the Defendant would fraudulently acquire investment funds for the following purposes:

- a. to maintain an ongoing or expanding Ponzi scheme in which the "returns" paid to earlier Investors actually constituted funds provided by later Investors;

- b. to make payments and/or fund distributions to some Investors so as to lull Investors into the mistaken belief that their investment remained sound;
- c. trade futures and options on futures in the commodities market; and
- d. for personal expenses.

9. It was part of the scheme and artifice that the Defendant, through one or more of the Seibert Entities, would acquire cash and assets from individual Investors from across the United States by means of false and fraudulent promises, representations, pretenses, and material omissions.

10. It was part of the scheme and artifice that the Defendant transmitted and caused to be transmitted wire communications in interstate commerce, writings, signals, signs, pictures and sounds to and from the Western District of Texas to locations outside of the State of Texas. These wire communications included, but were not limited to, the following:

- a. telephone calls;
- b. email communications via the internet;
- c. electronic communications involving the clearing of checks and other financial transactions through the Federal Reserve banking system;
- d. transfer by wire and electronic means of funds between financial institutions and investment companies located outside the State of Texas and financial institutions and investment companies in the Western District of Texas.

11. It was part of the scheme and artifice that the Defendant represented that the Seibert Entities purchased assets with the funds obtained from the Investors when, in truth and fact, the Investors' funds were applied toward other fraudulent investment activities: the payment of "dividends," "returns," and "redemptions" to prior Investors; trading futures and options on futures in the commodities market; and the Defendant's own personal use and benefit.



12. It was part of the scheme and artifice that accurate and material cash flow and accounting information was not provided to the Investors.

13. It was part of the scheme and artifice that the Defendant omitted and failed to disclose material facts to potential Investors and current clients, including but not limited to the following:

- a. that Investors funds had been, and would be, funneled and diverted to making Ponzi-type payments to prior Investors;
- b. that the Defendant traded futures and options on futures in the commodities market and for personal expenses, and
- c. that the Defendant used a substantial portion of Investors' funds for the personal use and benefit of himself.

#### **Manner and Means**

The Defendant carried out the scheme in the following manner and by the following means:

14. The Defendant utilized interstate wire transmissions in furtherance of the scheme. For example, The Defendant utilized interstate wires to receive investment monies and transmit fictitious investment payments to the Investors based upon false and fraudulent misrepresentations and material omissions. The Defendant could not have carried out the fraudulent scheme without the benefit of interstate wire communications.

15. Because of the nature of the monetary transactions (i.e., wire transfer and credit card purchases), the Defendant used electronic communication to conduct the Scheme. Because the transactions took place in many locations, the Defendant transmitted the electronic communications in interstate or foreign commerce.

**Execution of the Scheme via Wire Transmission**

16. Once the Investors decided to participate in the Defendant's fraudulent deals, the Defendant instructed the Investors to either write a check made payable to him personally or, more frequently, to wire the funds to a bank account which he said was held in the name of GAF. In truth, the funds were pooled in Seibert's BOA Account.

17. After the closing, the Defendant paid some of the Investors monthly "interest" payments on the loans, representing to the Investors they were paid by the borrower in the loan/investment deal. In reality, the payments derived from funds of subsequent Investors, which the Defendant paid out in the manner of a Ponzi scheme. In all, the Defendant used over \$4 million to pay "returns" to earlier Investors, but the monies actually constituted funds provided by later Investors.

18. When the loans never came to fruition, he began using the Investor's monies to trade in commodity interests without disclosing the use to the Investors. During the Relevant Period, the Defendant used and lost over \$8 million of Investors' funds trading commodity interest in a commodity account bearing his name. The Defendant traded through Seibert's Straits Account.

19. Throughout the Relevant Period, the Defendant used the Investor's monies for his personal expenses in the amount over \$2 million. Many of those expenses were incurred with the use of Seibert's AMEX Account.

20. The Defendant omitted to disclose to the Investors that instead of using their funds to make bridge loans as he had promised, he was actually pooling their funds with other Investors and using them to make Ponzi payments, trade commodity interests, and use for his personal expenses.

**COUNT ONE**  
**Wire Fraud**  
**(Violation of 18 U.S.C. §1343)**

21. Paragraphs 1 through 20 of this Information are realleged and incorporated as though fully set forth herein.

From in or about 2016 and continuing until in or about May 2019, in the Western District of Texas and elsewhere, the Defendant,

**DAVID BYRON SEIBERT,**

(“the Defendant”), having devised and intended to devise a scheme and artifice to defraud, as set forth above, to obtain money and property by means of false, misleading, and fraudulent pretenses, representations, and promises, and omissions of material facts, did knowingly cause to be transmitted by wire, radio, or television communication in interstate and foreign commerce, a wire transfer of funds, constituting and containing a writing, sign, signal, picture, and sound, for the purpose of executing and attempting to execute said scheme and artifice, on or about the date set forth below.

On or about August 5, 2018, the Defendant sent an email from his personal email account <dseibert@austin.rr.com> to Investors John Harris, Edward Blum, and Donald Clayton. The email was a solicitation for an investment opportunity in El Paso, TX and more specifically at Commerce Park a 120,000 sq. ft. office park. The purported investment was a cumulative loan of \$1,700,000 earning 13% over a year. Pursuant to this email solicitation, the below Investors provided their proceeds as follows:

<b>Investor(s)</b>	<b>Date (on or about)</b>	<b>Amount</b>	<b>Method</b>	<b>From Financial Institution(s)</b>	<b>To Financial Institution</b>
Diana Weil Family Trust	08/13/2018	\$100,000	Wire	JP Morgan Chase, New York, NY	Seibert's BOA Account-Austin, Texas
Nancy Roucher	08/14/2018	\$100,000	Wire	Wells Fargo, San Francisco, CA	Seibert's BOA Account-Austin, Texas
BHW Family LP	08/14/2018	\$100,000	Wire	Citibank, New York, NY	Seibert's BOA Account-Austin, Texas
Donald Clayton	08/15/2018	\$800,000	Wire	Citibank, New York, NY	Seibert's BOA Account-Austin, Texas
Edward Blum	08/15/2018	\$100,000	Wire	Citibank, New York, NY	Seibert's BOA Account-Austin, Texas
John Harris	08/15/2018	\$400,000	Check	Morgan Stanly, Kansas City, MO	Seibert's BOA Account-Austin, Texas

All in violation of Title 18, United States Codes, Sections 1343.

**COUNT TWO**  
**Engaging in Monetary Transactions in Property  
Derived From Specified Unlawful Activity  
(Violation of 18 U.S.C. §1957)**

22. Paragraphs 1 through 21 of this Indictment are realleged and incorporated as though fully set forth herein.

23. From in or about 2016 and continuing until in or about May 2019, in the Western District of Texas and elsewhere, the Defendant,

**DAVID BYRON SEIBERT,**

did knowingly engage and attempt to engage in a monetary transaction by through or to a financial institution, affecting interstate or foreign commerce, in criminally derived property of a value greater than \$10,000, that is deposit, withdrawal, transfer, or exchange of U.S. currency, funds, and monetary instruments, such property having been derived from a specified unlawful activity: Wire Fraud, as described in Count One of this Information, and contrary to Title 18, United States Code, Section 1343, as follows:

Immediately following the investment(s) into the El Paso property at Commerce Park, on or about August 17, 2018, the Defendant made a \$11,930.86 payment from Seibert's BOA Account-Austin, Texas, a financial institution, to Seibert's AMEX Account; and the following transfers from Seibert's BOA Account-Austin, Texas, a financial institution, to Seibert's Straits Account:

<b>Date (on or about)</b>	<b>Amount</b>
08/17/2018	\$200,000
08/31/2018	\$80,000

All in violation of Title 18, United States Codes, Section 1957.

**NOTICE OF GOVERNMENT'S DEMAND FOR FORFEITURE**

**[See FED. R. CRIM. P. 32.2]**

**I.**

**Wire Fraud Violation and Forfeiture Statute**

**[Title 18 U.S.C. §1343, subject to forfeiture pursuant Title 18 U.S.C. § 981 (a)(1)(C)]**

As a result of the criminal violations set forth in Count One, the United States of America give notice to the Defendant David Byron Siebert of its intent to seek the forfeiture of property, including the items listed below, upon conviction and as part of sentencing pursuant to FED. R. CRIM. P. 32.2 and Title 18 U.S.C. § 981(a)(1)(C), which states:

**Title 18 U.S.C. § 981. Criminal Forfeiture**

**(a)(1)** The following property is subject to forfeiture to the United States:

**(C)** Any property, real, or personal, which constitutes or is derived from proceeds traceable to . . . any offense constituting “specific unlawful activity” (as defined in section 1956(c)(7) of this title), or a conspiracy to commit such offense.

**II.**

**Money Laundering Violation and Forfeiture Statutes**

**[Title 18 U.S.C. §1957 and subject to forfeiture pursuant Title 18 U.S.C. § 982(a)(1)]**

As a result of the foregoing criminal violation set forth in Count Two, the United States gives notice to the Defendant David Byron Siebert of its intent to seek the forfeiture of properties, including the items listed below, Defendant shall forfeit all right, title, and interest in said properties to the United States pursuant to FED. R. CRIM. P. 32.2 and Title 18 U.S.C. § 982(a)(1), which states:

**Title 18 U.S.C. § 982. Criminal Forfeiture**

**(a)(1)** The court is imposing sentence on a person convicted of an offense in violation of sections 1956, 1957, or 1960 of this title, shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property.

This Notice of Demand for Forfeiture includes, but is not limited to, the properties described below in Paragraph III.

**III.**  
**Subject Properties**

- Silver Band Breitling Gold Ring Around Face watch;
- Silver Breitling Yellow Face watch;
- Rose Gold & Diamond Bulgari ring;
- \$5,000.00, more or less, in United States Currency; and
- Any and all other items used and/or intended to be used in the commission of the criminal offenses.

**Money Judgment:**

A sum of money equal to Fourteen Million Nine Hundred Ninety Three Thousands and Thirty Three Dollars (\$14,993,033.00) represents the properties involved in and/or the amount of proceeds traceable, directly or indirectly, to the violations set forth in Counts One and Two, for which Defendant David Byron Siebert is liable.

**Substitute Assets:**

If any of the properties described above, as a result of any act or omission of Defendant David Bryon Siebert:

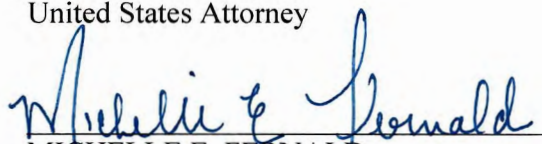
- a. Cannot be located upon the exercise of due diligence;
- b. Has been transferred or sold to, or deposited with, a third person;
- c. Has been placed beyond the jurisdiction of the Court;
- d. Has been substantially diminished in value; or
- e. Has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States to seek the forfeiture of any other properties owned by Defendant up to the value of the Money Judgment as substitute assets, pursuant to FED. R. CRIM. P. 32.2 and 21 U.S.C. § 853(p).

Respectfully submitted,

Ashley C. Hoff  
United States Attorney

By:

  
MICHELLE E. FERNALD  
Assistant United States Attorney