

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-cv-60082- DIMITROULEAS/SNOW

SECURITIES AND EXCHANGE COMMISSION)
)
Plaintiff,)
)
v.)
)
FREDERIC ELM f/k/a FREDERIC ELMALEH,)
<i>et al.</i> ,)
)
Defendants,)
)

**PLAINTIFF’S UNOPPOSED MOTION FOR ENTRY OF JUDGMENT OF
PERMANENT INJUNCTION AND OTHER RELIEF AS TO DEFENDANTS
ELM TREE INVESTMENT ADVISORS, LLC, ELM TREE INVESTMENT
FUND LP, ELM TREE ‘E’CONOMY FUND LP,
AND ELM TREE MOTION OPPORTUNITY LP**

Pursuant to the Court’s Second Order to Show Cause for Lack of Prosecution as to Defendants Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund LP, Elm Tree ‘e’Conomy Fund LP, and Elm Tree Motion Opportunity LP, entered on January 21, 2016 [DE 135], Plaintiff Securities and Exchange Commission hereby files the attached Consent of Defendants Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund LP, Elm Tree ‘e’Conomy Fund LP, and Elm Tree Motion Opportunity LP.

The Commission respectfully requests the Court enter the attached Judgment of Permanent Injunction and Other Relief [DE 136-2].

Dated: January 29, 2016

Respectfully submitted,

By: /s/ Patrick R. Costello
Patrick R. Costello
Assistant Chief Litigation Counsel
Florida Bar No. 75034

Attorney for Plaintiff
**SECURITIES AND EXCHANGE
COMMISSION**
100 F Street N.E.
Washington, DC 20549-5985
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Lead Attorney

Katharine Zoladz
Senior Counsel
S.D. Fla. No. A5502058

Attorney for Plaintiff
**SECURITIES AND EXCHANGE
COMMISSION**
801 Brickell Avenue, Suite 1800
Miami, Florida 33131
Telephone: (305) 416-6220
Facsimile: (305) 536-4154
E-mail: ZoladzK@sec.gov

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on January 29, 2016, the foregoing document was filed electronically with the Clerk of Court using CM/ECF. I also certify the foregoing document is being served this day on all counsel of record identified on the Service List below via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Patrick R. Costello

Patrick R. Costello

SERVICE LIST

David R. Chase, Esq.
David R. Chase, P.A.
1700 East Las Olas Boulevard, Suite 305
Fort Lauderdale, FL 33301
(Counsel for Frederic Elm and Amanda Elm)

Christopher Bruno, Esq.
Bruno & Degenhardt, P.C.
10615 Judicial Drive, Suite 703
Fairfax, VA 22030
(Counsel for Frederic Elm and Amanda Elm)

Daniel S. Newman, Esq.
Broad and Cassel
One Biscayne Tower
2 South Biscayne Blvd., 21st Floor
Miami, FL 33131
(Counsel for Receiver Grisel Alonso)

206(4)-8(a)(2) of the Investment Advisers Act of 1940 (“Advisers Act”), 15 U.S.C. §§ 80b-6(1), 80b-6(2), 80b-6(4), and 17 C.F.R. §§ 275.206(4)-8(a)(1) and (a)(2).

3. Defendants agree that, upon motion of the Commission, the Court shall determine whether it is appropriate to order disgorgement of ill-gotten gains and/or a civil penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d); Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d); and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9(e); and, if so, the amount(s) of the disgorgement and/or civil penalty. Defendants further understand that, if disgorgement is ordered, Defendants shall pay prejudgment interest thereon, calculated from December 1, 2014, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). Defendants further agree that in connection with the Commission’s motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Defendants will be precluded from arguing they and Defendant Frederic Elm f/k/a Frederic Elmaleh did not violate the federal securities laws as alleged in the Complaint; (b) Defendants may not challenge the validity of this Consent or the Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(e) of the Federal Rules of Civil Procedure. In connection with the Commission’s motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

4. Defendants waive the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Defendants waive the right, if any, to a jury trial and to appeal from the entry of the Judgment.

6. Defendants enter into this Consent voluntarily and represent that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendants to enter into this Consent.

7. Defendants agree this Consent shall be incorporated into the Judgment with the same force and effect as if fully set forth therein.

8. Defendants will not oppose enforcement of the Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waive any objection based thereon.

9. Defendants waive service of the Judgment and agree that entry of the Judgment by the Court and filing with the Clerk of the Court will constitute notice to them of its terms and conditions.

10. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendants in this civil proceeding. Defendants acknowledge no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendants waive any claim of Double Jeopardy based upon the settlement of this proceeding, including imposition of any remedy or civil penalty herein. Defendants further acknowledge the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendants understand they shall not be permitted to contest the factual allegations of the Complaint in this action.

11. Defendants understand and agree to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings," and "a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations." As part of Defendants' agreement to comply with the terms of Section 202.5(e), Defendants: (a) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the Complaint or creating the impression that the Complaint is without factual basis; (b) will not make or permit to be made any public statement

to the effect that Defendants do not admit the allegations of the Complaint, or that this Consent contains no admission of the allegations, without also stating Defendants do not deny the allegations; and (c) upon filing of this Consent, Defendants hereby withdraw any papers filed in this action to the extent they deny any allegation in the Complaint. If Defendants breach this agreement, the Commission may petition the Court to vacate the Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendants': (i) testimonial obligations; or (ii) the right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

12. Defendants hereby waive any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorneys' fees or other fees, expenses, or costs expended by Defendants to defend against this action. For these purposes, Defendants agree they are not the prevailing party in this action since the parties have reached a good faith settlement.

13. Defendants agree the Commission may present the Judgment to the Court for signature and entry without further notice.

14. Defendants agree the Court shall retain jurisdiction over them and over this matter for the purpose of enforcing the terms of the Judgment.

I, Grisel Alonso, Esq., solely in my capacity as the Court-appointed Receiver for Defendants Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund LP, Elm Tree 'e'Conomy Fund LP, and Elm Tree Motion Opportunity LP, having had the benefit of the advice of competent legal counsel, hereby consent to the Court's entry of the attached Judgment of Permanent Injunction and Other Relief as to Defendants Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund LP, Elm Tree 'e'Conomy Fund LP, and Elm Tree Motion Opportunity LP.

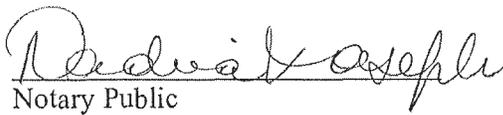
Dated: January 28th, 2016

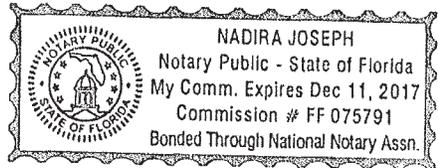


By: Grisel Alonso, Esq., solely in my capacity as Court-appointed Receiver for Defendants Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund LP, Elm Tree 'e'Conomy Fund LP, and Elm Tree Motion Opportunity LP

STATE OF FLORIDA)
)
) ss:
COUNTY OF BROWARD)

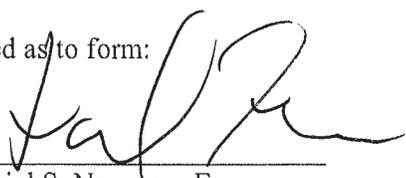
On this 28th day of January 2016, before me personally appeared Grisel Alonso, Esq. who [check one] is personally known to me or ___ produced a Florida driver's license bearing her name and photograph as identification, and who executed this Consent and acknowledged to me that she executed the same.


Notary Public



12-11-2017
Commission Expires:

Approved as to form:



By: Daniel S. Newman, Esq.
BROAD AND CASSEL
One Biscayne Tower
2 South Biscayne Blvd., 21st Floor
Miami, FL 33131

Counsel to the Receiver for Defendants Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund LP, Elm Tree 'e'conomy Fund LP, and Elm Tree Motion Opportunity LP

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 15-cv-60082- DIMITROULEAS/SNOW

SECURITIES AND EXCHANGE COMMISSION)	
)	
Plaintiff,)	
)	
v.)	
)	
FREDERIC ELM f/k/a FREDERIC ELMALEH,)	
<i>et al.,</i>)	
)	
Defendants,)	
and)	
)	
AMANDA ELM f/k/a AMANDA ELMALEH,)	
)	
Relief Defendant.)	
)	

**JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF AS TO
DEFENDANTS ELM TREE INVESTMENT ADVISORS, LLC, ELM TREE
INVESTMENT FUND LP, ELM TREE ‘E’CONOMY FUND LP,
AND ELM TREE MOTION OPPORTUNITY LP**

The Securities and Exchange Commission having filed a Complaint and Defendants Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund LP, Elm Tree ‘e’Conomy Fund LP, and Elm Tree Motion Opportunity LP (collectively, “Defendants”) having entered a general appearance; consented to the Court’s jurisdiction over them and the subject matter of this action; consented to entry of this Judgment of Permanent Injunction and Other Relief (“Judgment”) without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein); waived findings of fact and conclusions of law; and waived any right to appeal from this Judgment:

I.

PERMANENT INJUNCTION

A. Section 17(a) of the Securities Act

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933

(the “Securities Act”), 15 U.S.C. § 77q(a), in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser;

by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Defendants’ qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) any of the officers, agents, servants, employees, and attorneys of Defendants; and (b) other persons in active concert or participation with any of the Defendants or with anyone described in (a).

B. Section 10(b) and Rule 10b-5 of the Exchange Act

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5, by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;

- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Defendants' qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) any of the officers, agents, servants, employees, and attorneys of Defendants; and (b) other persons in active concert or participation with any of the Defendants or with anyone described in (a).

C. Sections 206(1) and 206(2) of the Advisers Act

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Elm Tree Investment Advisors, LLC ("ETIA") is permanently restrained and enjoined from violating Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§ 80b-6(1) and 80b-6(2), by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, while acting as an investment adviser:

- (a) to employ any device, scheme, or artifice to defraud any client or prospective client; or
- (b) to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client;

by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the

prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) ETIA's qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) any of the officers, agents, servants, employees, and attorneys of ETIA; and (b) other persons in active concert or participation with ETIA or with anyone described in (a).

D. Section 206(4) and Rules 206(4)-8(a)(1) and 206(4)-8(a)(2) of the Advisers Act

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that ETIA is permanently restrained and enjoined from violating Section 206(4) and Rules 206(4)-8(a)(1) and 206(4)-8(a)(2) of the Advisers Act, 15 U.S.C. § 80b-6(4) and 17 C.F.R. §§ 275.206(4)-8(a)(1) and 275.206(4)-8(a)(2), by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, while acting as an investment adviser to a pooled investment vehicle:

- (a) to make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle; or
- (b) to otherwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle;

by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) ETIA's qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who

receive actual notice of this Judgment by personal service or otherwise: (a) any of the officers, agents, servants, employees, and attorneys of ETIA; and (b) other persons in active concert or participation with ETIA or with anyone described in (a).

II.

DISGORGEMENT AND CIVIL PENALTY

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon motion of the Commission, the Court shall determine whether it is appropriate to order disgorgement of ill-gotten gains and/or a civil penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d); Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d); and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9(e); and, if so, the amount(s) of the disgorgement and/or civil penalty. If disgorgement is ordered, Defendants shall pay prejudgment interest thereon, calculated from December 1, 2014, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (i) Defendants will be precluded from arguing they and Defendant Frederic Elm f/k/a Frederic Elmaleh did not violate the federal securities laws as alleged in the Complaint; (ii) Defendants may not challenge the validity of the Consent or this Judgment; (iii) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (iv) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

III.

INCORPORATION OF CONSENT

IT IS FURTHER ORDERED, ADJUDGED AND DECREED the Consent filed herewith is incorporated herein with the same force and effect as if fully set forth herein, and Defendants shall comply with all of the undertakings and agreements set forth therein.

IV.

RETENTION OF JURISDICTION

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED this Court shall retain jurisdiction of this matter for purposes of enforcing the terms of this Judgment.

V.

RECEIVERSHIP ORDER

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED the Receivership Order entered by the Court on January 16, 2015 [DE 13] remains in effect, and Grisel Alonso, Esq., the Court-appointed Receiver for Defendants, may continue to act consistently with the rights and powers afforded to her under the terms of the Receivership Order. Nothing herein shall be deemed to limit the powers provided to the Receiver in the Receivership Order, nor shall this Judgment be deemed as an admission by the Receiver or Defendants in any litigation between the Receiver and any third party.

VI.

RULE 54(b) CERTIFICATION

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Judgment forthwith and without further notice.

DONE AND ORDERED in Chambers in Fort Lauderdale, Florida, this ____ day of

_____, 2016.

WILLIAM P. DIMITROULEAS
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 15-cv-60082- DIMITROULEAS/SNOW

SECURITIES AND EXCHANGE COMMISSION)
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Plaintiff,)
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v.)
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FREDERIC ELM f/k/a FREDERIC ELMALEH,)
<i>et al.,</i>)
)
Defendants,)
and)
)
AMANDA ELM f/k/a AMANDA ELMALEH,)
)
Relief Defendant.)
_____)

**JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF AS TO
DEFENDANTS ELM TREE INVESTMENT ADVISORS, LLC, ELM TREE
INVESTMENT FUND LP, ELM TREE ‘E’CONOMY FUND LP,
AND ELM TREE MOTION OPPORTUNITY LP**

The Securities and Exchange Commission having filed a Complaint and Defendants Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund LP, Elm Tree ‘e’Conomy Fund LP, and Elm Tree Motion Opportunity LP (collectively, “Defendants”) having entered a general appearance; consented to the Court’s jurisdiction over them and the subject matter of this action; consented to entry of this Judgment of Permanent Injunction and Other Relief (“Judgment”) without admitting or denying the allegations of the Complaint (except as to jurisdiction and except as otherwise provided herein); waived findings of fact and conclusions of law; and waived any right to appeal from this Judgment:

I.

PERMANENT INJUNCTION

A. Section 17(a) of the Securities Act

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933

(the “Securities Act”), 15 U.S.C. § 77q(a), in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
- (c) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser;

by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Defendants’ qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) any of the officers, agents, servants, employees, and attorneys of Defendants; and (b) other persons in active concert or participation with any of the Defendants or with anyone described in (a).

B. Section 10(b) and Rule 10b-5 of the Exchange Act

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5, by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;

- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) Defendants' qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) any of the officers, agents, servants, employees, and attorneys of Defendants; and (b) other persons in active concert or participation with any of the Defendants or with anyone described in (a).

C. Sections 206(1) and 206(2) of the Advisers Act

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Elm Tree Investment Advisors, LLC ("ETIA") is permanently restrained and enjoined from violating Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§ 80b-6(1) and 80b-6(2), by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, while acting as an investment adviser:

- (a) to employ any device, scheme, or artifice to defraud any client or prospective client; or
- (b) to engage in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client;

by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the

prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) ETIA's qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Judgment by personal service or otherwise: (a) any of the officers, agents, servants, employees, and attorneys of ETIA; and (b) other persons in active concert or participation with ETIA or with anyone described in (a).

D. Section 206(4) and Rules 206(4)-8(a)(1) and 206(4)-8(a)(2) of the Advisers Act

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that ETIA is permanently restrained and enjoined from violating Section 206(4) and Rules 206(4)-8(a)(1) and 206(4)-8(a)(2) of the Advisers Act, 15 U.S.C. § 80b-6(4) and 17 C.F.R. §§ 275.206(4)-8(a)(1) and 275.206(4)-8(a)(2), by use of the mails or any means or instrumentality of interstate commerce, directly or indirectly, while acting as an investment adviser to a pooled investment vehicle:

- (a) to make any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle; or
- (b) to otherwise engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle;

by, directly or indirectly (i) creating a false appearance or otherwise deceiving any person, or (ii) disseminating false or misleading documents, materials, or information or making, either orally or in writing, any false or misleading statement in any communication with any investor or prospective investor, about: (A) any investment strategy or investment in securities; (B) the prospects for success of any product or company; (C) the use of investor funds; (D) compensation to any person; (E) ETIA's qualifications to advise investors; or (F) the misappropriation of investor funds or investment proceeds.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who

receive actual notice of this Judgment by personal service or otherwise: (a) any of the officers, agents, servants, employees, and attorneys of ETIA; and (b) other persons in active concert or participation with ETIA or with anyone described in (a).

II.

DISGORGEMENT AND CIVIL PENALTY

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon motion of the Commission, the Court shall determine whether it is appropriate to order disgorgement of ill-gotten gains and/or a civil penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d); Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d); and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9(e); and, if so, the amount(s) of the disgorgement and/or civil penalty. If disgorgement is ordered, Defendants shall pay prejudgment interest thereon, calculated from December 1, 2014, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (i) Defendants will be precluded from arguing they and Defendant Frederic Elm f/k/a Frederic Elmaleh did not violate the federal securities laws as alleged in the Complaint; (ii) Defendants may not challenge the validity of the Consent or this Judgment; (iii) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (iv) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

III.

INCORPORATION OF CONSENT

IT IS FURTHER ORDERED, ADJUDGED AND DECREED the Consent filed herewith is incorporated herein with the same force and effect as if fully set forth herein, and Defendants shall comply with all of the undertakings and agreements set forth therein.

IV.

RETENTION OF JURISDICTION

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED this Court shall retain jurisdiction of this matter for purposes of enforcing the terms of this Judgment.

V.

RECEIVERSHIP ORDER

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED the Receivership Order entered by the Court on January 16, 2015 [DE 13] remains in effect, and Grisel Alonso, Esq., the Court-appointed Receiver for Defendants, may continue to act consistently with the rights and powers afforded to her under the terms of the Receivership Order. Nothing herein shall be deemed to limit the powers provided to the Receiver in the Receivership Order, nor shall this Judgment be deemed as an admission by the Receiver or Defendants in any litigation between the Receiver and any third party.

VI.

RULE 54(b) CERTIFICATION

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this Judgment forthwith and without further notice.

DONE AND ORDERED in Chambers in Fort Lauderdale, Florida, this ____ day of _____, 2016.

WILLIAM P. DIMITROULEAS
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record