

United States District Court

FOR THE
NORTHERN DISTRICT OF CALIFORNIA

VENUE: SAN FRANCISCO

FILED
2011 SE. 15 P 2:23
RICHARD W. WILSON
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

CR 11 0664

[REDACTED]
[REDACTED]

EBRAHIM SHABUDIN and
THOMAS YU,

EMC

DEFENDANT(S).

INDICTMENT

Violations: 18 U.S.C. § 1349 – Conspiracy to Commit Securities Fraud; 18 U.S.C. § 1348 – Securities Fraud; 15 U.S.C. §§ 78m(b)(2) (A), 78m(b)(5), 78ff and 17 C.F.R. § 240.13b2-1 – Falsifying Corporate Books and Records; 15 U.S.C. § 78ff and 17 C.F.R. § 240.13b2-2 – False Statements to Accountants of a Publicly Traded Company; 18 U.S.C. § 2 – Aiding and Abetting; 18 U.S.C. § 981(a) (1)(C) and 28 U.S.C. § 2461 – Forfeiture of Fraud Proceeds

CR-11-0664 EMC

A true bill

[Signature]
Foreman

Filed in open court this 15th day of

September
[Signature]
Ada Means Clerk

Bail, \$ _____
[Signature]
Jacqueline Scott Corley
United States Magistrate Judge

[Handwritten notes]
NO BAIL WARRANT
to
[unclear]

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: COMPLAINT INFORMATION INDICTMENT SUPERSEDING

Name of District Court, and Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

OFFENSE CHARGED

18 U.S.C. § 1349 - Securities Fraud Conspiracy; 18 U.S.C. § 1348 - Securities Fraud; 15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(5), 78ff and 17 C.F.R. § 240.13b2-1 - Falsifying Corporate Books and Records; 15 U.S.C. § 78ff and 17 C.F.R. § 240.13b2-2 - False Statements to Accountants; 18 U.S.C. § 2 - Aiding and Abetting; 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461 - Forfeiture

Petty
 Minor
 Misdemeanor
 Felony

DEFENDANT - U.S.

THOMAS YU

DISTRICT COURT NUMBER

CR 11 0664

PENALTY: See Attachment A

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

FBI / SIGTARP / FDIC-OIG / FRB-OIG

person is awaiting trial in another Federal or State Court, give name of court

this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District

this is a reprosecution of charges previously dismissed which were dismissed on motion of:

U.S. ATTORNEY DEFENSE

SHOW DOCKET NO.

this prosecution relates to a pending case involving this same defendant

MAGISTRATE CASE NO.

prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

Name and Office of Person Furnishing Information on this form MELINDA HAAG

U.S. Attorney Other U.S. Agency

Name of Assistant U.S. Attorney (if assigned) Jeffrey Rabkin / Adam Reeves

DEFENDANT

EMC

IS NOT IN CUSTODY

Has not been arrested, pending outcome this proceeding.

- 1) If not detained give date any prior summons was served on above charges
- 2) Is a Fugitive
- 3) Is on Bail or Release from (show District)

NDCA

IS IN CUSTODY

- 4) On this charge
 - 5) On another conviction } Federal State
 - 6) Awaiting trial on other charges
- If answer to (6) is "Yes", show name of institution

Has detainer been filed? Yes No

If "Yes" give date filed

DATE OF ARREST Month/Day/Year

Or... If Arresting Agency & Warrant were not

DATE TRANSFERRED TO U.S. CUSTODY Month/Day/Year

This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

SUMMONS NO PROCESS* WARRANT

Bail Amount: _____

If Summons, complete following:

Arraignment Initial Appearance

Defendant Address:

* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time: _____ Before Judge: _____

Comments:

- ATTACHMENT A -

PENALTY:

The maximum statutory penalty for conspiracy to commit securities fraud, in violation of Title 18, United States Code, Section 1349, is 25 years, plus a fine of up to \$250,000 or twice the gross gain or loss, whichever is higher.

The maximum statutory penalty for securities fraud, in violation of Title 18, United States Code, Section 1348, is 25 years, plus a fine of up to \$250,000 or twice the gross gain or loss, whichever is higher.

The maximum statutory penalty for falsifying corporate books and records, in violation of Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5) and 78ff and 17 C.F.R. § 240.13b2-1 is 20 years, plus a fine of up to \$5,000,000.

The maximum statutory penalty for making false statements to accountants of a publicly traded company in violation of Title 15, United States Code, Section 78ff and 17 Code of Federal Regulations § 13b2-2 is 20 years, plus a fine of up to \$5,000,000.

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OFFENSE CHARGED

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- Petty
- Minor
- Misdemeanor
- Felony

PENALTY: See Attachment A

Name of District Court, and/or Judge/Magistrate Location
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DEFENDANT - U.S.

EBRAHIM SHABUDIN

DISTRICT COURT NUMBER

CR 11 0664

DEFENDANT

EMC

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

FBI / SIGTARP / FDIC-OIG / FRB-OIG

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U.S. Attorney Other U.S. Agency

Name of Assistant U.S. Attorney (if assigned) Jeffrey Rabkin / Adam Reeves

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- 1) Has not been arrested, pending outcome this proceeding. If not detained give date any prior summons was served on above charges
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The maximum statutory penalty for falsifying corporate books and records, in violation of Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5) and 78ff and 17 C.F.R. § 240.13b2-1 is 20 years, plus a fine of up to \$5,000,000.

The maximum statutory penalty for making false statements to accountants of a publicly traded company in violation of Title 15, United States Code, Section 78ff and 17 Code of Federal Regulations § 13b2-2 is 20 years, plus a fine of up to \$5,000,000.

1 INDICTMENT

2 The Grand Jury charges:

3 INTRODUCTORY ALLEGATIONS

4 At all times relevant to this Indictment, unless otherwise indicated:

5 I. Background

6 A. The Bank

7 1. United Commercial Bank (UCB) was a commercial bank headquartered in San
8 Francisco, California, with branch offices throughout the United States as well as in China and
9 Taiwan. UCB provided a full range of commercial and consumer banking products to businesses
10 and individuals.

11 2. UCBH Holdings, Inc. (UCBH), a Delaware corporation, was the holding company
12 for UCB. UCBH was a publicly traded company whose shares were registered with the United
13 States Securities and Exchange Commission (SEC) and were traded on the National Association
14 of Securities Dealers Automatic Quotation (NASDAQ) system under the symbol "UCBH."
15 Hereafter, UCBH and UCB are referred to collectively as "the Bank."

16 3. As a public company, the Bank was required to comply with the SEC's rules and
17 regulations, which were designed to protect the investing public. Under those rules and
18 regulations, the Bank was required to (a) make and keep books, records, and accounts, which, in
19 reasonable detail, accurately and fairly reflected the transactions and disposition of the assets of
20 the Bank; (b) devise and maintain a system of internal accounting controls sufficient to provide
21 reasonable assurances that the Bank's transactions were recorded as necessary to permit
22 preparation of financial statements in conformity with generally accepted accounting principles;
23 and (c) file annual reports with the SEC that contained audited financial statements that
24 accurately and fairly presented the financial condition of the Bank, as well as other reports that
25 contained information about the Bank's management, board of directors, business operations and
26 performances.

27 4. A public accounting firm acted as the independent auditor of the Bank's annual
28 financial statements and reviewed the financial statements it filed quarterly.

1 5. The Bank was regulated by, among other agencies, the Federal Deposit Insurance
2 Corporation (the FDIC). The FDIC required, among other things, that the Bank be adequately
3 capitalized and safely managed at all times.

4 B. The Defendants

5 6. Defendant EBRAHIM SHABUDIN was a resident of Moraga, California, and an
6 Executive Vice President of the Bank. From approximately September 2008 through April 2009,
7 SHABUDIN served as the Bank's Chief Credit Officer and the Chief Operating Officer.

8 7. Defendant THOMAS YU was a resident of San Ramon, California, and a Senior
9 Vice President of the Bank. From approximately June 2008 through June 2009, YU served as
10 the Bank's Manager of Credit Risk and Portfolio Management.

11 C. The Bank's Loan Loss Allowance

12 8. The Bank's business loans were booked as assets on the quarterly and annual
13 financial statements filed with the SEC. Interest accrued on business loans was booked as
14 revenue on those quarterly and annual financial statements.

15 9. The Bank assigned risk ratings to its loans. Each rating represented the current
16 likelihood, based on all available information, that the borrower would pay the amount due under
17 the borrower's loan agreement with the Bank. Changes in risk ratings were reflected in internal
18 records specifically prepared for that purpose.

19 10. The Bank deemed a loan to be "impaired" if, based on all current information, it
20 was probable that the Bank would be unable to collect all of the amounts due under the loan
21 agreement. On a quarterly basis, the Bank represented to its regulators, its auditor, and the
22 investing public that the Bank had estimated the total dollar amount of outstanding loans that the
23 Bank would probably not collect from borrowers. This estimate, identified on the Bank's
24 quarterly and annual financial statements as the "Allowance for Loan Losses" (hereafter, the
25 "Loan Loss Allowance"), was derived from, among other things, the Bank's risk ratings as well
26 as the value of the collateral securing the Bank's loans.

27 11. By decreasing the Loan Loss Allowance, the Bank increased net assets on the
28 balance sheet and increased net income on the income statement. For this reason, the size of the

1 Bank's Loan Loss Allowance was material to stock analysts and the investing public. The
2 Bank's Loan Loss Allowance was also material to bank regulators such as the FDIC, which
3 monitored the Bank's Loan Loss Allowance and total assets to ensure that the Bank was
4 adequately capitalized.

5 D. The Bank's Expanding Loan Portfolio

6 12. Between 2004 and 2007, the Bank's loan portfolio increased from approximately
7 \$4.4 billion to more than \$8 billion. By September 2008, the Bank's loan portfolio faced
8 growing losses.

9 13. On or about October 3, 2008, Congress created the Troubled Asset Relief
10 Program (the TARP), as part of the Emergency Economic Stabilization Act of 2008.

11 14. On or about November 14, 2008, the United States provided approximately \$298
12 million in TARP funds to the Bank.

13 II. The Scheme to Defraud

14 A. Objectives of the Scheme to Defraud

15 15. Beginning in or about September 2008, SHABUDIN and YU, together with
16 others, engaged in a fraudulent scheme to deceive the investing public, depositors, the SEC, the
17 Bank's auditor, and bank regulators including bank examiners with the FDIC, by manipulating
18 the Bank's books and records in a manner that, as they well knew, (a) misrepresented and
19 concealed the Bank's true financial condition and performance by falsifying the books and
20 records so they did not fairly and accurately reflect, in all material respects, the transactions and
21 dispositions of the assets of the Bank, and omitted facts necessary to make the books and records
22 complete and accurate; and (b) caused the Bank to issue false and misleading statements and
23 representations about its financial condition and performance, because such statements did not
24 fairly and accurately, in all material respects, reflect the Bank's actual financial condition and
25 performance, and omitted facts necessary to make those statements complete and accurate.

26 16. The objectives of the scheme to defraud were, among other things, to (a) conceal,
27 delay, and avoid publicly reporting the Bank's number of impaired loans; (b) conceal, delay, and
28 avoid publicly reporting the Bank's true loan losses; (c) mislead investors through false

1 statements relating to information material to their decision to buy, sell, or hold the Bank's
2 securities; (d) mislead depositors about information relevant to their decision to keep their funds
3 at the Bank; and (e) mislead bank regulators, such as the FDIC, about whether the Bank was
4 adequately capitalized and effectively managed.

5 B. Manner and Means of the Scheme to Defraud

6 17. In furtherance of the scheme to defraud, SHABUDIN and YU, and others, utilized
7 a variety of fraudulent accounting maneuvers and techniques. Among other things, SHABUDIN
8 and YU, and others, caused the Bank to:

9 (a) fraudulently conceal information showing the Bank's loan collateral and
10 repossessed assets had declined in value;

11 (b) fraudulently rate the risk of certain loans; and

12 (c) fraudulently delay the downgrading of the risk ratings of certain loans.

13 18. As a further part of the scheme to defraud, SHABUDIN and YU, and others,
14 falsified the Bank's books and records. Among other things, SHABUDIN and YU, and others,
15 prepared and caused to be prepared various records and memoranda that both falsely described,
16 and omitted material information necessary to accurately describe, the likelihood that loans
17 would be repaid pursuant to the Bank's loan agreements and the value of the Bank's loan
18 collateral and repossessed assets. As a consequence, the description of the Bank's loans and
19 repossessed assets presented in those records and memoranda was false, misleading, and
20 fraudulent.

21 19. As a further part of the scheme to defraud, SHABUDIN and YU, and others,
22 misled and lied to the Bank's auditor. SHABUDIN and YU, and others, also failed to disclose to
23 the Bank's auditor facts necessary to make their statements and representations complete and
24 accurate. For example, SHABUDIN and YU, and others:

25 (a) misrepresented, and caused to be misrepresented, to the Bank's auditor, records
26 and memoranda that provided a materially false, misleading, and fraudulent description of
27 various Bank loans and the collateral securing those loans;

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1 (b) concealed and omitted from the Bank's records material information relating to
2 the existence of recent appraisals of collateral that secured various Bank loans;

3 (c) concealed and omitted from the Bank's records material information relating to
4 the value of repossessed assets and collateral; and

5 (d) concealed and omitted from the Bank's records material information relating to
6 the Bank's intention to sell various loans, as well as pending loan sales.

7 20. As a further part of the fraudulent scheme, SHABUDIN and YU, and others,
8 caused the Bank to issue materially false and misleading public statements and reports regarding
9 its financial condition and performance in, among other things:

10 (a) a press release issued on or about January 22, 2009;

11 (b) an earnings call held on or about January 23, 2009; and

12 (c) an annual report on SEC Form 10-K filed with the SEC on or about March 16,
13 2009, that contained its financial statements for the year 2008.

14 21. On or about May 20, 2009, the Bank announced that the financial statements
15 contained in its March 16, 2009 SEC Form 10-K were unreliable, withdrew those financial
16 statements, and announced that it intended to restate them.

17 22. The Bank failed in November 2009, without filing restated financial statements
18 for the year 2008. As a result of the Bank's failure, the FDIC became the Bank's receiver and
19 has paid out approximately \$397 million. The estimated losses to the FDIC are approximately
20 \$2.5 billion. To date, none of the TARP funds have been repaid.

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1 COUNT ONE: (18 U.S.C. § 1349 – Conspiracy to Commit Securities Fraud)

2 23. The allegations in Paragraphs 1 through 22 are realleged and incorporated as if
3 fully set forth here.

4 24. Beginning in or about September 2008, and continuing through in or about April
5 2009, both dates being approximate and inclusive, in the Northern District of California and
6 elsewhere, the defendants,

7 EBRAHIM SHABUDIN and
8 THOMAS YU,

9 and others, did knowingly and intentionally attempt and conspire to execute a scheme and artifice
10 to (a) defraud persons in connection with securities of UCBH, an issuer with a class of securities
11 that was registered under Section 12 of the Securities Exchange Act of 1934, and (b) obtain, by
12 means of materially false and fraudulent pretenses, representations and promises, and by
13 statements containing material omissions, money and property in connection with the purchase
14 and sale of securities of UCBH, an issuer with a class of securities that was registered under
15 Section 12 of the Securities Exchange Act of 1934, in violation of Title 18, United States Code,
16 Section 1348.

17 All in violation of Title 18, United States Code, Section 1349.

18 COUNT TWO: (18 U.S.C. §§ 1348, 2 – Securities Fraud)

19 25. The allegations in Paragraphs 1 through 24 are realleged and incorporated as if
20 fully set forth here.

21 26. Beginning in or about September 2008, and continuing through in or about April
22 2009, both dates being approximate and inclusive, in the Northern District of California and
23 elsewhere, the defendants,

24 EBRAHIM SHABUDIN and
25 THOMAS YU,

26 and others, did knowingly and intentionally execute, and attempted to execute, a scheme and
27 artifice to (a) defraud persons in connection with securities of UCBH, an issuer with a class of
28 securities that was registered under Section 12 of the Securities Exchange Act of 1934, and (b)

1 obtain, by means of materially false and fraudulent pretenses, representations and promises, and
2 by statements containing material omissions, money and property in connection with the
3 purchase and sale of securities of UCBH, an issuer with a class of securities that was registered
4 under Section 12 of the Securities Exchange Act of 1934, and did aid and abet in the same.

5 All in violation of Title 18, United States Code, Sections 1348 and 2.

6 COUNT THREE: (15 U.S.C. §§ 78m(b)(2)(A), 78m(b)(5), 78ff and 17 C.F.R. 240.13b2-1; 18
7 U.S.C. § 2 – Falsifying Corporate Books and Records)

8 27. The allegations in Paragraphs 1 through 26 are realleged and incorporated as if
9 fully set forth here.

10 28. Beginning in or about September 2008, and continuing through in or about April
11 2009, both dates being approximate and inclusive, in the Northern District of California and
12 elsewhere, the defendants,

13 EBRAHIM SHABUDIN and
14 THOMAS YU,

15 and others, did knowingly and willfully, directly and indirectly, falsify and cause to be falsified
16 books, records, and accounts of UCBH, and did aid and abet in the same.

17 All in violation of Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5) and
18 78ff; Title 17, Code of Federal Regulations, Section 240.13b2-1; and Title 18, United States
19 Code, Section 2.

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1 COUNT FOUR: (15 U.S.C. § 78ff and 17 C.F.R. § 13b2-2; 18 U.S.C. § 2 – False Statements to
2 Accountants of a Publicly Traded Company)

3 29. The allegations in Paragraphs 1 through 28 are realleged and incorporated as if
4 fully set forth here.

5 30. Beginning in or about September 2008, and continuing through in or about April
6 2009, both dates being approximate and inclusive, in the Northern District of California and
7 elsewhere, the defendants,

8 EBRAHIM SHABUDIN and
9 THOMAS YU,

10 and others, did knowingly and willfully make and cause to be made materially false and
11 misleading statements to UCBH's auditors in connection with the audit, review, and examination
12 of UCBH's financial statements, and in connection with the preparation of documents and
13 reports required to be filed with the SEC, and did knowingly and willfully omit to state material
14 facts necessary in order to make statements made, in light of the circumstances in which such
15 statements were made, not misleading, and did aid and abet in the same.

16 All in violation of Title 15, United States Code, Section 78ff; Title 17, Code of Federal
17 Regulations, Section 240.13b2-2; and Title 18, United States Code, Section 2.

18 FORFEITURE ALLEGATION: (18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461)

19 31. Paragraphs 1 through 26 of this Indictment are re-alleged and incorporated as if
20 fully set forth here for the purpose of alleging forfeiture pursuant to the provisions of 18 U.S.C. §
21 981(a)(1)(C).

22 32. Upon a conviction for any violations of Title 18, United States Code, Sections
23 1349 and 1348, as alleged in Counts One and Two, the defendants,

24 EBRAHIM SHABUDIN and
25 THOMAS YU,

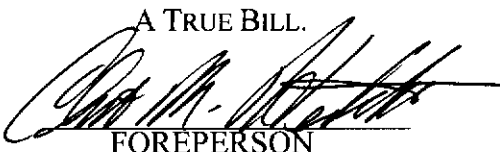
26 shall forfeit to the United States any property, real or personal, which constitutes or is derived
27 from proceeds traceable to said offense, including but not limited to a sum of money equal to the
28 total proceeds from the commission of said offense.

- 1 33. If, as a result of any act or omission of the defendants, any of said property
- 2 a. cannot be located upon the exercise of due diligence;
- 3 b. has been transferred or sold to or deposited with, a third person;
- 4 c. has been placed beyond the jurisdiction of the Court;
- 5 d. has been substantially diminished in value; or
- 6 e. has been commingled with other property which cannot be divided without
- 7 difficulty;

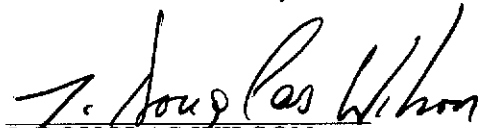
8 any and all interest defendants have in any other property up to the value of the property
 9 described in Paragraph 32 above, shall be forfeited to the United States pursuant to Title 18,
 10 United States Code, Section 981(a)(1)(C), as incorporated by Title 28, United States Code,
 11 Section 2461.


12 All in violation of Title 18, United States Code, Sections 981(a)(1)(C), 1348, 1349; Title
 13 28, United States Code, Section 2461; and Rule 32.2 of the Federal Rules of Criminal Procedure.

14
 15
 16 Dated: September 15, 2011

A TRUE BILL.

 FOREPERSON

17
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 20 MELINDA HAAG
 United States Attorney

21
 22 
 23 J. DOUGLAS WILSON
 Acting Chief, Criminal Division

24
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 26 (Approved as to form: 
 27 AUSA JEFFREY RABKIN
 28