

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

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THE PEOPLE OF THE STATE OF NEW YORK

-vs-

FELONY COMPLAINT
(AAG Ricardo E. Velez 212-416-6550)

DANIEL G. CALUGAR,

Defendant.

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STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Confidential Investigator Herbert Antomez, of the Criminal Investigations Bureau of the New York State Office of the Attorney General, being duly sworn, deposes and says that from during a period about January 2001 to about September 2003, the defendant committed the offense of:

VIOLATION OF GENERAL BUSINESS LAW § 352-c (6), a class E Felony,

in that the defendant, in the County of New York and elsewhere, intentionally engaged in fraud, deception, concealment, suppression, false pretense and fictitious and pretended purchase and sale, and with intent to deceive and defraud, made material false representations and statements, while engaged in inducing and promoting the issuance, distribution, exchange, sale, negotiation and purchase within and from this state of a security, and thereby wrongfully obtained property of a value in excess of two hundred fifty dollars.

Defendant committed the above crime as follows:

I am informed by the defendant and have examined the regularly-kept business records of Security Brokerage Inc. (“SBI”), the National Securities Clearing Corporation (“NSCC”) and Franklin Templeton Investments. According to those sources, the defendant, Daniel G. Calugar (“Calugar”), was president and owner of SBI, a broker-dealer and member of the National Association of Security Dealers. During the relevant time period, Calugar, often using SBI,

engaged in market timing, a practice involving frequent trading of shares of mutual funds. These trades were routed through the NSCC in New York in order to complete the transactions to purchase shares from the mutual funds. A share of a mutual fund is a type of security which is sold to the public.

During the time period charged, Calugar defrauded the Franklin Small-Mid Cap Growth Fund f/k/a Franklin Small Cap Growth Fund I (the “Fund”) and others by entering into a secret agreement with the adviser to the Fund, Franklin Advisers, Inc. (“Franklin Advisers”), and with Franklin Templeton Alternative Strategies, Inc. (“FTAS”), the adviser to the Franklin Templeton Strategic Growth Fund, Ltd. (the “Franklin Hedge Fund”). The secret agreement allowed Calugar to trade frequently in the Fund without paying the required monetary penalty, a benefit not available to other shareholders. In exchange for this benefit, Calugar, invested \$10 million in the Franklin Hedge Fund. Over the course of the relationship during the period charged herein, defendant thus failed to remit more than \$ 1 million

Calugar, in concert with Franklin Advisers and FTAS, intentionally concealed and suppressed the existence of this secret agreement from the Fund, other shareholders and the investing public. Pursuant to this arrangement, Calugar purchased and sold shares of the Fund in New York County and elsewhere, and thereby wrongfully obtained property in excess of \$250.

FALSE STATEMENTS MADE HEREIN
ARE PUNISHABLE AS A CLASS A
MISDEMEANOR PURSUANT TO
SECTION 210.45 OF THE PENAL LAW

HERBERT ANTOMEZ
NEW YORK STATE ATTORNEY GENERAL'S OFFICE