

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA :
 :
 v. : **CRIMINAL NO. 09-**
 :
 Spalen **MICHAEL ALEXANDER** :

GUILTY PLEA AGREEMENT

Under Federal Rule of Criminal Procedure 11, the government, the defendant, and the defendant's counsel enter into the following guilty plea agreement. Any reference to the United States or the government in this agreement shall mean the Office of the United States Attorney for the Eastern District of Pennsylvania.

1. The defendant agrees to plead guilty to Counts One, Two, and Three of an information, waiving prosecution by indictment, charging him in Counts One and Two with wire fraud, in violation of 18 U.S.C. § 1343, and in Count Three with money laundering, in violation of 18 U.S.C. § 1956, and not to contest forfeiture as set forth in the notice of forfeiture charging criminal forfeiture under 18 U.S.C. § 981, all arising from defendant's scheme to defraud investors of money they believed they were investing in defendant's hedge fund. The defendant further acknowledges his waiver of rights, as set forth in Attachment B to this agreement.

2. The defendant agrees to pay the special victims/witness assessment in the amount of \$300 before the time of sentencing and shall provide a receipt from the Clerk to the government before sentencing as proof of this payment. The defendant agrees to forfeiture as set forth in Attachment A to this agreement.

3. The defendant agrees to pay a fine as directed by the Court and to make restitution of \$7.5 million. The defendant further agrees that forfeiture, restitution, fine,

assessment, tax, interest or other payments in this case do not constitute extraordinary acceptance of responsibility or provide any basis to seek a downward departure or variance from the applicable Sentencing Guidelines range.

4. Defendant waives any claim under the Hyde Amendment, 18 U.S.C. § 3006A (Statutory Note), for attorney's fees and other litigation expenses arising out of the investigation or prosecution of this matter.

5. At the time of sentencing, the government will:

- a. Make whatever sentencing recommendation as to imprisonment, fines, forfeiture, restitution and other matters which the government deems appropriate.
- b. Comment on the evidence and circumstances of the case; bring to the Court's attention all facts relevant to sentencing including evidence relating to dismissed counts, if any, and to the character and any criminal conduct of the defendant; address the Court regarding the nature and seriousness of the offense; respond factually to questions raised by the Court; correct factual inaccuracies in the presentence report or sentencing record; and rebut any statement of facts made by or on behalf of the defendant at sentencing.
- c. Nothing in this agreement shall limit the government in its comments in, and responses to, any post-sentencing matters.

6. The defendant understands, agrees and has had explained to him by counsel that the Court may impose the following statutory maximum sentences: Counts One and Two (wire fraud), on each count, 20 years imprisonment, five years supervised release, a \$250,000 fine, and a \$100 special assessment; and Count Three (money laundering), 20 years imprisonment, five years supervised release, a \$500,000 fine, and a \$100 special assessment.

Total Maximum Sentence is: 60 years imprisonment, five years supervised release, \$1 million fine, and a \$300 special assessment. Full restitution of as much as \$7.5 million also shall be ordered. Forfeiture of any property, real or personal, that constitutes or is derived from proceeds traceable to the commission of such offenses, including, but not limited to, the sum of \$7.5 million and the real property comprising 1200, 1204, and 1208 Spring Mill Road, Villanova, Pennsylvania, also will be ordered.

The defendant further understands that supervised release may be revoked if its terms and conditions are violated. When supervised release is revoked, the original term of imprisonment may be increased by up to two years. Thus, a violation of supervised release increases the possible period of incarceration and makes it possible that the defendant will have to serve the original sentence, plus a substantial additional period, without credit for time already spent on supervised release.

7. The defendant may not withdraw his plea because the Court declines to follow any recommendation, motion or stipulation by the parties to this agreement. No one has promised or guaranteed to the defendant what sentence the Court will impose.

8. Pursuant to USSG § 6B1.4, the parties enter into the following stipulations under the Sentencing Guidelines Manual. It is understood and agreed that: (1) the parties are free

to argue the applicability of any other provision of the Sentencing Guidelines, including offense conduct, offense characteristics, criminal history, adjustments and departures; (2) these stipulations are not binding upon either the Probation Department or the Court; and (3) the Court may make factual and legal determinations that differ from these stipulations and that may result in an increase or decrease in the Sentencing Guidelines range and the sentence that may be imposed:

- a. The parties agree and stipulate that \$7.5 million was the fraud loss caused in furtherance of the criminal activity undertaken by the defendant, and the defendant's Guideline range should be calculated based on this amount pursuant to USSG § 1B1.3.
- b. The parties agree and stipulate that, as of the date of this agreement, the defendant has demonstrated acceptance of responsibility for his offense making the defendant eligible for a 2-level downward adjustment under USSG § 3E1.1(a).
- c. The parties agree and stipulate that, as of the date of this agreement, the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying the government of his intent to plead guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, resulting in a 1-level downward adjustment under USSG § 3E1.1(b).

9. In exchange for the undertakings made by the government in entering this plea agreement, the defendant voluntarily and expressly waives all rights to appeal or collaterally attack the defendant's conviction, sentence, or any other matter relating to this prosecution, whether such a right to appeal or collateral attack arises under 18 U.S.C. § 3742, 28 U.S.C. § 1291, 28 U.S.C. § 2255, or any other provision of law. This waiver is not intended to bar the assertion of constitutional claims that the relevant case law holds cannot be waived.

- a. Notwithstanding the waiver provision above, if the government appeals from the sentence, then the defendant may file a direct appeal of his sentence.
- b. If the government does not appeal, then notwithstanding the waiver provision set forth in this paragraph, the defendant may file a direct appeal but may raise only claims that:
 - (1) the defendant's sentence on any count of conviction exceeds the statutory maximum for that count as set forth in paragraph 6 above;
 - (2) the sentencing judge erroneously departed upward pursuant to the Sentencing Guidelines;
 - (3) the sentencing judge, exercising the Court's discretion pursuant to United States v. Booker, 543 U.S. 220 (2005), imposed an unreasonable sentence above the final Sentencing Guideline range determined by the Court.

If the defendant does appeal pursuant to this paragraph, no issue may be presented by the defendant on appeal other than those described in this paragraph.

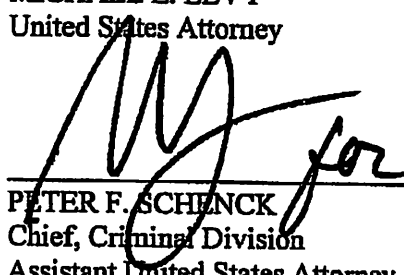
The defendant also waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

10. By entering this plea of guilty, the defendant also waives any and all rights the defendant may have, pursuant to 18 U.S.C. §3600, to require DNA testing of any physical evidence in the possession of the government. The defendant fully understands that, as a result of this waiver, any physical evidence in this case will not be preserved by the government and will therefore not be available for DNA testing in the future.

11. The defendant is satisfied with the legal representation provided by the defendant's lawyer; the defendant and this lawyer have fully discussed this plea agreement; and the defendant is agreeing to plead guilty because the defendant admits that he is guilty.

12. It is agreed that the parties' guilty plea agreement contains no additional promises, agreements or understandings other than those set forth in this written guilty plea agreement, and that no additional promises, agreements or understandings will be entered into unless in writing and signed by all parties.

MICHAEL L. LEVY
United States Attorney


PETER F. SCHENCK
Chief, Criminal Division
Assistant United States Attorney


DAVID L. AXELROD
Assistant United States Attorney


JONATHAN SOBEL
Counsel for Defendant

Date:

1/14/10

ATTACHMENT A

The defendant agrees to the following:

- a. **The defendant has an interest in each of the following assets that is forfeitable, pursuant to Title 28, United States Code, Section 2461(c), and Title 18, United States Code, Section 981(a)(1)(C), based upon his plea of guilty pursuant to this agreement. He forfeits his right, title and interest in the following assets and agrees that such assets constitute or are derived from proceeds of the violations specified above:**
 - i. **\$182,409.26 and \$225,207.72 the government seized from two TD Ameritrade accounts controlled by the defendant; and**
 - ii. **the real property comprising 1200, 1204, and 1208 Spring Mill Road, Villanova, Pennsylvania.**
- b. **The defendant agrees to the entry of a preliminary order of forfeiture pursuant to Fed.R.Crim.P. 32.2(b) as soon as possible after the guilty plea and before sentencing. The defendant also consents to the interlocutory sale of any or all of the foregoing assets, upon motion of the government, following the entry of a preliminary order of forfeiture. Pursuant to Fed.R.Crim.P. 32.2(b)(3), the defendant further agrees that, upon the request of the government, the preliminary order of forfeiture may be made final before his sentencing.**
- c. **The defendant agrees to surrender to the government possession of: (i) \$182,409.26 and \$225,207.72 the government seized from two TD Ameritrade accounts controlled by the defendant; and (ii) the proceeds from the sale of the real property comprising 1200, 1204, and 1208 Spring Mill Road, Villanova, Pennsylvania, at a time contemporaneous with the closing of such a sale. The defendant further agrees, with respect to any real property to be forfeited, that: the government may file a lis pendens on the real property; the government shall have access to the real property for the purposes of inspection, appraisal and testing; and the defendant will take all actions and execute all documents requested by the government to effectuate the government's access to the real property. The defendant agrees that should he fail to timely satisfy these obligations, the government may elect to: void this agreement; void the forfeiture portion of the agreement and try the forfeiture before the Court and seek a larger forfeiture; argue that the defendant is not entitled to a downward adjustment for acceptance of responsibility under Guideline Section 3E1.1; and/or pursue any and all forfeiture remedies available at law or equity. The defendant agrees to waive any right to trial by jury on all forfeiture issues.**
- d. **The defendant agrees that at the time this agreement is executed, the government may also place a lien and/or lis pendens on the following property in order to**

secure, in whole or in part, this forfeiture: 1200, 1204, and 1208 Spring Mill Road, Villanova, Pennsylvania. The defendant agrees to execute all documents requested by the government to effectuate these security interests. The defendant further agrees to place this real property up for sale with a real estate agent within 30 days of signing this plea agreement. Before signing any agreement with a real estate agent, the defendant shall submit the proposed agreement to the government which shall have the right to accept, reject, or accept or reject with conditions, the agreement. The defendant shall submit in writing all offers on the property to the government. Before entering into any agreement of sale with respect to the property, the defendant shall submit the proposed agreement to the government, which shall have the right to accept, reject, or accept or reject with conditions, the agreement. All proceeds of the sale shall be made out to the "United States Department of Justice" and submitted directly to the government by the settlement agency or title agent without first being submitted to the defendant.


- e. The defendant agrees not to contest the administrative or civil forfeiture to the government of: (i) \$182,409.26 and \$225,207.72, the government seized from two TD Ameritrade accounts controlled by Alexander; and (ii) the proceeds from the sale of the real property comprising 1200, 1204, and 1208 Spring Mill Road, Villanova, Pennsylvania.
- f. The defendant agrees that he will cooperate with the government by taking whatever steps are necessary to pass clear title to the United States of the assets listed above, including, but not limited to, assisting in bringing any assets, or the proceeds from the sale of assets, located outside the United States within the jurisdiction of the United States; completing any legal documents required for the transfer of assets to the United States, and taking whatever steps are necessary to ensure that assets subject to forfeiture are not sold, disbursed, wasted, hidden or otherwise made unavailable for forfeiture.
- h. The defendant understands and agrees that, as a condition precedent to this agreement, he was required to complete truthfully and accurately a financial disclosure form listing all of his income, assets, liabilities and financial interests, held directly or indirectly. The defendant further represents and warrants to the government that he has no interest, either direct or indirect, whether held in his own name or in the name of a relative, spouse, associate, another person or entity, whether held in this country or outside this country, in any property, real or personal, or any asset that would be subject to forfeiture on the basis of it representing proceeds from the violations specified in this agreement, except for the assets and property described in paragraph (a) above, and understands and acknowledges that the government is relying upon the defendant's representations regarding his financial status and the existence of forfeitable assets in entering into this plea agreement. If the defendant's representations are false or inaccurate,

the government may elect to: void this agreement; void the forfeiture portion of the agreement and try the forfeiture before the Court and seek a larger forfeiture; consider such representations in deciding whether to file any motion pursuant to U.S.S.G. § 5K1.1; argue that the defendant is not entitled to a downward adjustment for acceptance of responsibility under Guideline Section 3E1.1; and/or pursue any and all forfeiture remedies available at law or equity. The defendant agrees to waive any right to trial by jury on all forfeiture issues.

- i. The defendant agrees to waive any claims, defenses or challenges arising under the Double Jeopardy or Excessive Fines Clauses of the Eighth Amendment, resulting from the forfeiture imposed as a result of this indictment and/or any pending or completed administrative or civil forfeiture actions and stipulates that such forfeiture is not grossly disproportionate to his criminal conduct.**
- j. The defendant agrees that the forfeiture requirements of this agreement do not amount to extraordinary acceptance of responsibility and do not constitute any basis for a downward departure under the Sentencing Guidelines.**

Attachment B

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
 :
 v. : CRIMINAL NO.
 :
  MICHAEL ALEXANDER :

ACKNOWLEDGMENT OF RIGHTS

I hereby acknowledge that I have certain rights that I will be giving up by pleading guilty.

1. I understand that I do not have to plead guilty.
2. I may plead not guilty and insist upon a trial.
3. At that trial, I understand
 - a. that I would have the right to be tried by a jury that would be selected from the Eastern District of Pennsylvania and that along with my attorney, I would have the right to participate in the selection of that jury;
 - b. that the jury could only convict me if all twelve jurors agreed that they were convinced of my guilt beyond a reasonable doubt;
 - c. that the government would have the burden of proving my guilt beyond a reasonable doubt and that I would not have to prove anything;
 - d. that I would be presumed innocent unless and until such time as the jury was convinced beyond a reasonable doubt that the government had proven that I was guilty;
 - e. that I would have the right to be represented by a lawyer at this trial and at any appeal following the trial, and that if I could not afford to hire a lawyer, the court would appoint one for me free of charge;
 - f. that through my lawyer I would have the right to confront and cross examine the witnesses against me;

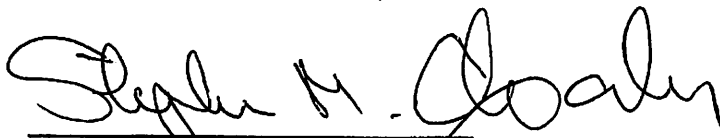
- g. that I could testify in my own defense if I wanted to and I could subpoena witnesses to testify in my defense if I wanted to;
- h. that I would not have to testify or otherwise present any defense if I did not want to and that if I did not present any evidence, the jury could not hold that against me.

4. I understand that if I plead guilty, there will be no trial and I would be giving up all of the rights listed above.

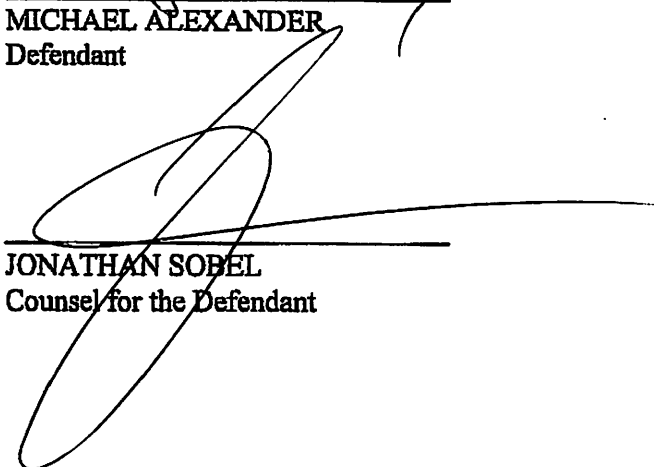
5. I understand that if I decide to enter a plea of guilty, the judge will ask me questions under oath and that if I lie in answering those questions, I could be prosecuted for the crime of perjury, that is, for lying under oath.

6. I understand that if I plead guilty, I have waived my right to appeal, except as set forth in appellate waiver provisions of my plea agreement.

7. Understanding that I have all these rights and that by pleading guilty I am giving them up, I still wish to plead guilty.



MICHAEL ALEXANDER
Defendant



JONATHAN SOBEL
Counsel for the Defendant