

RJS  
Court Ex 2  
10/2/12



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

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*The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007*

September 18, 2012

By Hand

Carl F. Schoeppl, Esq.  
Schoeppl & Burke, P.A.  
4651 North Federal Highway  
Boca Raton, Florida 33431

Re: United States v. John Mattera  
12 Cr. 127 (RJS)

Dear Mr. Schoeppl:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from John Mattera ("the defendant") to Counts One, Two, Three and Four of the above-referenced Indictment.

Count One charges the defendant with conspiracy to commit securities fraud and wire fraud, in violation of Title 18, United States Code, Section 371. Count One carries a maximum sentence of five years' imprisonment; a maximum period of supervised release of three years; a maximum fine, pursuant to Title 18, United States Code, Section 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense; and a mandatory \$100 special assessment.

Count Two charges the defendant with securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff and Title 17, Code of Federal Regulations, Section 240.10b-5. Count Two carries a maximum sentence of twenty years' imprisonment; a maximum period of supervised release of three years; a maximum fine of \$5 million; and a mandatory \$100 special assessment.

Count Three charges the defendant with wire fraud, in violation of Title 18, United States Code, Section 1343. Count Three carries a maximum sentence of twenty years' imprisonment; a maximum period of supervised release of three years; a maximum fine, pursuant

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to Title 18, United States Code, Section 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense; and a mandatory \$100 special assessment.

Count Four charges the defendant with money laundering, in violation of Title 18, United States Code, Section 1956. Count Four carries a maximum sentence of twenty years' imprisonment; a maximum fine, pursuant to Title 18, United States Code, Section 3571, of the greatest of \$500,000, or twice the value of the monetary instruments involved in the offense; a maximum period of supervised release of three years; and a mandatory \$100 special assessment.

In addition to the foregoing, the Court must order restitution in accordance with Sections 3663, 3663A, and 3664 of Title 18, United States Code.

The total maximum term of imprisonment on Counts One through Four is 65 years.

In consideration of the defendant's plea to the above offenses, the defendant will not be further prosecuted criminally by this Office (except for criminal tax violations as to which this Office cannot, and does not, make any agreement) for (1) his participation in a securities fraud and wire fraud conspiracy from in or about November 2009 through in or about November 2011, as described in Count One of the Indictment; (2) his conduct related to his commission of securities fraud, wire fraud and money laundering, as described in Counts Two through Four of the Indictment, from in or about November 2009 through in or about November 2011. In addition, at the time of sentencing, the Government will move to dismiss any open Counts against the defendant. The defendant agrees that with respect to any and all dismissed charges he is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

The defendant hereby admits the forfeiture allegations with respect to Counts One through Four of the Indictment and agrees to forfeit to the United States, pursuant to 18 U.S.C. Sections 981 (a)(1)(c) and 982, and 28 U.S.C. Section 2461, all property, real and personal, which constitutes or is derived from proceeds traceable to the commission of the offenses, or is property involved in the money laundering offense, or is property traceable to such property, including but not limited to: (i) a sum of money equal to \$13 million in United States currency, representing the amount of proceeds traceable to the commission of the offense (the "Money Judgment"); and (ii) all right, title and interest of the defendant in the following specific property: \$25,000 cash (posted as part of the defendant's bail); and a 2010 Ferrari Italia VN ZFF67NFA3A0175042 (securing defendant's bail) (collectively the "Specific Property"). The defendant agrees that he will not file a claim or a petition for remission or mitigation in any forfeiture proceeding involving the Specific Property and will not cause or assist anyone else in doing so. The defendant also agrees to take all necessary steps to pass clear title to the Specific Property to the United States, including, but not limited to, the execution of all necessary documentation. It is further understood that any forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon him in addition to forfeiture. The defendant consents to the entry of the

Consent Order of Forfeiture annexed hereto as Exhibit A and agrees that the Consent Order of Forfeiture shall be final as to the defendant at the time it is ordered by the Court.

The defendant further agrees to make restitution in an amount ordered by the Court. It is the intent of this Office to recommend that the Department of Justice invoke its Restoration Policy and transfer forfeited assets to be applied to any restitution order entered by the Court.

In consideration of the foregoing and pursuant to United States Sentencing Guidelines ("U.S.S.G." or "Guidelines") Section 6B1.4, the parties hereby stipulate to the following:

A. Offense Level

1. The November 1, 2011 version of the Guidelines applies to this case. The counts are grouped together. See U.S.S.G. § 3D1.2

2. U.S.S.G. § 2B1.1 applies. Because Counts Two, Three and Four have a statutory maximum term of imprisonment of 20 years or more, the base offense level is 7. See U.S.S.G. § 2B1.1(a)(1).

3. Because the loss that resulted was more than \$7,000,000, but not more than \$20,000,000, the offense level is increased by 20 levels. See U.S.S.G. § 2B1.1(b)(1)(K).

4. Because the offense involved ten or more victims, the offense level is increased by 2 levels. See U.S.S.G. § 2B1.1(b)(2)(A).

5. Because the defendant was an organizer or leader of criminal activity that involved fewer than five persons, the offense level is increased by 2 levels. See U.S.S.G. § 3B1.1(c).

6. Because the defendant attempted to willfully obstruct and impede the administration of justice with respect to the investigation, prosecution and sentencing of the instant offense or a closely related offense, the offense level is increased by 2 levels. See U.S.S.G. § 3C1.1.<sup>1</sup>

7. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence, a two-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a). Furthermore, assuming the defendant has accepted responsibility as described in the previous sentence, an additional one-level reduction is warranted, pursuant to U.S.S.G. § 3E1.1(b),

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<sup>1</sup> The defendant reserves the right to argue at sentencing that the enhancement pursuant to U.S.S.G. § 3C1.1 should not be applied in the instant case. If the Court were to find that the obstruction of justice enhancement is not applicable, the total adjusted offense level would be 28.

because the defendant gave timely notice of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

In accordance with the above, the applicable Guidelines offense level is 30.

**B. Criminal History Category**

Based upon the information now available to this Office (including representations by the defense), the defendant has a total of 5 criminal history points, calculated as follows:

1. On or about February 27, 2002, in the Circuit Court of Kentucky, Fayette County, the defendant was convicted of theft by failure to make required disposition of property, in violation of Kentucky Revised Statute Section 514.070, a felony, and sentenced to a term of imprisonment of one year. Pursuant to U.S.S.G. § 4A1.1(b), the defendant receives 2 criminal history points for this conviction.

2. On or about April 7, 2003, in the 15<sup>th</sup> Judicial Circuit Court of Florida, the defendant was convicted of four counts of grand theft, a felony, in violation of Florida Statute Section 812.014 (1)(2C), and sentenced to five years' probation (case number 01-6201). Pursuant to U.S.S.G. § 4A1.1(c), the defendant receives 1 criminal history point for this conviction.

3. On or about April 7, 2003, in the 15th Judicial Circuit Court of Florida, the defendant was convicted of one count of grand theft over \$20,000, a felony, in violation of Florida Statute Section 812.014(1)(2B), and sentenced to five years' probation (case number 01-11673). Pursuant to U.S.S.G. § 4A1.1(c), the defendant receives 1 criminal history point for this conviction.

4. On or about April 7, 2003, in the 15th Judicial Circuit Court of Florida, the defendant was convicted of two counts of grand theft, a felony, in violation of Florida Statute Section 812.014(1)(2C), and sentenced to five years' probation (case number 03-1030). Pursuant to U.S.S.G. § 4A1.1(c), the defendant receives 1 criminal history point for this conviction.

In accordance with the above, the defendant's Criminal History Category is III.

**C. Sentencing Range**

Based upon the calculations set forth above, the defendant's stipulated Guidelines range is 121 to 151 months (the "Stipulated Guidelines Range"). In addition, after determining the defendant's ability to pay, the Court may impose a fine pursuant to U.S.S.G. § 5E1.2. At Guidelines level 30, the applicable fine range is \$15,000 to \$5 million.

The parties agree that neither a downward nor an upward departure from the Stipulated Guidelines Range of 121 to 151 months' imprisonment is warranted. Accordingly, neither party

will seek any departure or adjustment pursuant to the Guidelines that is not set forth herein. Nor will either party suggest that the Probation Office consider such a departure or adjustment under the Guidelines, or suggest that the Court *sua sponte* consider any such departure or adjustment.

The parties agree that either party may seek a sentence outside of the Stipulated Guidelines Range of 121 to 151 months, suggest that the Probation Office consider a sentence outside of the Stipulated Guidelines Range of 121 to 151 months, and suggest that the Court *sua sponte* consider a sentence outside of the Stipulated Guidelines Range of 121 to 151 months, based upon the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a).

Except as provided in any written Proffer Agreement(s) that may have been entered into between this Office and the defendant, nothing in this Agreement limits the right of the parties (i) to present to the Probation Office or the Court any facts relevant to sentencing; (ii) to make any arguments regarding where within the Stipulated Guidelines Range of 121 to 151 months (or such other range as the Court may determine) the defendant should be sentenced and regarding the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a); (iii) to seek an appropriately adjusted Guidelines range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above; and (iv) to seek an appropriately adjusted Guidelines range or mandatory minimum term of imprisonment if it is subsequently determined that the defendant qualifies as a career offender under U.S.S.G. § 4B1.1. Nothing in this Agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, *see* U.S.S.G. § 3E1.1, regardless of any stipulation set forth above, if the defendant fails clearly to demonstrate acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence. Similarly, nothing in this Agreement limits the right of the Government to seek an enhancement for obstruction of justice, *see* U.S.S.G. § 3C1.1, regardless of any stipulation set forth above, should it be determined that the defendant has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this Agreement.

It is understood that pursuant to U.S.S.G. § 6B1.4(d), neither the Probation Office nor the Court is bound by the above Guidelines stipulation, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Office or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated to above, or contemplates any sentence outside of the Stipulated Guidelines Range of 121 to 151 months, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court. It is further understood that the Guidelines are not binding on the Court. The defendant acknowledges that his entry of a guilty plea to the charged offenses authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence.

This Office cannot, and does not, make any promise or representation as to what sentence the defendant will receive. Moreover, it is understood that the defendant will have no right to withdraw his plea of guilty should the sentence imposed by the Court be outside the Guidelines range set forth above.

It is agreed (i) that the defendant will not file a direct appeal; nor bring a collateral challenge, including but not limited to an application under Title 28, United States Code, Section 2255 and/or Section 2241; nor seek a sentence modification pursuant to Title 18, United States Code, Section 3582(c), of any sentence within or below the Stipulated Guidelines Range of 121 to 151 months, and (ii) that the Government will not appeal any sentence within or above the Stipulated Guidelines Range of 121 to 151 months. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation. The parties agree that this waiver applies regardless of whether the term of imprisonment is imposed to run consecutively to or concurrently with the undischarged portion of any other sentence of imprisonment that has been imposed on the defendant at the time of sentencing in this case. The defendant further agrees not to appeal any term of supervised release that is less than or equal to the statutory maximum. The defendant also agrees not to appeal any restitution amount or forfeiture amount that is less than or equal to \$13 million, and the Government agrees not to appeal any restitution amount or forfeiture amount that is greater than or equal to \$13 million.

The defendant hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, Jencks Act material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, and impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

It is further agreed that should the convictions following the defendant's pleas of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

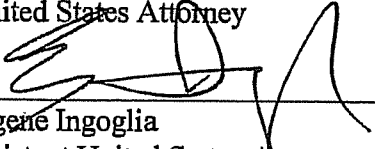
It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office.

Apart from any written Proffer Agreement(s) that may have been entered into between this Office and defendant, this Agreement supersedes any prior understandings, promises, or conditions between this Office and the defendant. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.


Very truly yours,

PREET BHARARA  
United States Attorney

By:

  
Eugene Ingolia  
Assistant United States Attorney  
(212) 637-1113

APPROVED:

  
Marc P. Berger  
Chief, Securities and Commodities  
Fraud Task Force

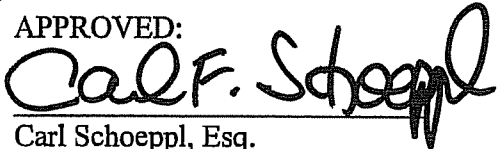
AGREED AND CONSENTED TO:

  
John A. Mattera

DATE

09/24/2012

APPROVED:

  
Carl Schoeppl, Esq.  
Attorney for John A. Mattera

DATE

09/21/12

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