Order
1-31-14
The plea of guilty is accepted.
Todd Campbell
U.S. District Judge

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA	)	
	)	
	)	No. 3:09-cr-00262
v.	)	
	)	JUDGE CAMPBELL
TERRY KRETZ	)	

PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States and defendant Terry Kretz ("defendant" or "Kretz") have entered into a plea agreement, the terms of which are as follows:

Charges in This Case

1. Defendant has been charged in the indictment in this case with the following offenses:

(a) Conspiracy under 18 U.S.C. § 371 (Count One);

(b) Securities fraud under 15 U.S.C. §§ 78j(b) and 78ff; and 17 C.F.R. § 240.10b-5 (Count Two);

(c) Wire fraud under 18 U.S.C. § 1343 (Count Three);

(d) Mail fraud under 18 U.S.C. § 1341 (Counts Four through Seven);

(e) Money laundering related to transactions involving greater than $10,000 under 18 U.S.C. § 1957 (Counts Eight through Ten);

(f) Money laundering related to the promotion of unlawful activities under 18 U.S.C. § 1956(a)(1)(A)(i) (Counts Eleven through Twelve); and

(g) Making a material false statement on a loan application under 18 U.S.C. § 1014.

2. In addition to the above criminal charges, the indictment contains a forfeiture allegation involving defendant under 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461.

3. Defendant has read the charges and forfeiture allegation in the indictment, and they have been explained to him by his attorney. Defendant understands the nature and elements of the crimes with which he has been charged.

Charges to Which Defendant is Pleading Guilty

4. By this plea agreement, the defendant agrees to enter a voluntary plea of guilty to the following offenses:

(a) Count One, charging conspiracy under 18 U.S.C. § 371;

(b) Count Two, charging securities fraud under 15 U.S.C. §§ 78j(b) and 78ff; and 17 C.F.R. § 240.10b-5;

(c) Count Five, charging mail fraud under 18 U.S.C. § 1341; and

(d) Count Twelve, charging money laundering under 18 U.S.C. § 1956(a)(1)(A)(i).

5. Defendant also agrees to the entry of the forfeiture judgment, which will result in the entry of a money judgment as described in Paragraph 36.

6. Defendant further understands, in addition to the penalties described above, these offenses require the Court to impose restitution, as further described below in Paragraph 35.

7. Once the Court accepts defendant's plea to the above charges and adjudges defendant guilty of them, the government agrees to dismiss the remaining counts in the indictment.

Penalties

8. The parties understand and agree that the offenses to which the defendant will enter a plea of guilty carry the following maximum penalties:

(a) Count One, charging conspiracy under 18 U.S.C. § 371, for which the maximum penalties are five years' imprisonment, a fine of not more than $250,000 or twice the gross gain or gross loss resulting from the offense, a mandatory special assessment of $100, and a term of supervised release not to exceed three years;

(b) Count Two, charging securities fraud under 15 U.S.C. §§ 78j(b) and 78ff; and 17 C.F.R. § 240.10b-5, for which the maximum penalties are 20 years' imprisonment, a fine of not more than $5 million or twice the gross gain or gross loss resulting from the offense, a mandatory special assessment of $100, and a term of supervised release not to exceed three years;

(c) Count Five, charging mail fraud under 18 U.S.C. § 1341, for which the maximum penalties are 20 years' imprisonment, a fine of not more than $250,000 or twice the gross gain or gross loss resulting from the offense, a mandatory special assessment of $100, and a term of supervised release not to exceed three years; and

(d) Count Twelve, charging money laundering under 18 U.S.C. § 1956(a)(1)(A)(i), for which the maximum penalties are 20 years' imprisonment, a fine of not more than $500,000 or twice the value of the property involved in the financial transaction, a mandatory special assessment of $100, and a term of supervised release not to exceed three years.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Plea Agreement

9. This Plea Agreement is voluntary and represents the entire agreement between the United States and defendant regarding his criminal liability in case number 3:09-cr-00262.

10. Defendant understands that by pleading guilty he surrenders certain trial rights, including the following:

(a) If defendant persisted in a plea of not guilty to the charge against him, he would have the right to a public and speedy trial. Defendant has a right to a jury trial, and the trial would be by a judge rather than a jury only if defendant, the government, and the Court all agreed to have no jury.

(b) If the trial were a jury trial, the jury would be composed of twelve laypersons selected at random. Defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent; that the government bears the burden of proving defendant guilty of the charge beyond a reasonable doubt.

(c) If the trial were held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

(d) At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront

those government witnesses and his attorney would be able to cross-examine them. In turn, defendant could present witnesses and other evidence on his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court.

(e) At a trial, defendant would have a privilege against self-incrimination so that he could testify or refuse to testify, and no inference of guilt could be drawn from his refusal.

11. Defendant understands that by pleading guilty he is waiving all of the trial rights set forth in the prior paragraph. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

Factual Basis

12. Defendant will plead guilty because he is in fact guilty of the charges in Counts One, Two, Five and Twelve in the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

With respect to Count One (Conspiracy)

13. Hanover Corporation, LLC ("Hanover") was a limited liability company that was formed in 2002 and maintained a place of business in Nashville, Tennessee. Hanover purported to be an investment firm that invested in stock options, real estate, equity shares of companies, and other securities.

14. Defendant, Terry Kretz, was the Chief Executive Officer of Hanover and was responsible for the day-to-day operations and management of Hanover. Robert Haley was the Chief Financial Officer of Hanover and was responsible for overseeing the finances and bookkeeping of Hanover. Daryl Bornstein was a salesman for Hanover.

15. From in or about January 2004 through in or about August 2006, in the Middle District of Tennessee and elsewhere, Terry Kretz did willfully, knowingly, and unlawfully conspire with Robert Haley, Daryl Bornstein, and others to commit one or more offenses against the United States, including (a) securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10(b)-5; (b) wire fraud, in violation of Title 18, United States Code, Section 1343; and (c) mail fraud, in violation of Title 18, United States Code, Section 1341.

16. The manner and means by which Kretz sought to accomplish and carry out the conspiracy and the underlying scheme to defraud included, among others, the following:

(a) From approximately January 2004 through approximately August 2006, Kretz, Bornstein, Haley, and others conspired and schemed to defraud clients of Hanover by, individually or jointly, soliciting and obtaining from clients millions of dollars under false pretenses, failing to invest those client funds as promised, and misappropriating and converting client funds to Kretz's, Bornstein's, Haley's, and others' benefit without the knowledge or authorization of the clients. Contrary to the promises and representations made to clients, Kretz, Bornstein, Haley, and others, in fact, operated a Ponzi scheme in which existing clients were paid "interest" (and, in some cases, their principal) from later clients' investments.

(b) In or about late 2003 or early 2004, Kretz and others acting on his behalf began offering clients the opportunity to invest using instruments styled as promissory notes. The promissory notes, along with their accompanying promissory-note agreements, set out the terms of the investment. Those terms provided that clients would invest a principal sum (referred to in the note as a "loan"), which Hanover employees could invest in several enumerated ways. The

promissory notes and promissory-note agreements further provided that, in return, the client would receive a fixed rate of return (referred to in the note as "interest") every month, plus a final payment of principal and accrued unpaid interest upon the promissory note's maturity date.

(c) Kretz persuaded prospective clients to invest money in Hanover promissory notes through multiple false or misleading statements. Kretz indicated that the companies in which Hanover would invest client money had already begun generating significant revenues—including by stating that the companies had signed major contracts for their products—and that Hanover was prospering. Kretz also told clients that they would achieve a guaranteed fixed rate of return (in the form of the so-called "interest") and that their principal investment (the so-called "loan") was guaranteed. In truth and in fact, and as Kretz knew, these representations and others made by Kretz were false. Kretz understood and intended that the companies in which Hanover had invested money were generating virtually no revenue. Consequently, the companies were not sharing any profits or other revenue with Hanover, which had no source of funds other than money from new investors. Moreover, Kretz knew that the rates of return he had promised investors—as high as 24% per year or greater—would be impossible to achieve, and that neither he nor Hanover had any other significant assets to back his pledges.

(d) Kretz materially misled clients by failing to state what he knew to be true: that approximately half of the money being invested in Hanover was used to pay previous Hanover investors, to pay Hanover's salaries and overhead, to benefit Kretz personally, and for additional purposes other than investments. Kretz's use of investor money for personal purposes included purchasing a $600,000 lot for Kretz, contributing more than $176,000 to a church, and paying for

golf memberships. Kretz understood and intended that information about these other purposes was material because the clients, who believed their money was being invested in startup companies and the stock market, would not have invested with Hanover had they understood the truth.

(e) Kretz carried out further misrepresentations with respect to clients brought into Hanover by Bornstein. Many of Bornstein's clients had lost significant amounts of money investing with him before he joined Hanover. Kretz agreed with Bornstein that upon Bornstein's joining Hanover as a salesman in October or November of 2004 and raising new money for Hanover, Hanover would take on the old investors' debts from failed ventures recommended by Bornstein and repay them out of Hanover funds. In certain instances, Hanover took on the obligation to repay investors in those failed schemes in their entirety, without those investors contributing any new money to Hanover. In other cases, Bornstein's clients agreed to invest new money in Hanover in exchange for a promissory note promising to pay them interest based on their new contribution combined with their previous loss amount, and repay the combined amount in full at the end of the note term. These notes promised exorbitant returns that, as Kretz understood and intended, were virtually impossible to make good on—the promised cash flows over the lifetime of the note often constituted effective annual interest rates of 85% or more. Bornstein and Kretz promised these enormous repayments, and Haley was aware of such promises.

(f) In or about August 2006, at a meeting of Hanover note holders, Kretz presented a balance sheet containing information that he knew to be false. The balance sheet valued certain assets based on the money paid into the asset, and not on the asset's actual market value. For example, the balance sheet listed a $213,157 "Investment in TRIPP" as a balance sheet

asset even though Kretz knew that "TRIPP" was a defunct entity. The balance sheet also listed Hanover's $600,000 purchase of a home lot as an asset, even though he knew that Hanover's interest in the lot had been transferred to himself personally.

(g) Kretz knew that Hanover was accepting and using millions of dollars of client money, some of which was obtained through wire transfers in and affecting interstate commerce from financial institutions, both inside and outside of the state of Tennessee, and some of which was obtained through mailings delivered by the United States Postal Service or private commercial carriers. In addition, Kretz conducted and caused to be conducted wire transfers of client funds between accounts at financial institutions that operated in interstate commerce.

17. In furtherance of the above conspiracy and scheme to defraud, and to effect the objects and purposes thereof, Kretz individually or jointly committed one or more overt acts within the Middle District of Tennessee and elsewhere, including, among others, the following:

(a) Between on or about March 25, 2005 and on or about March 29, 2005, Kretz, individually or jointly, caused a mailing from W.H. and L.H., which enclosed check #324, in the amount of $500,000, payable to Hanover.

(b) Between on or about May 2, 2005 and on or about May 10, 2005, Kretz caused to be mailed check #11917 from Hanover to B.K.

(c) Between on or about October 1, 2005 and on or about October 6, 2005, Kretz caused to be mailed check #13179 from Hanover to M.B.

(d) Between on or about February 2, 2006 and on or about February 8, 2006, Kretz caused to be mailed check #14380 from Hanover to G.M.

(e) Between in or about January 2004 to in or about August 2006, Kretz caused to be prepared checks purporting to be interest payments, including but not limited to checks #11917, #13179, and #14380 referred to in Paragraphs 17(b) – 17(d) above.

(f) Between in or about January 2004 and in or about August 2006, Kretz prepared or caused to be prepared IRS Forms 1099-INT falsely purporting to reflect interest income.

(g) Between in or about January 2004 and in or about August 2006, Kretz mailed or caused to be mailed IRS Forms 1099-INT to clients of Hanover.

(h) Between on or about January 2004 and in or about August 2006, Kretz caused to be prepared balance sheets falsely representing the financial condition of Hanover and its investments, including but not limited to a balance sheet dated "as of December 23, 2005." Kretz presented the information in the December 2005 balance sheet to Hanover note holders and represented that it was accurate.

(i) On or about August 22, 2006, Kretz caused Hanover Corporation check 15362, in the amount of $15,000, payable to R.C.S., to be issued.

With respect to Count Two (Securities Fraud)

18. Through his conduct, as described above in Paragraphs 13 to 17 of this plea agreement, Kretz knowingly employed (as a principal and as an aider and abettor) a scheme to defraud. That scheme to defraud revolved around and was in connection with the purchase and sale of securities, including but not limited to, the promissory notes issued by Hanover.

19. Kretz knowingly made multiple untrue statements of material facts and omitted material facts that made, under the circumstances, certain statements misleading. Such

statements and omissions included the misrepresentations concerning the financial health of the companies owned or partly owned by Hanover, as well as the false promises of large interest repayments. In addition, Kretz was aware that the balance sheet he presented to investors, as well as the "interest" checks and the Form INT-1099s mailed to investors, were misleading. Kretz also was aware that he was misleading investors by withholding from them that their money was being used to repay earlier investors in Hanover and for his personal purposes.

20. Throughout Hanover's existence and in connection with the purchase or sale of various securities, Kretz made use of various means and instrumentalities of interstate commerce, including mailings and interstate wires.

21. In engaging in the conduct described above, Kretz acted knowingly, willfully, and with the intent to defraud.

With respect to Count Five (Mail Fraud)

22. Through his conduct, as described above in Paragraphs 13 to 21 of this plea agreement, Kretz knowingly employed (as a principal and as an aider and abettor) a scheme to defraud that included multiple material misrepresentations and concealment of material facts. In furtherance of the scheme to defraud, Kretz mailed or caused another to mail various items, including, but not limited to, a mailing to B.K. enclosing check #11917, which purported to be an interest payment. The mailing to B.K. occurred between May 2, 2005 and May 10, 2005.

With respect to Count Twelve (Money Laundering)

23. Repaying clients who had previously invested with Bornstein on their earlier investments via checks using Hanover funds constituted "financial transactions" under 18 U.S.C. § 1956(c)(4), and the funds involved in those payments came from the mail, wire, and securities

fraud described herein, all of which are "specified unlawful activities" as defined by federal law. Haley, Bornstein, and Kretz knew that the funds used to pay these earlier investors came from investors who had been defrauded and deceived into providing those funds and from otherwise unlawful activity. By preparing, mailing, wiring, sending, and providing those interest payments, and aiding and abetting each other and others in doing so, Haley, Bornstein, and Kretz intended to promote the carrying on of the Ponzi scheme and the wire, mail, and securities fraud described herein. Among the financial transactions used in this manner was a July 12, 2005 payment, via Hanover check #12516, to W.B., which purported to be an interest payment.

* * * *

24. This statement of facts is provided to assist the Court in determining whether a factual basis exists for defendant's plea of guilty and to assess relevant conduct under the Sentencing Guidelines. The statement of facts does not contain each and every fact known to defendant and to the United States concerning defendant's or others' involvement in the offense conduct and other matters.

Sentencing Guidelines Calculations

25. The parties understand that the Court will take account of the Sentencing Guidelines, together with the other sentencing factors set forth at 18 U.S.C. § 3553(a), and will consider the U.S.S.G. advisory sentencing range in imposing defendant's sentence. The parties further understand that the advisory sentencing range is determined by a number of factors, including, among others, the offense level associated with defendant's crime and his criminal history, if any. The parties agree that the U.S.S.G. to be considered in this case are those effective November 1, 2013.

26. As described below, the parties have made certain estimates related to the sentencing guidelines. Defendant understands that these are merely estimates, and they do not bind the probation office or the Court in determining the guidelines. Finally, defendant understands that, if the probation office or the Court ultimately calculates defendant's guidelines differently, Defendant will not be able to withdraw his guilty plea.

Offense Level

27. With respect to the Offense Level, the parties estimate the following:

(a) The several counts of conviction appear to group as "closely related counts" because "one of the counts embodies conduct that is treated as a specific characteristic in, or other adjustment to, the guideline applicable to another of the counts." U.S.S.G. §3D1.2(c); *see also* U.S.S.G. §2S1.1, comment. (n.6). Consequently, the offense level applicable to the group is the offense level for the "most serious of the counts comprising the [g]roup." U.S.S.G. §3D1.3(a). In this case, that count is Count Twelve, which charges money laundering under 18 U.S.C. § 1956(a)(1)(A)(i). The Guideline calculation for that count is controlled by U.S.S.G. 2S1.1(a)(1).

(b) Under U.S.S.G § 2S1.1(a)(1), the base offense level for the group is the offense level for the underlying offense from which the laundered funds were derived. Those underlying offenses here are, among others, mail fraud (18 U.S.C. § 1341), and securities fraud (15 U.S.C. § 78j(b) and 77f; 17 C.F.R. § 240.10(b)-5), the offense level for both of which is determined by U.S.S.G. § 2B1.1, entitled "Theft, Embezzlement . . . and Offenses Involving Fraud and Deceit." Applied to this case, U.S.S.G. § 2B1.1 provides that:

i. The base offense level is **6**. *See* U.S.S.G. § 2B1.1(a)(1)(B).

ii. The offense level is increased by **20 levels** because the amount of loss is more than $7,000,000 but less than $20,000,000. *See* U.S.S.G. § 2B1.1(b)(1)(K).

iii. The offense level is increased by **4 levels** because the offense involved more than 50 but less than 250 victims. *See* U.S.S.G. § 2B1.1(b)(2)(B).

iv. The offense level is increased by **2 levels** because the offense involved sophisticated means. *See* U.S.S.G. § 2B1.1(b)(9)(c).

(c) Based on the above calculations under U.S.S.G. § 2B1.1, the base offense level offense is 32. Therefore, under U.S.S.G. § 2S1.1(a), the base level offense for the group is also **32.**

(d) The offense level is increased by **2 levels** because defendant was convicted under 18 U.S.C. § 1956. *See* U.S.S.G. §2S1.1(b)(2)(B).

(e) The offense level is increased by **2 levels** because defendant was an organizer or leader. *See* U.S.S.G. §3B1.1(c).

(f) The offense level is increased by **2 levels** because defendant "abused a position of . . . private trust . . . in a manner that significantly facilitated the commission or concealment of the offense." *See* U.S.S.G. §3B1.3.

(g) Based on the above calculations, defendant's offense level would be **38.**

(h) Assuming defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the government, through his allocution and later conduct before the imposition of sentence, a two-level reduction will be warranted, under U.S.S.G. § 3E1.1(a). Furthermore,

assuming defendant accepts responsibility as described in the previous sentence, the United States will move for an additional one-level reduction pursuant to U.S.S.G § 3E1.1(b), because defendant will have given timely notice of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently.

(i) As a result of the calculations in Paragraphs 27(a) through 27(h), the parties estimate defendant's offense level will be **35.**

28. The parties agree that the enhancements identified above are the ones that apply, and neither party will argue for additional enhancements or any downward departures under Part K of Chapter 5 of the Guidelines.

Criminal History Category

29. The parties do not have an agreement regarding the defendant's criminal history category, but anticipate that he will be Category 1.

Court Will Determine Guideline Range

30. Any estimate of the offense level or guidelines range that defendant may have received from defendant's counsel, the United States, or the Probation Office is a prediction, not a promise, and is not binding on the Probation Office or the Court. Defendant understands that the Probation Office will conduct its own investigation and make its own recommendations, that the Court ultimately determines the facts and law relevant to sentencing, that the Court's determinations govern the final guidelines calculations, and that the Court determines both the final offense level and the final guidelines range. Accordingly, the validity of this agreement is

not contingent upon the Probation Officer's or the Court's concurrence with any other calculations performed by any other party at any other time.

31. The parties reserve the right to answer any inquiries and to make all appropriate arguments concerning any Sentencing Guideline issues raised by the Court or the Probation Office. Defendant further acknowledges that he will have no right to withdraw his guilty plea based on the Court's interpretation of the Sentencing Guidelines or if the Court imposes a sentence greater or less than what defendant may have expected based on his attorney's, the Probation Office's, or any other source's calculation of the Guidelines.

Agreements Relating to Sentencing

32. The United States agrees to recommend a custodial sentence of 168 months, the low end of the U.S.S.G. range associated with an offense level of 35 and a Criminal History Category of 1. The defendant is free to ask for whatever sentence he deems appropriate. Additionally the parties agree to recommend that the Court impose the federal sentence to run concurrently with any state sentence imposed in case number 2013-D-2831.

33. Defendant understands that the Court is neither a party to nor bound by this plea agreement and, notwithstanding this agreement or any motion by the government, may impose the maximum penalties set forth above. Defendant understands that, if the Court does not accept the parties' sentencing recommendations, he may not withdraw his plea of guilty if the Court imposes a sentence greater than what either he or the government recommends.

34. Defendant further acknowledges that the Court will impose a mandatory special assessment of $100 for each count of conviction and that Defendant is obligated to pay that special assessment by statute.

Restitution

35. The parties understand and acknowledge that the Court must order restitution under 18 U.S.C. §§ 3663A, 3664. The parties have not estimated that restitution in this plea agreement and understand that the probation office will calculate restitution as part of the PSR. Ultimately, the Court will determine the final amount of restitution in the case. The defendant understands that, if he disagrees with the Court's restitution determination, it will not be a basis to withdraw his guilty plea.

Forfeiture

36. Under this agreement, defendant agrees to entry of a forfeiture judgment corresponding to the forfeiture allegation in the Indictment. Specifically, defendant agrees to an entry of a money judgment in the amount of restitution determined by the Court. In doing so, Defendant admits that these funds (a) were obtained directly or indirectly as a result of the conduct alleged in Counts One, Two, Five, and Twelve of the indictment (and as described in the "Factual basis" section above in this plea agreement), and (b) constitute or are derived from proceeds traceable to each violation.

37. With respect to any funds obtained via the judicial forfeiture process, if defendant meets the appropriate requirements regarding restoration and remission of judicially forfeited assets (as stated in the Asset Forfeiture Policy Manual, Chapter 13, Section I.B (2010) or Title 28, Code of Federal Regulations, Part 9), the United States Attorney's Office will recommend to the Asset Forfeiture and Money Laundering Section of the Department of Justice the restoration or remission of any such assets. Any funds obtained through forfeiture and returned (through restoration or remission) to victims would offset the restitution amount in a corresponding amount.

Presentence Investigation Report and Post-Sentence Supervision

38. Defendant understands that the United States, in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing, shall fully apprise the District Court and the Probation Office of the nature, scope, and extent of defendant's conduct regarding the charges against him, as well as any related matters. The government will make known all matters in aggravation and mitigation relevant to the issue of sentencing.

39. Defendant agrees to execute truthfully and completely a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the United States Probation Office, and the United States regarding all details of his financial circumstances, including his recent income tax returns as specified by the Probation Officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1 and enhancement of his sentence for obstruction of justice under U.S.S.G. § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the Court.

40. This Plea Agreement concerns criminal liability only. Except as expressly set forth in this Plea Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Plea Agreement are limited to the United States Attorney's Office for the Middle District of Tennessee and the Fraud Section of the Criminal Division of the Department of Justice and cannot bind any

other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Plea Agreement.

41. Defendant understands that nothing in this Plea Agreement shall limit the Internal Revenue Service (IRS) in its collection of any taxes, interest, or penalties from defendant.

Waiver of Appellate Rights

42. Regarding the issue of guilt, defendant knowingly waives all (a) rights to appeal any issue bearing on the determination of whether he is guilty of the crimes to which he is agreeing to plead guilty and (b) trial rights that might have been available if he exercised his right to go to trial. This waiver does not apply, however, to defendant's right to appeal any of these issues where the appeal is based on voluntariness, prosecutorial misconduct, or ineffective assistance of counsel.

43. Regarding sentencing, defendant is aware that 18 U.S.C. § 3742 generally affords a defendant the right to appeal the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal the sentence. This waiver does not apply, however, to defendant's right to appeal his sentence where the appeal is based on voluntariness, prosecutorial misconduct, or ineffective assistance of counsel.

44. Regarding collateral attacks, defendant also knowingly waives the right to file a collateral attack challenging his sentence or raising other issues, including, but not limited to, a motion brought pursuant to 28 U.S.C. § 2255 or § 2241. This waiver does not apply, however, to defendant's right to file a collateral attack where the attack is based on voluntariness, prosecutorial misconduct, or ineffective assistance of counsel.

Other Terms

45. If defendant engages in additional criminal activity after he has pleaded guilty but before sentencing, defendant shall be considered to have breached this Plea Agreement, and the government at its option may void this Plea Agreement.

46. Defendant understands that, under Title 12, United States Code, Section 1829, his conviction in this case will prohibit him from directly or indirectly participating in the affairs of any financial institution insured by the Federal Deposit Insurance Corporation (FDIC) except with the prior written consent of the FDIC and, during the ten years following his conviction, the additional approval of this Court. Defendant further understands that if he violates this prohibition, he could be punished by imprisonment for up to five years and a fine of up to $1,000,000.

Conclusion

47. Defendant understands this Plea Agreement, even if filed under seal, may later be unsealed and will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

48. Defendant understands that his compliance with each part of this Plea Agreement extends until such time as he is sentenced, and failure to abide by any term of the Plea Agreement is a violation of the Plea Agreement. Defendant further understands that in the event he violates this Plea Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Plea Agreement, or may require defendant's specific performance of this Plea Agreement.

49. Defendant and his attorney acknowledge that no threats have been made to cause defendant to plead guilty.

No promises, agreements, or conditions have been entered into other than those set forth in this Plea Agreement, and none will be entered into unless memorialized in writing and signed by all of the parties listed below.

Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending superseding indictment. Further, I fully understand all rights with respect to the provisions of the Sentencing Guidelines that may apply in my case. I have read this Plea Agreement and carefully reviewed every part of it with my attorney. I understand this Plea Agreement, and I voluntarily agree to it.

Date: 1.31.2014

TERRY KRETZ
Defendant

(signatures continue on next page)

50. Defense Counsel Signature: I am counsel for defendant in this case. I have fully explained to defendant his rights with respect to the pending superseding indictment. Further, I have reviewed the provisions of the Sentencing Guidelines and Policy Statements, and I have fully explained to defendant the provisions of those guidelines that may apply in this case. I have reviewed carefully every part of this Plea Agreement with defendant. To my knowledge, defendant's decision to enter into this Plea Agreement is an informed and voluntary one

Date: 1-31-14

RONALD CLAYTON SMALL
Attorney for defendant

Respectfully submitted,

DAVID RIVERA
United States Attorney

By:
SCARLETT SINGLETON NOKES
Assistant U.S. Attorney

JOHN WEBB
Deputy Criminal Chief

JEFFREY KNOX
Chief, Fraud Section, Criminal Division

By: _____
JUSTIN GOODYEAR
Trial Attorney

_____
PATRICK STOKES
Deputy Chief