U.S. Department of Justice

United States Attorney
Southern District of New York

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

June 29, 2012

John R. Wing, Esq.
Lankler Siffert & Wohl
500 Fifth Avenue
New York, New York 10110

Re: United States v. Peter Madoff, S7 10 Cr. 228 (LTS)

Dear Mr. Wing:

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 Peter Madoff ("the Defendant") to Counts One and Two of the above-referenced Information, charging him with the following violations of federal law, between in or about 1996 and on or about December 11, 2008, in connection with his employment at Bernard L. Madoff Investment Securities ("BLMIS").

Count One charges the Defendant with conspiracy to (1) commit securities fraud; (2) falsify books and records of an investment adviser; (3) falsify books and records of a broker-dealer; (4) make false filings with the U.S. Securities and Exchange Commission ("SEC"); (5) commit mail fraud; (6) falsify statements in relation to documents required by ERISA; and (7) obstruct or impede the lawful government functions of the Internal Revenue Service ("IRS") in the ascertainment, assessment, computation and collection of taxes, all in violation of Title 18, United States Code, Section 371. Count One carries a maximum sentence of five years' imprisonment, a maximum fine under Title 18, United States Code, Section 3571(d) of the greatest of $250,000, twice the gross pecuniary gain to any person derived from the offense, or twice the gross pecuniary loss to persons other than the Defendant resulting from the offense, a mandatory $100 special assessment, and a maximum term of three years' supervised release.

Count Two charges the Defendant with falsifying books and records of an investment adviser, in violation of Title 15, United States Code, Sections 80b-4 and 80b-17; Title 17, Code of Federal Regulations, Section 275.204-2; and Title 18, United States Code, Section 2. Count Two carries a maximum sentence of five years' imprisonment, a maximum fine under Title 18, United States Code, Section 3571(d) of the greatest of $10,000, twice the gross pecuniary gain to any person derived from the offense, or twice the gross pecuniary loss to persons other than the Defendant resulting from the offense, a mandatory $100 special assessment, and a maximum term of three years' supervised release.

The total maximum sentence of incarceration on Counts One and Two is 10 years' imprisonment.

It is further understood that the Defendant shall make restitution in an amount to be specified by the Court in accordance with 18 U.S.C. §§ 3663, 3663A, and 3664. This amount shall be paid according to a plan established by the Court.

This prosecution and the protection against prosecution, with respect to tax offenses, set forth above have been approved by the Tax Division, Department of Justice. It is understood that, prior to the date of sentencing, the Defendant shall file accurate amended personal tax returns for the calendar years 1998 through 2008. The Defendant will pay past taxes due and owing to the IRS for calendar years 1998 through 2008, including any applicable penalties on such terms and conditions as will be agreed upon between the Defendant and the IRS. In addition, the Defendant agrees not to contest the applicability of civil fraud penalties.

In consideration of his plea to the above offenses, the Defendant will not be further prosecuted criminally by this Office and, with respect to tax offenses, the Tax Division, Department of Justice, for his participation in the crimes set forth in the Information, as charged in Counts One and Two, it being understood that this agreement does not bar the use of such conduct as a predicate act or as the basis for a sentencing enhancement in a subsequent prosecution including, but not limited to, a prosecution pursuant to 18 U.S.C. §§ 1961 *et seq.* In addition, at the time of sentencing, the Government will move to dismiss any open Counts against the defendant. This Agreement does not provide any protection against prosecution except as set forth above. 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 furthermore admits the forfeiture allegations of the Information and agrees to forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offense of conspiracy to commit offenses constituting specified unlawful activity, as defined in 18 U.S.C. § 1956(c)(7), as alleged in Count One of the Information, including but not limited to (a) a sum of money equal to $143.1 billion, representing the amount of proceeds obtained as a result of the commission of the said offense (the "Money Judgment"); and (b) all of the Defendant's right, title and interest in the following specific property: (i) the real property and appurtenances known as 34 Pheasant Run, Old Westbury, New York; (ii) the cooperative apartment known as 975 Park Avenue, Apartment 6B, New York, New York, including any and all shares of capital stock and/or the related proprietary lease; (iii) approximately $5,434,293.57, representing the proceeds of the sale of 200 Algoma Road, Palm Beach, Florida; (iv) approximately $2,257,047, representing the proceeds of the sale of 8 Barclay

Court, East Hampton, New York; (v) approximately $2,376,576.58, representing the proceeds of the sale of 1 Morton Square, Unit 5DW, New York, New York; and (vi) one 1995 Ferrari 355 Spyder (collectively, the "Specific Property"), with the proceeds from the sale of the Specific Property to be applied to the Money Judgment, in partial satisfaction thereof. The Defendant further consents to the administrative and/or civil forfeiture of the Specific Property pursuant to 18 U.S.C. § 981(a)(1)(A). 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 further 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 Preliminary Order of Forfeiture (Final as to the Defendant) annexed hereto as Exhibit A and agrees that the Preliminary Order of Forfeiture shall be final as to the Defendant at the time it is ordered 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. Pursuant to U.S.S.G. § 3D1.2, the securities fraud and related objects of Count One are grouped with one another and with the offense charged in Count Two. The Guideline applicable to this group of offenses is U.S.S.G. § 2B1.1. Because the loss amount for this group is substantially higher than that of any other offense charged in the Information, U.S.S.G. § 2B1.1 controls. The base offense level is 6. See U.S.S.G. § 2B1.1(a)(2).

2. Because the offenses involved a loss amount of more than $400,000,000, the base offense level is increased by 30 levels. See U.S.S.G. § 2B1.1(b)(1)(P).

3. Because the offenses involved 250 or more victims, the base offense level is increased by an additional 6 levels. See U.S.S.G. § 2B1.1(b)(2)(C).

4. Because the offenses involved sophisticated means, the base offense level is increased by an additional 2 levels. See U.S.S.G. § 2B1.1(b)(10).

5. Because the offenses substantially endangered the solvency or financial security of 100 or more victims, the base offense level is increased by an additional 4 levels. See U.S.S.G. § 2B1.1(b)(15)(B).

6. Because the offenses involved a violation of the securities law and, at the time of the offense, the Defendant was a registered broker or dealer, a person associated with a broker or dealer, and/or an investment adviser, the base offense level is increased by an additional 4 levels. See U.S.S.G. § 2B1.1(b)(18)(A).

7. Assuming the Defendant clearly demonstrates acceptance of responsibility through his guilty plea 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 will be warranted pursuant to U.S.S.G. § 3E1.1(b), 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 offense level is 49.

B. Criminal History Category

Based upon the information now available to this Office (including representations by the defense), the Defendant has no Criminal History points and, accordingly, the Defendant's Criminal History Category is I.

C. Sentencing Range

Based upon the calculations set forth above, the Defendant's stipulated Guidelines range exceeds the statutory maximum term of imprisonment. Therefore, the Guideline sentence is computed by adding the applicable statutory maximum sentences on all counts of conviction, which results in a Guidelines sentence of 10 years' imprisonment (the "Stipulated Guidelines Sentence"). See U.S.S.G. § 5G1.2(d). 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 49, the applicable fine range is $25,000 to $250,000. Under the Guidelines, because one or more of the charged offenses authorizes maximum fines greater than $250,000, the Court may impose a fine up to the maximum authorized by the statute. See U.S.S.G. § 5E1.2(c)(4).

The parties agree that neither a downward nor an upward departure from the Stipulated Guidelines Sentence of 10 years' imprisonment set forth above 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 not to seek a sentence other than the Stipulated Guidelines Sentence of 10 years' imprisonment, suggest that the Probation Office consider a sentence other than the Stipulated Guidelines Sentence, or suggest that the Court *sua sponte* consider a sentence other than the Stipulated Guidelines Sentence.

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; and (ii) 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. 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 a sentence other than the Stipulated Guidelines Sentence of 10 years' imprisonment, 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 other than the Stipulated Guidelines Sentence of 10 years' imprisonment 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 at or below the Stipulated Guidelines Sentence of 10 years' imprisonment; and (ii) that the Government will not appeal a sentence of the Stipulated Guidelines Sentence of 10 years' imprisonment. 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 forfeiture amount that is less than or equal to $143.1 billion, and the Government agrees not to appeal any forfeiture amount that is greater than or equal to $143.1 billion.

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 and, to the extent set forth above, the Tax Division, Department of Justice.

Apart from any written Proffer Agreement(s) that may have been entered into between this Office and the 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.

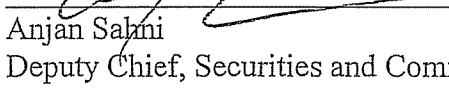
Very truly yours,

PREET BHARARA
United States Attorney

By:

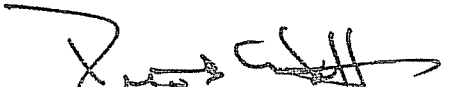
Lisa A. Baroni
Julian J. Moore
Matthew L. Schwartz
Assistant United States Attorneys
(212) 637-2405

APPROVED:

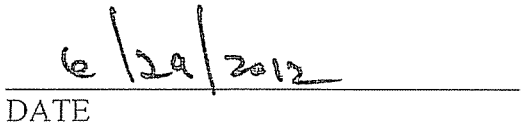


Anjan Sahni
Deputy Chief, Securities and Commodities
Fraud Unit

AGREED AND CONSENTED TO:



Peter Madoff



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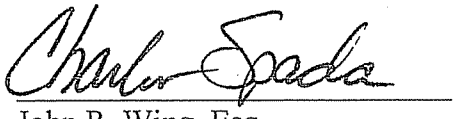
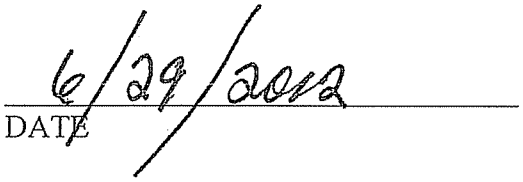


John R. Wing, Esq.
Attorney for Peter Madoff
Charles Spadt



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