

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

<b>UNITED STATES OF AMERICA,</b>	)	No. 3:08CR158TMR
	)	
<b>Plaintiff,</b>	)	PLEA AGREEMENT
	)	
<b>v.</b>	)	
	)	
<b>WILLIAM APPLETON,</b>	)	
	)	
<b>Defendant.</b>	)	
	)	
	)	
	)	
	)	

Defendant William Appleton (“defendant”), individually and through his attorney, Jay Clark, and plaintiff United States of America, by and through its attorney, the United States Attorney's Office for the Southern District of Ohio (“USAO”), (collectively, “the parties”), hereby agree as follows:

PLEA

1. Defendant gives up the right to indictment by a grand jury and agrees to plead guilty to Count One (mail fraud in violation of 18 U.S.C. § 1341) and Count Two (tax evasion in violation of 26 U.S.C. § 7201), of the information in this case. Defendant admits that he is, in fact, guilty of the offenses charged in Counts One and Two of the information, and that the Statement of Facts, which is attached hereto as Exhibit A and incorporated herein by reference, is true and correct.

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WAIVER OF CONSTITUTIONAL RIGHTS

2. By pleading guilty, defendant gives up the following rights:

a) The right to persist in a plea of not guilty.

b) The right to a speedy and public trial by jury.

c) The right to the assistance of legal counsel at trial, including the right to have the Court appoint counsel for defendant for the purpose of representation at trial. (In this regard, defendant understands that, despite his or her plea of guilty, he or she retains the right to be represented by counsel - and, if necessary, to have the court appoint counsel if defendant cannot afford counsel - at every other stage of the proceedings.)

d) The right to be presumed innocent and to have the burden of proof placed on the government to prove defendant guilty beyond a reasonable doubt.

e) The right to confront and cross-examine witnesses against defendant.

f) The right, if defendant wished, to testify on defendant's own behalf and present evidence in opposition to the charges, including the right to call witnesses and to subpoena those witnesses to testify.

g) The right not to be compelled to testify, and, if defendant chose not to testify or present evidence, to have that choice not be used against defendant.

By pleading guilty, defendant also gives up any and all rights to pursue any affirmative defenses, Fourth Amendment or Fifth Amendment claims, and other pretrial motions that have been filed or could be filed.

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STATUTORY PENALTIES, RESTITUTION AND SENTENCING

3. The statutory maximum sentence that the Court can impose for a violation of:

a. Title 18, United States Code, Section 1341 is: 20 years imprisonment; a fine of \$250,000 or twice the gross gain or gross loss resulting from the offense, whichever is greatest; a 3-year period of supervised release; and a mandatory special assessment of \$100;

b. Title 26, United States Code, Section 7201 is: 5 years imprisonment; a 3-year period of supervised release; the costs of prosecution; a fine of \$250,000; and a mandatory special assessment of \$100.

Therefore, the total maximum sentence for all offenses to which defendant is pleading guilty is: 25 years imprisonment; a 3-year period of supervised release; the costs of prosecution associated with Count Two; a fine of \$500,000, or twice the gross gain or gross loss resulting from the offense associated with Count One, whichever is greatest; and a mandatory special assessment of \$200.

4. Defendant understands that defendant will be required to pay full restitution to the victims of the offense. Defendant agrees that defendant will not seek the discharge of any restitution obligation, in whole or in part, in any present or future bankruptcy proceeding.

5. Defendant understands that the Court is required to consider the United States Sentencing Guidelines ("U.S.S.G." or "Sentencing Guidelines") among other factors in determining defendant's sentence. Defendant understands, however, that the Sentencing Guidelines are only advisory, and that after considering the Sentencing Guidelines, the Court may be free to exercise its discretion to impose any reasonable sentence up to the maximum set by statute for the crimes of conviction.

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6. Defendant understands that the U.S. Probation Office (“Probation Office”) will conduct a pre-sentence investigation and will recommend to the Court an advisory Sentencing Guidelines range. For the purpose of calculating an advisory Sentencing Guidelines range, the parties agree to the following Base Offense Level and specific offense characteristics, which the parties recommend be considered by the Court at the time of sentencing:<sup>1</sup>

Base Offense Level	:	7	[U.S.S.G. § 2B1.1(a)(1)(B)]
Specific Offense Characteristics	:	+18	[U.S.S.G. § 2B1.1(b)(1)(J) - Loss of More Than \$2,500,000]
		+2	[U.S.S.G. § 2B1.1(b)(9)(C) - Sophisticated Means]
Adjustments	:	<u>+2</u>	[U.S.S.G. § 3B1.3 - Abuse of Position of Trust]

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The parties reserve the right to argue that additional specific offense characteristics, adjustments and departures are appropriate. Defendant understands that the Probation Office’s recommendations do not bind the Court and that the parties’ recommendations or agreements do not bind the Court or the Probation Office. Defendant understands that, if the Court does not follow any of the parties’ recommendations or agreements made by the parties, he does not have the right to withdraw his plea of guilty. Defendant understands and acknowledges that he could receive up to the maximum penalties provided by law if the Court so determines.

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<sup>1</sup> The parties anticipate that the advisory Guidelines concerning Count Two are 9 or more levels less serious than the advisory Guidelines for Count One. Accordingly, based on the current estimate of the parties, no units should be added pursuant to U.S.S.G. § 3D1.4.

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DEFENDANT'S OBLIGATIONS

7. Defendant agrees that he will pay the applicable special assessments at or before the time of sentencing.

8. Defendant agrees to fully cooperate with the IRS in order to determine and calculate all taxes, interest and penalties due and owing by defendant to the United States, including, but not limited to making defendant's books and records available, and providing supporting documentation, to the IRS for examination and copying upon reasonable request.

9. Defendant further agrees and recognizes that any agreement or determination of restitution or tax loss in this case is not a final determination of the defendant's civil tax liability and does not preclude the IRS from further efforts to determine and collect taxes from defendant.

10. Defendant further agrees that he is not a prevailing party as defined by the Hyde Amendment, Public Law 105-119, Title VI, Nov. 26, 1997 (set forth as a statutory note under 18 U.S.C. § 3006A) and hereby expressly waives filing any suit or asserting any claim against the United States, including its agents and employees, under this provision.

11. Defendant further agrees to cooperate fully with the USAO, the Federal Bureau of Investigation and, as directed by the USAO, any other federal, state, or local law enforcement agency. This cooperation requires defendant to:

- a) Respond truthfully and completely to all questions that may be put to defendant, whether in interviews, before a grand jury, or at any trial or other court proceeding.
- b) Attend all meetings, grand jury sessions, trials or other proceedings at which defendant's presence is requested by the USAO or compelled by subpoena or court order.

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c) Produce voluntarily all documents, records, or other tangible evidence relating to matters about which the USAO, or its designee, inquires.

12. Defendant further agrees that in the event he does not plead guilty or seeks to withdraw his guilty plea, or the guilty plea is set aside for any other reason, defendant waives any protection afforded by Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, and § 1B1.8(a) of the United States Sentencing Guidelines Manual, and as such, any statements made by defendant in the course of plea discussions, in any proceeding under Rule 11 of the Federal Rules of Criminal Procedure, and during any cooperation with law enforcement authorities, will be admissible against defendant without limitation in any civil or criminal proceeding.

THE USAO'S OBLIGATIONS

13. If defendant complies fully with all defendant's obligations under this agreement, the USAO agrees:

a) Not to file additional criminal charges against defendant for violations both occurring in the Southern District of Ohio during the time period charged in Count One of the information and arising out of the facts set forth in the attached Statement of Facts;

b) At the time of sentencing, provided that defendant demonstrates an acceptance of responsibility for the offenses up to and including the time of sentencing, to recommend a two-level reduction in the applicable sentencing guideline offense level, pursuant to U.S.S.G. § 3E1.1, and to recommend and, if necessary, move for an additional one-level reduction if available under that section;

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c) If the USAO determines, in its exclusive judgment, that defendant has both complied with his obligations under this Plea Agreement and provided substantial assistance to law enforcement in the prosecution or investigation of another ("substantial assistance"), the USAO will consider filing a motion with the Court pursuant to U.S.S.G. § 5K1.1 requesting that the Court fix an offense level and corresponding guideline range below that otherwise dictated by the sentencing guidelines.

DEFENDANT'S UNDERSTANDINGS REGARDING SUBSTANTIAL ASSISTANCE

14. Defendant further understands the following:

a) Any knowingly false or misleading statement by defendant will subject defendant to prosecution for false statement, obstruction of justice, and perjury and will constitute a breach by defendant of this agreement.

b) Nothing in this agreement requires the USAO or any other prosecuting or law enforcement agency to accept any cooperation or assistance that defendant may offer, or to use it in any particular way.

c) Defendant cannot withdraw defendant's guilty plea if: the USAO does not make a motion pursuant to U.S.S.G. § 5K1. for a reduced guideline range; or the USAO makes such a motion pursuant to U.S.S.G. § 5K1.1 and the Court does not grant it; or the Court grants such a USAO motion but elects to sentence above the reduced range.

d) At this time the USAO makes no agreement or representation as to whether any cooperation that defendant has provided or intends to provide constitutes substantial assistance. The decision whether to file a substantial assistance motion rests solely within the discretion of the USAO.

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e) The USAO's determination of whether to file a substantial assistance motion will not depend in any way on whether the government prevails at any trial or court hearing in which defendant testifies.

WAIVER OF APPEAL AND COLLATERAL ATTACK

15. Defendant gives up the right to appeal his conviction. To the extent permitted by law, defendant further gives up the right to appeal the sentence imposed by the Court, and the manner in which the sentence is determined, provided that the sentence is within the statutory maximum except: the defendant retains the ability to appeal the Court's calculation of the advisory sentencing Guidelines. To the extent permitted by law, Defendant further waives and gives up any right to bring a post-conviction collateral attack on the conviction or sentence.

NO OTHER AGREEMENTS

16. Except as set forth herein, there are no promises, understandings or agreements between the USAO and defendant or defendant's counsel. This agreement binds only the USAO and does not bind any other federal, state or local prosecuting authority.

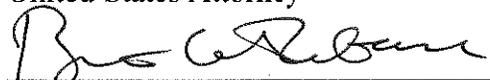
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DEFENDANT'S ACKNOWLEDGMENT

17. By signing this agreement, the defendant acknowledges that he has read this agreement, that he has carefully discussed the terms of this agreement with his attorney, and that he understands and accepts those terms voluntarily, without duress or coercion, and of his own free will. Defendant agrees that he is satisfied with the representation of his attorney in this case.

GREGORY G. LOCKHART  
United States Attorney

  
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BRENT G. TABACCHI  
Assistant United States Attorney

  
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WILLIAM APPLETON  
Defendant

  
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JAY CLARK  
Attorney for WILLIAM APPLETON

3/6/2009  
Date

6/MARCH/09  
Date

MARCH 6, 2009  
Date

**Exhibit A**

**Statement of Facts for William Appleton**

From approximately 2003 through September 2007, defendant William Appleton operated Appleton Advisors and Appleton Capital Management (“the Investment Firms”), purported hedge funds located in Cincinnati, Ohio. Through these Investment Firms, Mr. Appleton falsely informed potential clients that he could assist them strategically invest their money in various financial markets. To support these claims, Mr. Appleton routinely provided clients with a book that he allegedly had written and published concerning investment strategies. Mr. Appleton’s claims concerning this writing were untrue; he neither had authored nor published the book. Additionally, Mr. Appleton advised potential clients that he would invest in financial markets substantially all (i.e., ninety-eight percent) of the money that he received from them. He further promised to periodically provide them with accurate statements, detailing the status of their investments. Finally, Mr. Appleton indicated to potential clients that they could withdraw money from the Investment Firms at their convenience.

Based upon these representations, several individuals gave money totaling in excess of \$5 million to Mr. Appleton for the purpose of investing these funds. Relying on his promises, these investors expected accurate account statements as well as the ability to freely withdraw their funds from the Investment Firms.

Mr. Appleton, however, did not invest his clients' money as promised. Rather than investing ninety-eight percent of the money in the financial markets as he had represented, Mr. Appleton converted the vast majority of his clients' funds to his own personnel use. He used clients' funds to pay: (1) his living expenses; (2) the operation of the Investment Firms; and (3)

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earlier investors who sought to withdraw a portion of their money from the Investment Firms. For instance, on March 6, 2007, Mr. Appleton sent via Federal Express a purported interest payment from Cincinnati, Ohio, to one of his investors, identified herein by the initials J.W., located in Pennsylvania. Rather than representing money that J.W. had earned from her investments, the payment actually derived from money that other investors had given to Mr. Appleton to invest in financial markets.

Although Mr. Appleton did invest a small portion of the money that he received from his clients, he lost these funds in the financial markets and then failed to disclose these losses to his investors. To conceal these losses, Mr. Appleton sent his investors fraudulent account statements that falsely indicated that their investments were earning money.

These account statements also hid that Mr. Appleton, in fact, was generating significant income from his theft of his clients' funds. For instance, during calendar year 2005, Mr. Appleton received hundreds of thousands of dollars in taxable income through his improper diversion of investor money for his own personal benefit. Although he owed substantial taxes on this income, Mr. Appleton's use of the fraudulent account statements as well as his repeated transfer of funds through multiple bank accounts helped to conceal this fact. Even though he

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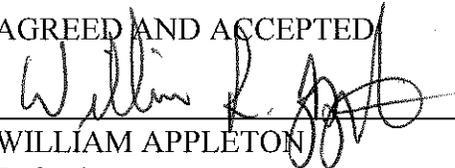
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lawfully was required to pay taxes on this income that he earned during calender year 2005, Mr. Appleton, who at that time was a resident of Cincinnati, Ohio, failed to file a tax return with the Internal Revenue Service on or before April 17, 2006.

In total, Mr. Appleton's fraudulent investment scheme defrauded his investors of in excess of \$5 million.

AGREED AND ACCEPTED

  
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WILLIAM APPLETON  
Defendant

6/MARCH/09  
Date

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