UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 09 CR 175
vs.	)	
	)	Judge John W. Darrah
PHILIP J. BAKER	)	

PLEA AGREEMENT

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and defendant PHILIP J. BAKER, and his attorney, KURT STITCHER, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(A) and Rule 11(c)(1)(B), as more fully set forth below. The parties to this Agreement have agreed upon the following:

Charges in This Case

2. The indictment in this case charges defendant with wire fraud, in violation of Title 18, United States Code, Section 1343 (Counts 1 - 17), commodity pool operator fraud, in violation of Title 7, United States Code, Sections 6o(1) and 13(a)(2) (Counts 18 and 19), embezzlement of commodity pool funds, in violation of Title 7, United States Code, Section 13(a)(1) (Count 20), obstruction of an official proceeding, in violation of Title 18, United States Code, Section 1512(c) (Counts 21 - 23), and criminal contempt, in violation of Title 18, United States Code, Section 401(3) (Counts 24 - 27).

3. Defendant has read the charges against him contained in the indictment, and those charges have been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crimes with which he has been charged.

Charge to Which Defendant is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to Count One of the indictment which charges defendant with wire fraud, in violation of Title 18, United States Code, Section 1343.

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charge contained in Count One of the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt and constitute relevant conduct pursuant to Guideline § 1B1.3:

Beginning no later than January 2002, and continuing through September 2007 (the "relevant time period"), at Chicago and Northbrook, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant devised, intended to devise, and participated in a scheme to defraud and to obtain money and property from Lake Shore Asset Management commodity pool participants by means of materially false and fraudulent pretenses, representations, promises and material omissions, which scheme is more fully described below.

Regulatory Background

During the relevant time period, the Commodity Futures Trading Commission ("CFTC") was an independent federal regulatory agency charged with administering and enforcing the Commodity Exchange Act ("the Act"). The National Futures Association ("NFA") was a not-for-profit membership corporation and self-regulatory organization registered with the CFTC. The NFA was headquartered in Chicago, in the Northern District of Illinois. The NFA conducted audits and investigations of NFA member firms, including registered commodity pool operators and commodity trading advisors, to monitor them for compliance with NFA rules.

A commodity pool was any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity futures. A commodity pool operator ("CPO") was any person engaged in the business of a commodity pool, and who solicited, accepted or received from others, funds or securities for the purpose of trading in commodity futures. Unless exempted or excluded from registration, a CPO was required to be registered with the CFTC, and to be a member of the NFA, before it could act on behalf of another person in connection with commodity futures trading. A participant was any person who had any direct financial interest in a commodity pool.

A commodity trading advisor ("CTA") was any person who, for compensation or profit, engaged in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading commodity futures and, as part of a regular business, issued analyses or reports concerning any of the activities referred to above. Unless exempted or excluded from registration, a CTA was required to be registered with the CFTC, and to be a member of the NFA, before it could act on behalf of another person in connection with commodity futures trading. The Act and CFTC regulations required CPO's and CTA's to maintain certain books and records and, upon request by the CFTC or the NFA, to make available for inspection those books and records.

Lake Shore's Operations

During the relevant time period, defendant controlled the activities of various companies, including several that had the words "Lake Shore Asset Management" or "Lake Shore" in their names (collectively "Lake Shore"). Lake Shore engaged in the business of trading commodity futures on behalf of several pools of investors. For example, defendant established Lake Shore Alternative Financial Asset, Ltd. under the laws of the Turks and Caicos Islands in 2001, and established Lake Shore Alternative Financial Asset Account I, Ltd., and Lake Shore Alternative Financial Asset Account II, Ltd. under the laws of the

Turks and Caicos Islands in 2005. Defendant also established Lake Shore Alternative Financial Asset Fund IV under the laws of the British Virgin Islands in January 2007. Defendant, a Canadian citizen, established these companies in the Caribbean Islands, in part, because he wanted to avoid doing business that was subject to the jurisdiction of courts in the United States. In April 2007, after defendant had decided to carry out certain Lake Shore-related business in the United States, he established Lake Shore Alternative Financial Asset Fund IV U.S. as an Illinois limited liability company.

Defendant and Individual A were ultimately responsible for all of Lake Shore's operations. Defendant was in charge of business development and sales, and he approved the final form of all of the Lake Shore marketing and disclosure literature. The Lake Shore commodity pools traded futures contracts that were offered on several futures exchanges around the world, including the Chicago Board of Trade and the Chicago Mercantile Exchange located in Chicago, in the Northern District of Illinois.

Defendant established companies called Spirex Company Ltd. ("Spirex") and Zebra Holdings Inc. ("Zebra") under the laws of the Turks and Caicos Islands. Defendant and Individual A established Hanford Investments Limited ("Hanford") under the laws of the Turks and Caicos Islands in 2000. Hanford maintained an account at FirstCaribbean International Bank in the Turks and

Caicos Islands. Hanford was created to be an "introducing broker" to collect fees for introducing Lake Shore's trading business to various futures commission merchants (futures trading firms or "FCMs"). Three of the FCM's to which Lake Shore directed its trading business were located in London, England.

During the relevant time period, the London FCMs paid more than $23 million to or for the benefit of Hanford as "introducing fees." Some funds collected by Hanford were distributed to defendant and to Individual A. During the relevant time period, Hanford paid more than $4 million to defendant in the form of payments to his companies Spirex and Zebra.

Pool participants invested with Lake Shore by sending funds to the Bank of New York ("BoNY"), in New York, NY. The funds on deposit at BoNY were managed by a cash management firm called Sentinel Management Group, Inc., ("Sentinel") which was located in Northbrook, in the Northern District of Illinois. Individual A and others performed the Lake Shore futures trading in Ontario, Canada, through accounts at the London FCMs. At defendant and Individual A's direction, and at the direction of defendant's subordinates at the Lake Shore offices in Ontario, Sentinel periodically would transfer funds from BoNY accounts to the London FCMs to be used for Lake Shore's futures trading, or to Hanford to be used to make payments to defendant, Individual A, and for other purposes. During the relevant time period, defendant directed Sentinel to make

payments totaling more than $10 million in interest earned on participants' funds to or for the benefit of Hanford.

Lake Shore pool participants received account statements monthly through the mail or other delivery services, and they had access to their Lake Shore account details online at the website www.lakeshorefunds.com. The website was operated through the use of a computer server located in Ontario, Canada. The account values presented to the pool participants were compiled by an accounting firm in Ontario ("back office firm"). The back office firm computed account values using cash balance information provided by Sentinel, and using futures trading performance figures provided by defendant and Individual A.

Beginning no later than 2003, defendant and Individual A knowingly provided false futures trading information to the back office firm knowing that the false information would be used to compute materially misleading account values for pool participants. The trading information was false in that it showed that Lake Shore's futures trading activity was profitable when in fact, as defendant well knew, Lake Shore had lost millions of dollars trading futures. Defendant also used the false futures trading information to create and direct the creation of materially misleading marketing material.

Defendant's Fraudulent Scheme

During the relevant time period, defendant fraudulently solicited and accepted and caused to be solicited and accepted more than $291,860,626 from approximately 900 entities and individuals worldwide for the purpose of, among other things, trading commodity futures contracts in several commodity pools. Defendant's solicitations were fraudulent in that he did not provide material information, and he falsely represented, among other things:

a. that the Lake Shore commodity pools generated positive returns during the relevant time period, when in fact Lake Shore experienced substantial trading losses during that time period;

b. that no management fee would be charged by any except one of the Lake Shore pools, that no operational expenses would be passed on to the pool participants, and that participants would only pay a "profit incentive fee" if the pools generated profits, when in fact defendant converted millions of dollars in participant funds to his own use even though the Lake Shore pools were not profitable;

c. that defendant co-founded Lake Shore in 1993, and that Lake Shore was a CFTC-registered member of the NFA, and was regulated by those entities, when in fact defendant was not officially associated with a registered Lake Shore entity until January 2007, and the actual principals of Lake Shore Inc. repeatedly reported to the NFA that Lake Shore was a dormant company that conducted no business during the relevant time period.

During the relevant time period defendant and Individual A caused to be misappropriated approximately $33 million in participants' funds, and the

participants' funds incurred several million dollars in net losses trading commodity futures during that time.

Defendant created, presented and caused to be presented to prospective commodity pool participants various forms of promotional and disclosure literature. The literature took the form of "confidential explanatory memoranda" and "fact sheets" as well as other documents and presentations. Defendant presented the literature to prospective pool participants in person, through sales and representatives, and at the website www.lakeshorefunds.com.

Misrepresentations Concerning Commodity Pool Performance

Defendant falsely represented and caused to be falsely represented that Lake Shore's various funds had generated high returns in all years from 2003 through 2007. For example, in a document called *Lake Shore Group of Companies Fact Sheet, Lake Shore I,* dated May 31, 2007, defendant misrepresented that "Lake Shore Alternative Financial Asset Fund I, Limited" had generated the following returns:

2003 – 22.48%
2004 – 29.81%
2005 – 18.95%
2006 – 5.73%
2007 – .55%

In a document called *Lake Shore Group of Companies Fact Sheet, Lake Shore IV,* dated December 31, 2006, defendant misrepresented that "Lake Shore Alternative Financial Asset Fund IV, Ltd." had generated the following returns:

2002 – 55.50%
2003 – 37.02%
2004 – 33.80%
2005 – 40.30%
2006 – 21.40%

Defendant stated at the bottom of the Fund IV Fact Sheet that the results for 2002, showing a 55.50% return, were simulated and based on a combination of returns from other Lake Shore funds. In fact, as defendant well knew, his commodity pools that did business under the "Lake Shore" name experienced millions of dollars in trading losses during the relevant time period.

Defendant misrepresented and caused to be misrepresented that Lake Shore had a long history of trading success. For example, in a document called *Lake Shore Group of Companies, Lake Shore Asset Management Limited OVERVIEW,* defendant stated that "Lake Shore has a track record of strong investment performance over the past 13 years." In a press release entitled *Lake Shore Asset Management Launches Lake Shore IV,* which was posted at the website www.lakeshorefunds.com, defendant stated, "In its 13-year history, Lake Shore's flagship 'Program I' has generated a 28.27% compound annual return."

In fact, as defendant well knew, his "Lake Shore" funds only began trading commodity futures in 2002, and did not have a thirteen-year track record.

Defendant misrepresented and caused to be misrepresented that Lake Shore had $1 billion in assets under management. In fact, as defendant well knew, Lake Shore never had $1 billion in assets under management.

Misrepresentations and Material Omissions Concerning Lake Shore's Registration With the CFTC and Membership in the NFA

Although Lake Shore's futures trading actually was conducted by Individual A and others in Ontario, Canada, defendant's marketing material falsely stated that the "trading manager" for Lake Shore was a company called Lake Shore Asset Management, *Inc*. ("Lake Shore Inc."), an Illinois corporation with a principal office in Chicago, Illinois. At various times prior to January 2007, Lake Shore Inc. had been registered with the CFTC as a CTA and CPO, and had been a member of the NFA. However, the actual owners and officers of Lake Shore Inc. repeatedly reported to the NFA that it was a dormant entity which had no customers and no active trading accounts. In November 2006, defendant paid a Lake Shore Inc. officer $20,000 to withdraw Lake Shore Inc.'s NFA registration, and to transfer to defendant the right to use the name "Lake Shore Asset Management" in connection with matters regulated by the NFA.

Prior to January 2007, neither defendant nor the entities controlled by him were registered with the CFTC, nor were they members of the NFA. In January 2007, however, defendant caused an entity called Lake Shore Asset Management, *Ltd*. ("Lake Shore Ltd.") to become a CFTC-registered, NFA member CTA and CPO, and defendant was subsequently approved by the NFA as a principal of Lake Shore Ltd. Defendant held himself out as the managing partner of Lake Shore Ltd. The main office of Lake Shore Ltd. purportedly was in Hamilton, Bermuda.

During the relevant time period, and before defendant's company Lake Shore Ltd. was registered with the CFTC, defendant emphasized, in literature provided to prospective pool participants, the benefit of United States regulatory oversight of Lake Shore, stating that the NFA conducted audits and investigations of registered entities, and reviewed registered entities' promotional and disclosure literature. In fact, prior to June 2007, the NFA never conducted an audit of any Lake Shore entity, or reviewed any of their promotional or disclosure literature. Defendant knew this and yet took advantage of Lake Shore Inc.'s registration status to fraudulently solicit pool participants and lull them into believing that investments in his commodity pools were regulated by the NFA and CFTC.

Misrepresentations Concerning Fees and Expenses

Defendant misrepresented and caused to be misrepresented that the Lake Shore commodity pools would bear all expenses incurred in connection with their organization and ongoing operation, and that such expenses would not be passed on, either directly or indirectly, to the pool participants. Defendant further stated in the literature that no management fee would be charged by any pool (with the exception of "Fund IV" which was purportedly launched in 2007) , that Lake Shore would charge only a "profit incentive fee" equal to 25% of the "net new appreciation," and that Lake Shore "operated on the basis of 100% pay for performance."

In a document called *Lake Shore Group of Companies, Lake Shore Asset Management Limited OVERVIEW*, defendant stated "Lake Shore has taken a unique approach to fees. It believes that the client must profit before Lake Shore can profit. In line with this philosophy, Lake Shore only charges a performance fee: No fee to enter, No fee to exit, No management fee (Lake Shore Alternative Financial Asset Fund I, II, and III), Performance fee of 25%." In fact, defendant did charge the pool participants millions of dollars in brokers' fees and expenses, and otherwise misappropriated their funds, as described below.

Misappropriation of Pool Participant Funds

During the relevant time period, defendant caused the transfer of approximately $10 million in interest earned on participant funds at Sentinel to Hanford even though he knew that the Lake Shore commodity pools experienced millions of dollars in net losses trading futures contracts during that same time period. Defendant also caused approximately $23 million in "introducing broker fees" to be paid by Lake Shore's futures trading firms to Hanford during that same time period. During May and June 2007, defendant caused approximately $1 million in pool participant funds to be transferred from Sentinel to Anglo International Associates ("Anglo"), which was located in London, England, for the benefit of defendant.

In order to further the scheme to defraud, defendant transmitted many electronic communications in foreign commerce. For example:

a. On May 7, 2005, defendant sent an email that was routed through a computer server in Ontario, Canada, to Northbrook, Illinois, directing that Sentinel wire transfer $52,500 to Hanford;

b. On December 4, 2005, defendant sent an email from London, England, to Northbrook, Illinois, directing that Sentinel wire transfer $40,000 to Hanford;

c. On May 11, 2007, defendant sent an email that was routed through a computer server in Ontario, Canada, to Northbrook, Illinois, directing that Sentinel wire transfer $711,762.67 to an Anglo account at the Royal Bank of Scotland, London, England, for the benefit of Hanford; and

d. On or about June 19, 2007, defendant sent an email that was routed through a computer server in Ontario, Canada, to Northbrook, Illinois, directing that Sentinel wire transfer $444,641.09 to an Anglo account at the Royal Bank of Scotland, London, England, for the benefit of Hanford.

Concealment of Evidence and Obstruction

Defendant concealed and misrepresented the existence, purposes and the acts done in furtherance of the scheme. On June 13, 2007, NFA staff reviewed the website found at www.lakeshorefunds.com and saw a press release entitled *Lake Shore Asset Management Launches Lake Shore IV*. The press release stated, "In its 13-year history, Lake Shore's flagship 'Program I' has generated a 28.27% compound annual return."

On June 14, 2007, NFA staff presented themselves at 875 North Michigan Avenue, Chicago, Illinois, to conduct an audit of Lake Shore Ltd. in order to verify information presented on the website. When NFA staff requested access to books and records, a Lake Shore representative told them that the records were outside the United States, but told them there was a password-protected area of the website that contained information responsive to their request.

On June 15, 2007, the Lake Shore representative gave NFA staff a user name and password to access the protected part of the website and, over the next few days, NFA staff viewed and printed material found there. Also on June 15, defendant caused $2,100,000 to be wired from Hanford's account at

FirstCaribbean International Bank in the Turks and Caicos Islands to an Anglo account in the United Kingdom. On June 19, defendant revoked the NFA's access to the protected part of the website.

On June 21, 2007, the CFTC issued a document request to Lake Shore Ltd. The CFTC requested, among other things, the name and address of each Lake Shore pool participant and client. Between June 21 and June 26, CFTC staff communicated with Lake Shore Ltd. through attorneys for defendant and Lake Shore Ltd., but defendant refused to produce records to the CFTC as required by the Act. Between June 22 and June 29, defendant caused three wire transfers, totaling more than $790,000, to be sent from Hanford to Anglo.

On or about June 25, 2007, defendant directed that 38 boxes of Lake Shore records be shipped from offices in Ontario, Canada to Hamilton, Bermuda, while his attorneys were in communication with the CFTC and the NFA regarding their request for Lake Shore documents.

On June 26, 2007, the CFTC filed a *Complaint for Injunctive and Other Equitable Relief and for Civil Monetary Penalties Under the Commodity Exchange Act* against Lake Shore Ltd. in the United States District Court for the Northern District of Illinois, case number 07 C 3598, a matter assigned to Judge Blanche M. Manning. The CFTC also moved for a restraining order freezing the assets of Lake Shore Ltd. in order to preserve those assets for the benefit of

commodity pool participants. The CFTC requested that the restraining order also direct Lake Shore Ltd. to make its books and records available to CFTC staff. The information sought by the CFTC included the name and address of each pool participant, and itemized records of Lake Shore Ltd.'s commodity futures transactions. Also on June 26, defendant caused Lake Shore's computer server to be shipped from Canada to Bermuda.

On June 27, 2007, Judge Manning issued an order directing Lake Shore Ltd. and its employees and attorneys to permit the CFTC immediately to inspect and copy all records of Lake Shore Ltd.'s business operations wherever those records were situated. Seven days later, on July 4, 2007, defendant directed that an additional 20 boxes of Lake Shore records be shipped from Canada to Bermuda.

On August 28, 2007, Judge Manning issued a preliminary injunction freezing the assets of Lake Shore Ltd. and the other entities with which it was a "common enterprise" in order to preserve those assets for the benefit of commodity pool participants, and ordering Lake Shore Ltd. and its officers and attorneys to produce books and records to the CFTC. Less than two weeks later, on September 11, 2007, defendant caused Lake Shore's computer server and books and records to be shipped from Bermuda, to Geneva, Switzerland.

On October 4, 2007, Judge Manning issued an order appointing a receiver ("Receiver") for Lake Shore Ltd. The order gave the Receiver the duty and the power to take control of Lake Shore Ltd.'s assets and books and records for the benefit of the commodity pool participants, to liquidate those assets and distribute them to the participants upon further order of the district court, and to initiate, defend or compromise any legal action in any jurisdiction necessary to preserve Lake Shore's assets. The order also directed Lake Shore Ltd. and its officers and attorneys to cooperate fully with the Receiver, and to deliver to the Receiver all assets, books and records.

On November 20, 2007, Judge Manning held defendant in civil contempt for his failure to comply with the August 28, 2007, preliminary injunction and the October 4, 2007, order appointing the Receiver.

On January 24, 2008, Judge Manning referred the matter to the Office of the United States Attorney for the Northern District of Illinois for investigation and possible prosecution of criminal contempt charges against defendant.

On April 24, 2008, Judge Manning entered a permanent injunction against several Lake Shore-related entities and Hanford. The injunction prohibited them and their officers and attorneys from trading commodity futures, engaging in business as CPO's or CTA's, and from concealing or altering their books and records. The injunction ordered the Lake Shore entities and Hanford to make

their books and records available to the CFTC and the Receiver, to prepare an accounting of all of their assets held outside the United States and to return those assets to the United States, and otherwise froze Lake Shore's assets to preserve those assets for the benefit of commodity pool participants.

On September 17, 2008, Judge Manning entered a permanent injunction against defendant. The injunction imposed essentially the same restrictions and obligations upon defendant as did the permanent injunction entered against the corporate entities on April 24, 2008.

Defendant had actual knowledge of Judge Manning's orders at or around the time they were issued, but he did not produce to the CFTC or Receiver the books, records and assets the Court ordered him to produce. Specifically, defendant failed to produce the name and address of each pool participant, and itemized records of Lake Shore's commodity futures transactions, and records supporting Lake Shore's claims concerning positive trading performance.

On or about June 13, 2007, at Chicago, in the Northern District of Illinois, Eastern Division, and elsewhere, defendant, for the purpose of executing the above-described scheme, knowingly caused to be transmitted by means of wire communication in foreign commerce, certain wirings, signs and signals, namely, postings on the website www.lakeshorefunds.com, which was hosted on a

computer server in Ontario, Canada, and was accessible throughout the world, including in Chicago, Illinois.

7. The foregoing facts are set forth solely to assist the Court in determining whether a factual basis exists for defendant's plea of guilty, and are not intended to be a complete or comprehensive statement of all the facts within defendant's personal knowledge regarding the charged crimes and related conduct.

Maximum Statutory Penalties

8. Defendant understands that the charge to which he is pleading guilty carries the following statutory penalties:

a. A maximum sentence of 20 years' imprisonment. This offense also carries a maximum fine of $250,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that the judge also may impose a term of supervised release of not more than three years.

b. Defendant further understands that the Court must order restitution to the victims of the offense in an amount determined by the Court.

Defendant agrees that the amount of restitution currently due to approximately 900 victims of the offense is $154,831,582.

c. In accord with Title 18, United States Code, Section 3013, defendant will be assessed $100 on the charge to which he has pled guilty, in addition to any other penalty or restitution imposed.

Sentencing Guidelines Calculations

9. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

10. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines**. The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2010 Guidelines Manual.

b. **Offense Level Calculations.**

i. The base offense level is 7, pursuant to Guideline § 2B1.1(a)(1).

ii. The offense level is increased by 28 levels, pursuant to Guideline § 2B1.1(b)(1)(O), because the loss ($274,148,513) exceeds $200,000,000.

iii. The offense level is increased by 6 levels, pursuant to Guideline § 2B1.1(b)(2)(C), because the number of victims (approximately 900) exceeds 250.

iv. The offense level is increased by 2 levels, pursuant to Guideline § 2B1.1(b)(9), because a substantial part of the fraudulent scheme was committed from outside the United States and because the offense involved sophisticated means. The scheme involved the trading of commodity futures on exchanges all around the world from Ontario, Canada. The scheme involved the use of a back office accounting function and a computer server used to host a website, both located in Ontario. Both the back office and computer server were used to distribute account statements that defendant knew to contain material misrepresentations about the profitability of Lake Shore's futures trading. The scheme also involved the electronic transfer of funds from pool participants around the world into the United States, the management of that cash by Sentinel in the Northern District of Illinois, and the subsequent transfer of funds to defendant and others using a network of offshore corporate entities and bank accounts established for the purpose of carrying out Lake Shore's business.

v. The offense level is increased by 4 levels, pursuant to Guideline § 2B1.1(b)(17), because the offense involved a violation of the commodities law and, at the time of the offense, defendant was a commodity trading advisor and a commodity pool operator. Prior to January 2007 defendant acted in the capacity of an unregistered CTA and CPO, and after January 2007 defendant was a principal of Lake Shore Ltd., which was a registered CTA and CPO.

vi. The offense level is increased by 2 levels, pursuant to Guideline § 3C1.1, because defendant willfully obstructed and impeded, and attempted to obstruct and impede, the administration of justice with respect to the CFTC's investigation of defendant, and the CFTC's civil lawsuit in United States District Court. Defendant did so by concealing records from the CFTC and the Court, and by transferring funds in an effort to avoid the effect of the various asset freeze orders issued by the Court. The CFTC's investigation and lawsuit were related to defendant's offense of conviction.

vii. Notwithstanding defendant's obstruction of the CFTC's investigation and civil lawsuit, if the Court finds that defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his conduct, if the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his

actions within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine or restitution that may be imposed in this case, a two-level reduction in the offense level is appropriate.

viii. In accord with Guideline § 3E1.1(b), defendant has timely notified the government 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. Therefore, as provided by Guideline § 3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 46, which, when combined with the anticipated criminal history

category of I, results in an anticipated advisory Sentencing Guidelines range of life imprisonment, in addition to any supervised release, fine, and restitution the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above Guideline calculations are preliminary in nature and based on facts known to the parties as of the time of this Plea Agreement. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that while none of the Guideline calculations set forth above are binding on the Court or the Probation Office, the parties have agreed pursuant to Fed.R.Crim.P. 11(c)(1)(B) that certain components of those calculations – specifically, those set forth above in subparagraphs b(i) through b(viii) of this paragraph – are binding on the parties, and it shall be a breach of this Plea Agreement for either party to present or

advocate a position inconsistent with the agreed calculations set forth in the identified subparagraphs.

g. Defendant understands that with the exception of the Guideline provisions identified above as binding on the parties, the Guideline calculations set forth above are non-binding predictions, upon which neither party is entitled to rely, and are not governed by Fed. R. Crim. P. 11(c)(1)(B). Errors in applying or interpreting any of the Sentencing Guidelines (other than those identified above as binding) may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the Guidelines. The validity of this Plea Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Plea Agreement, on the basis of such corrections.

Cooperation

11. Defendant agrees he will fully and truthfully cooperate in any matter in which he is called upon to cooperate by a representative of the United States Attorney's Office for the Northern District of Illinois. This cooperation shall include providing complete and truthful information in any investigation

and pre-trial preparation and complete and truthful testimony in any criminal, civil or administrative proceeding.

Agreements Relating to Sentencing

12. The government will recommend that the Court impose a sentence of imprisonment of 240 months. The defendant is free to recommend that the Court impose a sentence of imprisonment of less than 240 months.

13. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Plea Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

14. If, in its sole discretion, the government determines subsequent to defendant's sentencing in this case that defendant has provided substantial assistance, as described in Fed. R. Crim. P. 35(b)(2), which assistance has not been taken into account by the parties in fashioning the sentencing agreement in this case, and is not taken into account by the Court in imposing sentence, then the government will move for a reduction in his sentence pursuant to Fed. R. Crim. P. 35(b)(4). Defendant understands that it is solely within the government's discretion whether to move for a reduction in his sentence, and he agrees not to challenge the government's decision if it determines in its

discretion that such a motion is not appropriate. Defendant also understands that should the government seek such a reduction as outlined above, it is solely within the Court's discretion to grant or reject such a request, and to determine the extent of any reduction.

15. Regarding restitution, defendant acknowledges that the total amount of restitution owed to approximately 900 victims is $154,831,582, minus any credit for funds repaid prior to sentencing, and that pursuant to Title 18, United States Code, § 3663A, the Court must order defendant to make full restitution in the amount outstanding at the time of sentencing.

16. Restitution shall be due immediately, and paid pursuant to a schedule to be set by the Court at sentencing. The government and the defense understand that, pursuant to Title 18, United States Code, Section 3664(j)(2), any amount of restitution due to a victim in this case shall be reduced by any amount later recovered as compensatory damages for the same loss by that victim in any federal civil proceeding. Specifically, any amount paid to a victim by the Receiver in the case *U.S. Commodity Futures Trading Commission v. Lake Shore Asset Management Limited* et al., case number 07 C 3598 pending in the United States District Court for the Northern District of Illinois, shall reduce the amount of restitution due to that same victim in this case. Defendant acknowledges that if the receivership is terminated before full restitution has

been made to each victim, defendant will be responsible for the remaining restitution due, and that termination of the receivership will not terminate defendant's obligation to make restitution. Defendant acknowledges that pursuant to Title 18, United States Code, Section 3664(k), he is required to notify the Court and the United States Attorney's Office of any material change in economic circumstances that might affect his ability to pay restitution.

17. Defendant agrees to pay the special assessment of $100 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

18. Defendant agrees that the United States may enforce collection of any fine or restitution imposed in this case pursuant to Title 18, United States Code, Sections 3572, 3613, and 3664(m), notwithstanding any payment schedule set by the Court.

19. After sentence has been imposed on the count to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the indictment, as well as the forfeiture allegation as to defendant.

20. Defendant and the government understand that, pursuant to Title 18, United States Code, Section 4100 *et seq.*, and 28 C.F.R. § 527.40 *et seq.*, defendant may seek to be transferred from the United States Bureau of Prisons

to Canada to serve part of his sentence by petitioning the United States Department of Justice through its International Prisoner Transfer Unit. Defendant understands that such a petition is not automatically granted, and that the decision to grant or deny such a petition rests with the Attorney General, through the International Prisoner Transfer Unit, and not with the United States Attorney for the Northern District of Illinois. The United States Attorney for the Northern District of Illinois agrees to not oppose such a petition if made by defendant, and further agrees to promptly supply to the International Prisoner Transfer Unit information or documents requested by that Unit. Defendant further understands that he will have no right to withdraw his plea of guilty, or take any appeal from, or make any collateral or post-conviction attack against, his conviction or sentence in this case should he not be accepted for a prisoner transfer to Canada.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Plea Agreement

21. This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case 09 CR 175.

22. This Plea Agreement concerns criminal liability only. Except as expressly set forth in this 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 Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities, except as expressly set forth in this Agreement.

Waiver of Rights

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

a. **Trial rights**. Defendant has the right to persist in a plea of not guilty to the charges against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court

remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt and that it was to consider each count of the indictment separately. The jury would have to agree unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. 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.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear

voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

b. **Waiver of appellate and collateral rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial. Defendant is aware that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, afford a defendant the right to appeal his conviction and the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal his conviction, any pre-trial rulings by the Court, and any part of the sentence (or the manner in which that sentence was determined), including any term of imprisonment and fine within the maximums provided by law, and including any order of restitution, in exchange for the concessions made by the United States in this Plea Agreement. In addition, defendant also waives his right to challenge his conviction and sentence, and the manner in which the sentence was determined, and (in any case in which the term of imprisonment and fine are within the maximums provided by statute) his attorney's alleged failure or

refusal to file a notice of appeal, in any collateral attack or future challenge, including but not limited to a motion brought under Title 28, United States Code, Section 2255. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation, nor does it prohibit defendant from seeking a reduction of sentence based directly on a change in the law that is applicable to defendant and that, prior to the filing of defendant's request for relief, has been expressly made retroactive by an Act of Congress, the Supreme Court, or the United States Sentencing Commission.

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

Presentence Investigation Report/Post-Sentence Supervision

24. Defendant understands that the United States Attorney's Office 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, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing, including the nature and extent of defendant's cooperation.

25. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office 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 Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

26. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Plea Agreement shall be sufficient evidence of defendant's

request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Other Terms

27. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine and restitution for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

28. Defendant will not object to a motion brought by the United States Attorney's Office for the entry of an order authorizing disclosure of documents, testimony and related investigative materials which may constitute grand jury material, preliminary to or in connection with any judicial proceeding, pursuant to Fed. R. Crim. P. 6(e)(3)(E)(I). In addition, defendant will not object to the government's solicitation of consent from third parties who provided records or other materials to the grand jury pursuant to grand jury subpoenas, to turn those materials over to the Civil Division of the United States Attorney's Office, or an appropriate federal or state agency, for use in civil or administrative proceedings or investigations, rather than returning them to the third parties.

29. Defendant recognizes that pleading guilty may have consequences with respect to his immigration status if he is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the

offense to which defendant is pleading guilty. Indeed, because defendant is pleading guilty to an offense that is an "aggravated felony" as that term is defined in Title 8, United States Code, Section 1101(a)(43), removal is presumptively mandatory. Removal and other immigration consequences are the subject of a separate proceeding, however, and defendant understands that no one, including his attorney or the Court, can predict to a certainty the effect of his conviction on his immigration status. Defendant nevertheless affirms that he wants to plead guilty regardless of any immigration consequences that his guilty plea may entail, even if the consequence is his automatic removal from the United States.

Conclusion

30. Defendant understands that this Plea Agreement will be filed with the Court, will become a matter of public record and may be disclosed to any person.

31. Defendant understands that his compliance with each part of this Plea Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set

forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

32. Should the judge refuse to accept defendant's plea of guilty, this Plea Agreement shall become null and void and neither party will be bound thereto.

33. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Plea Agreement to cause defendant to plead guilty.

34. Defendant acknowledges that he has read this Plea Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: _____

PATRICK J. FITZGERALD
United States Attorney

PHILIP J. BAKER
Defendant

CLIFFORD C. HISTED
Assistant U.S. Attorney

KURT STITCHER
Attorney for Defendant