

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	CAUSE NO. 16-CR-148
EDWARD M. MILLER,	)	
	)	
Defendant.	)	

PLEA AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, come now the United States of America, by and through Sandra Moser, Acting Chief, Criminal Division, Fraud Section, and Defendant Edward Miller, by and through Kevin Milner, attorney for Defendant, and show the Court they have entered into a plea agreement as follows:

1. I, Edward Miller, have the ability to read, write, and speak the English language.

2. I have received a copy of the Superseding Indictment and have read and discussed it with my lawyer, and believe and feel that I understand every accusation and charge made against me in this case. I have knowingly and voluntarily agreed to plead guilty to Counts 1 and 16 of the Superseding Indictment.

3. I have told my lawyer the facts and surrounding circumstances as known to me concerning the matters mentioned in the Superseding Indictment and believe and feel that my lawyer is fully informed as to all such matters. My

lawyer has counseled and advised me as to the nature and elements of every accusation and charge against me and as to any possible defenses I might have.

4. I understand that I am entitled to have all of my rights which may be involved in this matter explained to me, and that I have the right to have any questions I may have answered for me.

5. I understand by pleading guilty I waive certain rights. The rights described below have been explained to me, as well as the consequences of my waiver of these rights, and I knowingly and voluntarily waive these rights as part of this plea agreement:

- a. If I persisted in a plea of not guilty to the charges against me, I would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. I have the right to a jury trial. However, I may waive a jury trial in writing with the approval of the Court and the consent of the government.
- b. If the trial is a jury trial, the jury would be composed of twelve people selected at random. My attorney and I would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, 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 a defendant is presumed innocent, and that it could not convict unless, after hearing all the evidence, it was persuaded of my guilt beyond a reasonable doubt, and that it was to consider each count of the Superseding Indictment separately.
- c. 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 of my guilt beyond a reasonable doubt.
- d. At a trial whether by a jury or a judge, the prosecution would be required to present its witnesses and other evidence against me. I

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

- e. At a trial, I would have a privilege against self-incrimination so that I could decline to testify, and no inference of guilt could be drawn from my refusal to testify. If I desired to do so, I could testify in my own behalf.
- f. At trial and at every stage of the proceedings, I have a right to an attorney, and if I could not afford an attorney one would be appointed for me.
- g. Rule 11(f) and Federal Rules of Evidence 408 and 410 are rules, which ordinarily limit the admissibility of statements made by a Defendant in the course of plea discussions. I knowingly and voluntarily waive these rights and agree that any statements made in the course of my guilty plea or this Plea Agreement (in part or in its entirety, at the sole discretion of the United States) are made under penalty of perjury and will be admissible against me for any purpose in any criminal or civil proceeding, if I fail to enter or attempt to withdraw my guilty plea, or in any post-conviction proceeding challenging the knowing or voluntary nature of the guilty plea.
- h. In the event that I should be found guilty of the charge(s) against me, I would have the right to challenge my conviction through post-conviction proceedings or appeal my conviction on such charge(s) to a higher court.

6. I understand that under the U.S. Sentencing Guidelines, the Court, in light of an investigation by the United States Probation Office, will determine the applicable sentencing guideline range, and that the Court will determine all matters, whether factual or legal, relevant to the application of the U.S. Sentencing Guidelines. I understand that the U.S. Sentencing Guidelines are advisory only, and that the specific sentence to be imposed upon me will be

determined by the judge after consideration of a pre-sentence investigation report, input from counsel for me and the government, federal sentencing statutes, and the U.S. Sentencing Guidelines.

7. Notwithstanding the above, I have, with the assistance of counsel, entered into an agreement with the United States as follows:

- a. I will plead GUILTY to the following Counts of the Superseding Indictment: Count 1, which charges me with Conspiracy to Commit Securities Fraud and Wire Fraud in violation of Title 18, United States Code, Sections 1349, and Count 16, which charges me with Obstruction of Justice in violation of 18 U.S.C. § 1512(c)(1), because I am, in fact, GUILTY of the offenses as charged.
- b. I understand the maximum possible penalties that may be imposed upon me are as follows:

18 U.S.C. § 1349:

- a. a term of imprisonment for twenty (25) years (18 U.S.C. § 1349);
- b. a fine in an amount equal to the greatest of (1) \$250,000; or (2) twice the gross pecuniary gain the conspirators derived from the crime; or (3) twice the gross pecuniary loss caused to the victims of the crime by the conspirators; and
- c. a term of supervised release of not more than three years following any term of imprisonment.

18 U.S.C. § 1512(c)(1):

- a. a term of imprisonment of 20 years;
 - b. a fine in an amount of \$250,000; and
 - c. a term of supervised release of not more than 3 year following any term of imprisonment.
- c. If the Court finds my plea to be voluntary and knowingly made, and accepts the plea, then the United States will move at the appropriate time to dismiss the remaining counts against me in the Superseding indictment. However, to the extent I breach this agreement, or the convictions pursuant to this plea agreement are vacated or overturned in whole or in part, the United States is entitled to bring all charges in the Superseding Indictment against

me, and I agree to waive any defense that any of these charges are time barred.

- d. I understand that a special assessment of \$200 will be imposed in addition to any other penalty, and the special assessment is due and payable prior to my sentencing hearing. I further understand that under a term of supervised release, I would have to live my life under certain conditions set by the Court and should I violate any of those conditions, the Court could revoke the supervised release and sentence me to serve an additional term of imprisonment.
- e. The following agreements in this paragraph are being submitted pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure that are *not binding* upon the Court. **I understand that if the Court does not follow the recommendations set forth in this paragraph, I will not be allowed to withdraw my guilty plea:**
 - i. The United States and I agree that in recognition of my acceptance of responsibility for my offense conduct, I am entitled to a three-level reduction in offense level. The United States and I further agree that I have assisted authorities in the investigation or prosecution of my own misconduct by timely notifying the United States Department of Justice Trial Attorneys of my intention to plead guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently. However, the government's obligation to recommend acceptance of responsibility under this plea agreement is contingent upon my continuing manifestation of acceptance of responsibility. If I deny my involvement, give conflicting statements of my involvement, or engage in additional criminal conduct including any personal use of controlled substances, the government shall not be bound to recommend any reduction in offense level for acceptance of responsibility. I further understand that the Court is not bound by this recommendation and that the Court makes the final decision regarding my receipt of a reduction in offense level for acceptance of responsibility.

- ii. The United States and I agree that based upon the facts of this case, the following guidelines are applicable:

U.S.S.G. § 2B1.4 (base offense level)	+8 levels
U.S.S.G. § 2B1.1(b)(1)(G) (loss)	+12 levels
U.S.S.G. § 3C1.1 (obstruction of justice)	+2 levels
U.S.S.G. § 3B1.2(b)(minor role)	-2 levels

Total (without acceptance adjustment): 20

- f. The following agreement in this paragraph is submitted to the Court pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) and is binding upon the Court if the Court accepts the plea agreement. I understand this means that if the Court decides not to accept the agreement set forth in this sub-paragraph, then the Court will notify me that it has rejected this plea agreement and afford me the opportunity to then withdraw my plea of guilty. I understand if I then persist in my guilty plea, the disposition of the case may be less favorable to me than that contemplated by this plea agreement.

- i. The United States agrees with me that the Court will impose a sentence of imprisonment in a Bureau of Prisons facility within the range of 3-24 months.

- ii. I agree that based upon the facts of this case, and with full consideration of any factors to be considered under 18 U.S.C. §3553(a), a sentence at a Bureau of Prisons facility within the range of 3-24 months is a fair and reasonable sentence given my offense conduct, and no additional grounds exist for a downward departure or variance. Furthermore, I agree that I will not seek an alternative sentence or make a sentencing recommendation, either directly or through counsel, which is in conflict with my acknowledgement that a sentence within the range of 3-24 months is appropriate in this case. I further understand that if I make any such argument, recommendation, or claim, the United States may, at its sole discretion, seek to withdraw this plea agreement without objection by me or my counsel.

- g. I acknowledge that the Court is required to order restitution for the full amount of any victims' compensable losses in this case as may be proved by the United States or stipulated to by the parties. Within 45 days of victim notification, the parties will meet and confer

regarding any victim claim for restitution and will propose an appropriate amount of restitution, if any, at sentencing. Any restitution obligation ordered by the Court shall be joint and several with co-conspirators Douglas Miller and Christopher Salis.

- h. I agree to forfeit to the United States all proceeds obtained from the conduct in the following amount: \$222,628.17 in United States currency.

I also acknowledge that all property covered by this agreement is subject to forfeiture as property that was used and intended to be used to commit and to promote the commission of the offense charged in Counts 1 and 16 of the Superseding Indictment. I further consent to the entry of orders of forfeiture pursuant to Federal Rule of Criminal Procedure 32.2. I agree to waive any right to challenge or appeal this forfeiture order.

- i. I understand that the law gives a convicted person the right to appeal the conviction and the sentence imposed. I also understand that no one can predict the precise sentence that will be imposed, and that the Court has jurisdiction and authority to impose any sentence within the statutory maximum set for my offenses as set forth in this plea agreement. With this understanding and in consideration of the government's entry into this plea agreement, I expressly waive my right to appeal or to contest my conviction and all components of my sentence or the manner in which my conviction or my sentence was determined or imposed, to any Court on any ground other than a claim of ineffective assistance of counsel, including any appeal under Title 18, United States Code, Section 3742 or any post-conviction proceeding, including but not limited to, a proceeding under Title 28, United States Code, Section 2255. I also agree to waive all rights, whether asserted directly or through a representative, to, after sentencing, request or receive from the United States any further records, reports, or documents pertaining to the investigation or prosecution of this matter; this waiver includes, but is not limited to, rights conferred by the Freedom of Information Act and the Privacy Act of 1974.

- 8. I am prepared to state to the Court the facts in this matter that cause me to believe that I am guilty of Counts 1 and 16 of the Superseding Indictment to which I have agreed to plead guilty. Furthermore, I acknowledge that the

following is only a summary of the events regarding my criminal conduct:

- a. In approximately August and September 2014, I learned that my brother and co-conspirator, co-Defendant Douglas Miller, had received certain confidential, material, and nonpublic information (“the Inside Information”), which our friend and co-conspirator Christopher Salis provided to us in violation of: (i) a duty of trust and confidence that he owed to a close, personal friend who worked for Concur Technologies, Inc. (“Concur”) and who had confided in him certain Inside Information regarding Concur with the understanding that it was not to be used for trading; and (ii) a separate fiduciary duty to his employer, SAP SE (“SAP”). Upon learning the Inside Information and knowing it to be disclosed by co-conspirator Salis in breach of his respective duties of trust and confidence, I, pursuant to an understanding and agreement I had with my co-conspirators, began to purchase Concur securities based on that information for the purposes of profiting from those transactions and with the intent to send a portion of those proceeds to Salis in exchange for the Inside Information.
- b. Concur’s stock was listed on the NASDAQ, a national securities exchange, and was registered with the United States Securities and Exchange Commission.
- c. Starting in or around August 2014, Salis disclosed to Douglas Miller the Inside Information, which included the likely fact that Concur would be acquired, and, ultimately, that Concur would likely be acquired by SAP in the coming weeks or months. I received this information with the knowledge that the Inside Information was obtained in breach of a duty of trust and confidence that Salis owed to his friend and to SAP, and that the information was confidential, material, and not public.
- d. In order to trade on the confidential, material, and nonpublic information, I opened a brokerage account with Scottrade. After I activated the brokerage account, I provided Douglas Miller with the account password. In order to become eligible to trade options, I provided Scottrade with materially false financial information, including about my assets and net worth, and materially false information about my trading experience. With Douglas Miller, I then proceeded to purchase call options in Concur, in order to profit from the Inside Information.

- e. I knew that Douglas Miller, as well as the other co-conspirators identified in the Superseding Indictment, were using brokerage accounts to purchase call options in Concur based on the Inside Information received from co-conspirator Salis, with the understanding that we would share in the proceeds of the trading, and that a portion of the proceeds would be given to Salis in exchange for the Inside Information.
- f. In August and September 2014, I used the account described above, and agreed with other co-conspirators that they would use their accounts, to purchase Concur securities based on the Inside Information that Salis and Douglas Miller provided to me. I knew that my conduct, which constituted trading on material non-public information and is often called “insider trading,” was wrong and unlawful.
- g. On or about September 17, 2014, Salis learned from a colleague that SAP would be acquiring Concur. Salis transmitted this Inside Information to Douglas Miller. I knew that Salis disclosed this information in breach of his fiduciary duty to SAP, and that the information was confidential, material, and not public. Through the account identified above, I purchased additional Concur call options based on this information. I knew that this trading was wrong and unlawful.
- h. On September 18, 2014, Concur and SAP publicly announced that SAP entered into an agreement to acquire Concur.
- i. In the days after Concur and SAP entered into this acquisition agreement in September 2014, I and my co-conspirators sold the Concur call options purchased based on the receipt of Inside Information from co-conspirator Salis for over \$500,000 dollars in profits, collectively.
- j. Between September 25, 2014 and September 27, 2014, members of the conspiracy visited Salis in California. Those members of the conspiracy provided Salis with cash as a portion of the profits from my and my co-conspirators’ trading in Concur options. In October 2014, Salis visited me and Douglas Miller, in Indiana, and members of the conspiracy gave him additional cash as a portion of profits from my and my co-conspirators’ trading in Concur options. I and certain of my co-conspirators also invested in EndowCloud, a

company associated with Salis, using the profits from the conspiracy. These payments were given to Salis because Salis had disclosed to members of the conspiracy the Inside Information upon which we traded in Concur securities.

- k. Throughout the course of the conspiracy, I and my co-conspirators took steps to conceal the conspiracy, including but not limited to the structuring of financial transactions to avoid detection, and the use of prepaid cellular phones (i.e. “burner” phones) not associated with our identities. In or around August 2015, I and Douglas Miller disposed of the burner phones we had purchased to prevent law enforcement from obtaining text messages regarding our trading in Concur securities.
- l. For the purpose of effecting the conspiracy and its unlawful objects and executing the scheme to defraud, I and members of the conspiracy transmitted and caused to be transmitted electronic communications, or “wires,” in interstate commerce.
- m. In or around August 2015, I knew that the Securities Exchange Commission (“SEC”) was engaged in an official proceeding for the purpose of investigating my and my co-conspirators’ trading into Concur securities. I also knew that there was a federal grand jury in the Northern District of Indiana engaged in an official proceeding for the purpose of investigating my and my co-conspirators’ trading in Concur securities. I corruptly deleted electronic data from my mobile telephone with the intent to impair its integrity and availability for use in the official proceedings.
- n. Throughout the course of the criminal conduct described herein, I acted knowingly, intentionally, and with the intent to defraud.

I admit that the events described above occurred in the Northern District of Indiana and elsewhere.

9. I understand that the government has reserved the right to tell the Court the good things about me and the bad things about me, and to fully inform the Court of the nature and extent of my offense(s) as well as the full extent of my criminal history.

10. I understand that if I violate any of the provisions of this plea agreement, including my continuing obligation to demonstrate acceptance of responsibility, or fail to abide by conditions of release, including appearance at sentencing, the United States may either (A) ask the Court to make a determination that I have breached this agreement in which event I will, at sentencing, lose the benefit of *all* the non-binding promises made by the government in this agreement and I would have no right to withdraw my guilty plea, or (B) the United States could seek to have the Court declare this entire plea agreement null and void, in which event I can then be prosecuted for all criminal offenses that I may have committed.

11. I believe and feel that my lawyer has done all that anyone could do to counsel and assist me, and that I now understand the proceedings in this case against me.

12. I declare that I offer my plea of guilty freely and voluntarily and of my own accord, and no promises have been made to me other than those contained in this agreement, nor have I been threatened in any way by anyone to cause me to plead guilty in accordance with this agreement.

13. I understand and acknowledge that this plea agreement, once filed with the court, is a public document and available for public viewing.

/s/ Edward M. Miller

Edward M. Miller
Defendant

/s/ Kevin E. Milner

Kevin E. Milner
Attorney for Defendant

APPROVED:

SANDRA MOSER
Acting Chief, Fraud Section
Criminal Division

/s/ Justin D. Weitz

JUSTIN D. WEITZ, Assistant Chief
JENNIFER L. FARER, Trial Attorney
U.S. Department of Justice
Criminal Division, Fraud Section

DATED: September 3, 2018