

United States Courts Southern  
District of Texas  
FILED

02/03/2022

Nathan Ochsner, Clerk of Court

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**UNITED STATES OF AMERICA**

v.

**PETER MILLER,**

**Defendant.**

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**Criminal No. 4:21-cr-00570**

**PLEA AGREEMENT**

The United States of America, by and through Jennifer Lowery, Acting United States Attorney for the Southern District of Texas and Zahra Jivani Fenelon, Assistant United States Attorney; Joseph S. Beemsterboer, Acting Chief of the Fraud Section of the Criminal Division of the United States Department of Justice ("Fraud Section") and Leslie S. Garthwaite, Assistant Chief, and Della Sentilles, Trial Attorney of the Fraud Section; and Defendant Peter Miller ("Defendant"), by and through Defendant's counsel, pursuant to Rule 11 of the Federal Rules of Criminal Procedure, state that they have entered into an agreement, the terms and conditions of which are as follows:

**Defendant's Agreement**

1. Defendant agrees to plead guilty to Count One of the Indictment, which charges Defendant with conspiracy to commit commodities fraud, in violation of Title 18, United States Code, Section 1349. Defendant is pleading guilty because he is in fact guilty of the charge contained in Count One of the Indictment. Defendant, by entering this plea, agrees he is waiving any right to have the facts that the law makes essential either to guilt or to punishment either charged in the Indictment, proved to a jury, or proven beyond a reasonable doubt.

**Punishment Range**

2. The statutory maximum sentence that the Court can impose for a violation of Title

18, United States Code, Section 1349, is not more than 25 years of imprisonment and a fine of \$250,000, or twice the gross gain or loss, whichever is greater. In addition, Defendant may receive a term of supervised release after imprisonment of up to five years. 18 U.S.C. §§ 3559(a)(4) and 3583(b)(2). Defendant acknowledges and understands that if he should violate the conditions of any period of supervised release that may be imposed as part of his sentence, then Defendant may be imprisoned for up to two years, without credit for time already served on the term of supervised release prior to such violation. 18 U.S.C. §§ 3559(a)(4) and 3583(e)(3). Defendant understands that he cannot have the imposition or execution of the sentence suspended, nor is he eligible for parole.

**Mandatory Special Assessment**

3. Pursuant to Title 18, United States Code, Section 3013(a)(2)(A), on or before the date of sentencing, Defendant will pay to the Clerk of the United States District Court a special assessment in the amount of one hundred dollars (\$100.00) per count of conviction. The payment will be by cashier's check or money order, payable to the Clerk of the United States District Court, c/o District Clerk's Office, P.O. Box 61010, Houston, Texas 77208, Attention: Finance.

**Immigration Consequences**

4. Defendant recognizes that pleading guilty may have consequences with respect to his immigration status if he is not a citizen of the United States. Defendant understands that if he is not a citizen of the United States, by pleading guilty he may be removed from the United States, denied citizenship, and denied admission to the United States in the future. Defendant's attorney has advised Defendant of the potential immigration consequences resulting from Defendant's plea of guilty.

**Cooperation**

5. The parties understand this agreement carries the potential for a motion for departure under Section 5K1.1 of the Sentencing Guidelines. Defendant understands and agrees that whether such a motion is filed will be determined solely by the United States through the United States Attorney for the Southern District of Texas and the Fraud Section. Should Defendant's cooperation, in the sole judgment and discretion of the United States, amount to "substantial assistance," the United States reserves the sole right to file a motion for departure pursuant to Section 5K1.1 of the United States Sentencing Guidelines. Defendant further agrees to persist in his plea of guilty through sentencing, and to fully cooperate with the United States. Defendant understands and agrees that the United States will request that sentencing be deferred until that cooperation is complete.

6. Defendant understands and agrees that "fully cooperate," as that term is used herein, includes providing all information relating to any criminal activity known to Defendant, including but not limited to commodities, securities, wire, mail, and honest services fraud; accommodations trades and fictitious sales; insider trading; money laundering; false statements, perjury, and obstruction of justice; and criminal activity under applicable tax laws, whether or not related to the criminal activity for which Defendant was charged. Defendant understands that such information includes both state and federal offenses arising therefrom. In that regard:

- i. Defendant agrees that this plea agreement binds only the United States Attorney's Office for the Southern District of Texas, the Fraud Section, and Defendant; it does not bind any other United States Attorney's Office or any other unit of the Department of Justice;
- ii. Defendant agrees to testify truthfully as a witness before a grand jury or in any other judicial or administrative proceeding when called upon to do so by the United States. Defendant further agrees to waive his Fifth Amendment privilege against self-incrimination for the purpose of this agreement;

- iii. Defendant agrees to voluntarily attend any interviews and conferences as the United States may request;
- iv. Defendant agrees to provide truthful, complete, and accurate information and testimony and understands any false statements made by the defendant to the grand jury or at any court proceeding (criminal or civil), or to a government agent or attorney, can and will be prosecuted under the appropriate perjury, false statement, or obstruction statutes;
- v. Defendant agrees to provide to the United States all documents in his possession, custody, or under his control relating to all areas of inquiry and investigation; and
- vi. Should the recommended departure, if any, not meet Defendant's expectations, the Defendant understands that he remains bound by the terms of this agreement and cannot, for that reason alone, withdraw his plea.

Defendant's obligation under this section is a continuing one and will continue after sentencing until all investigations and/or prosecutions to which the Defendant's cooperation may be relevant have been completed.

**Waiver of Appeal and Collateral Review**

7. 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 the conviction and sentence imposed. Defendant is also aware that Title 28, United States Code, Section 2255, affords the right to contest or "collaterally attack" a conviction or sentence after the judgment of conviction and sentence has become final. Defendant knowingly and voluntarily waives the right to appeal or "collaterally attack" the conviction and sentence, except that Defendant does not waive the right to raise a claim of ineffective assistance of counsel on direct appeal, if otherwise permitted, or on collateral review in a motion under Title 28, United States Code, Section 2255. In the event Defendant files a notice of appeal following the imposition of the sentence or later collaterally attacks his conviction or sentence, the United States will assert its rights under this agreement and seek specific performance of these waivers.

8. Defendant waives all defenses based on venue, speedy trial under the Constitution

and Speedy Trial Act, and the statute of limitations, in the event that (a) Defendant's conviction is later vacated for any reason, (b) Defendant violates any provision of this Agreement, or (c) Defendant's plea is later withdrawn.

9. In agreeing to these waivers, Defendant is aware that a sentence has not yet been determined by the Court. Defendant is also aware that any estimate of the possible sentencing range under the Sentencing Guidelines that he may have received from his counsel, the United States or the Probation Office, is a prediction and not a promise, did not induce his guilty plea, and is not binding on the United States, the Probation Office, or the Court. The United States does not make any promise or representation concerning what sentence Defendant will receive. Defendant further understands and agrees that the United States Sentencing Guidelines are "effectively advisory" to the Court. *See United States v. Booker*, 543 U.S. 220 (2005). Accordingly, Defendant understands that, although the Court must consult the Sentencing Guidelines and must take them into account when sentencing Defendant, the Court is not bound to follow the Sentencing Guidelines nor sentence Defendant within the calculated Guidelines range.

10. Defendant understands and agrees that each and all waivers contained in the Agreement are made in exchange for the concessions made by the United States in this plea agreement.

**The United States' Agreements**

11. The United States agrees to each of the following:
- i. At the time of sentencing, the United States agrees not to oppose Defendant's anticipated request to the Court and the United States Probation Office that he receive a two-level downward adjustment pursuant to section 3E1.1(a) of the United States Sentencing Guidelines should Defendant accept responsibility as contemplated by the Sentencing Guidelines; and

- ii. At the time of sentencing, if Defendant qualifies for an adjustment under section 3E1.1(a) of the United States Sentencing Guidelines, and the offense level prior to operation of Section 3E1.1(a) is 16 or greater, the United States will move under Section 3E1.1(b) for an additional one-level reduction because Defendant timely notified authorities of his intent to plead guilty, thereby permitting the United States to avoid preparing for trial and permitting the United States and the Court to allocate their resources more efficiently.

**Agreement Binding - Southern District of Texas and Fraud Section Only**

12. The United States Attorney's Office for the Southern District of Texas and the Fraud Section agree that they will not further criminally prosecute Defendant for offenses arising from conduct charged in the Indictment. This plea agreement binds only the United States Attorney's Office for the Southern District of Texas, the Fraud Section, and the Defendant. It does not bind any other United States Attorney's Office or any other unit of the Department of Justice. The United States Attorney's Office for the Southern District of Texas and the Fraud Section will bring this plea agreement to the attention of other prosecuting offices, if requested.

**United States' Non-Waiver of Appeal**

13. The United States reserves the right to carry out its responsibilities under Guidelines sentencing. Specifically, the United States reserves the right:

- i. to bring its version of the facts of this case, including its evidence file and any investigative files, to the attention of the Probation Office in connection with that office's preparation of a presentence report;
- ii. to set forth or dispute sentencing factors or facts material to sentencing;
- iii. to seek resolution of such factors or facts in conference with Defendant's counsel and the Probation Office;
- iv. to file a pleading relating to these issues, in accordance with Section 6A1.2 of the United States Sentencing Guidelines and Title 18, United States Code, Section 3553(a); and

- v. to appeal the sentence imposed or the manner in which it was determined.

**Sentence Determination**

14. Defendant is aware that the sentence will be imposed after consideration of the United States Sentencing Guidelines and Policy Statements, which are advisory, and the factors listed in Title 18, United States Code, Section 3553(a). Defendant nonetheless acknowledges and agrees that the Court has authority to impose any sentence up to and including the statutory maximum set for the offense to which Defendant pleads guilty, and that the sentence to be imposed is within the sole discretion of the sentencing judge after the Court has consulted the applicable Sentencing Guidelines. Defendant understands and agrees that the parties' positions regarding the application of the Sentencing Guidelines do not bind the Court and that the sentence imposed is within the discretion of the sentencing judge. If the Court should impose any sentence up to the maximum established by statute, or should the Court order any or all of the sentences imposed to run consecutively, Defendant cannot, for that reason alone, withdraw his guilty plea and will remain bound to fulfill all of the obligations under this plea agreement.

15. Pursuant to Rule 11(c)(1)(B) the parties agree that they jointly will recommend that the Court make the following findings and conclusions as to the Sentencing Guidelines calculation and applicable fine, and that the applicable burden of proof for each finding of fact and law has been satisfied. Defendant understands that this recommendation is not binding on the Court, and if the Court refuses to follow the recommendations set forth in this paragraph, Defendant will not be permitted to withdraw his guilty plea.

Offense Level. The total offense level is 20, calculated as follows:

Base Offense Level:	7	U.S.S.G. § 2B1.1(a)(1)
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Loss (more than \$1,500,000)	+16	U.S.S.G. § 2B1.1(b)(1)
Total (without acceptance adjustment)	23	
Acceptance of Responsibility	-3	U.S.S.G. § 3E1.1
Final Offense Level	20	

16. Defendant understands that the Government's agreement to recommend an acceptance of responsibility reduction is contingent upon his continuing manifestation of acceptance of responsibility, and should Defendant deny his involvement or give conflicting statements concerning his involvement, the Government shall not be bound to recommend any reduction in offense level for acceptance of responsibility.

17. The parties agree that they will not seek any other enhancements or reductions to the offense level under the Sentencing Guidelines beyond those recommended in paragraph 15, other than in a possible motion for a downward departure under U.S.S.G. § 5K1.1. Further, the Defendant reserves the right to argue at sentencing that the Defendant was a minor participant in the criminal activity, under Sentencing Guideline § 3B1.2, and the United States reserves the right to oppose that argument. Defendant also reserves the right to oppose Guidelines calculations different than above if recommended by probation. This paragraph does not prohibit Defendant from arguing that consideration of the factors listed in Title 18, Section 3553(a) warrants a sentence outside the applicable Guidelines range.

#### **Rights at Trial**

18. Defendant understands that by entering into this agreement, he surrenders certain rights as provided in this plea agreement. Defendant understands that the rights which he is waiving include the following:

- i. If Defendant persisted in a plea of not guilty to the charges, Defendant would have



the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if Defendant, the United States, and the court all agree.

- ii. At a trial, the United States would be required to present witnesses and other evidence against Defendant. Defendant would have the opportunity to confront those witnesses, and his attorney would be allowed to cross-examine them. In turn, Defendant could, but would not be required to, present witnesses and other evidence on his own behalf. If the witnesses for Defendant would not appear voluntarily, he could require their attendance through the subpoena power of the court; and
- iii. At a trial, Defendant could rely on a privilege against self-incrimination and decline to testify, and no inference of guilt could be drawn from such refusal to testify. However, if Defendant desired to do so, he could testify on his own behalf.

#### **Factual Basis for Guilty Plea**

19. Defendant is pleading guilty because he is in fact guilty of the charge contained in Count One of the Indictment. Defendant agrees that, if this case were to proceed to trial, the United States could prove each element of the charged offense beyond a reasonable doubt. The facts set forth below, among others, would be offered to establish Defendant's guilt. Defendant agrees that these facts are true. This factual basis does not identify all of the persons who may have been involved in illegal activity or facts known to Defendant concerning the illegal activity in which he and others may have engaged.

#### **The Defendant and His Co-Conspirators**

At all times relevant to the Indictment, Defendant was a resident of Dorado, Puerto Rico. Defendant traded natural gas futures and other products through his company, Omerta Capital LLC ("Omerta").

At all times relevant to the Indictment, Mathew Webb ("Webb") was the owner of MDW Consulting LLC ("MDW") and Classic Energy, LLC ("Classic Energy"). MDW was a company established by Webb for his personal investments and business. Classic Energy was a registered brokerage firm in Houston, Texas, that provided brokerage services in various commodities energy

markets in exchange for commission fees. Among the services Classic Energy provided was to facilitate block trades in natural gas futures contracts between its customers and others in the market.

At all times relevant to the Indictment, Person 1 was a trader at Company B. Company B was in the business of, among other things, placing orders to buy and sell natural gas futures contracts.

At all times relevant to the Indictment, Marcus Schultz (“Schultz”) was a trader at Company A. Company A was in the business of, among other things, placing orders to buy and sell natural gas futures contracts.

Person 3 was an employee of Company B and was supervised by Person 1.

#### The Conspiracy

Between in or around August 2015 and continuing at least through in or around 2018, Defendant, Webb, and Person 1 were engaged in a conspiracy to commit commodities fraud in connection with the purchase and sale of natural gas futures contracts. As Defendant knew and understood, Person 1 worked as a trader placing orders for Company B to buy and sell natural gas futures contracts using Classic Energy as a broker. Before Defendant joined the conspiracy, Webb and Person 1 agreed to engage in unlawful prearranged trades with counterparties who agreed to join the conspiracy.

In or around August 2015, Defendant attended Person 3’s wedding, where he met Person 1. Webb and Person 1 told Defendant that they were looking for a new counterparty for their prearranged trading conspiracy, and Defendant agreed to join the conspiracy. Thereafter, Person 1, Webb, and Defendant engaged in unlawful prearranged trades and shared the proceeds of

profitable trades. To effectuate each of the trades involved in the conspiracy, Person 1, using Company B's nonpublic trading information, arranged for Webb to broker a block trade involving natural gas futures contracts, knowing that Defendant would be on the opposite side of the trade. Webb then communicated Company B's trade information to Defendant, who agreed to serve as the counterparty. After receiving the offer to enter into the block trade, but before its terms were reported to the Chicago Mercantile Exchange ("CME") (and thereby made public), Defendant engaged in screen-based trades in related natural gas futures products at advantageous prices. Whenever the Defendant profited from either the block trade or the offsetting screen trade, he transferred the proceeds to bank accounts he controlled, and then withdrew a share of the funds as cash to provide to Webb who in turn paid Person 1. Each participant in the conspiracy was paid a portion of what was earned from their unlawful trades. Defendant used cash for his payments to Webb in order to conceal them. Defendant understood that Webb would provide Person 1 with Person 1's share of the proceeds.

Also in furtherance of the conspiracy, Defendant engaged in other similar prearranged block trades (and offsetting screen trades) with Webb and Schultz to create profits that would be shared among the conspirators.

Throughout the course of the criminal conduct described in this factual basis, Defendant acted knowingly and willfully with the intent to defraud.

#### **Breach of Plea Agreement**

20. If Defendant should fail in any way to fulfill completely all of the obligations under this plea agreement, the United States will be released from its obligations under the plea agreement, and Defendant's plea and sentence will stand. If at any time Defendant fails to enter or attempts to withdraw his guilty plea; challenges the knowing or voluntary nature of the plea;

retains, conceals, or disposes of assets in violation of this plea agreement; or knowingly withholds evidence or is otherwise not completely truthful with the United States, then the United States may move the Court to set aside the guilty plea and reinstate prosecution. Any information and documents that have been disclosed by Defendant, including any statements made by Defendant, including, but not limited to, the factual basis for his guilty plea, whether prior to or subsequent to this plea agreement, and all leads derived therefrom, can and will be used against Defendant in any criminal or civil proceeding.

21. If, after signing this Agreement, the Defendant decides not to plead guilty as provided herein, or if the Defendant pleads guilty but subsequently makes a motion before the Court to withdraw his guilty plea and the Court grants that motion: (a) the Defendant agrees that any admission of guilt that he makes by signing this Agreement or that he makes while pleading guilty as set forth in this Agreement may be used against him in a subsequent trial if the Defendant later proceeds to trial; (b) the Defendant voluntarily, knowingly, and intelligently waives any protection afforded by Rule 11(f) of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence regarding the use of statements made in this Agreement or during the course of pleading guilty when the guilty plea is later withdrawn; and (c) waives any defense to any prosecution that is time barred by the statute of limitations, if that limitations period has run between the date of this plea agreement and the date Defendant is indicted.

**Restitution and Fines - Generally**

22. This Plea Agreement is being entered into by the United States on the basis of Defendant's express representation that he will make a full and complete disclosure of all assets over which he exercises direct or indirect control, or in which he has any financial interest. Defendant agrees not to dispose of any assets or take any action that would effect a transfer of

property in which he has an interest, unless Defendant obtains the prior written permission of the United States.

23. Defendant agrees to make complete financial disclosure by truthfully executing a sworn financial statement (Form OBD-500 or similar form) within 14 days of signing this plea agreement. Defendant agrees to authorize the release of all financial information requested by the United States, including, but not limited to, executing authorization forms permitting the United States to obtain tax information, bank account records, credit histories, and social security information. Defendant agrees to discuss and answer any questions by the United States relating to Defendant's complete financial disclosure.

24. Defendant agrees to take all steps necessary to pass clear title to forfeitable assets to the United States and to assist fully in the collection of restitution and fines, including, but not limited to, surrendering title, executing a warranty deed, signing a consent decree, stipulating to facts regarding the transfer of title and the basis of forfeiture, and signing any other documents necessary to effectuate such transfer. Defendant also agrees to direct any banks which have custody of his assets to deliver all funds and records of such assets to the United States.

25. Defendant understands that forfeiture, restitution, and fines are separate components of sentencing and are separate obligations.

#### **Restitution**

26. Defendant agrees to pay full restitution to the victim(s) regardless of the count(s) of conviction. Defendant stipulates and agrees that as a result of his criminal conduct, the victim(s) incurred a monetary loss which he will be obligated to repay, jointly and severally with his co-conspirators which equals at least \$1,500,000. Defendant understands and agrees that the Court

will determine the amount of restitution to fully compensate the victim(s). Defendant agrees that restitution imposed by the Court will be due and payable immediately and that Defendant will not attempt to avoid or delay payment. Subject to the provisions of paragraph 7 above, Defendant waives the right to challenge in any manner, including by direct appeal or in a collateral proceeding, the restitution order imposed by the Court.

**Fines**


27. Defendant understands that under the Sentencing Guidelines, the Court is permitted to order Defendant to pay a fine that is sufficient to reimburse the government for the costs of imprisonment or term of supervised release, if any. Defendant agrees that any fine imposed by the Court will be due and payable immediately, and Defendant will not attempt to avoid or delay payment. Subject to the provisions of paragraph 7 above, Defendant waives the right to challenge the fine in any manner, including by direct appeal or in a collateral proceeding.

**Complete Agreement**

28. This written plea agreement, consisting of 17 pages, including the attached addendum of Defendant and his attorney, constitutes the complete plea agreement between the United States, Defendant, and Defendant's counsel. No promises or representations have been made by the United States except as set forth in writing in this plea agreement. Defendant acknowledges that no threats have been made against him and that he is pleading guilty freely and voluntarily because he is guilty.

29. Any modification of this plea agreement must be in writing and signed by all parties.

Filed at Houston, Texas, on February 03, 2022.

  
Peter Miller (Jan 26, 2022 14:16 EST)  
**PETER MILLER**  
Defendant

Subscribed and sworn to before me on February 03, 2022.


DAVID J. BRADLEY, Clerk  
UNITED STATES DISTRICT CLERK


By: /s/ Jennelle Gonzalez  
Deputy United States District Clerk

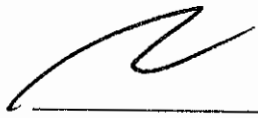
APPROVED:

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Philip Hilder  
Attorney for Defendant



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIMINAL NO. 4:21-cr-00570
	)	
PETER MILLER,	)	
Defendant.	)	

**PLEA AGREEMENT – ADDENDUM**

I have fully explained to Defendant his rights with respect to the pending information. I have reviewed the provisions of the United States Sentencing Commission’s Guidelines Manual and Policy Statements, and I have fully and carefully explained to Defendant the provisions of those Guidelines which may apply in this case. I have also explained to Defendant that the Sentencing Guidelines are only advisory and the Court may sentence Defendant up to the maximum allowed by statute per count of conviction. Further, I have carefully reviewed every part of this plea agreement with Defendant. To my knowledge, Defendant’s decision to enter into this agreement is an informed and voluntary one.

Date 1/26/22

  
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Philip Hilder  
Attorney for Defendant

I consulted with my attorney and fully understand all my rights with respect to the charges pending against me. My attorney has fully explained, and I understand, all my rights with respect to the provisions of the United States Sentencing Commission's Guidelines Manual, which may apply in my case. I have read and carefully reviewed every part of this plea agreement with my attorney. I understand this agreement and I voluntarily agree to its terms.

Date Jan 26, 2022

  
Peter miller (Jan 26, 2022 14:16 EST)

Peter Miller