



U.S. Department of Justice

William D. Weinreb
Acting United States Attorney
District of Massachusetts

Main Reception: (617) 748-3100

John Joseph Moakley United States Courthouse
1 Courthouse Way
Suite 9200
Boston, Massachusetts 02210

May 31, 2017

Roger A. Burlingame, Esq.
Kobre & Kim LLP
Tower 42
25 Old Broad Street
London, EC2N 1HQ

Re: **United States v. Edward Pennings**
Criminal No.: 16-10094-LTS

Dear Mr. Burlingame:

The United States Attorney for the District of Massachusetts (the "U.S. Attorney") and the United States Department of Justice, Criminal Division, Fraud Section (the "Fraud Section") and your client, Edward Pennings ("Defendant"), agree as follows with respect to the above-referenced case:

1. **Change of Plea**

Defendant shall waive indictment and plead guilty to Count One of the above-referenced Indictment charging him with conspiracy to commit wire and securities fraud, in violation of 18 U.S.C. § 371. Defendant expressly and unequivocally admits that he committed the crime charged in Count One, did so knowingly and willfully, and is in fact guilty of that offense.

The U.S. Attorney and the Fraud Section agree to dismiss the remaining counts of the Indictment following the imposition of sentence at the sentencing hearing.

2. **Penalties**

Defendant faces the following maximum penalties on Count One: incarceration for 5 years; supervised release for 3 years; a fine of \$250,000, or twice the gross gain/loss, whichever is greater; and a mandatory special assessment of \$100.

Defendant also recognizes that pleading guilty may have consequences with respect to Defendant's immigration status if Defendant 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. Removal and other immigration consequences are the subject of a separate proceeding, however, and Defendant understands that no one, including defense counsel and the District Court, can predict to a certainty the effect of this conviction on Defendant's immigration status. Defendant nevertheless affirms his decision to plead guilty regardless of any immigration consequences that this plea may entail, even if the consequence is Defendant's automatic removal from the United States.

If Defendant applies for a Waiver of Inadmissibility, Nonimmigrant Waiver, or any other applicable waiver to allow admission to the United States, and provided that Defendant complies with his obligations under this Agreement, the U.S. Attorney and the Fraud Section will, if asked, advise the United States Department of Homeland Security or any other appropriate agency that they have no objection, based on Defendant's involvement in the conduct underlying the Indictment, to Defendant's receipt of such a waiver. Defendant understands and acknowledges that the authority to grant any such waiver does not rest with the U.S. Attorney and the Fraud Section, and that the decision to grant such a waiver rests solely with the United States Department of Homeland Security.

3. Sentencing Guidelines

The sentence to be imposed upon Defendant is within the discretion of the District Court ("Court"), subject to the statutory maximum penalties set forth above and the provisions of the Sentencing Reform Act, and the advisory United States Sentencing Guidelines ("USSG" or "Guidelines"). While the Court may impose a sentence up to and including the statutory maximum term of imprisonment and statutory maximum fine, it must consult and take into account the USSG and the other factors set forth in 18 U.S.C. § 3553(a) in imposing a sentence.

The U.S. Attorney and the Fraud Section will take the position that Defendant's total offense level under the USSG (prior to any adjustment for acceptance of responsibility) is calculated as follows:

- in accordance with USSG § 2B1.1(a), Defendant's base offense level is 6;
- in accordance with USSG § 2B1.1(b)(1)(K), Defendant's offense level is increased by 20, because the loss is more than \$9,500,000, but not more than \$25,000,000;
- in accordance with USSG § 2B1.1(b)(10)(C), Defendant's offense level is increased by 2, because the offense involved sophisticated means;
- in accordance with USSG § 2B1.1(b)(19)(A)(iii), Defendant's offense level is increased by 4, because the offense involved a violation of securities law and,

at the time of the offense, the defendant was an officer of a publicly traded company and/or a person associated with a broker or dealer.

The U.S. Attorney and the Fraud Section reserve the right to oppose Defendant's argument(s) for a departure from, or a sentence outside, the USSG under the factors set forth in 18 U.S.C. §3553(a).

Based on Defendant's prompt acceptance of personal responsibility for the offense of conviction in this case, and information known to the U.S. Attorney and the Fraud Section at this time, the U.S. Attorney and the Fraud Section agree to recommend that the Court reduce by three levels Defendant's adjusted offense level under USSG §3E1.1.

The U.S. Attorney and the Fraud Section reserve the right not to recommend a reduction under USSG §3E1.1 if, at any time between Defendant's execution of this Agreement and sentencing, Defendant:

- (a) Fails to admit a complete factual basis for the plea;
- (b) Fails to truthfully admit Defendant's conduct in the offense of conviction;
- (c) Falsely denies, or frivolously contests, relevant conduct for which Defendant is accountable under USSG §1B1.3;
- (d) Fails to provide truthful information about Defendant's financial status;
- (e) Gives false or misleading testimony in any proceeding relating to the criminal conduct charged in this case and any relevant conduct for which Defendant is accountable under USSG §1B1.3;
- (f) Engages in acts that form a basis for finding that Defendant has obstructed or impeded the administration of justice under USSG §3C1.1;
- (g) Intentionally fails to appear in Court or violates any condition of release;
- (h) Commits a crime;
- (i) Transfers any asset protected under any provision of this Agreement; or
- (j) Attempts to withdraw Defendant's guilty plea.

Defendant understands and acknowledges that Defendant may not withdraw his plea of guilty if, for any of the reasons listed above, the U.S. Attorney and the Fraud Section do not

recommend that Defendant receive a reduction in offense level for acceptance of responsibility. Defendant also understands and acknowledges that, in addition to declining to recommend an acceptance-of-responsibility adjustment, the U.S. Attorney and the Fraud Section may seek an upward adjustment pursuant to USSG §3C1.1 if Defendant obstructs justice after the date of this Agreement.

Nothing in this Agreement affects the obligation of the U.S. Attorney and the Fraud Section to provide the Court and the U.S. Probation Office with accurate and complete information regarding this case.

4. Sentence Recommendation

The U.S. Attorney and the Fraud Section agree to recommend the following sentence before the Court:

- (a) incarceration at or below the low end of the Guidelines sentencing range as calculated by the by the Court at sentencing, excluding departures;
- (b) a fine within the Guidelines sentencing range as calculated by the Court at sentencing, excluding departures, unless the Court finds that Defendant is not able and, even with the use of a reasonable installment schedule, is not likely to become able to pay a fine;
- (c) 12 months of supervised release; and
- (d) a mandatory special assessment of \$100.

Defendant agrees to provide the U.S. Attorney and the Fraud Section any expert reports, motions, memoranda of law and documentation of any kind on which Defendant intends to rely at sentencing not later than 21 days before sentencing. Any basis for sentencing as to which Defendant has not provided the U.S. Attorney and the Fraud Section all such items at least 21 days before sentencing shall be deemed waived.

5. Payment of Mandatory Special Assessment

Defendant agrees to pay the mandatory special assessment to the Clerk of the Court on or before the date of sentencing, unless Defendant establishes to the satisfaction of the Court that Defendant is financially unable to do so.

6. Prison Transfer

If Defendant is eligible and applies to transfer his sentence pursuant to the international prisoner transfer program, the U.S. Attorney and the Fraud Section agree not to oppose the defendant's transfer application. Defendant acknowledges and understands, however, that the transfer decision rests in the sole discretion of the Office of Enforcement Operations ("OEO") of the Criminal Division of the United States Department of Justice and that the position of the U.S. Attorney and the Fraud Section is neither binding on nor determinative of the positions of other federal agencies or on the final transfer decision of OEO. Defendant further understands that in addition to OEO, federal law and the underlying transfer treaties require that the foreign government must also approve the transfer.

7. Waiver of Rights to Appeal and to Bring Future Challenge

- (a) Defendant has conferred with his attorney and understands that he has the right to challenge both his conviction and his sentence (including any orders relating to supervised release, fines, forfeiture, and restitution) on direct appeal. Defendant also understands that, in some circumstances, Defendant may be able to argue in a future proceeding (collateral or otherwise), such as pursuant to a motion under 28 U.S.C. §2255, 28 U.S.C. §2241, or 18 U.S.C. §3582(c), that Defendant's conviction should be set aside or Defendant's sentence (including any orders relating to supervised release, fines, forfeiture, and restitution) set aside or reduced.
- (b) Defendant waives any right to challenge Defendant's conviction on direct appeal or in a future proceeding (collateral or otherwise).
- (c) Notwithstanding the previous sub-paragraphs, Defendant reserves the right to claim that (i) Defendant's lawyer rendered ineffective assistance of counsel under *Strickland v. Washington*; or (ii) the prosecutors in this case engaged in misconduct that entitles Defendant to relief from Defendant's conviction or sentence.

8. Other Post-Sentence Events

- (a) In the event that Defendant appeals or challenges in a future proceeding (collateral or otherwise) Defendant's sentence, the U.S. Attorney and the Fraud Section reserve the right to argue the correctness of the sentence imposed by the Court.

- (b) If Defendant seeks re-sentencing, Defendant agrees not to seek to be re-sentenced with the benefit of any change to the Criminal History Category that the Court calculated at the time of Defendant's original sentencing, except to the extent that Defendant has been found actually factually innocent of a prior crime.
- (c) In the event of a re-sentencing following an appeal from or future challenge (collateral or otherwise) to Defendant's sentence, the U.S. Attorney and the Fraud Section reserve the right to seek a departure from and a sentence outside the USSG if, and to the extent, necessary to reinstate the sentence the U.S. Attorney and the Fraud Section advocated at Defendant's initial sentencing pursuant to this Agreement

9. Court Not Bound by Agreement

The parties' sentencing recommendations and their respective calculations under the USSG are not binding upon the U.S. Probation Office or the Court. Within the maximum sentence Defendant faces under the applicable law, the sentence to be imposed is within the sole discretion of the Court. Defendant's plea will be tendered pursuant to Fed. R. Crim. P. 11(c)(1)(B). Defendant may not withdraw his plea of guilty regardless of what sentence is imposed, or because the U.S. Probation Office or the Court declines to follow the parties' USSG calculations or recommendations. Should the Court decline to follow the U.S. Attorney's and the Fraud Section's USSG calculations or recommendations, the U.S. Attorney and the Fraud Section reserve the right to defend the Court's calculations and sentence in any direct appeal or future challenge (collateral or otherwise).

10. Information For Presentence Report

Defendant agrees to provide all information requested by the U.S. Probation Office concerning Defendant's assets.

11. Civil Liability

By entering into this Agreement, the U.S. Attorney and the Fraud Section do not compromise any civil liability, including but not limited to any tax liability, Defendant may have incurred or may incur as a result of Defendant's conduct and plea of guilty to the charges specified in Paragraph 1 of this Agreement.

12. Rejection of Plea by Court

Should Defendant's guilty plea not be accepted by the Court for whatever reason, or later be withdrawn on Defendant's motion, this Agreement shall be null and void at the option of the U.S. Attorney and the Fraud Section.

13. Breach of Agreement

If the U.S. Attorney and the Fraud Section determine that Defendant has failed to comply with any provision of this Agreement, has violated any condition of Defendant's pretrial release, or has committed any crime following Defendant's execution of this Agreement, the U.S. Attorney and the Fraud Section may, at their sole option, be released from their commitments under this Agreement in their entirety by notifying Defendant, through counsel or otherwise, in writing. The U.S. Attorney and the Fraud Section may also pursue all remedies available to them under the law, regardless whether they elect to be released from their commitments under this Agreement. Further, the U.S. Attorney and the Fraud Section may pursue any and all charges that have been, or are to be, dismissed pursuant to this Agreement. Defendant recognizes that his breach of any obligation under this Agreement shall not give rise to grounds for withdrawal of Defendant's guilty plea, but will give the U.S. Attorney and the Fraud Section the right to use against Defendant before any grand jury, at any trial or hearing, or for sentencing purposes, any statements that Defendant may make, and any information, materials, documents or objects that Defendant may provide to the government subsequent to this Agreement, without any limitation. In this regard, Defendant hereby waives any defense to any charges that Defendant might otherwise have based upon any statute of limitations, the constitutional protection against pre-indictment delay, or the Speedy Trial Act.

14. Who Is Bound By Agreement

This Agreement is limited to the U.S. Attorney for the District of Massachusetts and the Fraud Section, and cannot and does not bind the Attorney General of the United States or any other federal, state or local prosecutive authorities.

15. Complete Agreement

This letter contains the complete agreement between the parties relating to the disposition of this case. No promises, representations or agreements have been made other than those set forth in this letter. This Agreement supersedes prior understandings, if any, of the parties, whether written or oral (subject to Paragraph 7, above). This Agreement can be modified or supplemented only in a written memorandum signed by the parties or on the record in court.

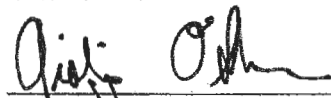
If this letter accurately reflects the agreement among the U.S. Attorney and the Fraud Section and Defendant, please have Defendant sign the Acknowledgment of Agreement below. Please also sign below as Witness. Return the original of this letter to Assistant U.S. Attorney Stephen E. Frank.

Very truly yours,

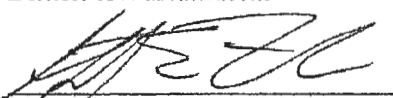
ANDREW WEISSMANN
Chief, Fraud Section
Criminal Division

WILLIAM D. WEINREB
Acting United States Attorney
District of Massachusetts

By:

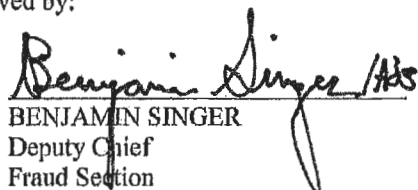


AISLING O'SHEA
Trial Attorney

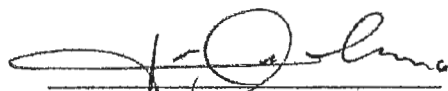


STEPHEN E. FRANK
Assistant U.S. Attorney

Approved by:



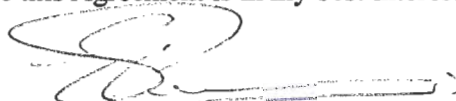
BENJAMIN SINGER
Deputy Chief
Fraud Section



STEPHEN E. FRANK
Chief, Economic Crimes Unit
JORDI DE LLANO-CAMPOS
Deputy Chief, Economic Crimes Unit

ACKNOWLEDGMENT OF PLEA AGREEMENT

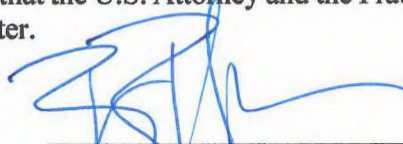
I have read this letter in its entirety and discussed it with my attorney. I hereby acknowledge that it fully sets forth my agreement with the United States Attorney's Office for the District of Massachusetts and the Fraud Section of the Criminal Division of the United States Department of Justice. I further state that no additional promises or representations have been made to me by any official of the United States in connection with this matter, and that I have received no prior offers to resolve this case. I understand the crime to which I have agreed to plead guilty, the maximum penalties for that offense and the Sentencing Guideline penalties potentially applicable to it. I am satisfied with the legal representation provided to me by my attorney. We have had sufficient time to meet and discuss my case. We have discussed the charge against me, possible defenses I might have, the terms of this Plea Agreement and whether I should go to trial. I am entering into this Agreement freely, voluntarily, and knowingly because I am guilty of the offense to which I am pleading guilty, and I believe this Agreement is in my best interest.



EDWARD PENNINGS
Defendant

Date: 2 JUNE 2017

I certify that Edward Pennings has read this Plea Agreement and that we have discussed its meaning. I believe he understands the Plea Agreement and is entering into the Plea Agreement freely, voluntarily, and knowingly. I also certify that the U.S. Attorney and the Fraud Section have not extended any other offers to resolve this matter.



ROGER A. BURLINGAME, ESQ.
Attorney for Defendant

Date: June 5, 2017