

**UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF  
TENNESSEE, NASHVILLE DIVISION**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
v.	)	<b>No. 3:09-00262</b>
	)	<b>(Judge Campbell)</b>
<b>ROBERT HALEY</b>	)	

**PETITION TO ENTER A PLEA OF GUILTY**

1. ROBERT HALEY, respectfully represent to the Court as follows:

(1) My true full name is Robert Wayne Haley. I was born in Davidson County, Tennessee and I am 54 years old and completed at least 16 years of formal education.

(2) My retained lawyer is Jack D. Lowery.

(3) I have received a copy of the indictment before being called upon to plead and have read and discussed it with my lawyer, and believe and feel that I understand every accusation made against me in the indictment.

(4) I have had sufficient opportunity to discuss with my lawyer the facts and surrounding circumstances concerning the matters mentioned in the indictment. My lawyer has counseled and advised with me as to the nature and cause of every accusation against me. We have thoroughly discussed the government's case against me and my potential defenses to the government's case. My lawyer has explained each element of the crime charged to me and what the government would offer to prove these elements beyond reasonable doubt.

(5) I understand that the statutory penalty for each of the offenses with which I am charged is,

a. as to Count I :

- i. not more than 5 years imprisonment,
- ii. restitution is to be determined by the Court at sentencing,
- iii. a fine of up to \$ 250,000 or twice the gross gain or gross loss resulting from the offense,
- iv. a mandatory \$100 special assessment, and
- v. a term of supervised release of not more than 3 years in addition to such term of imprisonment.

b. as to Count II:

- i. not more than 20 years imprisonment,
- ii. restitution is to be determined by the Court at sentencing,
- iii. a fine of up to \$ 5,000,000 or twice the gross gain or loss resulting from the offense,
- iv. a mandatory \$100 special assessment, and
- v. a term of supervised release of not more than 3 years in addition to such term of imprisonment.

c. as to Count III:

- i. not more than 20 years imprisonment,
- ii. restitution is to be determined by the Court at sentencing,
- iii. a fine of up to \$250,000,
- iv. a mandatory \$100 special assessment, and
- v. a term of supervised release of not more than 3 years in addition to such term of imprisonment

d. as to Count(s) IV through VII:

- i. not more than 20 years imprisonment,
- ii. restitution is to be determined by the Court at sentencing,
- iii. a fine of up to \$ 250,000 or twice the gross gain or gross loss resulting from the offense,
- iv. a mandatory \$100 special assessment, and
- v. a term of supervised release of not more than 3 years in addition to such term of imprisonment

e. as to Count(s) VIII through X:

- i. not more than 10 years imprisonment,
- ii. restitution is to be determined by the Court at sentencing,
- iii. a fine of up to \$ 250,000 or twice the amount of the criminally derived property involved in the transaction,
- iv. a mandatory \$100 special assessment, and
- v. a term of supervised release of not more than 1 year in addition to such term of imprisonment

f. as to Count(s) XI and XII:

- i. not more than 20 years imprisonment,
- ii. restitution is to be determined by the Court at sentencing,
- iii. a fine of up to \$ 500,000 or twice the value of the property involved in the financial transaction ,
- iv. a mandatory \$100 special assessment, and
- v. a term of supervised release of not more than 3 years in addition to such term of imprisonment

I understand that terms of imprisonment for convictions on more than one count may be ordered to run concurrently or consecutively with each other.

(6) I have been advised that I will be sentenced to a sentence sufficient but not greater than necessary to satisfy the goals of sentencing specified in 18 U.S.C. § 3553(a). One consideration will be Guidelines established by the United States Sentencing Commission. I understand that these Guidelines are advisory, but that the Court must take account of the Guidelines together with other sentencing goals. My lawyer and I have discussed the calculation of the Guidelines in my case. My lawyer has given me an estimate of the Guidelines range that may apply in my case. I realize that this is simply my lawyer's estimate. I understand that my advisory Guideline range will be calculated by the United States Probation Officer who prepares the presentence report in my case. This estimation is subject to challenge by either me or the government, unless prohibited by a plea agreement. The final Guideline calculation will be made by the Court. I further understand that I may be sentenced to a fine to be calculated through the Guidelines. No fine will be imposed if the Judge finds me unable to pay any fine. Considered in this fine may be the amount of financial loss to the victim or gain to me as well as the costs of any confinement or probation supervision. The Court may also order that restitution be made to any victim of the offense. I have a right to a review of my sentence by the United States Court of Appeals for the Sixth Circuit unless waived in the plea agreement.

(7) I understand that, under 18 U.S.C. § 3561(a), I am not eligible for a sentence of probation if I receive any sentence of imprisonment at the same time on this offense or any other offense, or am convicted of a Class A or Class B felony, or the offense is one for which probation is expressly prohibited. I have been informed that under the present federal sentencing system there is no parole. I will receive only 54 days good time credit per year and it will not vest until the end of each year. I further understand that if I am sentenced to a period of supervised release and I violate the terms of that supervised release, upon revocation I could be imprisoned again.

a. as to Count I :

- i. not more than five years imprisonment,
- ii. restitution is to be determined by the Court at sentencing,
- iii. a fine of up to \$250,000 or twice the gross gain or gross loss resulting from the offense,
- iv. a mandatory \$100 special assessment, and
- v. a term of supervised release of not more than 3 years in addition to such term of imprisonment.

b. as to Count II :

- i. not more than 20 years imprisonment,
- ii. restitution is to be determined by the Court at sentencing,
- iii. a fine of up to \$5,000,000 or twice the gross gain or gross loss resulting from the offense,
- iv. a mandatory \$100 special assessment, and
- v. a term of supervised release of not more than 3 years in addition to such term of imprisonment.

c. as to Count V:

- i. not more than 20 years imprisonment,
- ii. restitution is to be determined by the Court at sentencing,
- iii. a fine of up to \$ 250,000 or twice the gross gain or gross loss resulting from the offense,
- iv. a mandatory \$100 special assessment, and
- v. a term of supervised release of not more than 3 years in addition to such term of imprisonment.

d. as to Count XII:

- i. not more than 20 years imprisonment,
- ii. restitution is to be determined by the Court at sentencing,
- iii. a fine of up to \$500,000 or twice the value of the property involved in the financial transaction,
- iv. a mandatory \$100 special assessment, and
- v. a term of supervisory release of not more than 3 years.

e. entry of a forfeiture judgment in the amount of the restitution determined by the Court will be entered against me.

(8) I understand that should this plea of guilty be accepted, I will be a convicted felon in the eyes of the law for the rest of my life. This means, under present law that (a) I cannot vote in Tennessee, unless my right to vote is lawfully restored, and may not be eligible to vote in other states; (b) I cannot possess a firearm anywhere; (c) If I am presently on probation, parole, or supervised release whether state or federal, the fact that I have been convicted may be used to revoke my probation, parole or supervised release regardless of what sentence I receive in this case; (d) If I am convicted of any crime in the future, whether state or federal, this conviction may be used to increase that sentence; (e) I may have to disclose the fact that I am a convicted felon when applying for employment and such disclosure may result in my not getting jobs and having difficulty in getting others. [If I have been convicted of certain drug offenses, my conviction may result in my losing entitlement to certain federal benefits pursuant to the Anti-Drug Abuse Act of 1988.] I understand that this list may not include all of the adverse consequences of my conviction in this case.

(9) I understand that I can plead "NOT GUILTY" to any or all offenses charged against me, and continue to plead "NOT GUILTY", and that if I choose to plead not guilty, the Constitution guarantees me (a) the right to a speedy trial by jury; (b) the right not to testify and no implication of guilt would arise by my failure to do so; (c) the right to be presumed innocent until such time, if ever, that the government proves my guilt beyond a reasonable doubt to the satisfaction of a court and jury; (d) the right to see and hear all the witnesses and to cross-examine any witnesses who may testify against me; (e) the right to use the power and process of the court to compel the production of any evidence, including the attendance of any witnesses, in my favor; and to testify in my own behalf if I choose to do so; (f) the right to have assistance of counsel in my defense at all stages of the proceedings; (g) if I am convicted at such trial I have the right to appeal with a lawyer to assist me and the appeal will not cost me any money if I am indigent. I understand that if the Court accepts my plea that there will be no jury trial and that I

will be convicted of the count(s) to which I plead just as if a jury found me guilty of the charge(s) following a trial. The Court may then impose sentence upon me within the limits set forth in any plea agreement stated in paragraph (5).

(10) No officer or agent of any branch of government (federal, state or local), nor any other person, has guaranteed me what sentence I will receive. If there are any agreements between myself and my lawyer and the prosecution concerning my plea they are fully set forth in paragraph (13) below. I understand that even with a plea agreement no person can bind the Judge to give any particular sentence in my case. If the Judge rejects an agreement pursuant to Federal Rule of Criminal Procedure 11(c)(1)(A) or (C) I will be offered the opportunity to withdraw my guilty plea. If the Judge rejects a recommendation made pursuant to Rule 11(c)(1)(B) I have no right to withdraw my plea. I understand that if the Judge decides to make a recommendation about where I should serve any incarceration that the recommendation is not a promise or a guarantee, but only a recommendation and is not binding on the Bureau of Prisons which will make the final decision (after I am sentenced) about where I will be incarcerated.

(11) My lawyer has done all the investigation and research in this case that I have asked him to do, and has reviewed with me the discovery material provided by the Government. I am satisfied with his representation at this point.

(12) Fully understanding my rights to plead "NOT GUILTY" and fully understanding the consequence of my plea of guilty, I wish to plead "GUILTY" and respectfully request the Court to accept my plea as follows: *SEE ATTACHED PLEA AGREEMENT.*

(13) This plea is a result of a plea agreement between my lawyer and prosecution under the provision of Rule 11 of the Federal Rules of Criminal Procedure. **Please see attached plea agreement and incorporated herein by reference.**

(14) I offer my plea of "GUILTY" freely and voluntarily and of my own accord; also my lawyer has explained to me, and I feel and believe I understand this petition.

(15) I am not under the influence of either drugs or alcohol.

(16) I request the Court to enter now my plea of "GUILTY" as set forth in paragraph (12) of this petition, in reliance upon my statements made in this petition.

(17) Recognizing that the Court may reserve acceptance of this plea pending the receipt of the pre-sentence report, I agree that the pre-sentence report may be disclosed to the United States Attorney, my counsel and myself, prior to the sentencing hearing.

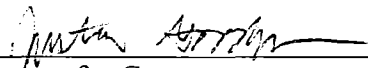
Signed by me in open court under the penalties of perjury in the presence of my lawyer, this the 29 day of JAN, 2014.



Robert Haley, Defendant

ACKNOWLEDGMENT OF GOVERNMENT ATTORNEY

The maximum punishment, plea and plea agreement (if any) are accurately stated above.

  
\_\_\_\_\_  
Lawyer for Government

CERTIFICATE OF COUNSEL

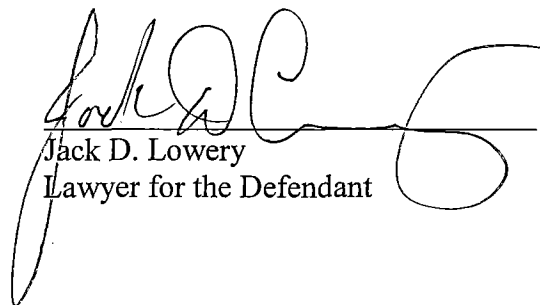
The undersigned, as lawyer and counselor for ROBERT HALEY, hereby certifies as follows:

(1) I have read and fully explained to ROBERT HALEY all the accusations against him in this case;

(2) To the best of my knowledge and belief each statement set forth in the foregoing petition is accurate and true;

(3) In my opinion the plea of "GUILTY" as offered by ROBERT HALEY in paragraph (12) of the foregoing petition, is voluntarily and understandingly made; and I recommend to the Court that the plea of "GUILTY" be accepted and entered as requested in paragraph (12) of the foregoing petition.

Signed by me in open court in the presence of ROBERT HALEY this 29 day of Jan, 2014.

  
\_\_\_\_\_  
Jack D. Lowery  
Lawyer for the Defendant

ORDER

Good cause appearing therefore from the foregoing petition of the foregoing named defendant and the certificate of her counsel and for all proceedings heretofore had in this case, it is ORDERED that the petition be granted and the defendant's plea of "GUILTY" be accepted and entered as prayed in the petition and as recommended in the certificate of counsel.

Done in open court this 29 day of JAN., 2014.



UNITED STATES DISTRICT JUDGE

Order  
1-29-14

The plea agreement is approved.

Todd Campbell  
U.S. District Judge

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

UNITED STATES OF AMERICA )  
 )  
 ) No. 3:09-cr-00262  
 v. )  
 ) JUDGE CAMPBELL  
 ROBERT HALEY )

**PLEA AGREEMENT**

Pursuant to Fed. R. Crim. P. 11(c)(1)(B) and (C), the United States and defendant Robert Haley ("defendant" or "Haley") have entered into a plea agreement, the terms of which are as follows:

**Charges in This Case**

1. Defendant has been charged in the indictment in this case with the following offenses:

- (a) Conspiracy under 18 U.S.C. § 371 (Count One);
- (b) Securities fraud under 15 U.S.C. §§ 78j(b) and 78ff; and 17 C.F.R. § 240.10b-5 (Count Two);
- (c) Wire fraud under 18 U.S.C. § 1343 (Count Three);
- (d) Mail fraud under 18 U.S.C. § 1341 (Counts Four through Seven);
- (e) Money laundering related to transactions involving greater than \$10,000 under 18 U.S.C. § 1957 (Counts Eight through Ten); and
- (f) Money laundering related to the promotion of unlawful activities under 18 U.S.C. § 1956(a)(1)(A)(i) (Counts Eleven through Twelve).

2. In addition to the above criminal charges, the indictment contains a forfeiture allegation involving defendant under 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461.



3. Defendant has read the charges and forfeiture allegation in the indictment, and they have been explained to him by his attorney. Defendant understands the nature and elements of the crimes with which he has been charged.

**Charges to Which Defendant is Pleading Guilty**

4. By this plea agreement, the defendant agrees to enter a voluntary plea of guilty to the following offenses:

- (a) Count One, charging conspiracy under 18 U.S.C. § 371;
- (b) Count Two, charging securities fraud under 15 U.S.C. §§ 78j(b) and 78ff; and 17 C.F.R. § 240.10b-5;
- (c) Count Five, charging mail fraud under 18 U.S.C. § 1341; and
- (d) Count Twelve, charging money laundering under 18 U.S.C. § 1956(a)(1)(A)(i).

5. Defendant also agrees to the entry of the forfeiture judgment, which will result in the entry of a money judgment as described in Paragraph 45.

6. Defendant further understands, in addition to the penalties described above, these offenses require the Court to impose restitution, as further described below in Paragraph 44.

7. Once the Court accepts defendant's plea to the above charges and adjudges defendant guilty of them, the government agrees to dismiss the remaining counts in the indictment.

**Penalties**

8. The parties understand and agree that the offenses to which the defendant will enter a plea of guilty carry the following maximum penalties:

(a) Count One, charging conspiracy under 18 U.S.C. § 371, for which the maximum penalties are five years' imprisonment, a fine of not more than \$250,000 or twice the gross gain or gross loss resulting from the offense, a mandatory special assessment of \$100, and a term of supervised release not to exceed three years;

(b) Count Two, charging securities fraud under 15 U.S.C. §§ 78j(b) and 78ff; and 17 C.F.R. § 240.10b-5, for which the maximum penalties are 20 years' imprisonment, a fine of not more than \$5 million or twice the gross gain or gross loss resulting from the offense, a mandatory special assessment of \$100, and a term of supervised release not to exceed three years;

(c) Count Five, charging mail fraud under 18 U.S.C. § 1341, for which the maximum penalties are 20 years' imprisonment, a fine of not more than \$250,000 or twice the gross gain or gross loss resulting from the offense, a mandatory special assessment of \$100, and a term of supervised release not to exceed three years; and

(d) Count Twelve, charging money laundering under 18 U.S.C. § 1956(a)(1)(A)(i), for which the maximum penalties are 20 years' imprisonment, a fine of not more than \$500,000 or twice the value of the property involved in the financial transaction, a mandatory special assessment of \$100, and a term of supervised release not to exceed three years.

### **Acknowledgments and Waivers Regarding Plea of Guilty**

#### **Nature of Plea Agreement**

9. This Plea Agreement is voluntary and represents the entire agreement between the United States and defendant regarding his criminal liability in case number 3:09-cr-00262.

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

(a) If defendant persisted in a plea of not guilty to the charge against him, he would have the right to a public and speedy trial. Defendant has a right to a jury trial, and the trial would be by a judge rather than a jury only if defendant, the government, and the Court all agreed to have no jury.

(b) If the trial were a jury trial, the jury would be composed of twelve laypersons selected at random. Defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause, 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 defendant is presumed innocent; that the government bears the burden of proving defendant guilty of the charge beyond a reasonable doubt.

(c) If the trial were held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

(d) 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. In turn, defendant could 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.

(e) At a trial, defendant would have a privilege against self-incrimination so that he could testify or refuse to testify, and no inference of guilt could be drawn from his refusal.

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

**Factual Basis**

12. Defendant will plead guilty because he is in fact guilty of the charges in Counts One, Two, Five and Twelve in the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

**With respect to Count One (Conspiracy)**

13. Hanover Corporation, LLC ("Hanover") was a limited liability company that was formed in 2002 and maintained a place of business in Nashville, Tennessee. Hanover purported to be an investment firm that invested in stock options, real estate, equity shares of companies, and other securities.

14. Terry Kretz was the Chief Executive Officer of Hanover and was responsible for the day-to-day operations and management of Hanover. Defendant, Robert Haley, was the Chief Financial Officer of Hanover and was responsible for overseeing the finances and bookkeeping of Hanover. Daryl Bornstein was a salesman for Hanover.

15. From in or about January 2004 through in or about August 2006, in the Middle District of Tennessee and elsewhere, Robert Haley did willfully, knowingly, and unlawfully conspire with Terry Kretz, Daryl Bornstein, and others to commit one or more offenses against the United States, including (a) securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, and Title 17, Code of Federal Regulations, Section 240.10(b)-5; (b) wire fraud, in

violation of Title 18, United States Code, Section 1343; and (c) mail fraud, in violation of Title 18, United States Code, Section 1341.

16. The manner and means by which Haley sought to accomplish and carry out the conspiracy and the underlying scheme to defraud included, among others, the following:

(a) From approximately January 2004 through approximately August 2006, Kretz, Bornstein, Haley, and others conspired and schemed to defraud clients of Hanover by, individually or jointly, soliciting and obtaining from clients millions of dollars under false pretenses, failing to invest those client funds as promised, and misappropriating and converting client funds to Kretz's, Bornstein's, Haley's, and others' benefit without the knowledge or authorization of the clients. Contrary to the promises and representations made to clients, Kretz, Bornstein, Haley, and others, in fact, operated a Ponzi scheme in which existing clients were paid "interest" (and, in some cases, their principal) from later clients' investments.

(b) In or about late 2003 or early 2004, while Haley was employed by Kretz, Kretz and others acting on his behalf began offering clients the opportunity to invest using instruments styled as promissory notes. The promissory notes, along with their accompanying promissory-note agreements, set out the terms of the investment. Those terms provided that clients would invest a principal sum (referred to in the note as a "loan"), which Hanover employees could invest in several enumerated ways. The promissory notes and promissory-note agreements further provided that, in return, the client would receive a fixed rate of return (referred to in the note as "interest") every month, plus a final payment of principal and accrued unpaid interest upon the promissory note's maturity date.

(c) As Hanover's CFO, Haley maintained the company's books and records and prepared financial reports showing the company's financial condition. Haley was aware that in fact, the representations contained in the promissory notes and made elsewhere to investors were false. Haley knew that most of the money being raised from new investors was in fact not being invested at all, but was instead going to pay the salaries of Hanover employees and to pay principal and interest to previous investors. In addition, as Haley knew, Hanover used money it had raised from investors to purchase a \$600,000 home lot for Kretz, pay for golf memberships for executives, including Haley, and make donations to Kretz's church. Haley was also aware that even with the influx of money from new investors, Hanover itself was in dire financial condition, losing money and often struggling to make payroll.

(d) Haley warned Kretz that Hanover was losing money, and that he could not continue soliciting new investments and using the funds to pay off old investors. When Kretz ignored these warnings, Haley continued to serve as CFO for Hanover.

(e) Haley also made and caused others to make, directly and indirectly, material false or misleading representations regarding Hanover's financial condition and holdings. For example, Haley prepared a false balance sheet that he knew Kretz would use at a meeting of noteholders to make false representations concerning Hanover's assets. Using information provided by Kretz, Haley valued certain assets in these balance sheets based on the money paid into the asset, and not on the asset's actual market value. For example, Haley listed a \$213,157 "Investment in TRIPP" as a balance sheet asset even though he knew that "TRIPP" was a defunct entity. Haley also listed Hanover's \$600,000 purchase of a home lot as an asset, even though he knew that Hanover's interest in the lot had been transferred to Kretz personally.

(f) Haley was also aware that Hanover was using money raised from new investors to pay off investors in a different failed investment scheme. Specifically, Bornstein had raised substantial sums of money for different investments before joining Hanover. Those investments had failed, and Bornstein's previous investors were left with substantial losses. Haley was aware that Kretz and Bornstein had agreed that upon Bornstein's joining Hanover as a salesman and raising new money for Hanover, Hanover would take on debts of the old investors in Bornstein's failed projects and repay them out of Hanover funds. Haley knew that this arrangement was never disclosed to the Hanover investors whose money was being used to pay obligations on failed investments that they were never even aware of.

(g) Haley also caused payments purporting to be "interest" payments on old investments to be mailed to investors through the United States Postal Service or other commercial carriers. These payments were in fact simply transfers of funds received from new investors. The payments furthered clients' misconceptions concerning how their money was being invested, causing the clients to invest even more money, and lulling clients from demanding their money back.

(h) Haley knew that Hanover was accepting and using millions of dollars of client money, some of which was obtained through wire transfers in and affecting interstate commerce from financial institutions, both inside and outside of the state of Tennessee, and some of which was obtained through mailings delivered by the United States Postal Service or private commercial carriers. In addition, Haley conducted and caused to be conducted wire transfers of client funds between accounts at financial institutions that operated in interstate commerce.

17. In furtherance of the above conspiracy and scheme to defraud, and to effect the objects and purposes thereof, Haley individually or jointly, and as a principal or aider and abettor, committed one or more overt acts within the Middle District of Tennessee and elsewhere, including, among others, the following:

(a) Between on or about May 2, 2005 and on or about May 10, 2005, Haley caused to be mailed check #11917 from Hanover to B.K.

(b) Between on or about October 1, 2005 and on or about October 6, 2005, Haley caused to be mailed check #13179 from Hanover to M.B.

(c) Between on or about February 2, 2006 and on or about February 8, 2006, Haley caused to be mailed check #14380 from Hanover to G.M.

(d) Between in or about January 2004 to in or about August 2006, Haley caused to be prepared checks purporting to be interest payments, including but not limited to checks #11917, #13179, and #14380 referred to in Paragraphs 17(a) – 17(c) above.

(e) Between in or about January 2004 and in or about August 2006, Haley prepared or caused to be prepared IRS Forms 1099-INT falsely purporting to reflect interest income.

(f) Between in or about January 2004 and in or about August 2006, Haley mailed or caused to be mailed IRS Forms 1099-INT to clients of Hanover.

(g) Between on or about January 2004 and in or about August 2006, Haley prepared and caused to be prepared balance sheets falsely representing the financial condition of Hanover and its investments, including but not limited to a balance sheet dated “as of December



23, 2005.” Haley knew that Kretz would be presenting the information in the December 2005 balance sheet to Hanover noteholders.

(h) On or about August 22, 2006, Haley caused Hanover Corporation check 15362, in the amount of \$15,000, payable to R.C.S., to be issued.

With respect to Count Two (Securities Fraud)

18. Through his conduct, as described above in Paragraphs 13 to 17 of this plea agreement, Haley knowingly employed (as a principal and as an aider and abettor) a scheme to defraud. That scheme to defraud revolved around and was in the connection with the purchase and sale of securities, including but not limited to, the promissory notes issued by Hanover.

19. Haley knowingly made multiple untrue statements of a material fact and omitted material facts that made, under the circumstances, certain statements misleading. Such statements and omissions included the false balance sheets created by Haley, as well as the “interest” checks and the misleading Form INT-1099s mailed to investors, all described above. In addition, Haley was aware that Kretz and Bornstein were making additional false or misleading statements to investors about the nature of their investment, where the money would be invested, and Hanover’s financial condition.

20. Throughout Hanover’s existence and in connection with the purchase or sale of various securities, Haley made use of various means and instrumentalities of interstate commerce, including mailings and interstate wires.

21. In engaging in the conduct described above, Haley acted knowingly, willfully, and with the intent to defraud.

With respect to Count Five (Mail Fraud)

22. Through his conduct, as described above in Paragraphs 13 to 21 of this plea agreement, Haley knowingly employed (as a principal and as an aider and abettor) a scheme to defraud that included multiple material misrepresentations and concealment of material facts. In furtherance of the scheme to defraud, Haley mailed or caused another to mail various items, including, but not limited to, a mailing to B.K. enclosing check #11917, which purported to be an interest payment. The mailing to B.K. occurred between May 2, 2005 and May 10, 2005.

With respect to Count Twelve (Money Laundering)

23. Repaying clients who had previously invested with Bornstein on their earlier investments via checks using Hanover funds constituted “financial transactions” under 18 U.S.C. § 1956(c)(4), and the funds involved in those payments came from the mail, wire, and securities fraud described herein, all of which are “specified unlawful activities” as defined by federal law. Haley, Bornstein, and Kretz knew that the funds used to pay these earlier investors came from investors who had been defrauded and deceived into providing those funds and from otherwise unlawful activity. By preparing, mailing, wiring, sending, and providing those interest payments, and aiding and abetting each other and others in doing so, Haley, Bornstein, and Kretz intended to promote the carrying on of the Ponzi scheme and the wire, mail, and securities fraud described herein. Among the financial transactions used in this manner was a July 12, 2005 payment, via Hanover check #12516, to W.B., which purported to be an interest payment.

\* \* \* \*

24. This statement of facts is provided to assist the Court in determining whether a factual basis exists for defendant’s plea of guilty and to assess relevant conduct under the

Sentencing Guidelines. The statement of facts does not contain each and every fact known to defendant and to the United States concerning defendant's or others' involvement in the offense conduct and other matters.

### **Sentencing Guidelines Calculations**

25. The parties understand that the Court will take account of the Sentencing Guidelines, together with the other sentencing factors set forth at 18 U.S.C. § 3553(a), and will consider the U.S.S.G. advisory sentencing range in imposing defendant's sentence. The parties further understand that the advisory sentencing range is determined by a number of factors, including, among others, the offense level associated with defendant's crime and his criminal history, if any. The parties agree that the U.S.S.G. to be considered in this case are those effective November 1, 2013.

26. As described below, the parties have made certain estimates related to the sentencing guidelines. Defendant understands that these are merely estimates, and they do not bind the probation office or the Court in determining the guidelines. Finally, defendant understands that, if the probation office or the Court ultimately calculates defendant's guidelines differently, Defendant will not be able to withdraw his guilty plea.

### **Offense Level**

27. With respect to the Offense Level, the parties estimate the following:

(a) The several counts of conviction appear to group as "closely related counts" because "one of the counts embodies conduct that is treated as a specific characteristic in, or other adjustment to, the guideline applicable to another of the counts." U.S.S.G. §3D1.2(c); *see also* U.S.S.G. §2S1.1, comment. (n.6). Consequently, the offense level applicable to the group is the

offense level for the “most serious of the counts comprising the [g]roup.” U.S.S.G. §3D1.3(a). In this case, that count is Count Twelve, which charges money laundering under 18 U.S.C. § 1956(a)(1)(A)(i). The Guideline calculation for that count is controlled by U.S.S.G. 2S1.1(a)(1).

(b) Under U.S.S.G. § 2S1.1(a)(1), the base offense level for the group is the offense level for the underlying offense from which the laundered funds were derived. Those underlying offenses here are, among others, mail fraud (18 U.S.C. § 1341), and securities fraud (15 U.S.C. § 78j(b) and 77f; 17 C.F.R. § 240.10(b)-5), the offense level for both of which is determined by U.S.S.G. § 2B1.1, entitled “Theft, Embezzlement . . . and Offenses Involving Fraud and Deceit.” Applied to this case, U.S.S.G. § 2B1.1 provides that:

- i. The base offense level is **6**. See U.S.S.G. § 2B1.1(a)(1)(B).
- ii. The offense level is increased by **20 levels** because the amount of loss is more than \$7,000,000 but less than \$20,000,000. See U.S.S.G. § 2B1.1(b)(1)(K).
- iii. The offense level is increased by **4 levels** because the offense involved more than 50 but less than 250 victims. See U.S.S.G. § 2B1.1(b)(2)(B).
- iv. The offense level is increased by **2 levels** because the offense involved sophisticated means. See U.S.S.G. § 2B1.1(b)(9)(c).

(c) Based on the above calculations under U.S.S.G. § 2B1.1, the base offense level offense is 32. Therefore, under U.S.S.G. § 2S1.1(a), the base level offense for the group is also **32**.

(d) The offense level is increased by **2 levels** because defendant was convicted under 18 U.S.C. § 1956. *See* U.S.S.G. §2S1.1(b)(2)(B).

(e) The offense level is increased by **2 levels** because defendant used a “special skill[] in a manner that significantly facilitated the commission or concealment of the offense.” *See* U.S.S.G. §3B1.3; *see also* U.S.S.G. §3B1.3, comment. (n.4) (describing persons who possess a “special skill” as including, among others, “accountants”).

(f) Based on above calculations, defendant’s offense level would be 36.

(g) Assuming defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the government, through his allocution and later conduct before the imposition of sentence, a two-level reduction will be warranted, under U.S.S.G. § 3E1.1(a). Furthermore, assuming defendant accepts responsibility as described in the previous sentence, the United States will move for an additional one-level reduction pursuant to U.S.S.G § 3E1.1(b), because defendant will have given timely notice of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently.

(h) As a result of the calculations in Paragraphs 27(a) through 26(g), the parties estimate defendant’s offense level will be **33**.

#### **Criminal History Category**

28. The parties have not estimated defendant’s criminal history category.

#### **Anticipated Sentencing Range**

29. Because the parties have not estimated defendant’s criminal history category, they cannot formulate an anticipated guidelines range.

### **Court Will Determine Guideline Range**

30. Any estimate of the offense level or guidelines range that defendant may have received from defendant's counsel, the United States, or the Probation Office is a prediction, not a promise, and is not binding on the Probation Office or the Court. Defendant understands that the Probation Office will conduct its own investigation and make its own recommendations, that the Court ultimately determines the facts and law relevant to sentencing, that the Court's determinations govern the final guidelines calculations, and that the Court determines both the final offense level and the final guidelines range. Accordingly, the validity of this agreement is not contingent upon the Probation Officer's or the Court's concurrence with any other calculations performed by any other party at any other time.

31. The parties reserve the right to answer any inquiries and to make all appropriate arguments concerning any Sentencing Guideline issues raised by the Court or the Probation Office. Defendant further acknowledges that, except as outlined in Paragraph 38 below, he will have no right to withdraw his guilty plea based on the Court's interpretation of the Sentencing Guidelines or if the Court imposes a sentence greater or less than what defendant may have expected based on his attorney's, the Probation Office's, or any other source's calculation of the Guidelines.

### **Cooperation**

32. Defendant agrees to cooperate fully and truthfully with the United States and to provide all information known him regarding any criminal activity. In that regard:

(a) Defendant agrees to respond truthfully and completely to any and all questions that may be put to him, whether in interviews, before a grand jury, or at any trial(s) or other court proceedings.

(b) Defendant agrees to be reasonably available for debriefings and pre-trial conferences as the United States may require.

(c) Defendant agrees to produce voluntarily any and all documents, records, writings, or materials of any kind in his possession or under her care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.

(d) Defendant consents to continuances of his sentencing hearing as requested by the United States.

33. Nothing in this Plea Agreement requires the government to accept any cooperation or assistance that defendant may choose to proffer. The decision as to whether and how to use any information or cooperation that defendant provides (if at all) is in the exclusive discretion of the United States.

34. Defendant must at all times give complete, truthful, and accurate information and testimony, and must not commit, or attempt to commit, any further crimes. Defendant understands that if he falsely implicates an innocent person in the commission of a crime, or exaggerates the involvement of any person in the commission of a crime in order to appear cooperative, or if defendant falsely minimizes the involvement of any person in the commission of a crime in order to protect that person, then defendant will be in violation of the Plea Agreement. If the United States determines that defendant has failed to cooperate fully, has intentionally given false, misleading, or incomplete information or testimony, has committed or attempted to commit

any further crimes, or has otherwise violated any provision of this Plea Agreement, the United States, may in its discretion and as appropriate in light of particular circumstances: (a) prosecute defendant for perjury, false declarations or statements, and obstruction of justice; (b) prosecute any other crime alleged in the superseding indictment that would have otherwise been dismissed at sentencing; (c) charge defendant with other crimes; and (d) recommend a sentence up to the statutory maximum.

35. This Plea Agreement is conditioned upon defendant providing full, complete, and truthful cooperation. This Plea Agreement is *not* conditioned upon (a) charges being brought against any other individual; (b) any outcome in any pending investigation; or (c) any result in any future prosecution that may occur because of defendant's cooperation.

36. If the United States in its sole discretion determines that defendant has cooperated fully, provided substantial assistance to law enforcement authorities, and otherwise complied with the terms of this Plea Agreement, prior to sentencing the government shall inform the Court, through an appropriate motion under U.S.S.G. §5K1.1, of the nature and extent of defendant's cooperation. In that case, the government, in its sole discretion, also may recommend that the Court impose a particular sentence or depart downward to a particular extent. Defendant understands that the decision whether, and to what extent, to depart below the court-determined guidelines range rests solely with the Court. Defendant further understands that, at the time this Plea Agreement is entered, no one has promised that a substantial-assistance motion will be made on defendant's behalf.

37. The United States cannot, and does not, make any promise or representation as to what sentence defendant will receive. The United States will inform the Probation Office and the



Court of (a) this Plea Agreement; (b) the nature and extent of defendant's activities with respect to this case and all other activities of defendant that the United States deems relevant to sentencing; and (c) the nature and extent of defendant's cooperation.

**Agreements Relating to Sentencing**

38. This Plea Agreement is governed, in part, by Federal Rule of Criminal Procedure 11(c)(1)(C). That is, the parties have agreed, notwithstanding the advisory guideline calculations, taking into account the factors set forth in Title 18, United States Code, Section 3553(a) that the agreed-upon sentence shall be no more than nine years and a day. The defendant is free to recommend whatever sentence he deems appropriate. Other than the agreed maximum term of incarceration, the parties have agreed that the Court remains free to impose the sentence it deems appropriate. If the Court accepts and imposes no more than the agreed maximum term of incarceration set forth herein, defendant may not withdraw this plea as a matter of right under Federal Rule of Criminal Procedure 11(d). If, however, the Court refuses the agreed maximum term of incarceration, thereby rejecting the Plea Agreement, or otherwise refuses to accept defendant's plea of guilty, either party shall have the right to withdraw from this Plea Agreement.

39. Subject to the preceding paragraph, either party may seek whatever sentence it deems appropriate regardless of the Sentencing Guidelines range recommended by the probation office or determined by the Court.

40. The parties understand that, if the Court grants a government motion to depart downward under U.S.S.G. §5K1.1, and therefore pronounces a final Guidelines range lower than the Guidelines range otherwise determined by the Court, the Court will consider this lower, final Guidelines range together with other sentencing factors in determining defendant's sentence.

41. Defendant understands that, if the government does not move the Court to depart downward under U.S.S.G. §5K1.1, the Court will impose a sentence taking into consideration the court-determined Guidelines range together with other sentencing factors in determining defendant's sentence.

42. Defendant understands that the Court is neither a party to nor bound by this plea agreement and, notwithstanding this agreement or any motion by the government, may impose the maximum penalties set forth above. Defendant understands that, if the Court does not accept the parties' sentencing recommendations, he may not withdraw his plea of guilty if the Court imposes a sentence greater than what either he or the government recommends.

43. Defendant further acknowledges that the Court will impose a mandatory special assessment of \$100 for each count of conviction and that Defendant is obligated to pay that special assessment by statute.

#### Restitution

44. The parties understand and acknowledge that the Court must order restitution under 18 U.S.C. §§ 3663A, 3664. The parties have not estimated that restitution in this plea agreement and understand that the probation office will calculate restitution as part of the PSR. Ultimately, the Court will determine the final amount of restitution in the case. The defendant understands that, if he disagrees with the Court's restitution determination, it will not be a basis to withdraw his guilty plea.

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### **Forfeiture**

45. Under this agreement, defendant agrees to entry of a forfeiture judgment corresponding to the forfeiture allegation in the Indictment. Specifically, defendant agrees to an entry of a money judgment in the amount of restitution determined by the Court. In doing so, Defendant admits that these funds (a) were obtained directly or indirectly as a result of the conduct alleged in Counts One, Two, Five, and Twelve of the indictment (and as described in the "Factual basis" section above in this plea agreement), and (b) constitute or are derived from proceeds traceable to each violation.

46. With respect to any funds obtained via the judicial forfeiture process, if defendant meets the appropriate requirements regarding restoration and remission of judicially forfeited assets (as stated in the Asset Forfeiture Policy Manual, Chapter 13, Section I.B (2010) or Title 28, Code of Federal Regulations, Part 9), the United States Attorney's Office will recommend to the Asset Forfeiture and Money Laundering Section of the Department of Justice the restoration or remission of any such assets. Any funds obtained through forfeiture and returned (through restoration or remission) to victims would offset the restitution amount in a corresponding amount.

### **Presentence Investigation Report and Post-Sentence Supervision**

47. 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, as well as any related matters. The government will make known all matters in aggravation and mitigation relevant to the issue of sentencing.

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

49. This Plea Agreement concerns criminal liability only. Except as expressly set forth in this Plea 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 Plea Agreement are limited to the United States Attorney's Office for the Middle District of Tennessee and the Fraud Section of the Criminal Division of the Department of Justice and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Plea Agreement.

50. Defendant understands that nothing in this Plea Agreement shall limit the Internal Revenue Service (IRS) in its collection of any taxes, interest, or penalties from defendant.

### **Waiver of Appellate Rights**

51. Regarding the issue of guilt, defendant knowingly waives all (a) rights to appeal any issue bearing on the determination of whether he is guilty of the crimes to which he is agreeing to plead guilty and (b) trial rights that might have been available if he exercised his right to go to trial. This waiver does not apply, however, to defendant's right to appeal any of these issues where the appeal is based on voluntariness, prosecutorial misconduct, or ineffective assistance of counsel.

52. Regarding sentencing, defendant is aware that 18 U.S.C. § 3742 generally affords a defendant the right to appeal the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal the sentence. This waiver does not apply, however, to defendant's right to appeal his sentence where the appeal is based on voluntariness, prosecutorial misconduct, or ineffective assistance of counsel.

53. Regarding collateral attacks, defendant also knowingly waives the right to file a collateral attack challenging his sentence or raising other issues, including, but not limited to, a motion brought pursuant to 28 U.S.C. § 2255 or § 2241. This waiver does not apply, however, to defendant's right to file a collateral attack where the attack is based on voluntariness, prosecutorial misconduct, or ineffective assistance of counsel.

### **Other Terms**

54. If defendant engages in additional criminal activity after he has pleaded guilty but before sentencing, defendant shall be considered to have breached this Plea Agreement, and the government at its option may void this Plea Agreement.

55. Defendant understands that, under Title 12, United States Code, Section 1829, his conviction in this case will prohibit him from directly or indirectly participating in the affairs of any financial institution insured by the Federal Deposit Insurance Corporation (FDIC) except with the prior written consent of the FDIC and, during the ten years following his conviction, the additional approval of this Court. Defendant further understands that if he violates this prohibition, he could be punished by imprisonment for up to five years and a fine of up to \$1,000,000.

#### Conclusion

56. Defendant understands this Plea Agreement, even if filed under seal, may later be unsealed and will be filed with the Court, will become a matter of public record, and may be disclosed to any person.


57. Defendant understands that his compliance with each part of this Plea Agreement extends until such time as he is sentenced, and failure to abide by any term of the Plea Agreement is a violation of the Plea Agreement. Defendant further understands that in the event he violates this Plea Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Plea Agreement, or may require defendant's specific performance of this Plea Agreement.

58. Defendant and his attorney acknowledge that no threats have been made to cause defendant to plead guilty.

No promises, agreements, or conditions have been entered into other than those set forth in this Plea Agreement, and none will be entered into unless memorialized in writing and signed by all of the parties listed below.

Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending superseding indictment. Further, I fully understand all rights with respect to the provisions of the Sentencing Guidelines that may apply in my case. I have read this Plea Agreement and carefully reviewed every part of it with my attorney. I understand this Plea Agreement, and I voluntarily agree to it.

Date: 1-29-14



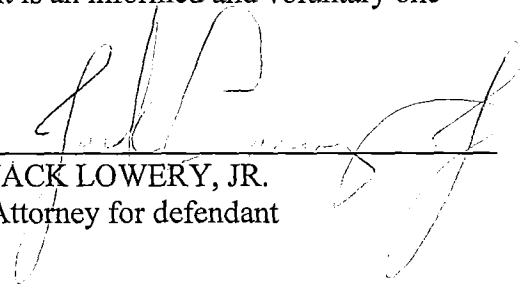
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ROBERT HALEY  
Defendant

(signatures continue on next page)


59. Defense Counsel Signature: I am counsel for defendant in this case. I have fully explained to defendant his rights with respect to the pending superseding indictment. Further, I have reviewed the provisions of the Sentencing Guidelines and Policy Statements, and I have fully explained to defendant the provisions of those guidelines that may apply in this case. I have reviewed carefully every part of this Plea Agreement with defendant. To my knowledge, defendant's decision to enter into this Plea Agreement is an informed and voluntary one

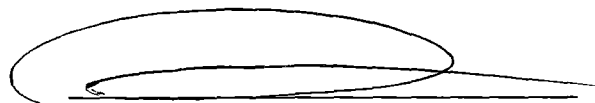
Date: 1/29/14

  
\_\_\_\_\_  
JACK LOWERY, JR.  
Attorney for defendant

Respectfully submitted,

DAVID RIVERA  
United States Attorney

By:   
\_\_\_\_\_  
SCARLETT SINGLETON NOKES  
Assistant United States Attorney

  
\_\_\_\_\_  
JOHN WEBB  
Deputy Criminal Chief

JEFFREY KNOX  
Chief, Fraud Section, Criminal Division



By: Justin Goodyear  
JUSTIN GOODYEAR  
Trial Attorney

Patrick Stokes / P.S.  
PATRICK STOKES  
Deputy Chief