

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

DAVID BRYANT

No. 16 CR 494

Judge Matthew F. Kennelly

**PLEA AGREEMENT**

1. This Plea Agreement between the United States Attorney for the Northern District of Illinois, ZACHARY T. FARDON, and defendant DAVID BRYANT, and his attorney, EDWARD M. ROBINSON, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The parties to this Agreement have agreed upon the following:

**Charge in This Case**

2. The information in this case charges defendant with wire fraud, in violation of Title 18, United States Code, Section 1343.

3. Defendant has read the charge against him contained in the information, and that charge has been fully explained to him by his attorney.

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

**Charge to Which Defendant Is Pleading Guilty**

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

### **Factual Basis**

6. Defendant will plead guilty because he is in fact guilty of the charge contained in the information. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

Beginning in or about June 2013, and continuing through in or about January 2016, in the Northern District of Illinois, and elsewhere, defendant DAVID BRYANT devised, intended to devise, and participated in a scheme to defraud investors and a financial institution, and to obtain money and property by means of false and fraudulent pretenses, representations and promises, and concealment of material facts.

Defendant created a company called the Bryant Family Investment Fund, LLC. Defendant identified himself as the Managing Partner, and acted as a commodity trading advisor to customers of the company. The company purported to be in the business of managing commodity futures and options trading for investors/customers in exchange for a percentage of the trading profits.

Defendant fraudulently obtained and retained money from investors by falsely representing that the Bryant Family Investment Fund had been extraordinarily successful in trading, generating profits of more than 200% a year. In fact, defendant knew that his company had done no trading in its name and the trading that the defendant did in his accounts was consistently unprofitable, resulting in large losses. Defendant traded investors' funds in his own trading accounts, created false account statements for investors, created fake

corporate trading records, and used a portion of investors' funds to pay for personal and business expenses. The defendant also misappropriated funds and fraudulently obtained bank funds to make repayments to certain investors. Defendant fraudulently obtained at least approximately \$5,100,000 from investors and a financial institution, and caused a loss to investors and others of at least approximately \$3,600,000.

Defendant falsely represented to investors that they could make large profits through his company, because the company had been generating profits of approximately 1% a day for approximately four or five years, and that defendant had a great track record of successful trading over the past fifteen years. In fact, defendant knew that the company was not generating any profits, and his trading had resulted in significant losses.

The Bryant Family Investment Fund was not a functioning company, and it had no employees, no office facilities, no trading accounts, and it did not file tax returns. Defendant opened bank accounts in the company's name to receive investors' funds, and falsely represented to investors that the company would hold and invest their funds. In fact, defendant BRYANT knew that the company, which had done no trading in its name, was not generating any profits, and his prior trading had resulted in significant losses.

Defendant falsely represented to investors that their funds would be held in separate sub-accounts, and would not be commingled with funds belonging to anyone else. Instead of keeping the investors' funds in separate accounts, defendant commingled the investors' funds in his own personal bank accounts and personal trading accounts.

Defendant falsely represented to investors that all trades would be accounted for at the end of each trading day, and that the company would provide investors with daily, weekly, or bi-weekly settlement statements reflecting the investors' profits or losses. In fact, defendant fraudulently created, and provided to customers, account statements that falsely identified commodity futures and options trades made for individual investors' accounts, which purportedly resulted in substantial profits.

Defendant created, and provided to customers, fake trading account records, which falsely showed that the Bryant Family Investment Fund had a trading account, and that the account had a balance of between \$4 million and \$6 million, depending on the date. The records also falsely showed that the trading account had large trading profits. The records falsely appeared to be generated by a brokerage firm in Chicago, and had that brokerage firm's name and logo at the top of the page. Defendant BRYANT provided those records to certain investors, even though he knew that the company did not have a trading account and did not have any profits.

Defendant falsely represented to investors that he would make money only if the investors made money, and that he would not take any of the investors' funds, unless the investors made a profit. In fact, defendant used investors' funds to pay for at least approximately \$200,000 of personal and business expenses, even though he knew that the investors never made a profit. Defendant did not report those funds on his tax returns.

Defendant opened personal trading accounts in Chicago and, in order to avoid regulatory scrutiny, he falsely represented on the account applications that he would be trading funds that belonged to him personally, and that he would not be trading any investors' funds. Defendant did this because he knew that, if he disclosed that he was trading customer funds, he would need to be registered with the CFTC. In order to conceal his use of investors' funds, defendant transferred investors' funds from the company's bank accounts to his personal bank account, and then transferred those funds by interstate wires to his trading accounts in Chicago.

Defendant told investors that, when they filed their tax returns, they did not have to report their trading profits. The defendant falsely represented that his company had a prior tax loss that could be carried forward, so investors did not have to report the profits that their account statements showed. Defendant discouraged investors from paying taxes on their investments because he knew that their profits were fictitious.

In or about November 2014, defendant admitted to a group of investors, who had requested repayment, that he could not repay them because he had lost their money, and he had been giving them false account statements. In order to repay those investors and prevent them from disclosing the fraud, defendant fraudulently obtained bank loans, which he used, at least in part, to repay a portion of the money owed to those investors. To obtain the bank loans, defendant forged his mother's signature on a quit claim deed for an office building that his mother owned, without her knowledge or authorization and transferred ownership of that

property into his own name. The defendant then fraudulently used that property as collateral to obtain certain bank loans.

Defendant misappropriated investors' funds to repay other investors. Defendant made at least \$500,000 of Ponzi-type payments to investors because he did not have enough money to pay investors from any other source.

Defendant attempted to lull certain investors by falsely promising to repay them, when, in fact, defendant knew he did not have enough money to make those payments.

Defendant attempted to continue trading, in direct violation of an order issued by a federal judge in connection with a civil enforcement action brought against the defendant by the CFTC, in which the judge ordered the defendant to stop trading. Defendant asked an investor to open a trading account in the investor's name so that the defendant could use that account to trade. Defendant also attempted to obtain \$12,000 from the cash value of his life insurance, in violation of the asset freeze order issued by the federal judge in the same civil enforcement action, so that the defendant could trade those funds.

As a result of his actions, defendant caused an actual loss to investors of at least approximately \$3,194,593. Defendant repaid a group of investors approximately \$860,000 after those investors knew about the fraud. Defendant also stopped repaying the \$500,000 bank loan that he had fraudulently obtained, resulting in an overall fraud loss of at least approximately \$4,500,000.

On or about June 5, 2014, at Chicago, for the purpose of executing the scheme to defraud, defendant knowingly caused to be transmitted by means of wire communication in interstate commerce, certain writings, signs and signals, namely, an interstate electronic transfer of funds from JPChase Morgan Bank, in Chicago, Illinois, through the Federal Reserve's Fedwire System, to Malaga Bank, in California, that involved approximately \$25,000 of investors' funds, which defendant transferred from his personal trading account in Chicago to his personal bank account in California, and which the defendant misappropriated to pay for personal and business expenses, in violation of Title 18, United States Code, Section 1343.

#### **Maximum Statutory Penalties**

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

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

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

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

### **Sentencing Guidelines Calculations**

8. Defendant understands that in determining a sentence, the Court is obligated to calculate the applicable Sentencing Guidelines range, and to consider that range, possible departures under the Sentencing Guidelines, and other sentencing factors under 18 U.S.C. § 3553(a), which include: (i) the nature and circumstances of the offense and the history and characteristics of the defendant; (ii) the need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense, afford adequate deterrence to criminal conduct, protect the public from further crimes of the defendant, and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (iii) the kinds of sentences available; (iv) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and (v) the need to provide restitution to any victim of the offense.

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

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the

calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2015 Guidelines Manual.

**b. Offense Level Calculations.**

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

ii. Pursuant to Guideline § 2B1.1(b)(1)(J), the base offense level is increased by 18 levels because the loss totals at least approximately \$4,500,000, which is between \$3,500,000 and \$9,500,000.

iv. Pursuant to Guideline § 2B1.1(b)(2)(A), the offense level is increased by 2 levels because the offense involved more than 10 victims.

v. Pursuant to Guideline § 2B1.1(b)(10)(C), the base offense level is increased by 2 levels because the offense involved sophisticated means, in that the offense conduct pertaining to the execution and concealment of the fraud was especially complex and intricate.

vi. Pursuant to Guideline § 2B1.1(b)(19)(B)(ii), the base offense level is increased by 4 levels because the offense involved a violation of commodities law and, at the time of the offense, the defendant was a commodities trading advisor.

vii. Pursuant to Guideline § 2B1.1, Application Note 15(C), the enhancement for abuse of a position of trust, under Guideline § 3B1.3, should not be applied, if the enhancement for being a commodities trading advisor is applied under §

2B1.1(b)(19)(B). If the court determines that the enhancement for being a commodities trading advisor does not apply, then the base offense level is increased by 2 levels, because the defendant abused a position of trust in a manner that significantly facilitated the commission and concealment of the offense.

viii. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine or restitution that may be imposed in this case, a two-level reduction in the offense level is appropriate.

ix. In accord with Guideline § 3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline § 3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a 2 level reduction for acceptance of responsibility, the government will move for an additional 1 level reduction in the offense level.

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

government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 30, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory sentencing guidelines range of 97 to 121 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose.

e. Defendant and his attorney and the government acknowledge that the above guidelines calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional guidelines provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

10. Both parties expressly acknowledge that this Agreement is not governed by Fed. R. Crim. P. 11(c)(1)(B), and that errors in applying or interpreting any of the sentencing guidelines may be corrected by either party prior to sentencing. The parties may correct these

errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the guidelines. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

### **Agreements Relating to Sentencing**

11. Each party is free to recommend whatever sentence it deems appropriate.

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

13. Regarding restitution, defendant acknowledges that pursuant to Title 18, United States Code, Section 3663A, the Court must order defendant to make full restitution to victims, including investors, a bank, and others, in an amount to be determined by the Court at sentencing, which the parties anticipate will be approximately \$3,600,000. The amount of restitution shall reflect credit for any funds repaid prior to sentencing.

14. Restitution shall be due immediately, and paid pursuant to a schedule to be set by the Court at sentencing. Defendant acknowledges that pursuant to Title 18, United States Code, Section 3664(k), he is required to notify the Court and the United States Attorney's

Office of any material change in economic circumstances that might affect his ability to pay restitution.

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

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

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

#### **Nature of Agreement**

17. This Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in this case.

18. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

## Waiver of Rights

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

a. **Right to be charged by indictment.** Defendant understands that he has a right to have the charge prosecuted by an indictment returned by a concurrence of twelve or more members of a grand jury consisting of not less than sixteen and not more than twenty-three members. By signing this Agreement, defendant knowingly waives his right to be prosecuted by indictment and to assert at trial or on appeal any defects or errors arising from the information, the information process, or the fact that he has been prosecuted by way of information.

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

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

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

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

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

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

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

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

c. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and may only appeal the validity of this plea of guilty and the sentence imposed. Defendant understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

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

21. **Venue Waiver:** Defendant understands that he has the right to be prosecuted for any criminal offense in the district or districts where the offense was committed. By signing this Agreement, defendant knowingly consents to prosecution of the charge against him in the Northern District of Illinois and waives any objection to the venue of this prosecution.

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

22. 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 charge against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

23. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

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

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

### **Other Terms**

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

26. Defendant understands that, if convicted, a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future.

### **Conclusion**

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

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

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

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

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

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

AGREED THIS DATE: \_\_\_\_\_

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ZACHARY T. FARDON  
United States Attorney

\_\_\_\_\_  
DAVID BRYANT  
Defendant

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JACQUELINE STERN  
Assistant U.S. Attorney

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EDWARD M. ROBINSON  
Attorney for Defendant