

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 07-20446-CR-PCIT

UNITED STATES OF AMERICA

vs.

RAQUEL KOHLER,

Defendant.

_____ /

PLEA AGREEMENT

The United States Attorney's Office for the Southern District of Florida ("Office") and RAQUEL KOHLER (hereinafter referred to as the "defendant") enter into the following agreement:

1. The defendant agrees to plead guilty to a two-count Information, which charges the defendant with: Count 1 - Conspiracy to Commit Securities Fraud, in violation of Title 18, United States Code, Section 371; and Count Two - Perjury, in violation of Title 18, United States Code, Section 1621. The defendant also agrees to appear for an initial appearance on such Information before a federal magistrate judge in Miami, Florida on any date designated by this Office, and agrees to waive in open court her right to prosecution by indictment for these offenses.

2. The defendant is aware that the sentence will be imposed by the Court after considering the Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines").

The defendant acknowledges and understands that the Court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the Court relying in part on the results of a Pre-Sentence Investigation by the Court's probation office, which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the Court may depart from the advisory sentencing guideline range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The defendant is further aware and understands that the Court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose that sentence. The Court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory sentence. Knowing these facts, the defendant understands and acknowledges that the Court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the offense(s) identified in paragraph one (1) and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

3. The defendant also understands and acknowledges that the Court may impose a statutory maximum term of imprisonment of up to five (5) years, followed by a term of supervised release of up to three (3) years as to Count One of the Information. In addition to a term of imprisonment and supervised release, the Court may impose a maximum fine of up to \$250,000, or not more than the greater of twice the gross gain or gross loss resulting from the offense as to Count One of the Information. The defendant further understands that the Court may impose a statutory maximum term of imprisonment of up to five (5) years, followed by a term of supervised release of up to three (3) years as to Count Two of the Information. In addition to a term of imprisonment and

supervised release, the Court may impose a maximum fine of up to \$250,000 as to Count Two of the Information.

4. The defendant further understands and acknowledges that, in addition to any sentence imposed under paragraph 3 of this agreement, a special assessment in the amount of \$100.00 will be imposed on the defendant for each count in the Information. The defendant agrees that any special assessment imposed shall be paid by the time of sentencing.

5. The defendant understands that restitution under Title 18, United States Codes, Section 3663A is mandatory and she agrees that the restitution she is required to pay as a result of the criminal conduct described in Count One of the Information is approximately \$471 million. The defendant agrees that offenses, including but not limited to wire and mail fraud, listed under Title 18, United States Code, Section 3663A(c)(1) were committed by her as part of the fraud schemes underlying the offenses of conviction in the Information, and that those offenses gave rise to this plea agreement. The defendant further agrees, as permitted by Title 18, United States Code, Section 3663A(a)(3), that restitution payable by her shall be payable for the full amount of the loss arising from the relevant conduct related to this matter, not just from the offense of conviction.

6. The Office reserves the right to inform the Court and the probation office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon sentencing recommendations contained in this agreement, this Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

7. The undersigned parties agree that they will not seek any variance and, although not binding on the probation office or the Court, will recommend that the Court sentence the defendant within the Sentencing Guidelines. The parties will also recommend that the Court neither adjust upward nor downward under the Sentencing Guidelines when determining the advisory sentencing guideline range in this case, except as otherwise expressly contemplated in this agreement. The undersigned parties further agree that, although not binding on the probation office or the Court, they will jointly recommend that the Court neither depart upward nor downward under the Sentencing Guidelines after determining the advisory sentencing guideline range in this case, except as otherwise expressly contemplated in this agreement.

8. This Office agrees that, although not binding on the probation office or the Court, that the Court reduce by two levels the sentencing guideline level applicable to the defendant's offense, pursuant to Section 3E1.1(a) of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. If at the time of sentencing the defendant's offense level is determined to be sixteen (16) or greater, the government will make a motion requesting an additional one level decrease pursuant to Section 3E1.1(b) of the Sentencing Guidelines, stating that the defendant has assisted authorities in the investigation or prosecution of her own misconduct by timely notifying authorities of her 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. The United States, however, will not be required to make this motion and these recommendations if the defendant: (a) fails or refuses to make a full, accurate and complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (b) is found to have misrepresented facts to the government prior to entering into this plea

agreement; or, (c) commits any misconduct after entering into this plea agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official.

9. This Office and the defendant agree that, although not binding on the probation office or the Court, they will jointly recommend that the Court make the following findings and conclusions as to the sentence to be imposed on the count to which the defendant shall plead:

COUNT ONE - CONSPIRACY TO COMMIT SECURITIES FRAUD

- a. **Applicable Guideline Offense and Base Offense Level:** Pursuant to Section 2B1.1 of the Sentencing Guidelines, the offense guideline applicable to the defendant's offense is Section 2B1.1(a)(1), which provides for a base offense level of six (6) because the defendant will plead guilty to conspiracy to commit securities fraud, which carries a maximum term of imprisonment of five (5) years.
- b. **Specific Offense Characteristics:** The parties agree and stipulate that the following offense characteristics apply under Section 2B1.1(b):
 - (i) **Loss** - the amount of loss suffered by investors is more than \$400 million;
 - (ii) **Victims** - the offense involved over 250 victims; and
 - (iii) **Sophisticated Means** - the offense involved sophisticated means.

COUNT TWO - PERJURY

- c. Applicable Guideline Offense and Base Offense Level: the offense guideline applicable to the defendant's offense is Section 2J1.3, which provides for a base offense level of fourteen (14).

10. This Office and the defendant agree that, although not binding on the probation office or the Court, they will further jointly recommend that the defendant's sentence on Count One should run concurrent to the sentence on Count Two

11. This agreement excludes Title 26 offenses, crimes of violence, and any other proceeding which may be pending at the time this agreement is signed. This agreement is also limited to the United States Attorney's Office for the Southern District of Florida and, as such, does not and cannot bind other federal, state, regulatory, or local prosecuting authorities.

12. The defendant is aware that the sentence has not yet been determined by the Court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the defendant's attorney, this Office, or the probation office, is a prediction, not a promise, and is not binding on this Office, the probation office or the Court. The defendant understands further that any recommendation that this Office makes to the Court as to sentencing, whether pursuant to this agreement or otherwise, is not binding on the Court and the Court may disregard the recommendation in its entirety. The defendant understands and acknowledges, as previously acknowledged in paragraph two (2) above, that the defendant may not withdraw her plea based upon the Court's decision not to accept a sentencing recommendation made by the defendant, this Office, or a recommendation made jointly by both the defendant and this Office.

13. In the event the defendant withdraws from this agreement prior to or after pleading guilty to the charges identified in paragraph one (1) above or otherwise fails to fully comply with any of the terms of this plea agreement, this Office will be released from its obligations under this agreement, and the defendant agrees and understands that: (a) she thereby waives any protection afforded by the proffer letter agreement between the parties, Section 1B1.8 of the Sentencing Guidelines, Rule 11(f) of the Federal Rules of Criminal Procedure, and Rule 410 of the Federal Rules of Evidence, and that any statements made by her as part of plea discussions, any debriefings or interviews, or in this agreement, whether made prior to or after the execution of this agreement, will be admissible against her without any limitation in any civil or criminal proceeding brought by the government; (b) the defendant's waiver of any defense based on the statute of limitations or any other defense based on the passage of time in filing an indictment or information, referred to herein, shall remain in full force and effect; and (c) the defendant stipulates to the admissibility and authenticity, in any case brought by the United States in any way related to the facts referred to in this agreement, of any documents provided by the defendant or her representatives to any state or federal agency and/or this Office.

14. The defendant hereby knowingly and voluntarily waives any defense based on the statute of limitations or any other defense based on the passage of time in filing an indictment or information against the defendant with respect to any criminal offenses in connection with the defendant's criminal conduct under the Information.

15. This Office represents that the undersigned prosecutors are unaware of any information establishing the factual innocence of the defendant in the offense referred to in paragraph one (1) of this agreement. This Office understands it has a continuing duty to provide such information

establishing factual innocence of the defendant. The defendant understands that if this case proceeded to trial, this Office would be required to provide impeachment information relating to any informants or other witnesses. In addition, if the defendant raised an affirmative defense, this Office would be required to provide information in its possession that supports such a defense. Further, if this case proceeded to trial, this Office would be required to provide other information and materials in accordance with Fed. R. Crim. P. 16 and the Southern District of Florida's Standing Discovery Order. In return for the Government's promises set forth in this agreement, the defendant waives the right to receive in discovery any such information and materials other than information and materials establishing the factual innocence of the defendant, and agrees not to attempt to withdraw the guilty plea or to file a collateral attack based on the existence of such information and materials other than information and materials establishing the factual innocence of the defendant.

16. The defendant is aware that Title 18, United States Code, Section 3742 affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by this Office in this plea agreement, the defendant hereby waives all rights conferred by Section 3742 to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, or to collaterally attack the conviction pursuant to Title 28, United States Code, Sections 2255, 2254, 2241 or any other applicable provision, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure from the guideline range that the Court establishes at sentencing. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in Title 18, United States Code, Section 3742(b). However, if this Office appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above

waiver of appellate/collateral attack rights. By signing this agreement, the defendant acknowledges that she has discussed the appeal/collateral attack waiver set forth in this agreement with her attorney. The defendant further agrees, together with this Office, to request that the district court enter a specific finding that the defendant's waiver of her right to appeal or to collaterally attack the conviction or sentence to be imposed in this case was knowing and voluntary.

17. This Office agrees that it will not seek additional upward specific offense characteristics, enhancements, or upward departures to or from the defendant's offense level beyond those, if any, specifically referred to in this agreement, except that this Office shall have the right in its discretion to seek additional upward specific offense characteristics, enhancements, or upward departures to or from the defendant's offense level beyond those, if any, specifically referred to in this agreement where any such additional upward specific offense characteristics, enhancements, or upward departures to or from the defendant's offense level would be based on conduct occurring after the defendant enters into this agreement. The defendant agrees that she will be sentenced under the Sentencing Guidelines and will not seek additional downward specific offense characteristics, reductions, variances, or downward departures to or from the defendant's offense level beyond those, if any, specifically referred to in this agreement. However, in the event the probation office recommends any specific offense characteristics, enhancements, reductions, variances, or departures to or from the defendant's offense level other than those, if any, specifically referred to in this agreement, either party shall have the right but not the obligation to oppose any such recommendation.

18. The defendant agrees that she shall cooperate fully with this Office by:

a. providing truthful and complete information and testimony, and producing documents, records and other evidence, when called upon by this Office, whether in interviews, before a grand jury, or at any trial or other court proceeding;

b. appearing at such grand jury proceedings, hearings, trials, and other judicial proceedings, and at meetings, as may be required by this Office;

c. if requested by this Office, working in an undercover role to contact and negotiate with others suspected and believed to be involved in criminal misconduct, under the supervision of, and in compliance with, law enforcement officers and agents; and

d. in providing information and testimony, she will not seek to protect any person or entity through false information or omission, and will not falsely implicate any person or entity.

19. The defendant also understands and agrees that she will not commit any further crimes. The defendant further understands that she may be prosecuted for, without limitation, any materially false statement made at any time during her cooperation with the United States, including under the federal perjury, obstruction of justice, and false statements statutes.

20. In addition, should the defendant falsely implicate or incriminate any person, or should the defendant fail to voluntarily and reasonably disclose all information and provide full and complete cooperation, which determinations are within the sole discretion of the United States, this Agreement is voidable at the option of the United States, and the following conditions shall then also apply:

a. The defendant may be prosecuted for perjury or false statements, if any, committed while testifying pursuant to this Agreement or for obstruction of justice should she

commit these offenses during the time in which she is cooperating with law enforcement pursuant to this Agreement; and

b. The United States may use against the defendant her own admissions and statements and the information, books, papers, documents and objects that she herself has furnished in the course of her cooperation with the United States.

21. This Office reserves the right to evaluate the nature and extent of the defendant's cooperation and to make the defendant's cooperation, or lack thereof, known to the court at the time of sentencing. If, in the sole and unreviewable judgment of this Office, the defendant's cooperation is of such quality and significance to the investigation or prosecution of other criminal matters as to warrant the Court's downward departure from the sentence required by the Sentencing Guidelines, this Office may at or before sentencing make a motion pursuant to Title 18, United States Code, Section 3553(e), Section 5K1.1 of the Sentencing Guidelines, or Rule 35 of the Federal Rules of Criminal Procedure subsequent to sentencing reflecting that the defendant has provided substantial assistance to the investigation or prosecution of other criminal matters, the extent of any assistance provided, and a recommendation for sentence reduction. The defendant acknowledges and agrees, however, that nothing in this agreement may be construed to require this Office to file such a motion and that this Office's assessment of the nature, value, truthfulness, completeness, and accuracy of the defendant's cooperation shall be binding on the defendant.

22. The defendant understands and acknowledges that the Court is under no obligation to grant a government motion pursuant to Title 18, United States Code, Section 3553(e), 5K1.1 of the Sentencing Guidelines or Rule 35 of the Federal Rules of Criminal Procedure, as referred to in this agreement, should the government exercise its discretion to file such a motion.

23. This is the entire agreement and understanding between this Office and the defendant.

There are no other agreements, promises, representations, or understandings.

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Date: 5/30/07

By: *Andrew K. Levi*
ANDREW K. LEVI
ASSISTANT UNITED STATES ATTORNEY

Date: 5/30/07

By: *RDO by Andrew K. Levi*
RYAN DWIGHT O'QUINN
SPECIAL ASSISTANT UNITED STATES ATTORNEY

Date: 5/29/07

By: *Michael B. Cohen*
MICHAEL B. COHEN
ATTORNEY FOR DEFENDANT

Date: 5/29/07

By: *Raquel Kohler*
RAQUEL KOHLER
DEFENDANT