



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

May 31, 2011

James K. Filan
Filan LLC
315 Post Road West
Westport, Connecticut 06880

Re: United States v. Eric S. Lipkin, S3 10 Cr. 228 (LTS)

Dear Mr. Filan:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from Eric S. Lipkin (the "Defendant") to a criminal superseding information (the "Information") charging him with the following violations of federal law, in connection with his employment at Bernard L. Madoff and Bernard L. Madoff Investment Securities ("BLMIS") between in or about 1996 and on or about December 11, 2008.

Count One charges the Defendant with conspiracy to 1) falsify books and records of a broker-dealer, 2) to falsify books and records of an investment adviser, and 3) to falsify statements to facilitate a theft concerning ERISA, in violation of Title 18, United States Code, Section 371. Count One carries a maximum sentence of five years' imprisonment, a maximum fine under Title 18, United States Code, Section 3571(d) of the greatest of \$250,000 or twice the gross pecuniary gain to any person derived from the offense, or twice the gross pecuniary loss to a person other than the Defendant, a mandatory \$100 special assessment, a maximum term of three years' supervised release, and criminal forfeiture.

Count Two charges the Defendant with conspiracy to commit bank fraud, in violation of Title 18, United States Code, Section 371. Count Two carries a maximum sentence of five years' imprisonment, a maximum fine under Title 18, United States Code, Section 3571(d) of the greatest of \$250,000 or twice the gross pecuniary gain to any person derived from the offense, or twice the gross pecuniary loss to a person other than the Defendant, a mandatory \$100 special assessment, a maximum term of three years' supervised release, and criminal forfeiture.

Count Three charges the Defendant with falsifying books and records of a broker-dealer, in violation of Title 15, United States Code, Sections 78q(a) and 78ff; Title 17, Code of Federal Regulations, Section 240.17a-3; and Title 18, United States Code, Section 2. Count Three carries a maximum sentence of twenty years' imprisonment, a maximum fine under Title 18, United States Code, Section 3571(d) of the greatest of \$5 million or twice the gross pecuniary gain to any person

2010.11.18

Gov't Exhibit # 1
6/6/11 10:59 AM

James K. Filan, Esq.
May 31, 2011
Page 2

derived from the offense, or twice the gross pecuniary loss to a person other than the Defendant, a mandatory \$100 special assessment, a maximum term of three years' supervised release, and criminal forfeiture.

Count Four charges the Defendant with falsifying books and records of an investment adviser, in violation of Title 15, United States Code, Sections 80b-4 and 80b-17; Title 17, Code of Federal Regulations, Section 275.204-2; and Title 18, United States Code, Section 2. Count Four carries a maximum sentence of five years' imprisonment, a maximum fine under Title 18, United States Code, Section 3571(d) of the greatest of \$250,000 or twice the gross pecuniary gain to any person derived from the offense, or twice the gross pecuniary loss to a person other than the Defendant, a mandatory \$100 special assessment, and a maximum term of three years' supervised release.

Count Five charges the Defendant with making false statements to facilitate a theft concerning ERISA, in violation of Title 18, United States Code, Section 1027, and Title 18, United States Code, Section 2. Count Five carries a maximum sentence of five years' imprisonment, a maximum fine under Title 18, United States Code, Section 3571(d) of the greatest of \$250,000 or twice the gross pecuniary gain to any person derived from the offense, or twice the gross pecuniary loss to a person other than the Defendant, a mandatory \$100 special assessment, and a maximum term of three years' supervised release.

Count Six charges the defendant with committing bank fraud, in violation of Title 18, United States Code, Section 1344, and Title 18, United States Code, Section 2. Count Six carries a maximum sentence of 30 years' imprisonment, a maximum fine, pursuant to Title 18, United States Code, Section 3571(d), of the greatest of \$1,000,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense, a \$100 special assessment, a maximum term of five years' supervised release, and criminal forfeiture.

The total maximum sentence of incarceration on Counts One through Six is 70 years' imprisonment.

It is understood that prior to the date of sentencing the Defendant shall file accurate amended tax returns for the years 2006, 2007, 2008, and 2009, and will pay, or will enter into an agreement to pay, past taxes due and owing by him to the Internal Revenue Service, including applicable penalties, if any, on such terms and conditions as will be agreed upon between him and the Internal Revenue Service ("the IRS").

James K. Filan, Esq.
May 31, 2011
Page 3

It is further understood that the Defendant shall make restitution in an amount to be specified by the Court in accordance with 18 U.S.C. §§ 3663, 3663A, and 3664. This amount shall be paid according to a plan established by the Court.

In addition, criminal forfeiture of all proceeds of the offenses charged in Counts One, Two, Three and Six of the Information is mandatory. As to each of Counts One and Three, forfeiture of up to approximately \$143.2 billion is alleged pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461. The amount of money the defendant will be ordered to forfeit as to Count One and Count Three will be determined by the Court prior to sentencing, pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure. As to each of Counts Two and Six, forfeiture of approximately \$700,000, to include the Defendant's interest in certain specific property, is alleged pursuant to 18 U.S.C. § 982. The defendant admits the forfeiture allegation with respect to Counts Two and Six and agrees to the entry of a Money Judgment in the amount of \$700,000 as to each such count (for a total Money Judgment of \$1,400,000) and to forfeit all of his right, title and interest in the following specific property: all that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments and easements, located at 314 Steilen Avenue, Ridgewood, New Jersey, 07450; and all funds, securities and other property held in any and all accounts at Fidelity Investments in the name or for the benefit of Eric S. Lipkin, Erika Lipkin, and/or any of their minor children, and all property traceable thereto (collectively the "Specific Property"), with the proceeds from the sale of the Specific Property to be applied to the Money Judgment, in partial satisfaction thereof. The Defendant agrees that he will not file a claim or a petition for remission or mitigation in any forfeiture proceeding involving the Specific Property and will not cause or assist anyone else in doing so. The Defendant further agrees to take all necessary steps to pass clear title to the Specific Property to the United States, including, but not limited to, the execution of all necessary documentation. It is further understood that any forfeiture of the Defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon him/her in addition to forfeiture.

It is understood that the Defendant (a) shall truthfully and completely disclose all information with respect to the activities of himself and others concerning all matters about which this Office inquires of him, which information can be used for any purpose; (b) shall cooperate fully with this Office, the Federal Bureau of Investigation, the Department of Labor, the IRS and any other law enforcement agency designated by this Office; (c) shall attend all meetings at which this Office requests his presence; (d) shall provide to this Office, upon request, any document, record, or other tangible evidence relating to matters about which this Office or any designated law enforcement agency inquires of him; (e) shall truthfully testify before the grand jury and at any trial and other court proceeding with respect to any matters about which this Office may request his testimony; (f) shall bring to this Office's attention all crimes which he has committed, and all administrative, civil, or criminal proceedings, investigations, or prosecutions in which he has been or is a subject, target, party, or witness; (g) shall commit no further crimes whatsoever; and (h) shall provide notice to this

James K. Filan, Esq.
May 31, 2011
Page 4

Office prior to discussing the conduct covered by Counts One through Six of the Information with anyone other than this Office, law enforcement agencies designated by the Office, or the Defendant's attorney.

Moreover, any assistance the Defendant may provide to federal criminal investigators shall be pursuant to the specific instructions and control of this Office and designated investigators.

It is understood that this Office cannot, and does not, agree not to prosecute the Defendant for criminal tax violations. However, if the Defendant fully complies with the understandings specified in this Agreement, no testimony or other information given by him (or any other information directly or indirectly derived therefrom) will be used against him in any criminal tax prosecution. Moreover, if the Defendant fully complies with the understandings specified in this Agreement, he will not be further prosecuted criminally by this Office for any crimes, except for criminal tax violations, related to his participation in the crimes set forth in the Information, namely, conspiracy, as charged in Counts One and Two, falsifying books and records of a broker-dealer, as charged in Count Three, falsifying books and records of an investment adviser, as charged in Count Four, making false statements to facilitate a theft concerning ERISA, as charged in Count Five, and bank fraud, as charged in Count Six, to the extent that he has disclosed such participation to this Office as of the date of this Agreement. This Agreement does not provide any protection against prosecution for any crimes except as set forth above.

It is understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office. This Office will, however, bring the cooperation of the Defendant to the attention of other prosecuting offices, if requested by him.

It is understood that the sentence to be imposed upon the Defendant is within the sole discretion of the Court. This Office cannot, and does not, make any promise or representation as to what sentence the Defendant will receive, and will not recommend any specific sentence to the Court. However, this Office will inform the Probation Department and the Court of (a) this Agreement; (b) the nature and extent of the Defendant's activities with respect to this case and all other activities of the Defendant which this Office deems relevant to sentencing; and (c) the nature and extent of the Defendant's cooperation with this Office. In so doing, this Office may use any information it deems relevant, including information provided by the Defendant both prior to and subsequent to the signing of this Agreement. In addition, if this Office determines that the Defendant has provided substantial assistance in an investigation or prosecution, and if he has fully complied with the understandings specified in this Agreement, this Office will file a motion, pursuant to Section 5K1.1 of the Sentencing Guidelines, requesting the Court to sentence the Defendant in light of the factors set forth in Section 5K1.1(a)(1)-(5). It is understood that, even if such a motion is filed, the sentence to be imposed on the Defendant remains within the sole discretion of the Court. Moreover, nothing in this Agreement limits this Office's right to present any facts and make any

James K. Filan, Esq.
May 31, 2011
Page 5

arguments relevant to sentencing to the Probation Department and the Court, or to take any position on post-sentencing motions. The Defendant hereby consents to such adjournments of his sentence as may be requested by this Office.

It is understood that, should this Office determine either that the Defendant has not provided substantial assistance in an investigation or prosecution, or that the Defendant has violated any provision of this Agreement, such a determination will release this Office from any obligation to file a motion pursuant to Section 5K1.1 of the Sentencing Guidelines, but will not entitle the Defendant to withdraw his guilty plea once it has been entered.

It is understood that, should this Office determine, subsequent to the filing of a motion pursuant to Section 5K1.1 of the Sentencing Guidelines and/or 18 U.S.C. §3553(e), that the Defendant has violated any provision of this Agreement, this Office shall have the right to withdraw such motion.

It is understood that, should the Defendant commit any further crimes or should it be determined that he has given false, incomplete, or misleading testimony or information, or should he otherwise violate any provision of this Agreement, the Defendant shall thereafter be subject to prosecution for any federal criminal violation of which this Office has knowledge, including perjury and obstruction of justice. Any such prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against the Defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

It is understood that in the event that it is determined that the Defendant has committed any further crimes, given false, incomplete, or misleading testimony or information, or otherwise violated any provision of this Agreement, (a) all statements made by the Defendant to this Office or other designated law enforcement agents, and any testimony given by the Defendant before a grand jury or other tribunal, whether prior to or subsequent to the signing of this Agreement, and any leads from such statements or testimony shall be admissible in evidence in any criminal proceeding brought against the Defendant; and (b) the Defendant shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, or any other federal rule that such statements or any leads therefrom should be suppressed. It is the intent of this Agreement to waive all rights in the foregoing respects.

The Defendant hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, the Defendant waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on

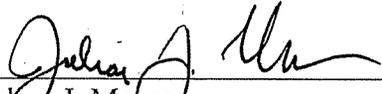
James K. Filan, Esq.
May 31, 2011
Page 6

the ground that the Government has failed to produce any discovery material, *Jencks* Act material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the Defendant, and impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

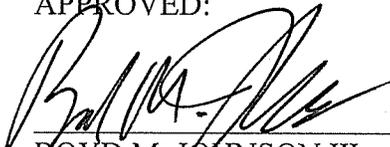
This Agreement supersedes any prior understandings, promises, or conditions between this Office and the Defendant. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

Very truly yours,

PREET BHARARA
United States Attorney

By: 
Julian J. Moore
Lisa A. Baroni
Assistant United States Attorneys
(212) 637-2473 / (212) 637-2405

APPROVED:

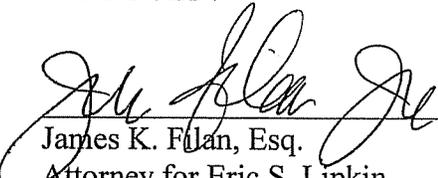

BOYD M. JOHNSON III
Deputy United States Attorney

AGREED AND CONSENTED TO:


Eric S. Lipkin

06/06/11
DATE

APPROVED:


James K. Filan, Esq.
Attorney for Eric S. Lipkin

4/4/2011
DATE