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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

09 CR 700 (AKH)

DAVID FRIEHLING,

Defendant.

-----x

New York, N.Y.  
November 3, 2009  
10:30 a.m.

Before:

HON. ALVIN K. HELLERSTEIN,

District Judge

APPEARANCES

PREET BHARARA

United States Attorney for the  
Southern District of New York

LISA BARONI

MARC LITT

Assistant United States Attorneys

ANDREW M. LANKLER

Attorney for Defendant Friebling

1 (Case called)

2 MS. BARONI: Good morning, your Honor.

3 Lisa Baroni, for the government.

4 With me at counsel table is a Marc Litt from the U.S.  
5 Attorney's Office, Special Agent Denice Lamond from the  
6 Internal Revenue Service, Special Agent Patrick Duffy from the  
7 FBI and a Pretrial Services officer just arrived, Margaret  
8 Smusz.

9 THE COURT: Good morning, all.

10 MR. LANKLER: Good morning, your Honor.

11 I am Andrew Lankler. I represent David Friehling.

12 THE COURT: Good to see, Mr. Lankler.

13 Good morning, Mr. Friehling.

14 I understand, Mr. Friehling, that you want to change  
15 your plea of not guilty to the indictment to a plea of guilty  
16 to a several count information; is that correct?

17 THE DEFENDANT: Yes.

18 THE COURT: We have to go through several steps.

19 First, Ms. Jones will arraign you and you will plead to the  
20 information. Then we'll put you under oath and then I have to  
21 ask you a number of questions under oath so you have to tell me  
22 the truth, the whole truth and nothing but the truth. If you  
23 fail to do that you expose yourself to additional penalties.

24 I have to make sure that what you are doing is  
25 voluntary. If you know what you are doing and no one's

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1 promised you anything, no one's threatened you in any way, what  
2 you are doing is because you want to do it and this is after  
3 you received your advice from Mr. Lankler and you are satisfied  
4 that you tell me you ar satisfied with your services. Then  
5 give through the constitutional rights that you have in every  
6 matter a defendant has for a speedy and public trial. I need  
7 to make sure even though I'm sure that Mr. Lankler's covered  
8 that thoroughly that you understand your rights that you are  
9 giving up. And lastly you will tell me what you did to make  
10 you guilty because I have to find that there is an independent  
11 basis in fact to sustain a plea and I have no interests in  
12 having a man who is innocent plead guilty to a crime.

13 So we go through all of that and you have to tell me  
14 the truth, the whole truth and nothing but the truth. Do you  
15 understand?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: Do you wish me to proceed in this fashion?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: First we'll arraign you to the  
20 information.

21 COURTROOM DEPUTY: Please rise. You are David  
22 Friehling.

23 THE DEFENDANT: Yes, I am.

24 COURTROOM DEPUTY: Have you signed this waiver ever  
25 indictment?

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1 THE DEFENDANT: Yes, I have.

2 COURTROOM DEPUTY: Before you signed it did you  
3 discuss it with your attorney?

4 THE DEFENDANT: Yes, I did.

5 COURTROOM DEPUTY: Did he explain it to you?

6 THE DEFENDANT: Yes, he did.

7 COURTROOM DEPUTY: Do you understand you are under no  
8 obligation to waive indictment?

9 THE DEFENDANT: Yes, I do.

10 COURTROOM DEPUTY: Do you understand that if you do  
11 not waive indictment if the government wants to prosecute you  
12 they will have to present this case to a grand jury which may  
13 or may not indict you?

14 THE DEFENDANT: Yes, I do.

15 COURTROOM DEPUTY: Do you realize that by signing this  
16 waiver of indictment you have given up your right to have this  
17 case presented to a grand jury?

18 THE DEFENDANT: Yes.

19 COURTROOM DEPUTY: Do you understand what a grand jury  
20 is?

21 THE DEFENDANT: Yes.

22 COURTROOM DEPUTY: Have you seen a copy of the  
23 information?

24 THE DEFENDANT: Yes.

25 COURTROOM DEPUTY: Would you like me to read it to

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1 you?

2 THE DEFENDANT: No.

3 COURTROOM DEPUTY: How do you plead?

4 THE DEFENDANT: Guilty.

5 THE COURT: All right. Before I can accept that plea  
6 we have to go through a number of different factors. We'll put  
7 that at rest for a few minutes and we'll examine you.

8 Now Ms. Jones is going to put you under oath.

9 (Defendant David Friehling sworn)

10 COURTROOM DEPUTY: Please, state your full name for the  
11 record.

12 THE DEFENDANT: David Gary Friehling.

13 THE COURT: How old are you, Mr. Friehling?

14 THE DEFENDANT: 49.

15 THE COURT: Where were you born?

16 THE DEFENDANT: Miami Beach Florida.

17 THE COURT: Where did you receive your education? How  
18 far did you go, through college?

19 THE DEFENDANT: Through graduate school.

20 THE COURT: What college did you go to?

21 THE DEFENDANT: Cornell University.

22 THE COURT: And which part of Cornell?

23 THE DEFENDANT: School of Industrial and Labor  
24 Relations.

25 THE COURT: When did you receive your degree?

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1 THE DEFENDANT: May of 1981.

2 THE COURT: Was it a degree of Bachelor of Arts or a  
3 Bachelor of Science?

4 THE DEFENDANT: Bachelor of Science in Industrial and  
5 Labor Relations.

6 THE COURT: Then you say you went on to graduate  
7 school?

8 THE DEFENDANT: Yes.

9 THE COURT: Where did, do you work?

10 THE DEFENDANT: Baruch College of New York City.

11 THE COURT: Received a Masters in Business  
12 Administration?

13 THE DEFENDANT: I never received my degree. I went  
14 for my MBA in accounting.

15 THE COURT: How many years did you go?

16 THE DEFENDANT: Approximately two and a half.

17 THE COURT: Then did you take the test for a CPA?

18 THE DEFENDANT: Yes, I took --

19 THE COURT: Pass the test?

20 THE DEFENDANT: Yes, I did.

21 THE COURT: When did you receive the certificate?

22 THE DEFENDANT: July of 1987.

23 THE COURT: That was a certificate to practice as a  
24 CPA?

25 THE DEFENDANT: Yes.

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1 THE COURT: In New York state?

2 THE DEFENDANT: Yes.

3 THE COURT: Tell me about a little bit about your  
4 personal life. Are you married?

5 THE DEFENDANT: Yes, I am.

6 THE COURT: How long?

7 THE DEFENDANT: 27 years this past August 29.

8 THE COURT: Any children?

9 THE DEFENDANT: Yes, three.

10 THE COURT: How many?

11 THE DEFENDANT: Three.

12 THE COURT: How old are they?

13 THE DEFENDANT: 24, 20 and 17.

14 THE COURT: What do they do?

15 THE DEFENDANT: My older son is a actor in California.

16 THE COURT: He is a what?

17 THE DEFENDANT: An actor.

18 THE COURT: Did he go to college?

19 THE DEFENDANT: Yes, he did. North University.

20 THE COURT: School of Theater Arts?

21 THE DEFENDANT: Yes.

22 THE COURT: And the 20 year old?

23 THE DEFENDANT: He is a junior at Duke University.

24 THE COURT: What is he studying?

25 THE DEFENDANT: Premed.

1 THE COURT: And the 17 year old?

2 THE DEFENDANT: She is a senior in high school.

3 THE COURT: Where does she go to high school?

4 THE DEFENDANT: Clarkstown North High School in New  
5 City, New York.

6 THE COURT: Does your wife work?

7 THE DEFENDANT: Yes, she does.

8 THE COURT: What does she do?

9 THE DEFENDANT: Account manager for the New York Blood  
10 Service.

11 THE COURT: I missed the company.

12 THE DEFENDANT: New York Blood Service.

13 THE COURT: What is that?

14 THE DEFENDANT: New York Blood Service.

15 THE COURT: Coming in to today, Mr. Friehling, have  
16 you had any medicine or alcohol or narcotics that could blur  
17 your thinking?

18 THE DEFENDANT: No.

19 THE COURT: Are you clear minded?

20 THE DEFENDANT: Yes.

21 THE COURT: Have you discussed the case thoroughly  
22 with Mr. Lankler?

23 THE DEFENDANT: Yes, I have.

24 THE COURT: And his staff?

25 THE DEFENDANT: Yes.

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1 THE COURT: Have you told them everything that you  
2 know about your case?

3 THE DEFENDANT: Yes.

4 THE COURT: Have you held any information away from  
5 him?

6 THE DEFENDANT: No.

7 THE COURT: Are you satisfied about the advise he is  
8 giving?

9 THE DEFENDANT: Yes.

10 THE COURT: Are you offering to plead guilty because  
11 you think that's the best think thing for you in this  
12 circumstances?

13 THE DEFENDANT: Yes.

14 THE COURT: Your own decision, your voluntary act?

15 THE DEFENDANT: Yes.

16 COURTROOM DEPUTY: Has anyone threatened you in any  
17 way to cause to make this decision?

18 THE DEFENDANT: No.

19 COURTROOM DEPUTY: Has anyone promised anything to  
20 make this decision?

21 THE DEFENDANT: No.

22 COURTROOM DEPUTY: You are doing it because you think  
23 that's what you want to do?

24 THE DEFENDANT: Yes.

25 COURTROOM DEPUTY: Let me discuss your constitutional

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1 rights. Do you understand that you have a right to a speedy  
2 and public trial?

3 THE DEFENDANT: Yes.

4 COURTROOM DEPUTY: That you are entitled to have a  
5 presumption of innocence?

6 THE DEFENDANT: Yes.

7 COURTROOM DEPUTY: As the case with every citizen of  
8 the United States?

9 THE DEFENDANT: Yes.

10 COURTROOM DEPUTY: That means that you can be found  
11 guilty of any crime unless the crime is charged and proved  
12 beyond a reasonable doubt to the satisfaction of a unanimous  
13 jury?

14 THE DEFENDANT: Yes.

15 COURTROOM DEPUTY: That your entitled to an attorney  
16 to guide you and represent you in every step of these criminal  
17 proceedings?

18 THE DEFENDANT: Yes.

19 COURTROOM DEPUTY: If you cannot afford a lawyer the  
20 government will provide a lawyer free of charge; you are aware  
21 of that?

22 THE DEFENDANT: Yes.

23 COURTROOM DEPUTY: And alone or through the lawyer you  
24 can confront every witness against you and cross examine that  
25 witness and require any witness having favorable information to

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1 come to the trial and testify whether that witness wishes to do  
2 so or not?

3 THE DEFENDANT: Yes.

4 COURTROOM DEPUTY: Do you understand also that you  
5 would have the right to testify if you wished to testify but if  
6 you didn't wish to you wouldn't have to and no inference could  
7 be drawn against you?

8 THE DEFENDANT: Yes.

9 COURTROOM DEPUTY: But by pleading guilty you waive  
10 these rights and you give me the authority to sentence you the  
11 same way I could if the jury brought in a verdict of guilty  
12 against you?

13 THE DEFENDANT: Yes.

14 COURTROOM DEPUTY: You are pleading guilty to the  
15 knowledge of all of those rights that you are waiving?

16 THE DEFENDANT: Yes, I am.

17 COURTROOM DEPUTY: Now, Ms. Baroni, I have a letter  
18 agreement that is before me of six pages.

19 MS. BARONI: Yes, your Honor. I have the executed  
20 for, you Honor.

21 THE COURT: May I see the executed copy. We'll mark  
22 all these pages with the executed copy as Court Exhibit 1.

23 (Pause)

24 THE COURT: I am looking at the 6th page of the  
25 original; is that your signature on this, Mr. Friehling?

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1 THE DEFENDANT: Yes, it is.

2 COURTROOM DEPUTY: Mr. Lankler, is that yours?

3 MR. LANKLER: Yes, it is, your Honor.

4 COURTROOM DEPUTY: Both signed November 2.

5 MR. LANKLER: We signed them last night, judge. Last  
6 night was the 2nd.

7 THE COURT: Today is the 3rd. Ms. Baroni, I am  
8 returning this to you, please, and I'll work with the copy.

9 Ms. Baroni, will you summarize the several counts of  
10 the information to which Mr. Friehling will be pleading.

11 MS. BARONI: Yes, your Honor.

12 Count One of the superseding information charges the  
13 defendant with securities fraud.

14 Count Two of the superseding information charges him  
15 with investment advisor fraud.

16 Counts Three through Six charge making false filings  
17 with the Securities and Exchange Commission.

18 Counts Seven, Eight and Nine charge the defendant with  
19 obstructing or impeding the administration of the Internal  
20 Revenue laws.

21 THE COURT: Would you tell Mr. Friehling and me what  
22 it is that the government has to prove if the case went to  
23 trial on each of those counts.

24 MS. BARONI: The elements of the offenses, your Honor?

25 THE COURT: Yes.

1 MS. BARONI: Sure. With respect to Count One,  
2 securities fraud, in order to prove this crime the government  
3 would have to establish the following elements beyond a  
4 reasonable doubt:

5 First, that in connection with the purchase or sale of  
6 a security the defendant did any one or more of the following:

7 Employed a device scheme or artifice to defraud or  
8 made an untrue statement of material fact or omitted to state a  
9 material fact which made what was said under the circumstances  
10 misleading, or engaged in an act, practice or course of  
11 business that operated or would operate as a fraud or deceit  
12 upon the purchaser or a seller.

13 Second, that the defendant acted knowingly, willfully  
14 or with the intent to defraud.

15 And third, that the defendant knowingly used or caused  
16 to be used any means or instruments of transportation or  
17 communication in interstate commerce or the use of the mails in  
18 furtherance of the fraudulent conduct.

19 And the government can also prove this through aiding  
20 and abetting liability, your Honor.

21 With respect to Count Two --

22 THE COURT: In other words, the government can prove  
23 Mr. Friebling's guilt either as a principal or as a person who  
24 aided and abetted a principal.

25 MS. BARONI: That right, judge.

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1           With respect to Count Two, investment advisor fraud,  
2 in order to prove this crime the government must show beyond a  
3 reasonable doubt the following four essential elements. First,  
4 that the defendant -- this also could be proven through aiding  
5 and abetting liability -- that there was an investment advisor,  
6 that either the defendant was investment advisor or aided and  
7 abetted an investment advisor.

8           Second, that the defendant either employed a device,  
9 scheme or artifice to defraud clients or prospective clients,  
10 that the defendant engaged in a transaction, practice or course  
11 of business which operated as a fraud and deceit upon those  
12 clients and prospective clients or that the defendant engaged  
13 in an act, practice or course of business that was fraudulent,  
14 deceptive and manipulative.

15           Third, that the defendant devised or participated in  
16 such alleged device, scheme or artifice to defraud or engaged  
17 in such alleged transaction, practice or course of business  
18 knowingly, willfully and with the intent to defraud.

19           Fourth that the defendant employed such alleged device,  
20 scheme or artifice to defraud or engaged in such alleged  
21 transaction, practice or course of business by use of the mails  
22 or other instrumentality of interstate commerce.

23           With respect to Counts Three through Six, making false  
24 filings with the Securities and Exchange Commission, the  
25 government to prove this offense would have to prove beyond a

1 reasonable doubt the following four elements:

2 That the defendant was required to file an  
3 application, report or document with the SEC under the  
4 Securities Exchange Act of 1934 and the rules and regulations  
5 there under.

6 Second, that the application report or document filed  
7 with the SEC contained false or misleading statements.

8 Third, that the false or misleading statements were  
9 material.

10 Fourth that the defendant acted knowingly and  
11 willfully.

12 THE COURT: Again, this can be proved either as a  
13 principal or by aiding and abetting?

14 MS. BARONI: Yes, your Honor.

15 THE COURT: And finally with respect to Count Seven  
16 through Nine which charges the defendant with obstructing or  
17 impeding the administration of the Internal Revenue laws, to  
18 prove this offense the government would have to show beyond a  
19 reasonable doubt first, that the defendant acted or endeavored  
20 corruptly, acted with corrupt intent.

21 And second, that the defendant acted to obstruct or  
22 impede the administration of the Internal Revenue laws.

23 THE COURT: Now, with regard to aiding and abetting --  
24 don't sit down yet, Ms. Baroni -- with regard to aiding and  
25 abet what is it that the government has to prove in each

1 instance? I can help you. I think there has to have been  
2 substantial help given by the defendant with knowledge that he  
3 was giving the help to assist another in committing a  
4 particular crime and investing enough interest in that as to  
5 make it his own.

6 MS. BARONI: Right, your Honor. Under the statute we  
7 would have to prove beyond a reasonable doubt that he aided,  
8 abetted, counseled, commanded, induced or procured the  
9 commission of a crime.

10 THE COURT: It's not just helping. It's helping with  
11 the intent that he is helping another commit a particular crime  
12 and in such a way is not being indifferent to it but making his  
13 own in interest in his part to assist.

14 MS. BARONI: That's right.

15 THE COURT: That in each of the Counts One, Two, Three  
16 through Six, Seven through Nine charges Mr. Friehling as a  
17 principal; is that right?

18 MS. BARONI: That's right, judge.

19 THE COURT: Okay. And if you prove aiding and  
20 abetting -- you are still not finished Ms. Baroni. You'll sit  
21 tonight. And if you prove aiding and abetting it's the same  
22 for purposes of sentencing as if you were to prove the  
23 principal itself.

24 MS. BARONI: That's right, your Honor. The statutory  
25 maximums are the same.

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1 THE COURT: Now, let's discuss the statutory maximum  
2 with regard to each of these counts.

3 MS. BARONI: Yes, judge. With respect to Count One,  
4 the securities fraud count, the maximum penalties are 20 years  
5 imprisonment, three years supervised release, a fine of the  
6 greatest of five million dollars or twice the gross gain or  
7 loss from the offense, a mandatory \$100 special assessment and  
8 restitution. With respect to --

9 THE COURT: And with regard to supervised release in  
10 that count and others, there are conditions that come with it.  
11 A violation of the condition leads to a hearing and if  
12 appropriate the judge can sentence among other things the  
13 defendant to jail even though he has finished his jail term.

14 MS. BARONI: That's right, your Honor.

15 THE COURT: All right.

16 MS. BARONI: With respect to Count Two, investment  
17 advisor fraud, the maximum penalties are five years  
18 imprisonment, three years supervised release, a fine of the  
19 greatest of \$10,000 or twice the gross gain or loss from the  
20 offense, a mandatory \$100 special assessment and restitution.

21 With respect to Counts Three through Six, making a  
22 false filings with the Securities and Exchange Commission, each  
23 count carries a maximum penalty of 20 years imprisonment, three  
24 years supervised release, a fine of the greatest of \$5,000,000  
25 or twice the gross gain or loss from the offense, a mandatory

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1 \$100 special assessment on each count and restitution.

2 Finally, with respect to Counts Seven, Eight and Nine,  
3 the obstructing or impeding the administration of the Internal  
4 Revenue laws, each count, the maximum penalties for each count  
5 are three years imprisonment, one year supervised release, a  
6 fine of the greatest of \$250,000 or twice the gross gain or  
7 loss, a mandatory \$100 special assessment on each count and  
8 restitution.

9 And also with respect to Count One, your Honor, that  
10 the securities fraud count also requires a forfeiture which is  
11 alleged.

12 THE COURT: Is the forfeiture only relevant to the  
13 securities fraud count?

14 MS. BARONI: Yes, your Honor.

15 THE COURT: You haven't mentioned forfeiture before.  
16 Does the government have funds that have been forfeited or the  
17 claims to be forfeited?

18 MS. BARONI: Yes, your Honor. We would ask that your  
19 Honor allocate the defendant on the forfeiture count just so  
20 that he admits it. And the government anticipates providing to  
21 the Court in short order after today's appearance preliminary  
22 order of forfeiture and a stipulation and order of  
23 interlocutory sale of the defendant's properties.

24 THE COURT: And what are those properties?

25 MS. BARONI: Two pieces of real estate, your Honor.

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1 THE COURT: Do you have the value estimates?

2 MS. BARONI: No, the government doesn't have the value  
3 at this time, your Honor.

4 THE COURT: All right. With regard to this punishment  
5 that you've read out the Court has discretion in many instances  
6 and under various guidelines to sentence on a concurrent basis  
7 or consecutive basis, meaning, that the sentences under each  
8 count can be given at the same time to be served or they can be  
9 added.

10 MS. BARONI: That's right. And the statutory maximum  
11 total of incarceration that could be imposed on the defendant  
12 if they all were consecutive would be 114 years imprisonment  
13 but your Honor has the discretion as you said.

14 THE COURT: Under various considerations and  
15 guidelines.

16 Ms. Baroni. Thank you very much. You can be seated.

17 Mr. Friebling, there's a number of points I wanted to  
18 make you are aware of. I've not studied these and I don't know  
19 to what extent I would find considerations for sentencing in  
20 other ways but I can sentence up to the statutory maximum. If  
21 you become disappointed in what I do when I sentence or in any  
22 other respect, once I accept your plea of guilty you are bound  
23 by it. You will not be able to withdraw it just because you  
24 are disappointed in what I do. Do you understand?

25 THE DEFENDANT: Yes.

1 THE COURT: I don't know what I'm going to do at  
2 sentence and that will be an exercise in itself. So if I don't  
3 know what it is I am going to do, no one can tell you what I am  
4 going to do. And any estimates of what I can do is false  
5 because I have not thought about it at all. Are you aware that  
6 I have this ability and power to sentence you under the law as  
7 I think appropriate at the time of sentencing.

8 THE DEFENDANT: Yes, I do.

9 THE COURT: To the extent you are disappointed in what  
10 I do will not be a basis for withdrawing from your guilty plea  
11 once I accept it. Are you aware of that?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. Is there another agreement,  
14 Ms. Baroni, that I should be considering today as well?

15 MS. BARONI: Your Honor, the only agreement is the  
16 agreement that we handed up to your Honor dated November 3rd  
17 the plea agreement.

18 THE COURT: That's the one that was signed?

19 MS. BARONI: Yes.

20 THE COURT: All right. Have you discussed it with  
21 Mr. Lankler, this plea agreement?

22 THE DEFENDANT: Yes, I have.

23 THE COURT: Have you gone over it very thoroughly?

24 THE DEFENDANT: Yes, I have.

25 THE COURT: Do you understand that you have an

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1 obligation expressed on page three of this letter truthfully  
2 and completely to disclose all information with respect to your  
3 activities and the activities of others that you know are aware  
4 of concerning all matters about which the U.S. Attorney's  
5 Office and a live investigating officer's inquire of you and  
6 that this information can be used for any purpose; you are  
7 aware of that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You promise to cooperate fully with the  
10 Office of the US Attorneys, the Federal Bureau of  
11 Investigation, the Internal Revenue Service and any other law  
12 enforcement agency designated by the U.S. Attorney's Office of  
13 the Southern District of New York?

14 THE DEFENDANT: Yes, I have.

15 THE COURT: You promise to attend all meetings at  
16 which the U.S. Attorney's Office requests your presence?

17 THE DEFENDANT: Yes.

18 THE COURT: To provide to the office upon request any  
19 document, record or other tangible evidence relating to matters  
20 about which the U.S. Attorney's Office or any other designated  
21 law enforcement agency require of you?

22 THE DEFENDANT: Yes.

23 THE COURT: You testified truthful before a grand jury  
24 and at any trial and any other court proceeding with respect to  
25 any matters about which the U.S. Attorney's Office may request

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1 further testimony?

2 THE DEFENDANT: Yes.

3 THE COURT: And to bring to the office of the U.S.  
4 Attorney all crimes that you have committed and all  
5 administrative civil or criminal proceedings investigations or  
6 prosecutions, prosecutions in which you have been a subject, a  
7 target, a party or a witness?

8 THE DEFENDANT: Yes.

9 THE COURT: You promised that you will commit no  
10 further crimes what ever, right?

11 THE DEFENDANT: Yes.

12 THE COURT: And that you will provide notice to the  
13 U.S. Attorney's Office prior to discussing the conduct covered  
14 by the information in each of its nine counts with anyone other  
15 than the U.S. Attorney's Office, law enforcement agencies  
16 designated by the U.S. Attorney's Office and your own attorney?

17 THE DEFENDANT: Yes.

18 THE COURT: The next paragraph at the bottom of page  
19 three going onto page four provides that if you fully complied  
20 with all of the obligations on your part to be performed under  
21 this agreement you will not be further prosecuted criminally by  
22 the Office of the U.S. Attorney of the Southern District of New  
23 York and with respect to the particular tax offenses in the  
24 information the Tax Division Department of Justice and  
25 Department of Justice for crimes that are specified in this

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1 letter?

2 THE DEFENDANT: Yes.

3 THE COURT: Do you understand the agreement does not  
4 bind any federal, state or local prosecuting authority other  
5 than the U.S. Attorney's Office for the Southern District of  
6 New York and to the extent mentioned, the tax division and the  
7 Department of Justice?

8 THE DEFENDANT: Yes.

9 THE COURT: In the middle of page four you expressed  
10 the understanding which we've just discussed that the sentence  
11 that will eventually be imposed is within the sole discretion  
12 of the judge of the court, either myself or some other judge;  
13 you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: And the U.S. Attorney's Office does not  
16 make any promise and can't any make any promise or  
17 representation as to what sentence the Court will give.

18 THE DEFENDANT: Yes.

19 THE COURT: And that it will not recommend a specific  
20 sentence to the Court.

21 THE DEFENDANT: Yes.

22 THE COURT: But it will inform the Court of your  
23 cooperation.

24 THE DEFENDANT: Yes.

25 THE COURT: And if all goes well and according to

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1 understanding write a letter to me under Section 5K1.1 of the  
2 sentencing guidelines.

3 THE DEFENDANT: Yes.

4 THE COURT: Is it your understanding that under such a  
5 letter you will want some special consideration from me or  
6 another judge with regard to your sentence?

7 THE DEFENDANT: Yes.

8 THE COURT: You are aware, however, that you could be  
9 disappointed. The government may feel that you are not  
10 cooperating sufficiently and refuse to write the letter?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: The letter will be written only if you  
15 comply in the government's opinion with all the conditions  
16 expressed in this document.

17 THE DEFENDANT: Yes.

18 THE COURT: Even if the government doesn't write its  
19 letter you've committed yourself to a plea of guilty. You  
20 cannot withdraw. You understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: On page 5 the letter provides a commitment  
23 on your part not to commit any further crimes, not to testify  
24 falsely, incompletely and or any misleading information and not  
25 to give information to the government that is false, incomplete

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1 or misleading. You are aware of that?

2 THE DEFENDANT: Yes, I am.

3 THE COURT: And that if you violate you will not be  
4 able to get a 5K1 letter.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: As I said before, when it comes to  
7 sentence I will be looking at the sentencing guidelines. I  
8 will be looking at considerations of a more general nature  
9 having to do with what is just punishment. And to the extent  
10 of your cooperation I will be looking at the extent of your  
11 cooperation and devising a just sentence for you; you  
12 understand that?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: And since I've not studied any of this, I  
15 don't know what I am going to do, how I will sentence you. As  
16 I said before, even if you are disappointed in what I do you  
17 will not be able to withdraw from your guilty plea.

18 THE DEFENDANT: Yes.

19 THE COURT: Ms. Baroni, tell us how -- you are back on  
20 your feet -- how you are going to prove all of these nine  
21 different offenses and the forfeiture.

22 MS. BARONI: Yes, your Honor.

23 If this case had gone to trial the government would  
24 prove through testimony and documentary evidence beyond a  
25 reasonable doubt all of the factors.

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1 THE COURT: All of the facts set forth in the  
2 superseding information.

3 MS. BARONI: Specifically, the government would prove  
4 with respect to the first six counts that beginning as early,  
5 at least as early as 1991 from 2008, that Mr. Friehling was a  
6 license certified public accountant, that he was a sole  
7 practitioner at Friehling and Horowitz, CPAs.

8 THE COURT: For that period of time?

9 MS. BARONI: Yes, your Honor.

10 THE COURT: 17 years, practiced alone?

11 MS. BARONI: Yes, your Honor.

12 THE COURT: No staff?

13 THE DEFENDANT: No.

14 MS. BARONI: No staff. His father-in-law had started  
15 the firm but he took it over when his father-in-law retired.

16 THE COURT: When did his father-in-law retired?

17 THE DEFENDANT: Formally retired in 1998.

18 THE COURT: So the first seven years you worked with  
19 him?

20 THE DEFENDANT: Yes.

21 THE COURT: Then alone?

22 THE DEFENDANT: Yes.

23 MS. BARONI: The government would further prove that  
24 Friehling and Horowitz was an accounting firm that was retained  
25 by Bernard L. Madoff Investment Securities to audit its

1 financial statements that were filed with the SEC.

2 THE COURT: When was he engaged? When was the firm  
3 engaged by Mr. Madoff?

4 MS. BARONI: From at least 1991 to the present,  
5 actually, even earlier when Mr. Horowitz was at the firm.

6 THE COURT: Throughout that 17 year period?

7 MS. BARONI: Yes, your Honor.

8 THE COURT: With yearly engagement letters,  
9 Ms. Baroni?

10 MS. BARONI: Yes, your Honor. I don't know about  
11 engagement letters but they were retained every year and paid a  
12 monthly retainer every month throughout those years. These  
13 financial statements were filed with the Securities and  
14 Exchange Commission and were also available to clients, your  
15 Honor. And during that time Mr. Friebling, the government  
16 would prove beyond a reasonable doubt, that Mr. Friebling did  
17 not conduct a meaningful audit of Bernard L. Madoff Investment  
18 Securities, that his audits were not performed in accordance  
19 with the required standards which are GAAP and GAAS.

20 THE COURT: GAAS is a shortening term for the  
21 Generally Accepted Auditing Standard and GAAP is a shortening  
22 for Generally Accepted Accounting Principals.

23 MS. BARONI: That's right, your Honor.

24 And that Mr. Friebling merely took the information  
25 given to him by Bernard Madoff and others and did not take

1 steps to conduct any independent verification of that  
2 information.

3 THE COURT: In other words, just put his own imperator  
4 as an accountant on financial information given him by  
5 Mr. Madoff.

6 MS. BARONI: That's right, your Honor.

7 THE COURT: And expressed an opinion which recited  
8 that he had conducted an audit according to go Generally  
9 Accepted Auditing Standards and in conformity with Generally  
10 Accepted Accounting Principles.

11 MS. BARONI: Yes.

12 THE COURT: And that in the opinion of the accounting  
13 firm of the statement presented fairly the conditions of the  
14 company is that each year end and that the income that was said  
15 to be earned was a true indication of the operating profits of  
16 that company.

17 MS. BARONI: That's right, the income and reliability  
18 but it was done on a fiscal year. Also, that the financial  
19 statements certified that he was independent but the government  
20 would prove beyond a reasonable doubt that Mr. Friebling was  
21 not an independent auditor and that he and his family had  
22 investment advisory accounts at Bernard L. Madoff Investment  
23 Securities and those accounts were held in the name of his wife  
24 and others.

25 THE COURT: Is there a disclosure of that in the

1 accounting statement?

2 MS. BARONI: No, your Honor.

3 The government would also prove beyond a reasonable  
4 doubt that Mr. Friehling knew at the time that he certified the  
5 financial statements, that they were materially false and that  
6 at the time that they were, that he caused them to be filed  
7 with Securities and Exchange Commission that he knew that they  
8 were materially false

9 THE COURT: So he actually knew that the statements  
10 were false?

11 MS. BARONI: Yes, your Honor.

12 THE COURT: But nevertheless gave an opinion that  
13 stated that they were fair and accurate.

14 MS. BARONI: Right. He knew that he did not perform  
15 any independent auditing function.

16 The government would also prove that these criminal  
17 acts were conducted in Manhattan as well as in Rockland County.

18 THE COURT: Both within the Southern District of New  
19 York.

20 MS. BARONI: That's right, your Honor.

21 THE COURT: So venue is satisfied.

22 MS. BARONI: Yes. With respect to Counts Seven  
23 through Nine --

24 THE COURT: So these proofs would show that he aided  
25 and abetted a device, scheme or artifice to defraud, that

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1 untrue statements of material facts were being made, that the  
2 business itself was operating as a fraud or a deceit upon  
3 purchasers and sellers, and that all this was done willfully,  
4 knowingly and with the intent to defraud and that the mails and  
5 instruments of transportation and communication and interstate  
6 commerce were used.

7 MS. BARONI: Yes, your Honor. The financial  
8 statements were filed with the SEC by mail by US mail many of  
9 the years.

10 THE COURT: Now, we're up to the investment advisor  
11 fraud.

12 MS. BARONI: Your Honor, that factual proffer covers  
13 the securities fraud, the investment advisor fraud and the  
14 making false filings with the SEC is all the same.

15 THE COURT: Who was the investment advisor?

16 MS. BARONI: Mr. Bernard L. Madoff Investment  
17 Securities.

18 So the government would prove beyond a reasonable  
19 doubt that the defendant knew that Bernard L. Madoff Investment  
20 Securities was a broker/dealer and also was an investment  
21 advisor.

22 THE COURT: And were the certified statements used by  
23 Mr. Madoff in a fraudulent way in connection with his  
24 functioning as an investment advisor?

25 MS. BARONI: In connection with both sides of the

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1 business, yes, your Honor. They were available to all clients.

2 THE COURT: That takes you us through Three through  
3 Six because these financial statements were filed with the SEC  
4 and defendant was aware they were being filed with the SEC.

5 MS. BARONI: That's right.

6 THE COURT: He was aware as well that they were being  
7 used to induce continuing activities and purchase sales by the  
8 customers of Mr. Madoff's business; is that right?

9 MS. BARONI: Well, yes, your Honor, he knew they were  
10 going to be filed with the SEC and he knew that they were  
11 available to certain clients upon request.

12 THE COURT: And that they were actually --

13 MS. BARONI: Right.

14 THE COURT: Now Seven through Nine, this is  
15 obstructing or impeding the administration of the Internal  
16 Revenues laws.

17 MS. BARONI: Yes, your Honor. If this case had gone  
18 trial the government would prove beyond a reasonable doubt that  
19 from 1991 through 2008, Mr. Friehling obstructed the  
20 administration of the Internal Revenue laws by assisting in the  
21 preparation of numerous false tax returns including individual  
22 income tax returns which are forms 1040 as well as --

23 THE COURT: His own?

24 MS. BARONI: No, your Honor.

25 THE COURT: Madoff's? Whose tax return?

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1 MS. BARONI: Numerous individuals, your Honor.

2 THE COURT: Connected with anything in particular?

3 MS. BARONI: No, your Honor. As I said, individual  
4 tax returns as well as tax returns for estates and trusts and  
5 that --

6 THE COURT: In general or in connection with any kind  
7 of kind of specific activity? This also focused on the Madoff  
8 activity or things that you are going to prove that  
9 Mr. Friehling did in his own in a general way conducting his  
10 business.

11 MS. BARONI: They were Mr. Madoff's individual tax  
12 returns as well as others' individual tax return and trust  
13 returns.

14 THE COURT: Connected with Mr. Madoff in some fashion?

15 MS. BARONI: Just others, your Honor. At this time  
16 the government will proffer that much.

17 THE COURT: Okay.

18 MS. BARONI: The government would also prove that  
19 these tax returns were filed with the IRS and that  
20 Mr. Friehling acted with corrupt intent when he assisted in the  
21 preparation and the filing of them.

22 THE COURT: In other words, knowing that they were  
23 being filed to fool and deceive the IRS.

24 MS. BARONI: Right.

25 THE COURT: And to pay a lower tax than that which we

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1 fairly do.

2 MS. BARONI: Right, your Honor.

3 THE COURT: And thereby placing the burden on  
4 everybody else.

5 MS. BARONI: And that, that's right that he acted with  
6 corrupt intent and that he knew the returns were false at the  
7 time that they were filed.

8 Also, the government would prove venue with respect to  
9 this that the criminal acts relating to these counts occurred  
10 in Manhattan and Rockland County in the Southern District of  
11 New York.

12 THE COURT: Thank you, Ms. Baroni. And do you approve  
13 this set of fact the acts how? How would you prove it?

14 MS. BARONI: The tax counts we would prove through  
15 testimony and documentary evidence.

16 THE COURT: Mr. Lankler, have you reviewed the proofs  
17 that Ms. Baroni recites?

18 MR. LANKLER: I have indeed, your Honor.

19 THE COURT: Are you satisfied that Ms. Baroni could  
20 prove a prima facie case with respect to each of those nine  
21 counts?

22 MR. LANKLER: I am, your Honor.

23 THE COURT: Do you know of any defenses that could  
24 trump these proofs?

25 MR. LANKLER: Not beyond a reasonable doubt, your

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1 Honor.

2 THE COURT: Mr. Friehling, are you offering to plead  
3 guilty because you believe that you are, in fact, guilty of  
4 each of these nine counts?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: I am going to ask you to tell me what you  
7 did to make you guilty. And I suspect that Mr. Lankler's  
8 helped you prepare a statement.

9 THE DEFENDANT: I have written a statement with the  
10 assistance of my attorney.

11 THE COURT: You may read the statement but I will be  
12 asking you questions throughout. Proceed loudly.

13 THE DEFENDANT: My name is David Friehling. I appear  
14 before your Honor today to take responsibility for my conduct  
15 in connection with my role as the auditor of BLMIS and a tax  
16 preparer for Bernard Madoff and others.

17 THE COURT: BLMIS is short for?

18 THE DEFENDANT: Bernard L. Madoff Investment  
19 Securities.

20 It is my understanding that I must now detail the  
21 specifics of the conduct and I will do so in connection with  
22 this statement. However, before I begin my formal allocution I  
23 wish to make your Honor aware of several important facts.

24 First and foremost, it is critical for your Honor to  
25 be aware that at no time was I ever aware that Bernard Madoff

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1 was engaged in a Ponzi scheme. In fact, I placed all of my  
2 savings and the savings of my wife and children with BLMIS. I  
3 also established a bona fide pension fund with BLMIS into which  
4 I placed all of my retirement contributions.

5 I was a member of the accounting firm of Friehling and  
6 Horowitz from 1989 to 2008. Friehling and Horowitz was the  
7 auditor of Bernard L. Madoff Investment Securities. Prior to  
8 my joining the firm my father-in-law Jerome Horowitz acted as  
9 the auditor for Bernard L. Madoff Investment Securities. I  
10 assumed the responsibility as auditor of BLMIS in or around  
11 1991 when my father-in-law retired.

12 THE COURT: So it's 1991 that he retired?

13 THE DEFENDANT: He didn't fully retire until 1998. He  
14 flew up and helped me and assisted me in the conduct of the  
15 audit.

16 THE COURT: Did he do the field work for the audit?

17 THE DEFENDANT: Yes. Well, the two of us together  
18 would.

19 THE COURT: Go ahead.

20 THE DEFENDANT: With the exception of my family  
21 members and some of the Madoff investors that I performed tax  
22 work for, I never had contact with Madoff investors and never  
23 acted as a feeder for BLMIS, solicited any investors for BLMIS  
24 or received any compensation from BLMIS other than the audit and  
25 tax preparation services I performed.

1           In what is surely the biggest mistake of my life I  
2 placed my trust in Bernard Madoff. While I am amongst  
3 thousands people who now make the same claim, I wish for your  
4 Honor to understand how I came to make not only this mistake  
5 but also how I came to suspend my judgment in committing crimes  
6 with which I am charged.

7           I was introduced to Bernard Madoff by my  
8 father-in-law. My father-in-law was asked to perform work for  
9 BLMIS in 1963 by his then boss Saul Alpern who is Ruth Madoff's  
10 father. I have known my father-in-law since the summer of 1972  
11 when his daughter, my future wife and I, first met. We began  
12 to date when we were 14, attended the same college and married  
13 when we were 22. When I was a senior in college I decide to I  
14 pursue a career in accounting and received my CPA license in  
15 1987.

16           I am prepared to accept responsibility for my conduct  
17 and do whatever I must to mitigate the impact it has had. From  
18 the first day that the federal prosecutors and investigators  
19 were ready to ask me questions I have made may myself available  
20 and have endeavored to answer every question put to me  
21 truthfully and fully to the best of my ability. I am here  
22 today first to take responsibility for my mistakes and second  
23 to apologize to the Madoff victims for the role that I now know  
24 that I played in Bernard Madoff' massive and devastating fraud.

25           I am truly sorry for the suffering of all the victims.

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1 I would also like to apologize once more to my father who lost  
2 his retirement savings which is in our family investment  
3 account, to my children who lost their entire savings which we  
4 had worked so long and so hard to amass for their education and  
5 futures, and most especially to my wife who has lost everything  
6 that we have worked for over 27 years of marriage, not the  
7 least of which is our good name.

8 Thank you, your Honor for the opportunity to address  
9 the Court and to make a public apology to the Madoff victims.  
10 I would now like to specifically address the details of my  
11 conduct.

12 With respect to the first six counts the information  
13 charging me with securities fraud, aiding and abetting,  
14 investment adviser fraud and making false filings with the  
15 Securities and Exchange Commission, I committed these crimes in  
16 my capacity as an independent auditor of BLMIS and did so  
17 within the Southern District of New York, specifically, in  
18 Manhattan and Rockland County.

19 Through my accounting firm Friebling and Horowitz I  
20 served as the auditor of BLMIS, a broker/dealer and investment  
21 adviser, as the individual who certified that BLMIS financial  
22 statements, I was obligated to maintain independence from BLMIS  
23 and to audit the books and records of BLMIS consistent with  
24 generally accepted auditing standards and generally accepted  
25 accounting principals. I was not independent of BLMIS inasmuch

1 as my entire savings and retirement account and the savings of  
2 my wife and children were invested in BLMIS. My investments at  
3 BLMIS exceeded \$500,000.

4 With respect to conduct to conducting GAAS and GAAP  
5 compliant audits, instead of following these standards and the  
6 standards set out by the AICPA of which I was a member, I did  
7 not conduct independent verification of BLMIS assets, review  
8 material sources of BLMIS revenue, rigorously examine the BLMIS  
9 bank accounts for which the BLMIS client funds flowed or  
10 verified the purchase and custody of securities by BLMIS.  
11 Instead I relied on the financial information provided by  
12 Bernard Madoff and other employees of BLMIS which I took at  
13 face value and used the information to prepare the BLMIS  
14 financial statements.

15 I certified that those statements were accurate and  
16 that GAAS and GAAP standards and did so knowing that they would  
17 be filed with the SEC and disseminated with investors.

18 THE COURT: Stop for a moment. Go ahead. Finish  
19 that.

20 THE DEFENDANT: Indeed I was aware that the financial  
21 statements I certified were then sent to the SEC by the United  
22 States Postal Service and filed with the SEC on December 14,  
23 2004, December 30, 2005, December 22, 2006 and December 20,  
24 2007.

25 THE COURT: The question I wanted to put to you is

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1 whether you knew at the time you prepared the financial  
2 statements that you were providing no independent verification  
3 of that which GAAS required you to independently verify?

4 THE DEFENDANT: Yes.

5 THE COURT: You were aware of that?

6 THE DEFENDANT: Yes.

7 THE COURT: You were aware that as a CPA you could not  
8 just put on an opinion, you had to do an independent  
9 verification of assets and liability?

10 THE DEFENDANT: Yes.

11 THE COURT: Right?

12 THE DEFENDANT: Yes.

13 THE COURT: And that meant looking at all the accounts  
14 that were given to you and making sure that the assets were  
15 there?

16 THE DEFENDANT: Yes.

17 THE COURT: Did these statements report customers'  
18 accounts? They may not. I am just asking a question.

19 MR. LANKLER: Your Honor, it's a little difficult to  
20 answer that question.

21 THE COURT: There was a line due from customers, was  
22 there not?

23 MR. LANKLER: From broker/dealers, your Honor.

24 THE COURT: From broker/dealers on accounts of  
25 customers? I want to know what you knew at the time regarding

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1 what were owed to customers and what were to be received from  
2 customers.

3 (Pause)

4 MR. LANKLER: Your Honor, I think it would be helpful  
5 if rather than answer that question exactly the way you've put  
6 it because it deals sort of with the securities side of BLMIS  
7 that Mr. Friehling was not directly involved in in the same way  
8 that he was with respect to the general financial statements.

9 THE COURT: I don't know what to ask specifically. I  
10 don't have these reports in front of me and I can't remember on  
11 my own and from the basis of my own experience exactly what  
12 these reports reported.

13 So let me just give you the general question,  
14 Mr. Friehling. You knew that under the generally accepted  
15 auditing standards that had to inform your work there was an  
16 obligation on the part of your firm and on your part to make  
17 sure that all that was reported on these statements were fair  
18 and accurate, right?

19 THE DEFENDANT: Yes.

20 THE COURT: You had a number of tests that were  
21 ordinarily to be performed regarding that proposition?

22 THE DEFENDANT: Yes.

23 THE COURT: You could not express an opinion as to the  
24 fairness and accuracy of the financial condition of the company  
25 and of its operating profits without going through all of these

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1 independent verifications?

2 THE DEFENDANT: Yes.

3 THE COURT: Didn't you put your signature on there  
4 just as if you had done all of these verifications?

5 THE DEFENDANT: Yes.

6 THE COURT: By saying that you were signing statements  
7 that conformed with GAAS you were representing to anyone who  
8 would read these that you had done all of the independent  
9 verifications that a CPA is required to do?

10 THE DEFENDANT: Yes.

11 THE COURT: So you knew that when you put on your  
12 opinion it was a false opinion?

13 THE DEFENDANT: Yes.

14 THE COURT: And you knew that people would rely on  
15 that opinion?

16 THE DEFENDANT: Yes.

17 THE COURT: And you knew that these statements would  
18 be filed with the SEC with your false opinion on it?

19 THE DEFENDANT: Yes.

20 THE COURT: Ms. Baroni, you want me to pursue anything  
21 else?

22 MR. LANKLER: Your Honor, we haven't concluded the  
23 allocution.

24 MS. BARONI: I think that's sufficient, your Honor.

25 THE COURT: Go on, Mr. Friehling.

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1           THE DEFENDANT: With respect to Count Seven to Nine  
2 charging me with obstructing or impeding the administration of  
3 the Internal Revenue laws, in addition to acting as the auditor  
4 for BLMIS I also prepared tax filings for Bernard Madoff and  
5 others. In that capacity I prepared personal tax returns that  
6 contained information I knew that was not accurate and assisted  
7 in the filing of those returns with the Internal Revenue  
8 Service. Thank you, your Honor.

9           THE COURT: Ms. Baroni, anything more you want me to  
10 pursue? I do need to ask questions on forfeiture.

11          MS. BARONI: I think that's sufficient. Just venue on  
12 the Count Seven through Nine.

13          THE COURT: Where were you working? Your office was  
14 in Rockland County, was it not?

15          THE DEFENDANT: Yes, it was.

16          THE COURT: And Rockland County is where you issued  
17 some of these false statements, right?

18          THE DEFENDANT: Yes.

19          THE COURT: And also the obstruction of the IRS was  
20 from Rockland County?

21          THE DEFENDANT: Yes.

22          MR. LANKLER: Your Honor, it was also in Manhattan as  
23 well if your Honor wishes to inquire.

24          THE COURT: And also in Manhattan as well?

25          THE DEFENDANT: Yes.

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1 THE COURT: Ms. Baroni, what shall I ask about  
2 forfeiture?

3 MS. BARONI: Just simply whether the defendant admits  
4 to the forfeiture allegation in the superseding information.

5 THE COURT: Set out on page 13.

6 MS. BARONI: That's right, 13 and 14, your Honor.

7 THE COURT: Paragraph 27 alleges that as a result of  
8 committing the offenses constituting specified, unlawful  
9 activity -- I'll skip the statutory reference -- alleged in  
10 Count One of the information. You shall forfeit to the United  
11 States all property real and personal that constitutes or is  
12 derived from proceeds traceable to the commission of the  
13 offenses; do you so agree?

14 THE DEFENDANT: Yes.

15 THE COURT: And if any of the above described  
16 forfeitable property is a result of any act or omission from  
17 you, can't be located or has been transferred or sold through a  
18 deposit with someone else or place beyond the jurisdiction of  
19 the court or been substantially diminished in value or  
20 commingled with other property which cannot be subdivided  
21 without difficulty, this property also can be forfeited or a  
22 reasonable equivalent of such property.

23 THE DEFENDANT: Yes.

24 THE COURT: Anything else, Ms. Baroni?

25 MS. BARONI: No, your Honor.

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1 THE COURT: Before I make my findings, anything else I  
2 should inquire about?

3 MS. BARONI: No, your Honor. I think that's  
4 sufficient.

5 MR. LANKLER: No, your Honor.

6 THE COURT: Ms. Friehling, I find you guilty of each  
7 of these nine counts. I find that your plea of guilty is --

8 Let's not rush out, please. Sit down. Sit down. Sit  
9 down till this is finished then you can all leave. No one is  
10 to leave until this is finished.

11 I find you guilty of each of these nine counts. I  
12 find that your plea is voluntarily made, is made understanding  
13 the consequence of such a plea and that there an independent  
14 basis of fact to sustain your plea of guilty to each of these  
15 nine counts.

16 Accordingly, I instruct the clerk to enter a plea of  
17 guilty in place of your previously plea of not guilty.

18 Do we have a control date for sentencing, Ms. Baroni?

19 COURTROOM DEPUTY: February 26, 2010 at 11 a.m.

20 MS. BARONI: That's fine with the government, your  
21 Honor.

22 THE COURT: I instruct that Mr. Lankler or a member of  
23 his staff be given an opportunity to be present for any  
24 interview with Mr. Friehling to be conducted by the probation  
25 department. And I instruct Ms. Baroni to obtain a copy of this

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1 transcript and furnish it to the probation department for any  
2 such interview to assist in the interview.

3 With regard to the forfeiture clause, Ms. Baroni, what  
4 is next step?

5 MS. BARONI: Your Honor, the government will deliver  
6 to your Honor's chambers this afternoon the preliminary order  
7 of forfeiture and the stipulation and order for the  
8 interlocutory sale of the defendant's properties.

9 THE COURT: Can that be done before 1:30?

10 MS. BARONI: Sure.

11 THE COURT: Anything else I need to deal with before I  
12 finished up these proceedings? There one thing more, right?

13 MS. BARONI: Yes, your Honor. The parties would  
14 jointly request that the bail conditions be continued and  
15 actually the parties have a joint proposed package for your  
16 Honor that increases the current bail conditions.

17 THE COURT: Please recite them.

18 MS. BARONI: It would be \$2.5 million personal  
19 recognizance bond cosigned by eight financially responsible  
20 people. The bond would be secured by approximately \$1 million  
21 to \$1.2 million of equity in five different properties, the  
22 properties owned by the cosigners.

23 THE COURT: This is all stated in your letter of  
24 November 2, is it not?

25 MS. BARONI: The defendant's letter.

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1 MR. LANKLER: My letter, judge.

2 THE COURT: Have you read that letter?

3 MS. BARONI: Yes, your Honor.

4 THE COURT: Mr. Lankler, may it be filed?

5 MR. LANKLER: Yes, your Honor. In addition I have my  
6 client's wife's travel documents which we're prepared to turn  
7 them over to Pretrial Services.

8 THE COURT: Fine. And, Ms. Smusz, you have reviewed  
9 this as well?

10 MS. SMUSZ: No, your Honor, but I have spoken to  
11 defense counsel on several occasions and they have recited to  
12 me what they intend to do with modifying the defendant's bail.

13 THE COURT: So, it's a \$2,500,000 personal  
14 recognizance bond to be signed by the defendant and eight  
15 financially responsible persons.

16 MS. BARONI: That's correct.

17 THE COURT: Have you very reviewed who these are?

18 MS. BARONI: Yes, your Honor. The government through  
19 the FBI ' interviewed all of them and we find them to be  
20 financially responsible.

21 THE COURT: And there are eight properties?

22 MS. BARONI: There are five properties.

23 THE COURT: And the aggregate estimated net equity in  
24 those five properties are between a million dollars and a  
25 million two hundred thousand dollars?

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1 MS. BARONI: That's correct, judge.

2 THE COURT: Are any of them homes?

3 MS. BARONI: Yes.

4 THE COURT: Residents in which people reside?

5 MS. BARONI: That's right.

6 THE COURT: So people are pledging their peoples to  
7 assure that there is no danger to the security of the people,  
8 the places or the government and that there is responsibility  
9 to attend all court dates and on the part of Mr. Friehling?

10 MS. BARONI: Yes.

11 THE COURT: Travel is restricted to the Southern  
12 District of New York, the Eastern District of New York and  
13 District of New Jersey.

14 MS. BARONI: That's right. And the defendant has  
15 surrendered his passport and his wife will now surrender her  
16 passport to Pretrial Services.

17 THE COURT: And will make no new applications.

18 MS. BARONI: That's right.

19 THE COURT: There will be regular Pretrial Services  
20 supervision; what does that mean?

21 MS. SMUSZ: Your Honor, as the defendant is reporting  
22 now he appears in person once monthly and telephones weekly.

23 THE COURT: Is he required to keep a land line phone.

24 MS. SMUSZ: No. That is not a requirement of that  
25 supervision.

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1 THE COURT: I'd like to impose it to make it easier  
2 for you to call.

3 MS. SMUSZ: That will be fine, your Honor.

4 THE COURT: Do you have a land line phone?

5 THE DEFENDANT: Yes, I do. You will maintain it  
6 throughout so that when you are called on a land line phone  
7 that's where you will answer as required by the probation  
8 office.

9 Anything else, Ms. Muse?

10 MS. SMUSZ: No, your Honor.

11 THE COURT: Ms. Baroni?

12 MS. BARONI: No, your Honor.

13 THE COURT: You consent to the continuation of these  
14 bail conditions?

15 MS. BARONI: The government does, your Honor.

16 THE COURT: And urges me to accept them?

17 MS. BARONI: Yes, your Honor.

18 MR. LANKLER: I urge you to accept it as well, your  
19 Honor.

20 THE COURT: Before I make my findings I'd like to ask  
21 if there is anyone in the audience who wishes to address me?  
22 This is your chance, folks. If you want to write letters, the  
23 fact that you are here enables me to consider anything.

24 All right, there is no one that wants to add anything.

25 I order the continuation of bail with the enhanced

1 terms that have been expressed in court and found by me.

2 Anything further?

3 MS. BARONI: That is all from the government, your  
4 Honor. Thank you.

5 MR. LANKLER: No, your Honor. Thank you very much.

6 THE COURT: Ms. Muse?

7 MS. SMUSZ: No, your Honor.

8 THE COURT: The proceedings are then recessed. Anyone  
9 wishing to leave can now leave.

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