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, 2012

Barry W. Agulnick, Esq.
Agulnick & Gogel LLC
8 Bond Street
Great Neck, New York 11021-2448

Re: United States v. Craig Kugel, S6 10 Cr. 228 (LTS)

Dear Mr. Agulnick:

This prosecution and the protection against prosecution set forth below have been approved by the Tax Division, Department of Justice.

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 Craig Kugel (the "Defendant") to a criminal superseding information (the "Information") charging him with the following violations of federal law, between in or about 2001 and on or about December 11, 2008, in connection with his employment at Bernard L. Madoff Investment Securities ("BLMIS").

Count One charges the Defendant with conspiracy to 1) obstruct or impede the lawful government functions of the Internal Revenue Service in the ascertainment, assessment, computation and collection of income taxes, and 2) falsify statements in relation to documents required by 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, twice the gross pecuniary gain to any person derived from the offense, or twice the gross pecuniary loss to persons other than the Defendant resulting from the offense, a mandatory $100 special assessment, and a maximum term of three years' supervised release.

Count Two charges the Defendant with making false statements in relation to documents required by ERISA, in violation of Title 18, United States Code, Section 1027, and Title 18, United States Code, Section 2. 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, twice the gross pecuniary gain to any person derived from the offense, or twice the gross pecuniary loss to persons other than the Defendant resulting from the offense, a mandatory $100 special assessment, and a maximum term of three years' supervised release.

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Counts Three through Five each charge the Defendant with subscribing to a false U.S. individual income tax return, in violation of Title 26, United States Code, Section 7206(l). Counts Three through Five each carry a maximum sentence of three years' imprisonment, a maximum fine under Title 18, United States Code, Section 3571(d) of the greatest of $250,000, twice the gross pecuniary gain to any person derived from the offense, or twice the gross pecuniary loss to persons other than the Defendant resulting from the offense, a mandatory $100 special assessment, a maximum term of three years' supervised release, and the costs of prosecution.

The total maximum sentence of incarceration on Counts One through Five is 19 years.

It is understood that, prior to the date of sentencing, the Defendant shall file accurate amended personal tax returns for the years 2005 through 2008. Defendant will pay past taxes due and owing by him to the Internal Revenue Service ("IRS"), including applicable penalties, if any, on such terms and conditions as will be agreed upon between him and the Internal Revenue Service. Defendant will not contest the applicability of civil fraud penalties.

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.

The Defendant furthermore admits the forfeiture allegations of the Information and agrees to forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, all property, real and personal, that constitutes or is derived from proceeds traceable to the commission of the offenses constituting specified unlawful activity, as defined in 18 U.S.C. § 1956(c)(7), as alleged in Counts One and Two of the Information, including but not limited to a sum of money equal to $1,153,292.29 as to each of Counts One and Two (for a total of $2,306,584.58). 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 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 Internal Revenue Service, 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 Office prior to discussing the conduct covered by Counts One through Five 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.

If the Defendant fully complies with the understandings specified in this Agreement, he will not be further prosecuted criminally by this Office, and, with respect to tax offenses, the Tax Division, Department of Justice, for any crimes related to his participation in (a) a conspiracy to 1) obstruct or impede the lawful government functions of the Internal Revenue Service in the ascertainment, assessment, computation and collection of income taxes, and 2) falsify statements in relation to documents required by ERISA, from in or about 2001 through on or about December 11, 2008, as charged in Count One of the Information, (b) falsifying statements in relation to documents required by ERISA from in or about 2003 through on or about December 11, 2008, as charged in Count Two of the Information, (c) subscribing to false U.S. individual income tax returns for the tax years 2006, 2007, and 2008, as charged in Counts Three through Five of the Information, and (d) any tax fraud that the Defendant engaged in in connection with his employment at BLMIS from 2001 to 2008, 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 all of the conduct set forth in subsection (d) of the preceding paragraph constitutes either relevant conduct, pursuant to United States Sentencing Guidelines ("U.S.S.G.") Section 1B1.3, or other conduct of the defendant, pursuant to U.S.S.G. § 1B1.4, that the Court may consider at the time of sentencing.

It is understood that, this Agreement does not bind any federal, state, or local prosecuting authority other than this Office and, to the extent set forth above, the Tax Division, Department of Justice. 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 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 that the Defendant has not provided substantial assistance in an investigation or prosecution, or 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 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.

The Defendant recognizes that, if he is not a citizen of the United States, his guilty plea and conviction make it very likely that his deportation from the United States is presumptively mandatory and that, at a minimum, he is at risk of being deported or suffering other adverse immigration consequences. The defendant acknowledges that he has discussed the possible immigration consequences (including deportation) of his guilty plea and conviction with defense counsel. The defendant affirms that he wants to plead guilty regardless of any immigration consequences that may result from the guilty plea and conviction, even if those consequences include deportation from the United States. It is agreed that the defendant will have no right to withdraw his guilty plea based on any actual or perceived adverse immigration consequences (including deportation) resulting from the guilty plea and conviction. It is further agreed that the defendant will not challenge his conviction or sentence on direct appeal, or through litigation under Title 28, United States Code, Section 2255 and/or Section 2241, on the basis of any actual or perceived adverse immigration consequences (including deportation) resulting from his guilty plea and conviction.

This Agreement supersedes any prior understandings, promises, or conditions between this Office, the Tax Division, Department of Justice, 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 / 637-2405

APPROVED:

_____
LORIN L. REISNER
Chief, Criminal Division

AGREED AND CONSENTED TO:

_____ 6/5/12
Craig Kugel DATE

APPROVED:

_____ 6/5/12
Barry W. Agulnick, Esq. DATE
Attorney for Craig Kugel