U.S. Department of Justice

United States Attorney
Southern District of New York

The Jacob K. Javits Federal Building
26 Federal Plaza, 38th Floor
New York, New York 10278

[DATE]

[Company's Attorney]
[Address]

Re: Conditional Declination as to [Company]

Dear [Counsel for Company]:

As set forth below, and conditioned upon verification of [the company's] representations and [the company's] continuing and complete cooperation as described herein, the Office of the United States Attorney for the Southern District of New York (this "Office") will exercise its discretion to decline to criminally prosecute [company], or its parent, subsidiaries, and affiliates (collectively [company] or the "Company") for any crimes (except for criminal tax violations, as to which this Office cannot and does not make any agreement) related to [insert description of conduct]. As further described in Paragraph 5 and Paragraph 7, should this Office determine that the Company has not complied with the obligations below, this Office will rescind this conditional declination assurance and revisit its analysis of whether a criminal prosecution would be appropriate under Department of Justice guidance.

1. **Company's Eligibility.** In exercising its discretion in offering a conditional declination, the Office relied upon the factors set out below, and on the Company's commitment to timely, truthful, continuing, and full cooperation, as described below.

   (a) Based on the Company's initial self-report, the Office is aware of facts and circumstances indicative of a scheme by one or more persons who are or were employees, officers, directors, agents, affiliates, customers, or investors of the Company to [INSERT CONDUCT DESCRIPTION] in the Southern District of New York and elsewhere. While still under investigation, this conduct will be referred to herein as the "illegal activity."

   (b) Upon discovering the illegal activity, the Company promptly reported it to this Office (i) independent of any preexisting obligation to disclose the conduct to the Department of Justice; (ii) prior to knowing of a government investigation concerning the illegal activity; and (iii) prior to receiving a grand jury subpoena or document request concerning the illegal activity from a U.S. law enforcement agency or regulator, such as the Department of Justice, the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, or a state attorney general.

   (c) The Company has committed to remediate the harm caused by the illegal activity—including by implementing changes to the Company's compliance program, and suspending, terminating, or disciplining any employee, officer, director, agent, customer, or investor directly involved in the illegal activity—and acknowledges that it must remediate such harm before the Office will issue a Notice of Final Declination, as defined in Paragraph 5.

(d) The Company has committed to make restitution to parties injured by the illegal activity and acknowledges that it must satisfy its restitution obligations before the Office will issue a Notice of Final Declination. The Company's restitution obligation extends to any party or class of individuals that qualify as a "victim" and have suffered a loss as defined by federal law relating to restitution. The Company is not required to pay restitution to any individuals or entities involved in the illegal activity.

(e) There are no aggravating circumstances rendering the Company ineligible for a conditional declination. "Aggravating circumstances" are defined for purposes of this letter as conduct involving or having a nexus to terrorism, sanctions evasion, export control evasion, foreign corruption, sex trafficking, human trafficking and smuggling, international drug cartels, slavery, forced labor, or the knowing or reckless financing of these activities or laundering of funds in support of these activities.

2. **Company's Cooperation.** The Company has committed to provide, and will continue to provide throughout the duration of the Office's investigation into the illegal activity, timely, truthful, continuing, and complete cooperation, including but not limited to:

(a) timely, truthfully, and accurately disclosing all relevant, non-privileged information known to the Company relating to the illegal activity;

(b) identifying individuals involved in or responsible for the illegal activity, as well as witnesses who, to the knowledge of the Company, may have material information regarding the matters under investigation;

(c) sharing the non-privileged factual results of internal investigations, including attribution of facts to specific individuals where feasible;

(d) providing promptly all relevant documents, information, or other materials in its possession, custody, or control, wherever located, including documents located abroad or in foreign languages, and making all efforts to address and mitigate barriers such as data privacy laws and blocking statutes;

(e) specifically identifying those materials that bear materially on or are particularly probative of individual culpability or the illegal activity at issue;

(f) subject to individuals' Fifth Amendment rights, using the Company's best efforts to make available for interviews or testimony present or former officers, directors, employees, agents, and consultants of the Company located in the United States and overseas, including but not limited to sworn testimony before a federal grand jury or in federal trials;

(g) using its best efforts to ensure that employees, directors, officers, and agents of the Company who provide information to the Office relevant to the illegal activity respond completely, candidly, and truthfully to all questions asked in interviews and grand jury appearances and at trial;

(h) using its best efforts to ensure that employees, directors, officers, and agents of the Company who provide information to the Office relevant to the illegal activity make no attempt to falsely protect or falsely implicate any person or entity;

(i) using its best efforts to ensure that witness interviews and other investigative steps that the Company takes as part of its internal investigation do not interfere with the Office's investigation after the Company self-reports to the Office, including by conferring with the Office about deferring certain interviews or investigative steps until after the Office has had an opportunity to conduct aspects of its investigation;

(j) preserving all records and communications across all platforms, including non-email and ephemeral messaging applications for all relevant records custodians;

(k) not committing, participating in, or attempting to commit or participate in any additional crime in violation of Titles 15 and 18 of the United States Code, including any acts of perjury or subornation of perjury (18 U.S.C. §§ 1621-22), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), obstruction of justice (18 U.S.C. §§ 1503 et seq.), contempt (18 U.S.C. §§ 401-402), or conspiracy to commit such offenses;

(l) consenting to any and all disclosures to other federal governmental authorities of such materials as this Office, in its sole discretion, shall deem appropriate; and

(m) upon the issuance of a conditional declination and for a period of three years afterward, bringing to this Office's attention any criminal conduct by the Company or any of its employees relating to fraud.[1] This provision may be terminated prior to the conclusion of three years in the discretion of the Office.

3. **The Government's Conditional Declination.** Subject to verification of the Company's representations reflected in Paragraph 1, and subject to the Company's timely, truthful, continuing, and full cooperation, as described in Paragraph 2, the Office will:

(a) decline to prosecute the Company, or any of its direct or indirect affiliates, subsidiaries, or joint ventures, for acts or offenses it committed in furtherance of the illegal activity before the date the Office executes this letter;

---

[1] The Company's obligation to report all criminal conduct pursuant to this letter will not disqualify it from receiving a declination or non-prosecution agreement following future self-reporting. The Office will evaluate appropriate resolutions of subsequent self-reported misconduct on a case-by-case basis and consistent with any relevant Department of Justice policies, and will take in to account the Company's successful participation in the Program. The Company's good faith reporting of additional criminal conduct as part of its ongoing cooperation obligation will not cause the Office to rescind this conditional declination or imperil the final declination.

(b) not seek or require payment of any financial penalty in the form of a criminal fine or forfeiture, provided the Company satisfies its obligation pursuant to this letter to make restitution to victims; and

(c) not require the appointment of any monitor provided the Company remediates the harm caused by the illegal activity to the satisfaction of this Office.

4. **Limitations on the Declination.** The Office's commitment to decline to prosecute the Company extends only to the Company and does not provide any individuals, regardless of their affiliation with the Company, with any form of protection against prosecution. This letter also does not provide any protection against prosecution for any future conduct by the Company or any of its direct or indirect affiliates, subsidiaries, or joint ventures. The commitments in this letter shall not apply to any acquirer or successor entities unless and until such acquirer or successor formally adopts and countersigns this letter.

5. **Notice of Final Declination.** After the Company has met its obligations set forth in this letter, including by completing remediation and making restitution to injured parties as described in Paragraph 1 and providing the required cooperation as described in Paragraph 2, the Office will notify the Company in writing that the Office's decision to decline criminal prosecution is final.

6. **Restitution.** The Company will make restitution to all injured parties before the Office provides a Notice of Final Declination. The Company's restitution obligation extends to any party or class of parties that qualify as a victim and have suffered a loss as defined by federal law relating to restitution. The Company is not required to pay restitution to any individuals or entities that have committed misconduct, as determined to the satisfaction of the Office by at least a preponderance of evidence. In the event that the Company agrees to compensate injured parties through a resolution with a regulator, including but not limited to the U.S. Securities and Exchange Commission, or the U.S. Commodity Futures Trading Commission, distributions made to victims pursuant to such a resolution shall be credited against any restitution obligation that the Company has to injured parties under this letter.

7. **Breach of the Foregoing Commitments.** If at any time before or after the Office's declination decision becomes final, as described in Paragraph 5, the Office determines that the Company (a) provided deliberately false, incomplete, or misleading information, including information contrary to its representations reflected in Paragraph 1; (b) fails to cooperate as set forth in Paragraph 2; or (c) otherwise fails to completely perform or fulfill its obligations as set forth in this letter, the Office may revoke its conditional or final declination of criminal prosecution and may thereafter initiate a criminal prosecution against the Company.

   Determination of whether the Company is not eligible for declination, has not cooperated as required by this letter, or has otherwise breached the commitments set forth herein—as well as whether to pursue prosecution of the Company—shall be in the Office's sole discretion, and shall not be subject to judicial review. Before the Office makes a final determination that the Company has breached its commitments in this letter, or if the declination is still conditional makes a final determination to revoke its declination, the Office will notify counsel for the Company in writing of the Office's intention to revoke its conditional declination. Within thirty days of receipt of such notice, the Company shall have the opportunity to respond to the Office in writing to explain the nature and circumstances of such potential breach, as well as the actions the Company has taken to address and remediate the situation, which explanation the Office shall consider in determining whether to deem any declination revoked, and/or pursue prosecution of the Company. In the event there is a dispute between the parties about the compliance with a term under this letter, the Company agrees that it bears the burden of proving its eligibility for declination, including demonstrating that its representations in this letter are accurate and that it has fully cooperated with the Office.

In the event that the Office determines that the Company has breached its commitments in this letter: (a) it is understood that all statements made by or on behalf of the Company to the Office, and any testimony given by the Company before a grand jury, a court, or any tribunal, or at any legislative hearings, whether prior or subsequent to its agreement to this letter, and any leads derived from such statements or testimony, may be offered in evidence in any and all criminal proceedings brought by the Office against the Company; and (b) the Company shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that any such statements or testimony made by or on behalf of the Company prior or subsequent to this letter agreement, or any leads derived therefrom, should be suppressed or are otherwise inadmissible because they were obtained in connection with this letter commitment. The decision of whether conduct or statements of any current director, officer or employee, or any person acting on behalf of, or at the direction of, the Company, will be imputed to the Company for the purpose of determining whether the Company has violated any provision of this letter agreement shall be in the sole discretion of the Office.

The Company acknowledges that the Office has made no representations, assurances, or promises concerning what sentence may be imposed by a Court if the Company breaches its commitments set forth herein and this matter proceeds to prosecution and a judgment. The Company further acknowledges that any such sentence is solely within the discretion of a Court and that nothing in this letter binds or restricts the Court in the exercise of such discretion.

8. **Tolling.** The Company agrees that if this conditional declination is withdrawn for any reason, the statute of limitations period for the illegal activity and any crimes committed in furtherance of the illegal activity will be tolled for the period between the date the Office executes this letter and the date on which the letter is withdrawn, or for a period of sixty days after the Office executes this letter, whichever period is greater.

9. **Sale, Merger, or Other Change in Corporate Form of Company.** Except as may otherwise be agreed by the parties in connection with a particular transaction, the Company agrees that in the event that it undertakes any change in corporate form, including if it sells, merges, or transfers business operations that are material to the Company's consolidated operations, or to the operations of any subsidiaries or affiliates involved in the conduct

described above, as they exist as of the date of this letter, whether such sale is structured as a sale, asset sale, merger, transfer, or other change in corporate form, it shall include in any contract for sale, merger, transfer, or other change in corporate form a provision binding the purchaser, or any successor in interest thereto, to the obligations described in this letter. The purchaser or successor in interest must also agree in writing that the Office's ability to enforce a breach under this letter agreement is applicable in full force to that entity. The Company agrees that the failure to include these provisions in the transaction will make any such transaction null and void. The Company shall provide notice to the Office at least thirty days prior to undertaking any such sale, merger, transfer, or other change in corporate form. The Office shall notify the Company prior to such transaction (or series of transactions) if the Office determines that the transaction(s) will have the effect of circumventing or frustrating the enforcement purposes of the commitments contained herein. If at any time the Company engages in a transaction that has the effect of circumventing or frustrating the enforcement purposes of this letter agreement, the Office may deem it a breach of the Company's commitments pursuant to Paragraph 7 of this letter. Nothing herein shall restrict the Company from indemnifying (or otherwise holding harmless) the purchaser or successor in interest for penalties or other costs arising from any conduct that may have occurred prior to the date of the transaction, so long as such indemnification does not have the effect of circumventing or frustrating the enforcement purposes of this letter agreement, as determined by the Office.

10. **Parties.** The commitments set forth in this letter do not bind any federal, state, local, or foreign prosecuting authority other than the Office. This letter does not provide any form of protection from prosecution for individuals, even if those individuals own, are employed by, or are otherwise affiliated with the Company. The Office agrees, if requested to do so, to bring to the attention of law enforcement and regulatory authorities the facts and circumstances relating to the nature of the conduct underlying this letter, including the fact that the Company self-reported the illegal activity, and the nature and quality of the Company's cooperation and remediation. By agreeing to provide this information to such authorities, the Office is not agreeing to advocate on behalf of the Company, but rather is agreeing to provide facts to be evaluated independently by such authorities.

11. **Publication.** Unless the Office determines a significant countervailing victim, public, or law enforcement interest may be harmed by the publication of this letter, the Office will disclose this declination to the public at the time it initiates a prosecution relating to the reported illegal activity. With prior notice to the Office, the Company may also choose to publicly disclose this letter on its own initiative, including as required by applicable federal securities laws or state blue sky laws.

12. **Entire Agreement.** With respect to this matter, this letter agreement supersedes all prior, if any, understandings, promises and/or conditions between this Office and the Company. No additional promises, agreements, and conditions have been entered into other than those set forth in this letter and none will be entered into unless in writing and signed by all parties.

Regards,

Jamie M. McDonald
United States Attorney

By:____________________________
[AUSA]
Assistant United States Attorney
(212) 637-[]

APPROVED:

____
Amanda L. Houle
Criminal Division Chief

AGREED AND CONSENTED TO:

____________________________ ____________________________
[Corporate Representative Name] Date
[Title]
[Company Name]

APPROVED:

____________________________ ____________________________
[Counsel's Name] Date
Attorney for [Company Name]