

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
) No. 10 CR 335
) Judge Robert M. Dow, Jr.
)
vs.)
)
EVAN BRENT DOOLEY)

PLEA AGREEMENT

1. This Plea Agreement between the Acting United States Attorney for the Northern District of Illinois, GARY S. SHAPIRO, and defendant EVAN BRENT DOOLEY, and his attorney, KERI AMBROSIO, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(A), as more fully set forth below. The parties to this Agreement have agreed upon the following:

Charges in This Case

2. The indictment in this case charges defendant with wire fraud, in violation of Title 18, United States Code, Section 1343 (Counts One through Sixteen), and exceeding speculative position limits, in violation of Title 7, United States Code, Sections 6a and 13(a)(5) (Counts Seventeen and Eighteen).

3. Defendant has read the charges against him contained in the indictment, and those charges have been fully explained to him by his attorney.

4. Defendant fully understands the nature and elements of the crimes with which he has been charged.

Charges to Which Defendant Is Pleading Guilty

5. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to the following counts of the indictment: Count 17, which charges defendant with exceeding speculative position limits, in violation of Title 7, United States Code, Sections 6a and 13(a)(5); and Count 18, which charges defendant with exceeding speculative position limits, in violation of Title 18, United States Code, Sections 6a and 13(a)(5).

Factual Basis

6. Defendant will plead guilty because he is in fact guilty of the charges contained in Counts 17 and 18 of the indictment. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt and constitute relevant conduct pursuant to Guideline § 1B1.3:

a. With respect to Count 17 of the indictment:

On or about February 27, 2008, at Chicago, in the Northern District of Illinois, defendant Evan Brent Dooley willfully held a short position in May 2008 wheat futures contracts that exceeded speculative position limits in violation of Rule 150.2 of the Commodity Futures Trading Commission, namely, defendant held a short position of approximately 16,174 contracts for May 2008 wheat futures contracts, in violation of Title 18, United States Code, Sections 6a and 13(a)(5).

Futures contracts were legally binding agreements to make or take delivery of a specific quantity of a commodity at a specific time in the future. All terms of the contracts were standardized except for price. Futures contracts ultimately were settled either through

liquidation by an offsetting transaction or by delivery of the actual commodity. Futures contracts were traded on contract markets (commonly known as exchanges and boards of trade) designated pursuant to the Commodity Exchange Act by the CFTC, the federal agency established by statute to regulate transactions involving the purchase and sale of futures contracts.

The Chicago Board of Trade was one of those designated contract markets. The CBOT was part of the CME Group, Inc. Prices for wheat futures contracts were quoted in cents per bushel with a minimum price fluctuation of one-quarter of one cent per bushel. Under the CBOT contract specifications, trading in wheat futures contracts was subject to daily price limits restricting the amount the price of a wheat contract could fluctuate – *i.e.*, “limit up” or “limit down.”

The Commodity Exchange Act required the CFTC to set position limits, and made it unlawful for any person to hold a net long or net short position in a commodity during one business day in excess of trading limits fixed by the Commission. CFTC regulations, in turn, forbid any person from holding or controlling any net long or net short position in excess of 5000 wheat futures contracts for a single month.

CBOT wheat futures contracts were traded on an electronic trading platform, known as CME Globex, which electronically matched orders submitted by registered customers to sell or to purchase futures contracts. To trade on CME Globex, a customer was required to have a relationship with a clearing futures commission merchant, or FCM. Pursuant to CME Rule 900.A, certain qualifying FCMs acted as “Clearing Members.” Pursuant to CME Rule

903.A, these Clearing Members guaranteed and assumed complete responsibility to pay the CBOT's clearing house for all losses resulting from trades executed on behalf of their customers. MF Global was an FCM and Clearing Member, and therefore guaranteed and assumed complete responsibility to pay CBOT's clearing house for losses resulting from trades executed on behalf of its customers, including its Associated Persons, known as AP's.

MF Global provided access to CME Globex through its own proprietary trading and order entry system, known as OrderXpress. MF Global provided to an AP a front-end application which was installed and operated on a computer with a connection to the internet. When an AP entered an order, that order was transmitted electronically over the internet to MF Global's server, or back-end application, which was located in Chicago, Illinois. MF Global's back-end application then transmitted the order electronically to CME Globex, where the order was processed for execution.

In February 2008, defendant was an AP for MF Global, and used OrderXpress to execute buy and sell orders. During the overnight trading session on or about February 26, 2008, defendant executed a series of large buy and sell orders for approximately 31,964 futures contracts, including 24,231 contracts for May 2008 wheat futures. In particular, defendant executed a series of large sell orders for wheat futures contracts and thereby established a substantial short position in May 2008 wheat futures contracts. By approximately 6:00 a.m., defendant was short 16,174 contracts for May 2008 wheat futures contracts, approximately 11,174 contracts in excess of the position limit set by the CFTC. Later on the morning of February 27, 2008, when the price for May 2008 wheat futures

contracts rose rapidly as defendant attempted to liquidate his short position, defendant again executed a series of sell orders. At approximately 10:11 a.m., defendant was short 17,181 contracts for May 2008 wheat futures contracts, approximately 12,181 contracts in excess of the position limit set by the CFTC.

b. With respect to Count 18 of the indictment:

On or about February 27, 2008, at Chicago, in the Northern District of Illinois, and elsewhere, defendant willfully held positions in March, May, July, and December 2008 wheat futures contracts that exceeded speculative position limits in violation of CFTC Rule 150.2, namely, defendant held short positions of more than 16,000 contracts for March, May, July, and December 2008 wheat futures contracts combined, in violation of Title 18, United States Code, Sections 6a and 13(a)(5).

As mentioned above, the Commodity Exchange Act required the CFTC to set position limits, and made it unlawful for any person to hold a net long or net short position in a commodity during one business day in excess of trading limits fixed by the Commission. CFTC regulations, in turn, forbid any person from holding or controlling any net long or net short position in excess of 6500 wheat futures contracts for all months.

On February 27, 2008, in addition to establishing a substantial short position in May 2008 wheat futures contracts (at approximately 10:11 a.m., defendant held a short position of approximately 17,181 May 2008 wheat futures contracts), defendant also established positions in March, July and December 2008 wheat futures contracts. In total, defendant's short positions far exceeded 6500 wheat futures contracts for all months.

7. Defendant, for purposes of computing his sentence under Guideline §1B1.2, stipulates to having committed the following additional offense:

From at least as early as February 26, 2008, to February 27, 2008, at Chicago, in the Northern District of Illinois, and elsewhere, defendant devised and participated in an artifice to defraud MF Global and to obtain money and property from MF Global by means of materially false and fraudulent pretenses, representations, and promises. Specifically, defendant devised and participated in an artifice to defraud in which he intended to trade at the CBOT in futures contracts in a manner exceeding defendant's financial ability to pay for potential trading losses resulting from such trades, with the knowledge and intent that MF Global, as the Clearing Member for these trades, would be responsible to pay the CBOT's clearing house for any losses he incurred. For the purpose of executing the above-described artifice to defraud, at approximately 8:07 p.m., on or about February 26, 2008, defendant knowingly caused to be transmitted by means of wire communication in interstate commerce, certain signs and signals, namely, defendant's order to sell 100 May 2008 wheat futures contracts (order #10785), which order was routed by computer from his residence in Olive Branch, Mississippi, to MF Global in Chicago, Illinois, for matching with a corresponding order to purchase futures contracts, in violation of Title 18, United States Code, Section 1343.

After representing to MF Global that all trades executed on defendant's behalf would be at defendant's own risk, defendant executed a series of large buy and sell orders for approximately 31,964 futures contracts, including 24,231 contracts for May 2008 wheat

futures, during the overnight trading session on February 26, 2008, even though defendant knew that he did not have the financial ability to pay for potential trading losses resulting from such trades. At the start of the trading session, defendant knew that he had a negative balance of approximately \$3,000 in his account at MF Global and intended that the risks associated with his trading activity be borne directly and solely by MF Global.

During the trading session, defendant executed a series of large sell orders for wheat futures contracts and thereby established a substantial short position in May 2008 wheat futures contracts. At approximately 5:17 a.m. on February 27, 2008, the price for May 2008 wheat futures contracts had gone “limit down” to approximately \$10.795 per bushel. On the morning of February 27, 2008, when the price for May 2008 wheat futures contracts rose rapidly as defendant attempted to liquidate his short position, defendant again executed a series of sell orders. By approximately 10:29 a.m., the price for May 2008 wheat futures contracts had gone “limit up” to approximately \$13.495 per bushel.

After MF Global representatives learned of defendant’s overnight trading activity, MF Global deactivated defendant’s account and liquidated the remainder of his position. MF Global, as the Clearing Member on these trades, paid the CBOT’s clearing house the amount of the loss realized, which was \$141,021,489. Defendant was financially unable to reimburse MF Global for the loss created by his trading activity. As a result of the artifice to defraud, defendant caused an actual loss to MF Global in the amount of approximately \$141,024,294 (the amount paid to CBOT’s clearing house and the negative balance in defendant’s MF Global account).

Maximum Statutory Penalties

8. Defendant understands that the charges to which he is pleading guilty carry the following statutory penalties:

a. Count 17 carries a maximum sentence of 5 years' imprisonment. Count 17 also carries a maximum fine of \$500,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that with respect to Count 17 the judge also may impose a term of supervised release of not more than three years.

b. Count 18 carries a maximum sentence of 5 years' imprisonment. Count 18 also carries a maximum fine of \$500,000, or twice the gross gain or gross loss resulting from that offense, whichever is greater. Defendant further understands that with respect to Count 18, the judge also may impose a term of supervised release of not more than three years.

c. Defendant further understands that the Court must order restitution to the victims of the offense in an amount determined by the Court.

d. In accord with Title 18, United States Code, Section 3013, defendant will be assessed \$100 on each count to which he has pled guilty, in addition to any other penalty or restitution imposed.

e. Therefore, under the counts to which defendant is pleading guilty, the total maximum sentence is 10 years' imprisonment. In addition, defendant is subject to a total maximum fine of \$1,000,000, or twice the gross gain or gross loss resulting from the offenses

of conviction, whichever is greater, a period of supervised release, and special assessments totaling \$200, in addition to any restitution ordered by the Court.

Sentencing Guidelines Calculations

9. Defendant understands that in imposing sentence the Court will be guided by the United States Sentencing Guidelines. Defendant understands that the Sentencing Guidelines are advisory, not mandatory, but that the Court must consider the Guidelines in determining a reasonable sentence.

10. For purposes of calculating the Sentencing Guidelines, the parties agree on the following points:

a. **Applicable Guidelines.** The Sentencing Guidelines to be considered in this case are those in effect at the time of sentencing. The following statements regarding the calculation of the Sentencing Guidelines are based on the Guidelines Manual currently in effect, namely the November 2012 Guidelines Manual.

b. **Offense Level Calculations.**

With respect to Count 17:

i. The base offense level is 6, pursuant to Guideline § 2B1.1(a)(2).

ii. Pursuant to Guideline § 2B1.1(b)(1)(N), the offense level is increased by 26 levels because the amount of loss (\$141,024,294) exceeds \$100,000,000, but is less than \$200,000,000.

iii. Pursuant to Guideline § 3B1.3, the offense level is increased by 2 levels because the defendant used a special skill in a manner that significantly facilitated the commission and concealment of the offense.

With respect to Count 18:

iv. The base offense level is 6, pursuant to Guideline § 2B1.1(a)(2).

v. Pursuant to Guideline § 2B1.1(b)(1)(N), the offense level is increased by 26 levels because the amount of loss (\$141,024,294) exceeds \$100,000,000, but is less than \$200,000,000.

vi. Pursuant to Guideline § 3B1.3, the offense level is increased by 2 levels because the defendant used a special skill in a manner that significantly facilitated the commission and concealment of the offense.

With respect to the stipulated offense:

vii. The base offense level is 7, pursuant to Guideline § 2B1.1(a)(1).

viii. Pursuant to Guideline § 2B1.1(b)(1)(N), the offense level is increased by 26 levels because the amount of loss (\$141,024,294) exceeds \$100,000,000, but is less than \$200,000,000.

ix. Pursuant to Guideline § 3B1.3, the offense level is increased by 2 levels because the defendant used a special skill in a manner that significantly facilitated the commission and concealment of the offense.

Grouping:

x. Pursuant to Guideline §§ 3D1.2(d) and 3D1.3, the counts of conviction and the stipulated offense are grouped, and the offense level applicable to the Group is the offense level that produces the highest offense level, namely, 35.

Acceptance of Responsibility

xi. Defendant has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for his criminal conduct. If the government does not receive additional evidence in conflict with this provision, and if defendant continues to accept responsibility for his actions within the meaning of Guideline § 3E1.1(a), including by furnishing the United States Attorney's Office and the Probation Office with all requested financial information relevant to his ability to satisfy any fine or restitution that may be imposed in this case, a two-level reduction in the offense level is appropriate.

xii. In accord with Guideline § 3E1.1(b), defendant has timely notified the government of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court to allocate its resources efficiently. Therefore, as provided by Guideline § 3E1.1(b), if the Court determines the offense level to be 16 or greater prior to determining that defendant is entitled to a two-level reduction for acceptance of responsibility, the government will move for an additional one-level reduction in the offense level.

c. **Criminal History Category.** With regard to determining defendant's criminal history points and criminal history category, based on the facts now known to the

government, defendant's criminal history points equal zero and defendant's criminal history category is I.

d. **Anticipated Advisory Sentencing Guidelines Range.** Therefore, based on the facts now known to the government, the anticipated offense level is 32, which, when combined with the anticipated criminal history category of I, results in an anticipated advisory Sentencing Guidelines range of 121 to 151 months' imprisonment, in addition to any supervised release, fine, and restitution the Court may impose. As mentioned above, the statutory maximum term of imprisonment for the counts of conviction is a total of 120 months.

e. Defendant and his attorney and the government acknowledge that the above Guideline calculations are preliminary in nature, and are non-binding predictions upon which neither party is entitled to rely. Defendant understands that further review of the facts or applicable legal principles may lead the government to conclude that different or additional Guideline provisions apply in this case. Defendant understands that the Probation Office will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Guideline calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations, and defendant shall not have a right to withdraw his plea on the basis of the Court's rejection of these calculations.

f. Both parties expressly acknowledge that this Agreement is not governed by Fed.R.Crim.P. 11(c)(1)(B), and that errors in applying or interpreting any of the

Sentencing Guidelines may be corrected by either party prior to sentencing. The parties may correct these errors either by stipulation or by a statement to the Probation Office or the Court, setting forth the disagreement regarding the applicable provisions of the Guidelines. The validity of this Agreement will not be affected by such corrections, and defendant shall not have a right to withdraw his plea, nor the government the right to vacate this Agreement, on the basis of such corrections.

Agreements Relating to Sentencing

11. Each party is free to recommend whatever sentence it deems appropriate.

12. It is understood by the parties that the sentencing judge is neither a party to nor bound by this Agreement and may impose a sentence up to the maximum penalties as set forth above. Defendant further acknowledges that if the Court does not accept the sentencing recommendation of the parties, defendant will have no right to withdraw his guilty plea.

13. Regarding restitution, defendant agrees to pay restitution to MF Global, arising from the offense conduct set forth above, totaling \$141,024,294, minus any credit for funds repaid prior to sentencing, pursuant to Title 18, United States Code, §§ 3663A(a)(3) and 3664.

14. Restitution shall be due immediately, and paid pursuant to a schedule to be set by the Court at sentencing. Defendant acknowledges that pursuant to Title 18, United States Code, Section 3664(k), he is required to notify the Court and the United States Attorney's Office of any material change in economic circumstances that might affect his ability to pay restitution.

15. Defendant agrees to pay the special assessment of \$200 at the time of sentencing with a cashier's check or money order payable to the Clerk of the U.S. District Court.

16. Defendant agrees that the United States may enforce collection of any fine or restitution imposed in this case pursuant to Title 18, United States Code, Sections 3572, 3613, and 3664(m), notwithstanding any payment schedule set by the Court.

17. After sentence has been imposed on the counts to which defendant pleads guilty as agreed herein, the government will move to dismiss the remaining counts of the indictment as to defendant.

Acknowledgments and Waivers Regarding Plea of Guilty

Nature of Agreement

18. This Agreement is entirely voluntary and represents the entire agreement between the Acting United States Attorney and defendant regarding defendant's criminal liability in case 10 CR 335.

19. This Agreement concerns criminal liability only. Except as expressly set forth in this Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Agreement are limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Agreement.

Waiver of Rights

20. Defendant understands that by pleading guilty he surrenders certain rights, including the following:

a. **Trial rights.** Defendant has the right to persist in a plea of not guilty to the charges against him, and if he does, he would have the right to a public and speedy trial.

i. The trial could be either a jury trial or a trial by the judge sitting without a jury. However, in order that the trial be conducted by the judge sitting without a jury, defendant, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

ii. If the trial is a jury trial, the jury would be composed of twelve citizens from the district, selected at random. Defendant and his attorney would participate in choosing the jury by requesting that the Court remove prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges.

iii. If the trial is a jury trial, the jury would be instructed that defendant is presumed innocent, that the government has the burden of proving defendant guilty beyond a reasonable doubt, and that the jury could not convict him unless, after hearing all the evidence, it was persuaded of his guilt beyond a reasonable doubt and that it was to consider each count of the indictment separately. The jury would have to agree

unanimously as to each count before it could return a verdict of guilty or not guilty as to that count.

iv. If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded that the government had established defendant's guilt beyond a reasonable doubt.

v. At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them.

vi. At a trial, defendant could present witnesses and other evidence in his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court. A defendant is not required to present any evidence.

vii. At a trial, defendant would have a privilege against self-incrimination so that he could decline to testify, and no inference of guilt could be drawn from his refusal to testify. If defendant desired to do so, he could testify in his own behalf.

b. **Appellate rights.** Defendant further understands he is waiving all appellate issues that might have been available if he had exercised his right to trial, and may only appeal the validity of this plea of guilty and the sentence imposed. Defendant

understands that any appeal must be filed within 14 calendar days of the entry of the judgment of conviction.

c. Defendant understands that by pleading guilty he is waiving all the rights set forth in the prior paragraphs, with the exception of the appellate rights specifically preserved above. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

Presentence Investigation Report/Post-Sentence Supervision

21. Defendant understands that the United States Attorney's Office in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing shall fully apprise the District Court and the Probation Office of the nature, scope, and extent of defendant's conduct regarding the charges against him, and related matters. The government will make known all matters in aggravation and mitigation relevant to sentencing.

22. Defendant agrees to truthfully and completely execute a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the probation officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to Guideline § 3E1.1 and enhancement of his sentence for obstruction of justice under Guideline § 3C1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001 or as a contempt of the Court.

23. For the purpose of monitoring defendant's compliance with his obligations to pay a fine and restitution during any term of supervised release or probation to which defendant is sentenced, defendant further consents to the disclosure by the IRS to the Probation Office and the United States Attorney's Office of defendant's individual income tax returns (together with extensions, correspondence, and other tax information) filed subsequent to defendant's sentencing, to and including the final year of any period of supervised release or probation to which defendant is sentenced. Defendant also agrees that a certified copy of this Agreement shall be sufficient evidence of defendant's request to the IRS to disclose the returns and return information, as provided for in Title 26, United States Code, Section 6103(b).

Other Terms

24. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine and restitution for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

Conclusion

25. Defendant understands that this Agreement will be filed with the Court, will become a matter of public record, and may be disclosed to any person.

26. Defendant understands that his compliance with each part of this Agreement extends throughout the period of his sentence, and failure to abide by any term of the Agreement is a violation of the Agreement. Defendant further understands that in the event

he violates this Agreement, the government, at its option, may move to vacate the Agreement, rendering it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Agreement, or may move to resentence defendant or require defendant's specific performance of this Agreement. Defendant understands and agrees that in the event that the Court permits defendant to withdraw from this Agreement, or defendant breaches any of its terms and the government elects to void the Agreement and prosecute defendant, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

27. Should the judge refuse to accept defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound to it.

28. Defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

29. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: _____

GARY S. SHAPIRO

EVAN BRENT DOOLEY

Acting United States Attorney

Defendant

DANIEL J. COLLINS
Assistant U.S. Attorney

KERI AMBROSIO
Attorney for Defendant