



U.S. Department of Justice

ORIGINAL

*United States Attorney  
Southern District of New York*

*Criminal Division  
Fraud Section*

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

*Bond Building  
1400 New York Avenue, NW 11<sup>th</sup> Floor  
Washington, DC 20005*

CT. EX. #1

January 5, 2018

Julia Gatto, Esq.  
Federal Defenders of New York  
52 Duane Street, 10<sup>th</sup> Floor  
New York, NY 10007

**Re: United States v. Joo Hyun Bahn, a/k/a "Dennis Bahn", 16 Cr. 831 (ER)**

Dear Ms. Gatto:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York and the Fraud Section of the Criminal Division of the United States Department of Justice (collectively, the "Offices") will accept a plea from Joo Hyun Bahn, a/k/a "Dennis Bahn" ("the defendant") to Counts One and Four of the above-referenced Indictment.

Count One charges the defendant with conspiracy to violate the Foreign Corrupt Practices Act ("FCPA"), in violation of Title 18, United States Code, Section 371, and carries a maximum term of imprisonment of five years, a maximum term of supervised release of three years, a maximum fine, pursuant to Title 18, United States Code, Section 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense, and a \$100 mandatory special assessment.

Count Four charges the defendant with violating the FCPA, in violation of Title 15, United States Code, Section 78dd-2, and Title 18, United States Code, Section 2, and carries a maximum term of imprisonment of five years, a maximum term of supervised release of three years, a maximum fine, pursuant to Title 18, United States Code, Section 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense, and a \$100 mandatory special assessment. In addition to the foregoing, the Court must order restitution as specified below.

The total maximum term of imprisonment on Counts One and Four is ten years.

In consideration of the defendant's plea to the above offenses, the defendant will not be further prosecuted criminally by the Offices (except for criminal tax violations, if any, as to which

the Offices cannot, and do not, make any agreement) for conspiring to violate and violating the FCPA between in or about March 2013 and May 2015, it being understood that this agreement does not bar the use of such conduct as a predicate act or as the basis for a sentencing enhancement in a subsequent prosecution including, but not limited to, a prosecution pursuant to 18 U.S.C. §§ 1961 *et seq.* In addition, at the time of sentencing, the Offices will move to dismiss any open Counts against the defendant. The defendant agrees that with respect to any and all dismissed charges he is not a “prevailing party” within the meaning of the “Hyde Amendment,” Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

The defendant hereby admits the forfeiture allegations with respect to Counts One and Four of the Indictment and agrees to forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461, all property, real and personal, which constitutes or is derived from proceeds traceable to such violations. 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 further understood that the defendant shall make restitution in an amount to be determined by the Court at the time of sentencing in accordance with Title 18, United States Code, Sections 3663, 3663A, and 3664. This amount shall be paid according to a plan established by the Court.

In consideration of the foregoing and pursuant to United States Sentencing Guidelines (“U.S.S.G.” or “Guidelines”) Section 6B1.4, the parties hereby stipulate to the following:

A. Offense Level

1. The applicable Guidelines manual is the manual effective November 1, 2016.
2. Pursuant to U.S.S.G. § 3D1.2(d), Counts One and Four are grouped into a single Group because the offense level for both offenses is determined largely on the basis of the total amount of loss. Pursuant to U.S.S.G. § 3D1.3(b), because Counts One and Four involve offenses of the same general type, but to which different guidelines apply—U.S.S.G. § 2X1.1 and § 2C1.1, respectively—the guideline that produces the highest offense level applies. Because the defendant and his co-conspirators completed all the acts the conspirators believed necessary on their part for the successful completion of the substantive FCPA offense, however, no adjustment is warranted under U.S.S.G. § 2X1.1(b). As a result, the applicable guideline for Count One is the same as that for the substantive FCPA offense charged in Count Four, namely U.S.S.G. § 2C1.1.
3. Pursuant to U.S.S.G. § 2C1.1(a)(2), the base offense level is 12.
4. Pursuant to U.S.S.G. § 2C1.1(b)(2), because the value of the payment, the benefit received or to be received in return for the payment, the value of anything obtained or to be obtained by a public official or others acting with a public official, or the loss to the government from the offense, whichever is greatest, exceeded \$6,500, the offense level is increased by the number of levels from the table in U.S.S.G. § 2B1.1. Pursuant to U.S.S.G. § 2B1.1(b)(1)(J), the

Offices believe that an 18-level enhancement is warranted because the value of the benefit to be received was greater than \$3.5 million but not more than \$9.5 million. The defendant reserves the right to argue at sentencing that, pursuant to U.S.S.G. § 2B1.1(b)(1)(G), a 12-level enhancement is warranted because the value of the payment was greater than \$250,000 but not more than \$550,000.

5. Assuming the defendant clearly demonstrates acceptance of responsibility to the satisfaction of the Offices, through his allocution and subsequent conduct prior to the imposition of sentence, a two-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a). Furthermore, assuming the defendant has accepted responsibility as described in the previous sentence, the Offices will move at sentencing for an additional one-level reduction, pursuant to U.S.S.G. § 3E1.1(b), because the defendant gave timely notice of his intention to enter a plea of guilty, thereby permitting the Offices to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

In accordance with the above, the Offices believe that the applicable Guidelines offense level for Counts One and Four is 27, and the defendant reserves the right to argue at sentencing that the offenses yield a lower Guidelines offense level of 21.

#### B. Criminal History Category

Based upon the information now available to the Offices (including representations by the defense), the defendant has zero criminal history points. Accordingly, the defendant's Criminal History Category is I.

#### C. Sentencing Range

Based upon the calculations set forth above, the parties agree that the defendant's sentencing Guidelines range is 70 to 87 months' imprisonment if the Court concludes that an 18-level loss enhancement applies, pursuant to U.S.S.G. §§ 2B1.1(b)(1)(J) and 2C1.1(b)(2). The parties further agree that the defendant's sentencing Guidelines range is 37 to 46 months' imprisonment if the Court concludes that only a 12-level loss enhancement applies, pursuant to U.S.S.G. §§ 2B1.1(b)(1)(G) and 2C1.1(b)(2). The defendant agrees that he will not file a direct appeal, collaterally attack, or litigate under Title 28, United States Code, Section 2255 and/or Section 2242, any sentence within or below the range of 37 to 87 months' imprisonment (the "Stipulated Guidelines Range"), including the Court's determination about the appropriate loss enhancement under U.S.S.G. §§ 2B1.1(b)(1) and 2C1.1(b)(2). In addition, after determining the defendant's ability to pay, the Court may impose a fine pursuant to U.S.S.G. § 5E1.2(c). At Guidelines level 27, the applicable fine range is \$25,000 to \$250,000; at Guidelines level 21, the applicable fine range is \$15,000 to \$150,000.

The parties agree that neither a downward nor an upward departure from the Stipulated Guidelines Range set forth above is warranted. Accordingly, neither party will seek any departure or adjustment pursuant to the Guidelines that is not set forth herein. Nor will either party in any way suggest that the Probation Office or the Court consider such a departure or adjustment under the Guidelines.

The parties agree that either party may seek a sentence outside of the Stipulated Guidelines Range based upon the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a).

Except as provided in any written Proffer Agreement(s) that may have been entered into between this Office and the defendant, nothing in this Agreement limits the right of the parties (i) to present to the Probation Office or the Court any facts relevant to sentencing; (ii) to make any arguments regarding where within the Stipulated Guidelines Range (or such other range as the Court may determine) the defendant should be sentenced and regarding the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a); (iii) to seek an appropriately adjusted Guidelines range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above; and (iv) to seek an appropriately adjusted Guidelines range or mandatory minimum term of imprisonment if it is subsequently determined that the defendant qualifies as a career offender under U.S.S.G. § 4B1.1. Nothing in this Agreement limits the right of the Offices to seek denial of the adjustment for acceptance of responsibility, *see* U.S.S.G. § 3E1.1, regardless of any stipulation set forth above, if the defendant fails clearly to demonstrate acceptance of responsibility, to the satisfaction of the Offices, through his allocution and subsequent conduct prior to the imposition of sentence. Similarly, nothing in this Agreement limits the right of the Offices to seek an enhancement for obstruction of justice, *see* U.S.S.G. § 3C1.1, regardless of any stipulation set forth above, should it be determined that the defendant has either (i) engaged in conduct, unknown to the Offices at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this Agreement.

It is understood that pursuant to U.S.S.G. § 6B1.4(d), neither the Probation Office nor the Court is bound by the above Guidelines stipulation, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Office or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated to above, or contemplates any sentence outside of the stipulated Guidelines range, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court. It is further understood that the Guidelines are not binding on the Court. The defendant acknowledges that his entry of a guilty plea to the charged offenses authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence. The Offices cannot, and do not, make any promise or representation as to what sentence the defendant will receive. Moreover, it is understood that the defendant will have no right to withdraw his plea of guilty should the sentence imposed by the Court be outside the Guidelines range set forth above.

It is agreed (i) that the defendant will not file a direct appeal; nor bring a collateral challenge, including but not limited to an application under Title 28, United States Code, Section 2255 and/or Section 2241; nor seek a sentence modification pursuant to Title 18, United States Code, Section 3582(c), of any sentence within or below the Stipulated Guidelines Range of 37 to 87 months' imprisonment, including the Court's determination about the appropriate loss

enhancement under U.S.S.G. §§ 2B1.1(b)(1) and 2C1.1(b)(2), and (ii) that the Offices will not appeal any sentence within or above the Stipulated Guidelines Range. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation. The parties agree that this waiver applies regardless of whether the term of imprisonment is imposed to run consecutively to or concurrently with the undischarged portion of any other sentence of imprisonment that has been imposed on the defendant at the time of sentencing in this case. The defendant further agrees not to appeal any term of supervised release that is less than or equal to the statutory maximum. The defendant also agrees not to appeal any fine that is less than or equal to \$250,000, and the Offices agree not to appeal any fine that is greater than or equal to \$15,000. Notwithstanding the foregoing, nothing in this paragraph shall be construed to be a waiver of whatever rights the defendant may have to assert claims of ineffective assistance of counsel, whether on direct appeal, collateral review, or otherwise. Rather, it is expressly agreed that the defendant reserves those rights.

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 Offices have 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, or 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 may subject him to adverse immigration consequences (including removal from the United States, denial of United States citizenship, or denial of admission to the United States in the future). The defendant acknowledges that he has discussed the possible adverse immigration consequences of his guilty plea and conviction with defense counsel. The defendant affirms that he wants to plead guilty regardless of any adverse immigration consequences that may result from the guilty plea and conviction. It is agreed that the defendant will have no right to withdraw his guilty plea based on any actual or perceived adverse immigration consequences 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 resulting from his guilty plea and conviction.

It is further agreed that should the convictions following the defendant's pleas of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement (including any counts that the Offices have agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against the defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement 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 further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than the Offices.

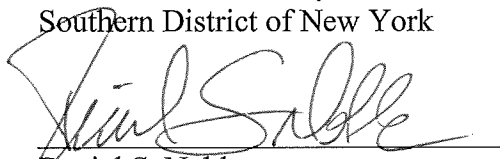
Apart from any written Proffer Agreement(s) that may have been entered into between the Offices and defendant, this Agreement supersedes any prior understandings, promises, or conditions between the Offices and the defendant. No additional understandings, promises, or conditions have been entered into 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,

GEOFFREY S. BERMAN  
United States Attorney  
Southern District of New York

SANDRA MOSER  
Acting Chief, Fraud Section  
Criminal Division

By:



Daniel S. Noble  
Assistant United States Attorney  
(212) 637-2239

By:



Dennis R. Kihm  
Trial Attorney  
(202) 616-2999

APPROVED:



Tim Howard  
Chief, Complex Frauds &  
Cybercrime Unit



Daniel Kahn  
Chief, FCPA Unit

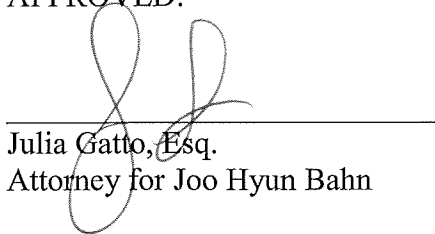
AGREED AND CONSENTED TO:



Joo Hyun Bahn

11/5/18  
DATE

APPROVED:



Julia Gatto, Esq.  
Attorney for Joo Hyun Bahn

1/5/18  
DATE