UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No.: 11-192(MJD)

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	**PLEA AGREEMENT AND**
	)	**SENTENCING STIPULATIONS**
v.	)	
	)	
CHRISTOPHER PETTENGILL,	)	
	)	
Defendant.	)	

The United States of America and Christopher Pettengill (hereinafter referred to as the "defendant") agree to resolve this case on the terms and conditions that follow. This plea agreement binds only the defendant and the United States Attorney's Office for the District of Minnesota. This agreement does not bind any other United States Attorney's Office or any other federal or state agency.

1. **Charges**. The defendant agrees to plead guilty to Counts 1, 2 and 3 of the Information. Count 1 charges the defendant with securities fraud in violation of Title 15, United States Code, Sections 77q(a) and 77x. Count 2 charges the defendant with conspiracy to commit wire fraud in violation of Title 18, United States Code, Section 371. Count 3 charges the defendant with engaging in a monetary transaction in property derived from a specified unlawful activity in violation of Title 18, United States Code, Section 1957.

The United States Attorney's Office for the District of Minnesota agrees that, beyond the charges contained in the information, it will not prosecute the defendant based upon facts which are known as of the date of the defendant's guilty plea to the IRS - Criminal Investigation Division case agents assigned to the case and/or the FBI case agents assigned to the case, including but not limited to facts involving the "UBS/Oxford Entities," as defined below.

2. **Waiver of Indictment**. The defendant agrees to waive indictment by a grand jury on these charges and to consent to the filing of a criminal information. The defendant further agrees to execute a written waiver of his right to be indicted by a grand jury on these charges.

3. **Factual Basis**. The defendant makes the following admission:

a. At all relevant times, the defendant, Trevor Gilson Cook (Cook) and/or other individuals formed and/or conducted business through entities identified by the terms "UBS" and/or "United Brokerage Services." These entities include but are not limited to "UBS Diversified;" "UBS Diversified, LLC;" "UBS Diversified Growth, LLC;" "UBS Global Advisors;" and "United Brokerage Services." These entities are hereafter referred to collectively as the "UBS Entities." These entities have no legitimate affiliation with the global financial services provider,

UBS, AG.

b. At all relevant times, the defendant, Cook, and/or other individuals formed and/or conducted business through entities identified by the term "Oxford." These entities include but are not limited to "Oxford Private Client Group;" "Oxford Global Advisors, LLC;" "Oxford Global Holdings;" "Oxford FX Advisors;" "Oxford FX Management, LLC;" "Oxford Institutional Growth LP;" "Oxford Global Partners, LLC;" "Oxford Global Partners;" "Oxford Capital Investments;" "Oxford Capital Holdings, LLC;" and "Oxford Global FX LLC." These entities are hereafter referred to collectively as the "Oxford Entities."

c. At all relevant times, Oxford Global Advisors bought and sold securities (identified below as the "Currency Program") for accounts of investors and others. At all relevant times, the defendant and others working on behalf of Oxford Global Advisors caused and conducted these securities transactions, directly and through others, using instrumentalities of interstate commerce. At all relevant times, the defendant was a person associated with Oxford Global Advisors and performed various duties including but not limited to soliciting investors to purchase these securities.

d. At all relevant times, "Crown Forex, SA" was a foreign currency trading firm with operations in Switzerland.

e. From in or about 2006 through in or about October 2007, in the State and District of Minnesota, the defendant, Cook,

and other individuals acting on behalf of the UBS Entities solicited and/or caused the solicitation of investors for a foreign currency trading program (Currency Program). The UBS Entities operated the Currency Program through various foreign currency trading firms including but not limited to Trading Firm A in Illinois; Crown Forex, SA; and others similar entities.

f. In or about October 2007, the defendant, Cook and other individuals generally stopped using the UBS Entities name to solicit investors because the global financial services firm named UBS, AG, filed a trademark infringement lawsuit against the defendant, Cook, and other individuals for using the name UBS.

g. Thereafter, the defendant, Cook and other individuals who solicited and caused the solicitation of investors for the UBS Entities agreed to the formation of "Oxford Global Advisors" for the continued soliciting of investors for the Currency Program.

h. From approximately October 2007, the defendant, Cook and other individuals solicited and caused the solicitation of investors for the Oxford Entities Currency Program. The defendant, Cook and other individuals working on behalf of the Oxford Entities told potential investors that the investment generated the promised rate of return through an "arbitrage" strategy that took advantage of differences in the interest rates of foreign currencies through split-second trading. The defendant, Cook and others individuals

further explained that the Oxford Entities strategy involved investing in a long position in one currency pair and a mirror short position in a second currency pair. As described by the defendant, Cook, and other individuals acting on behalf of the UBS/Oxford Entities, one position allegedly earned more interest than the other position paid, such that the investment involved little to no risk. The methodology was generally the same as that used in operating the Currency Program through the UBS Entities.

i. The defendant, Cook and other individuals acting on behalf of the Oxford Entities, caused the providing of and/or provided Currency Program investors with statements and investment return checks on a monthly basis. Although these statements purported to reflect positive investment returns, in fact, the statements were produced through simple arithmetic by individuals working on behalf of the Oxford Entities. Specifically, employees of the Oxford Entities multiplied an investor's investment assets by the promised rate of return to identify the monthly investment return amount. The employees then used that number in creating the monthly lulling checks that were sent to investors and which purported to reflect the return on the investment. In reality, these returns reflected on the statements and checks bore no relationship to the actual returns on assets invested through the Oxford Entities.

j. Investors did not receive statements from the

currency trading firms in actual possession of the investment funds, and thus relied upon the statements and checks provided by the Oxford Entities as evidence that the Currency Program functioned as they had been promised by the defendant, Cook and other individuals acting on behalf of the UBS/Oxford Entities.

k. The defendant, Cook, and other individuals acting on behalf of the Oxford Entities advised and supervised the Oxford Entities' sales agents and continued to solicit investors for the Currency Program through telemarketing, radio broadcasts, investor seminars, personal meetings, word-of-mouth, and other means.

l. In these solicitations, among other things, the defendant, Cook, and other individuals acting on behalf of the Oxford Entities represented that (i) the Currency Program generated an annual return of 10.5 to 12 percent; (ii) the Currency Program was a safe investment (iii) in that the investor could not lose investment principal; and (iv) the investor could withdraw his or her investment assets at any time.

m. By February 2008, the defendant, Cook and other individuals acting on behalf of the Oxford Entities had secured and/or caused the securing of tens of millions of dollars in investor assets for the Currency Program. Some of these assets were directed to Crown Forex, SA, in Switzerland for execution of the currency program.

n. In February 2008, Cook and other individuals acting

on behalf of the UBS/Oxford Entities caused the conducting of due diligence on Crown Forex, SA, in Switzerland. Through this due diligence, the defendant, Cook, and other individuals, were advised by email dated February 27, 2008, that Crown Forex, SA, was "illiquid." Specifically, they were told that Crown Forex, SA, claimed to have received investor assets valued at approximately $15 million and had only $1 million of those assets remaining. The defendant, Cook and other individuals, were also informed that the management of Crown Forex, SA, did not have the company under control financially.

o. To prop up Crown Forex, SA, as well as the UBS/Oxford Entities' existing investment therein, the defendant, Cook and other individuals working on behalf of the UBS/Oxford Entities agreed to provide approximately $4 million to Crown Forex, SA, in a transaction that purported to include an option for Oxford Global Advisors to assume control over the majority of Crown Forex, SA's operations.

p. In or about March 2008, a separate investor in Crown Forex, SA, and located in England – R.G.F.C. – began threatening legal action against Crown Forex, SA. The defendant, Cook, and other individuals acting on behalf of the Oxford Entities actively negotiated a payment plan to keep this separate investor and others from taking action against Crown Forex, SA, and from publicly disclosing problems with Crown Forex, SA.

q. Even after learning that Crown Forex, SA, was illiquid, and notwithstanding the Currency Program's problems and poor performance, the defendant, Cook and other individuals acting on behalf of the UBS/Oxford Entities continued to take funds from the Oxford Entities including but not limited hundreds of thousands of dollars used to fund the defendant's monthly salary, the partial production of a movie, cash withdrawals, personal income tax payments and other personal expenditures of the defendant, Cook and others acting on behalf of the UBS/Oxford Entities.

r. The defendant generally stopped working on behalf of the Oxford Entities in September 2008, and received his final payment from Crown Forex, SA, on or about November 17, 2008.

s. Cook and other individuals working on behalf of the Oxford Entities continued soliciting and securing investors for the Oxford Entities' Currency Program into 2009.

SECURITIES FRAUD

t. From on about February 27, 2008, through in or about September 2008, the defendant, aiding and abetting Cook and other individuals, and being aided and abetted by such individuals, did knowingly, willfully, and unlawfully, by the use of means and instrumentalities of interstate commerce, directly and indirectly use and employ manipulative and deceptive devices in connection with the purchase and sale of securities, namely the Currency Program, and did make untrue statements of material facts and omit

to state material facts necessary in order to make the statements made, not misleading in connection with the purchase and sale of said securities, in violation of Title 15, United States Code, Sections 77g(a) and 77x.

u. The defendant, Cook, and other individuals acting on behalf of the Oxford Entities both verbally and in written materials provided to existing and potential investors, made material misrepresentations and concealed material information about the Currency Program to induce existing investors to remain in the Currency Program and to induce potential investors to invest in the Currency Program.

v. At no time did the defendant, Cook or other individuals working on behalf of the UBS/Oxford Entities disclose to existing or potential investors Crown Forex, SA's illiquidity; any other material problems they saw with Crown Forex, SA; the obvious effect of these material problems on the value of investors' assets in the Currency Program; the problems that R.G.F.C. and/or other separate investors had with Crown Forex, SA; the payment plan(s) negotiated to conceal those problems; or any other material information concerning separate investors' significant problems with Crown Forex, SA.

w. At no time did the defendant, Cook, or other individuals working on behalf of the UBS/Oxford Entities disclose to investors that Crown Forex, SA, needed a multimillion dollar

cash infusion from the Oxford Entities to continue functioning.

x. Instead, the defendant, Cook and others working on behalf of the UBS/Oxford Entities, lulled existing investors and solicited new investors both personally and through UBS/Oxford Entities' sales agents, made false representations concerning the investment, and caused the production and sending of lulling statements and checks to show investors that the Currency Program functioned as the UBS/Oxford Entities claimed. These statements and checks falsely represented that investor's Currency Program assets had not lost value and were generating the promised rate of return despite the contrary information known by the defendant, Cook and other individuals acting on behalf of the UBS/Oxford Entities concerning Crown Forex, SA's significant financial problems.

y. The defendant, Cook and other individuals acting on behalf of the UBS/Oxford Entities made these material false representations to investors and concealed material facts from investors by use of means and instrumentalities of interstate commerce including and not limited to the United States mail, cellular telephone networks, land-line phone networks, radio airwaves, and bank wire facilities.

z. As a result of such material misstatements and omissions by Cook and the defendant, each aiding and abetting the other, D.B. invested $1.5 million in the Currency Program on or

about July 9, 2008.

CONSPIRACY TO COMMIT WIRE FRAUD

aa. From on or about February 27, 2008, and continuing to on or about November 17, 2008, in the State and District of Minnesota and elsewhere the defendant, Cook, and other individuals working on behalf of the UBS/Oxford Entities, knowingly and intentionally created, devised, executed, and attempted to execute a scheme and artifice to defraud, and to obtain money and other things of value, by means of materially false and misleading statements and representations concerning a security.

bb. During this time frame, the defendant, aiding and abetting and aided and abetted by Cook and other individuals working on behalf of the UBS/Oxford Entities, raised approximately $37 million from approximately 300 investors by selling securities, namely an investment in the Currency Program.

cc. In furtherance of the scheme, the defendant, Cook and other individuals working on behalf of the UBS/Oxford Entities, knowingly made and caused false statements to be made to existing and potential investors, including but not limited to, promising that the Currency Program would generate annual returns of approximately 10.5 to 12 percent and that the Currency Program involved little or no risk to the investors' principal.

dd. In furtherance of the scheme, the defendant, Cook and other individuals working on behalf of the UBS/Oxford Entities,

knowingly caused material information to be withheld from existing and potential investors including but not limited to (1) the dire financial position of Crown Forex, SA in Switzerland, one of the entities at which the defendant, Cook and other individuals acting on behalf of the UBS/Oxford Entities had placed and were continuing to place funds provided by Currency Program investors, and (2) the fact that the defendant's $1 million investment in the Currency Program was depleted by January 2007 through withdrawals and trading losses.

ee. In furtherance of the scheme, the defendant, aiding and abetting and aided and abetted by Cook and other individuals working on behalf of the UBS/Oxford Entities, falsely led existing and potential investors to believe that the Currency Program was functioning as the defendant, Cook and others individuals acting on behalf of the Oxford Entities represented and that it was generating the promised rates of return.

ff. In furtherance of the scheme, the defendant aiding and abetting and aided and abetted by Cook and other individuals working on behalf of the UBS/Oxford Entities, caused investors to receive monthly investment statements that falsely represented to investors that their investment was generating the promised rate of return and that their investment principal did not fluctuate in value or at times lose value.

gg. In furtherance of the scheme, the defendant, Cook

and other individuals working on behalf of the UBS/Oxford Entities, withheld from investors material information including that they diverted investment principal that had been entrusted to them for the Currency Program and used these funds (1) to pay investors purported interest payments and return of principal; (2) to pay salaries and personal expenses of the defendant, Cook and other individuals working on behalf of the UBS/Oxford Entities; and (3) to provide funds to Crown Forex, SA, and its separate investors in an effort to conceal from Swiss banking regulators and investors the dire financial condition of Crown Forex, SA. Part of this effort to conceal is reflected by email dated March 14, 2008, wherein the defendant indicated that Oxford Global Advisors is formulating a plan to resolve a separate investor's (R.C.G.F.'s) issues with Crown Forex, SA.

hh. As a result of the manipulative and deceptive practices, the defendant, aiding and abetting and aided and abetted by Cook and other individuals working on behalf of the UBS/Oxford Entities, continued to secure investments through wire transfers and payments by check from new and existing investors throughout the February to September 2008 time frame.

ii. The defendant received his final payment from Crown Forex, SA. on or about November 17, 2008.

ENGAGING IN A MONETARY TRANSACTION IN PROPERTY DERIVED FROM A SPECIFIED UNLAWFUL ACTIVITY

jj. On or about September 3, 2008, in the State and

District of Minnesota and elsewhere, the defendant, did knowingly engage and attempt to engage in a monetary transaction by, through, or to a financial institution, affecting interstate commerce, in criminally derived property of a value greater than $10,000.00, namely a "credit card web payment" of $11,369.19 from the defendant's personal bank account and for the defendant's credit card account xxxxxxxxxxx2725; the funds for this payment were derived from specified unlawful activity including but not limited to securities fraud, in violation of Title 15, United States Code, Section 77q(a) and 77x.

ALL OFFENSES

kk. The defendant acted knowingly, voluntarily and willingly; knew his actions violated the law; and is guilty of the crimes charged.

4. **Statutory Penalties**. The parties agree that statutory penalties applicable to each count are as follows:

Count 1: Securities Fraud

a. a maximum of 5 years imprisonment;

b. a supervised release term of not more than three years;

c. a criminal fine of up to the greater of $250,000.00 or twice the amount of gain or loss;

d. a mandatory special assessment of $100.00;

e. payment of mandatory restitution in an amount to be determined by the Court;

f. the costs of prosecution (as defined in 28 U.S.C.

§§ 1918(b) and 1920).

Count 2: Conspiracy To Commit Wire Fraud

g. a maximum of 5 years imprisonment;

h. a supervised release term of not more than three years;

i. a criminal fine of up to the greater of $250,000.00 or twice the amount of gain or loss;

j. a mandatory special assessment of $100.00;

k. payment of mandatory restitution in an amount to be determined by the Court;

l. the costs of prosecution (as defined in 28 U.S.C. §§ 1918(b) and 1920).

Count 3: Engaging In A Monetary Transaction In Property Derived From A Specified Unlawful Activity

m. a maximum of 10 years imprisonment;

n. a supervised release term of not more than three years;

o. a criminal fine of up to the greater of $250,000.00 or twice the amount of gain or loss;

p. a mandatory special assessment of $100;

q. payment of mandatory restitution in an amount to be determined by the Court;

r. the costs of prosecution (as defined in 28 U.S.C. §§ 1918(b) and 1920).

5. **Revocation of Supervised Release**. The defendant understands that if the defendant were to violate any condition of supervised release, the defendant could be sentenced to an additional term of imprisonment up to the length of the original

supervised release term, subject to the statutory maximums set forth in 18 U.S.C. § 3583.

6. **Waiver of Pretrial Motions**. The defendant understands and agrees that he has certain rights to file and litigate pretrial motions in this case. As part of this plea agreement, and based upon the concessions of the United States within this plea agreement, the defendant knowingly, willingly, and voluntarily gives up the right to file and litigate pretrial motions in this case.

7. **Guideline Calculations**. The parties acknowledge that the defendant will be sentenced in accordance with 18 U.S.C. § 3551, et seq. Nothing in this plea agreement should be construed to limit the parties from presenting any and all relevant evidence to the Court at sentencing. The parties also acknowledge that the Court will consider the United States Sentencing Guidelines in determining the appropriate sentence and stipulate to the following guideline calculations:

Count 1: Securities Fraud

a. Base Offense Level. The parties agree that the base offense level is 6 for Count 1, a violation of Title 15, United States Code, Sections 77q(a) and 77x. (U.S.S.G. § 2B1.1(a)(1)).

b. Specific Offense Characteristics. The parties agree that the base offense level should be increased by: (1) 22 levels for a loss of more than $20 million but less than $50 million; and (2) 6 levels for 250 or more victims. (U.S.S.G. § 2B1.1(b)(2) and (9)(C)).

The United States contends that the defendant should receive a 4 level upward adjustment identified at 2B1.1(b)(17) because he satisfies the enumerated criteria, and these enumerated criteria do not require that the defendant was registered with the SEC or a related entity at the time of the offense. U.S.S.G § 2B1.1(b)(17), App. n.14(A), and statutes cited therein. The defendant contends that he was not registered, and specifically not registered as a person associated with a broker or dealer at the time of the offense, such that adjustment does not apply. Presently, the United States has no information indicating that, at the time of the offense, the defendant was registered as a person associated with a broker or dealer.

The parties understand that the Court will determine application of this adjustment at sentencing. If the Court applies this 4 level adjustment, the parties agree that the 2 level adjustment for use of a special skill and/or abuse of position of trust in the commission of the offense does not apply; if the Court does not apply this 4 level adjustment, the parties agree that the 2 level adjustment for use of a special skill and/or abuse of position of trust in the commission of the offense applies. (U.S.S.G. § 2B1.1, App. n. 14(C)).

The parties agree that no other specific offense characteristics apply.

c. Chapter 3 Adjustments. The parties agree, that application of the Chapter 3 adjustment for use of a special skill and/or abuse of position of trust will be resolved as described in paragraph b above. (U.S.S.G. § 3B.1). The parties agree that no other Chapter 3 adjustments apply.

Count 2: Conspiracy To Commit Wire Fraud

d. Base Offense Level. The parties agree that the base offense level is 6 for Count 2, a violation of Title 18, United States Code, Section 371. (U.S.S.G. §§ 2X1.1, 2B1.1(a)(1)).

e. Specific Offense Characteristics. The parties agree that the base offense level should be

increased by: (1) 22 levels for a loss of more than $20 million but less than $50 million; and (2) 6 levels for 250 or more victims. (U.S.S.G. § 2B1.1(b)(2) and (9)(C)).

The United States contends that the defendant should receive a 4 level upward adjustment identified at 2B1.1(b)(17) because he satisfies the enumerated criteria, and these enumerated criteria do not require that the defendant was registered with the SEC or a related entity at the time of the offense. U.S.S.G § 2B1.1(b)(17), App. n.14(A), and statutes cited therein. The defendant contends that he was not registered, and specifically not registered as a person associated with a broker or dealer at the time of the offense, such that adjustment does not apply. Presently, the United States has no information indicating that, at the time of the offense, the defendant was registered as a person associated with a broker or dealer.

The parties understand that the Court will determine application of this adjustment at sentencing. If the Court applies this 4 level adjustment, the parties agree that the 2 level adjustment for use of a special skill and/or abuse of position of trust in the commission of the offense does not apply; if the Court does not apply this 4 level adjustment, the parties agree that the 2 level adjustment for use of a special skill and/or abuse of position of trust in the commission of the offense applies. (U.S.S.G. § 2B1.1, App. n. 14(C)).

The parties agree that no other specific offense characteristics apply.

c. Chapter 3 Adjustments. The parties agree, that application of the Chapter 3 adjustment for use of a special skill and/or abuse of position of trust will be resolved as described in paragraph b above. (U.S.S.G. § 3B.1). The parties agree that no other Chapter 3 adjustments apply.

Count 3: Engaging In A Monetary Transaction In Property Derived From A Specified Unlawful Activity

g. Base Offense Level. The parties agree that the base

offense level is either 36 (6+22+6+2) or 38 (6+22+6+4) for Count 3, as the base offense level is that for the underlying offense, namely securities fraud as charged in Count 1 of the information. (U.S.S.G. § 2S1.1(a)(1)).

h. Specific Offense Characteristics. The parties agree that the base offense level should be increased by 1 because this is an offense charged under Title 18, United States Code, Section 1957. (U.S.S.G. § 2S1.1(b)(2)(A). The parties agree that no other specific offense characteristics apply.

i. Chapter 3 Adjustments. The parties agree that other than as provided for herein no additional Chapter 3 adjustments apply.

All Counts

j. Grouping of Related Counts. Under the grouping rules set forth in Guideline Sections 3D1.1 to 3D1.4, Counts 1, 2 and 3 are grouped, resulting in application of the highest offense level from those counts. The highest offense level is either 37 or 39.

k. Acceptance of Responsibility. The government agrees to recommend that the defendant receive a 3-level reduction for acceptance of responsibility and to make any appropriate motions with the Court. However, the defendant understands and agrees that this recommendation is conditioned upon the following: (i) the defendant testifies truthfully during the change of plea hearing, (ii) the defendant cooperates with the Probation Office in the pre-sentence investigation, (iii) the defendant commits no further acts inconsistent with acceptance of responsibility, and (iv) the defendant makes reasonable efforts toward paying restitution. (U.S.S.G. § 3E1.1).

l. Criminal History Category. Based on information available at this time, the parties believe that the defendant's criminal history category is I. This does not constitute a stipulation, but a belief based on an assessment of the information currently known. Defendant's actual criminal history and related status (which might impact the

defendant's adjusted offense level and resulting sentence) will be determined by the Court based on the information presented in the Pre-sentence Report and by the parties at the time of sentencing.

m. Guideline Range. The calculations above result in potential advisory guideline ranges of (i) 188-235 months, based on a total offense level of 36 (39-3) and a criminal history category of I and (ii) 151-188 months, based on a total offense level of 34 (37-3) and a criminal history category of I.

n. Fine Range. The fine range is, at the low end either $17,500.00 or $20,000.00 (depending on the offense level), and at the high end $250,000.00 or twice the gain or loss, whichever is higher. (U.S.S.G. § 5E1.2(c)(3)).

o. Supervised Release. The Sentencing Guidelines require a term of supervised release of at least two but not more than three years. (U.S.S.G. § 5D1.2(a)(3)).

p. Sentencing Recommendation and Departures. The parties reserve the right to make motions for departures from the applicable guidelines range and to oppose any such motion made by the opposing party. The parties also reserve the right to argue for a sentence outside the applicable guideline range, specifically, a variance.

8. **Discretion of the Court**. This plea agreement is binding on the parties, but it does not bind the Court. The parties understand that the Sentencing Guidelines are advisory and their application is a matter that falls solely within the Court's discretion. The Court may make its own determination regarding the applicable guideline factors and the applicable criminal history category. The Court may also depart or vary from the applicable guidelines. If the Court determines that the applicable guideline

calculations or the defendant's criminal history category are different from that stated above, the parties may not withdraw from this agreement, and the defendant will be sentenced pursuant to the Court's determinations.

9. **Special Assessments**. The Guidelines require payment of a special assessment in the amount of $100.00 for each felony count of which the defendant is convicted. U.S.S.G. § 5E1.3. The defendant agrees to pay the special assessment prior to sentencing.

10. **Cooperation**. The defendant has agreed to cooperate with law enforcement authorities in the investigation and prosecution of other persons. This cooperation would include but is not limited to being interviewed by law enforcement agents and testifying truthfully at any trial or other proceeding. Furthermore, the defendant agrees to fully and completely disclose to the United States Attorney's Office (1) the existence and location of any assets to which the defendant had any right, title, or interest during the operation of the fraud scheme or now has any right, title, or interest, and (2) the manner in which the fraud proceeds were used. The defendant also agrees to cooperate in the same manner with the Receiver appointed in the related civil cases of United States Commodity Futures Trading Commission v. Trevor Cook, et al., 09-cv-3332 and United States Securities and Exchange Commission v. Trevor Cook et al., 09-cv-3333. The defendant agrees to assist the United States and the Receiver in identifying,

locating, returning, and transferring assets for use in payment of restitution and fines ordered by the Court.

If the defendant cooperates fully and truthfully as required by this agreement and thereby renders substantial assistance to the United States, the United States will, at the time of sentencing, move for a downward departure under U.S.S.G. § 5K1.1. The United States also agrees to make the full extent of the defendant's cooperation known to the Court. The defendant understands that the United States, not the Court, will decide whether the defendant has rendered substantial assistance. The United States will exercise its discretion in good faith.

The defendant also understands that there is no guarantee the Court will grant any such motion for a downward departure, and the defendant understands that the amount of any downward departure is within the Court's discretion. In the event the United States does not make or the Court does not grant such a motion, the defendant may not withdraw his plea based upon that ground.

Finally, the defendant understands that the United States is not required to accept any tendered cooperation on the defendant's part. If the United States, in its sole discretion, chooses not to accept tendered cooperation, the defendant will not receive a sentence reduction for such tendered cooperation and will not be allowed to withdraw from the plea agreement based upon that ground. If the government determines in good faith the defendant's

assistance does not constitute substantial assistance, the government will advise the Court of any and all assistance provided by the defendant, which may be considered by the Court in determining a fair and just sentence.

11. **Restitution**. The defendant understands and agrees that the Mandatory Victim Restitution Act, 18 U.S.C. § 3663A, applies and that the Court is required to order the defendant to make restitution to the victims of his crime. The defendant understands and agrees that restitution will encompass all victims of the fraud scheme he aided and abetted and will not be limited to the specific counts of conviction.

The defendant agrees to provide the United States and the Receiver with a sworn financial statement and will ensure that the financial statement is accurate, truthful, and complete.

If requested by the United States, the defendant agrees to submit to a financial deposition and to a polygraph examination to determine whether he has truthfully disclosed the existence of all of his assets and the use of the fraud proceeds.

12. **Forfeiture**. The defendant agrees and understands that the United States reserves its right to seek a personal money judgment forfeiture against the defendant in this action, or to proceed against any of the defendant's property in a civil, criminal or administrative forfeiture action if said property, real or personal, tangible or intangible, is subject to forfeiture under

federal law. The defendant agrees not to contest any such forfeiture proceedings. The defendant asks that the government allow any and all such forfeited property to be used for victim restitution.

13. **Complete Agreement**. This is the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises, representations, or understandings.

Date:

B. TODD JONES
United States Attorney

_____
BY: TRACY L. PERZEL
Assistant U.S. Attorney

Date:

_____
CHRISTOPHER PETTENGILL,
Defendant

Date:

_____
THOMAS B. HEFFELFINGER,
Counsel for Defendant