



**U.S. Department of Justice**

*Joshua S. Levy*  
*Acting United States Attorney*  
*District of Massachusetts*

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*Main Reception: (617) 748-3100*

*John Joseph Moakley United States Courthouse*  
*1 Courthouse Way*  
*Suite 9200*  
*Boston, Massachusetts 02210*

January 12, 2024

Sanjay Bhandari, Esq.  
Buchalter  
655 W. Broadway, Suite 1600  
San Diego, CA 92101

William Connolly, Esq.  
20 Park Plaza, Suite 1000  
Boston, MA 02116

Re: United States v. Kevin C. Dills  
Criminal No. 23-10075-RGS

Dear Attorneys Bhandari & Connolly:

The United States Attorney for the District of Massachusetts (the "U.S. Attorney") and your client, Kevin C. Dills ("Defendant"), agree as follows, pursuant to Federal Rule of Criminal Procedure ("Rule") 11(c)(1)(C):

1. Change of Plea

At the Court's earliest convenience, Defendant will plead guilty to Count Two of the Indictment: Securities Fraud, in violation of 15 U.S.C. §§ 78j(b) and 78ff(a). Defendant admits that Defendant committed the crime specified in this count and is in fact guilty of it.

Defendant agrees to waive venue, to waive any applicable statute of limitations, and to waive any legal or procedural defects in the Indictment.

The U.S. Attorney agrees to dismiss Count One following the imposition of sentence at the sentencing hearing. The U.S. Attorney further agrees to not charge Defendant with any additional offense based on the information about Defendant's conduct that is known to the U.S. Attorney at this time.

2. Penalties

Defendant faces the following maximum penalties on Count Two: incarceration for 20 years; supervised release for three years; a fine of \$5,000,000; a mandatory special assessment of \$100; and forfeiture to the extent charged in the Indictment.

Defendant understands that, if Defendant is not a United States citizen by birth, pleading guilty may affect Defendant's immigration status. Defendant agrees to plead guilty regardless of any potential immigration consequences, even if Defendant's plea results in being automatically removed from the United States.

3. Rule 11(c)(1)(C) Plea

In accordance with Rule 11(c)(1)(C), if the Court accepts this Plea Agreement, the Court must include the agreed disposition in the judgment. If the Court rejects any part of this Plea Agreement, the U.S. Attorney may void the agreement and/or Defendant may withdraw from it. Defendant may not withdraw Defendant's plea for any other reason.

Should the U.S. Attorney void the agreement and/or Defendant moves to withdraw Defendant's guilty plea, Defendant agrees to waive any defenses based upon statute of limitations, the constitutional protection against pre-indictment delay, and the Speedy Trial Act for all charges that could have been brought as of the date of this Plea Agreement.

4. Sentencing Guidelines

The U.S. Attorney agrees, based on the following calculations, that Defendant's total "offense level" under the Guidelines is 22:

- a) Defendant's base offense level is 7, because the offense of conviction is referenced to Section 2B1.1 of the Guidelines and has a statutory maximum term of imprisonment of 20 years or more (USSG § 2B1.1(a)(1));
- b) Defendant's offense level is increased by 18, because the loss from the offense was more than \$3,500,000 but not more than \$9,500,000 (USSG § 2B1.1(b)(1)(J), App. Note 3(B));
- c) Defendant's offense level is increased by 2, because the offense involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means (USSG § 2B1.1(b)(10)(C));
- d) Defendant's offense level is decreased by 2, because Defendant does not receive any criminal history points and otherwise meets the criteria for the adjustment for certain zero-point offenders (USSG § 4C1.1);

- e) Defendant's offense level is decreased by 3, because Defendant has accepted responsibility for Defendant's crime (USSG § 3E1.1).

Defendant agrees not to challenge this calculation. Defendant understands that the Court is not required to follow this calculation. Defendant also understands that the government will object to any reduction in Defendant's sentence based on acceptance of responsibility, and may be released from the parties' agreed-upon disposition in Paragraph 5 if: (a) at sentencing, Defendant (directly or through counsel) indicates that Defendant does not fully accept responsibility for having engaged in the conduct underlying each of the elements of the crime to which Defendant is pleading guilty; or (b) by the time of sentencing, Defendant has committed a new federal or state offense, or has in any way obstructed justice.

Nothing in this Plea Agreement affects the U.S. Attorney's obligation to provide the Court and the U.S. Probation Office with accurate and complete information regarding this case.

5. Agreed Disposition

The parties agree on the following sentence:

- a) incarceration for a period of time served;
- b) 36 months of supervised release, with not less than 20 months and not more than 30 months to be served on home detention with the following restrictions and requirements:
  - i. Defendant shall be restricted to his place of residence continuously except for the below-identified excused absences as authorized by Probation.
    - 1. Excused absences shall include:
      - a. Absences for the sole purpose of providing care for the Defendant's minor child, such as to attend to and/or address the child's educational, health, and medical needs. The scope of such absences shall be limited to those reasonably needed to ensure the child's physical, social, and mental well-being.
      - b. Absences for Defendant's own medical care, for religious services, or to attend to legal matters associated with this case.
    - ii. Probation's supervision of Defendant's home detention shall include electronic monitoring using an ankle bracelet or similar physical monitoring technology.

- iii. Absent written consent from the U.S. Attorney's Office, Defendant shall be prohibited from: (i) directly or indirectly acquiring or selling stock and/or convertible debt in any company in a private transaction; and (ii) directly or indirectly acquiring or selling any stock traded on the over-the-counter market.
- c) a mandatory special assessment of \$100, which Defendant must pay to the Clerk of the Court by the date of sentencing;
- d) forfeiture as set forth in Paragraph 8; and
- e) no fine.

Defendant agrees that all criminal monetary penalties, including special assessment and forfeiture, imposed shall be due and payable immediately, and further agrees that any Court-ordered repayment schedule does not preclude further enforcement or collection by the United States.

6. Waiver of Appellate Rights and Challenges to Conviction or Sentence

Defendant has the right to challenge Defendant's conviction and sentence on "direct appeal." This means that Defendant has the right to ask a higher court (the "appeals court") to look at what happened in this case and, if the appeals court finds that the trial court or the parties made certain mistakes, overturn Defendant's conviction or sentence. Also, in some instances, Defendant has the right to file a separate civil lawsuit claiming that serious mistakes were made in this case and that Defendant's conviction or sentence should be overturned.

Defendant understands that Defendant has these rights, but now agrees to give them up. Specifically, Defendant agrees that:

- a) Defendant will not challenge Defendant's conviction on direct appeal or in any other proceeding, including in a separate civil lawsuit; and
- b) Defendant will not challenge Defendant's sentence, including any court orders related to forfeiture or supervised release, on direct appeal or in any other proceeding, including in a separate civil lawsuit.

The U.S. Attorney agrees not to appeal the imposition of the sentence within the range agreed to by the parties in paragraph 5.

Defendant understands that, by agreeing to the above, Defendant is agreeing that Defendant's conviction and sentence will be final when the Court issues a written judgment after the sentencing hearing in this case. That is, after the Court issues a written judgment, Defendant

will lose the right to appeal or otherwise challenge Defendant's conviction and sentence regardless of whether Defendant later changes Defendant's mind or finds new information that would have led Defendant not to agree to give up these rights in the first place.

Defendant is agreeing to give up these rights in exchange for concessions the U.S. Attorney is making in this Agreement.

The parties agree that, despite giving up these rights, Defendant keeps the right to later claim that Defendant's lawyer rendered ineffective assistance of counsel, or that the prosecutor or a member of law enforcement involved in the case engaged in misconduct serious enough to entitle Defendant to have Defendant's conviction or sentence overturned.

7. Waiver of Hyde Amendment Claim

Defendant is aware that the Court can award attorneys' fees and other litigation expenses to defendants in certain criminal cases. In exchange for the concessions the U.S. Attorney is making in this Agreement, Defendant waives any claim under the so-called "Hyde Amendment," 18 U.S.C. §3006A, that is based in whole or in part on the U.S. Attorney's agreement in Paragraph 1 to dismiss Count One

8. Forfeiture

Defendant understands that the Court will, upon acceptance of Defendant's guilty plea, enter an order of forfeiture as part of Defendant's sentence, and that the order of forfeiture may include assets directly traceable to Defendant's offense, assets used to facilitate Defendant's offense, substitute assets and/or a money judgment equal to the value of the property derived from, or otherwise involved in, the offense.

The assets to be forfeited specifically include, without limitation, the following:

- a. \$6,124,860 in United States currency, to be entered in the form of an Order of Forfeiture (Money Judgment).

Defendant agrees not to dispute that \$6,124,860 is subject to forfeiture on the grounds that it is equal to the amount of proceeds the defendant derived from the offense.

Defendant agrees not to dispute that the amount of the forfeiture money judgment represents proceeds the Defendant obtained (directly or indirectly), and/or facilitating property and/or property involved in, the crimes to which Defendant is pleading guilty and that, due at least in part to the acts or omissions of Defendant, the proceeds or property have been transferred to, or deposited with, a third party, spent, cannot be located upon exercise of due diligence, placed beyond the jurisdiction of the Court, substantially diminished in value, or commingled with other property which cannot be divided without difficulty. Accordingly, Defendant agrees that the

United States is entitled to forfeit as “substitute assets” any other assets of Defendant up to the value of the now missing directly forfeitable assets.

Defendant agrees to consent to the entry of an order of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 11(b)(1)(J), 32.2, and 43(a) regarding notice of the forfeiture in the charging instrument, advice regarding the forfeiture at the change-of-plea hearing, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Defendant understands and agrees that forfeiture shall not satisfy or affect any fine, lien, penalty, restitution, cost of imprisonment, tax liability or any other debt owed to the United States.

Defendant further agrees to assent to the entry of a Court order (the “Restraining Order”) (i) requiring Defendant to maintain the value of the following real properties, which are potential substitute assets, (ii) requiring Defendant to pay all taxes, mortgages, insurance, and other costs associated with the following real properties, and (iii) restraining Defendant from encumbering, dissipating, wasting, selling, and otherwise transferring title to the following real properties without the express written permission and agreement of the U.S. Attorney, until the forfeiture money judgment is satisfied in full: (i) 7342 Altiva Pl., Carlsbad, CA 92009; (ii) 6971 Bixbite Pl., Carlsbad, CA 92009; (iii) 3600 Wailea Alanui, Unit 708, Kihei, HI 96753; and (iv) 2427 Kuhio Ave, Unit 2802, Honolulu, HI 96815 (the “Restrained Properties”).

The U.S. Attorney agrees to forgo unilateral enforcement of the forfeiture money judgment against the Restrained Properties or otherwise against the Defendant during the period of Defendant’s term of supervised release contingent upon (i) the Court’s entry of the Restraining Order and subject to the Defendant’s ongoing compliance with the Restraining Order, and (ii) the Defendant, within 120 days of sentencing, paying and/or agreeing to forfeit substitute asset(s) worth (in total) at least \$2 million toward the forfeiture money judgment. If Defendant chooses to forfeit real property as a substitute asset, the value of the real property for purposes of this 120-day deadline will be based upon a reasonable independent third-party appraisal or the United States Marshals Service appraisal, and the United States shall have discretion to reject the substitute asset if, in its judgment, the real property likely cannot be reasonably maintained or timely sold for value. The United States and Defendant agree that Defendant will undertake reasonable efforts to prepare some or all of the Restrained Properties for sale during the term of supervised release to satisfy the remainder of forfeiture money judgment in full. Reasonable efforts shall be determined solely by the United States. The United States reserves the right to object to the sale of any of the Restrained Properties, or any sale costs and fees, if in its sole determination, the sale price or sale costs and fees are not reasonable, or the purchaser is not an actual third party. If Defendant does not make reasonable efforts to prepare the sale of the Restrained Properties in this timeframe, the United States reserves the right to seek forfeiture of the Restrained Properties, or any other asset of Defendant, up to the amount of the forfeiture money judgment.

If the U.S. Attorney requests, Defendant shall deliver to the U.S. Attorney within 30 days after signing this Plea Agreement a sworn financial statement disclosing all assets in which Defendant currently has any interest and all assets over which Defendant has exercised control, or

has had any legal or beneficial interest. Defendant further agrees to be deposed with respect to Defendant's assets at the request of the U.S. Attorney. Defendant agrees that the United States Department of Probation may share any financial information about the Defendant with the United States Attorney's Office.

Defendant also agrees to waive all constitutional, legal, and equitable challenges (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement.

Defendant hereby waives and releases any claims Defendant may have to any vehicles, currency, or other personal property seized by the United States, or seized by any state or local law enforcement agency and turned over to the United States, during the investigation and prosecution of this case, and consents to the forfeiture of all such assets.

9. Civil Liability

This Plea Agreement does not affect any civil liability, including any tax liability, Defendant has incurred or may later incur due to Defendant's criminal conduct and guilty plea to the charges specified in Paragraph 1 of this Agreement.

10. Breach of Plea Agreement

Defendant understands that if Defendant breaches any provision of this Agreement, violates any condition of Defendant's pre-trial release or commits any crime following Defendant's execution of this Plea Agreement, Defendant cannot rely upon such conduct to withdraw Defendant's guilty plea. Defendant's conduct, however, would give the U.S. Attorney the right to be released from the U.S. Attorney's commitments under this Agreement, to pursue any charges that were, or are to be, dismissed under this Agreement, and to use against Defendant any of Defendant's statements, and any information or materials Defendant provided to the government during investigation or prosecution of Defendant's case—even if the parties had entered any earlier written or oral agreements or understandings about this issue.

Defendant also understands that if Defendant breaches any provision of this Agreement or engages in any of the aforementioned conduct, Defendant thereby waives any defenses based on the statute of limitations, constitutional protections against pre-indictment delay, and the Speedy Trial Act, that Defendant otherwise may have had to any charges based on conduct occurring before the date of this Agreement.



11. Who is Bound by Plea Agreement

This Agreement is only between Defendant and the U.S. Attorney for the District of Massachusetts. It does not bind the Attorney General of the United States or any other federal, state, or local prosecuting authorities.

12. Modifications to Plea Agreement

This Agreement can be modified or supplemented only in a written memorandum signed by both parties, or through proceedings in open court.

\* \* \*

If this letter accurately reflects the agreement between the U.S. Attorney and Defendant, please have Defendant sign the Acknowledgment of Plea Agreement below. Please also sign below as Witness. Return the original of this letter to Assistant U.S. Attorney James R. Drabick.


Sincerely,

JOSHUA S. LEVY  
Acting United States Attorney

By:

  
\_\_\_\_\_  
STEPHEN E. FRANK  
Chief  
Securities, Financial & Cyber Fraud Unit

SETH B. KOSTO  
Deputy Chief  
Securities, Financial & Cyber Fraud Unit

  
\_\_\_\_\_  
JAMES R. DRABICK  
IAN J. STEARNS  
Assistant U.S. Attorneys



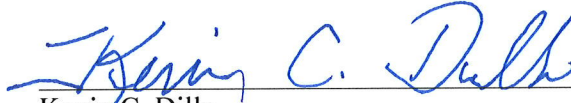
ACKNOWLEDGMENT OF PLEA AGREEMENT

I have read this letter and discussed it with my attorney. The letter accurately presents my agreement with the United States Attorney's Office for the District of Massachusetts. There are no unwritten agreements between me and the United States Attorney's Office, and no United States government official has made any unwritten promises or representations to me in connection with my guilty plea. I have received no prior offers to resolve this case.

I understand the crime I am pleading guilty to, and the maximum penalties for that crime. I have discussed the Sentencing Guidelines with my lawyer, and I understand the sentencing ranges that may apply.


I am satisfied with the legal representation my lawyer has given me, and we have had enough time to meet and discuss my case. We have discussed the charge against me, possible defenses I might have, the terms of this Agreement and whether I should go to trial.

I am entering into this Agreement freely and voluntarily and because I am in fact guilty of the offense. I believe this Agreement is in my best interest.

  
\_\_\_\_\_  
Kevin C. Dills  
Defendant

Date: 1-18-24

I certify that Kevin C. Dills has read this Agreement and that we have discussed what it means. I believe Kevin C. Dills understands the Agreement and is entering into it freely, voluntarily, and knowingly. I also certify that the U.S. Attorney has not extended any other offers regarding a change of plea in this case.

  
\_\_\_\_\_  
Sanjay Bhandari, Esq.  
William Connolly, Esq.  
Attorneys for Defendant

Date: Jan 18, 2024