

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Criminal No.: 11-141(1) (RHK/JJK)

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. ) PLEA AGREEMENT AND  
 ) SENTENCING STIPULATIONS  
(1) FRANK ELROY VENNES. JR., )  
 )  
Defendant. )

The United States of America, by and through its attorneys, B. Todd Jones, United States Attorney for the District of Minnesota, and Assistant United States Attorneys Timothy C. Rank, Kimberly A. Svendsen and Robert M. Lewis, and Frank Elroy Vennes, Jr. (hereinafter referred to as the "defendant") agree to resolve this case on the terms and conditions that follow.

1. **Charges.** The defendant agrees to plead guilty to Counts 3 and 26 of the Second Superseding Indictment. Count 3 of the Second Superseding Indictment charges the defendant with aiding and abetting securities fraud, in violation of Title 15, United States Code, Sections 77q(a) and 77x. Count 26 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 defendant is pleading guilty to these charges because he is guilty of these charges.

167

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2. Factual Basis.

From in or about 2001 through on or about September 24, 2008, the defendant, aiding and abetting, and being aided and abetted by, others, did knowingly and deliberately, offer and sell securities and, by the use of means and instrumentalities of interstate commerce, directly and indirectly, employed a scheme and artifice to defraud, obtained money by means of untrue statements of material fact and omissions of material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, and engaged in a transaction, practice or course of business which operated as a fraud or deceit upon the purchaser of securities, in violation of Title 15, United States Code, Sections 77q(a) and 77x.

Defendant was a business associate of Thomas J. Petters and a service agent and primary fundraiser for Petters Company, Inc. ("PCI"). Starting in or about 1995 and continuing until in or about September 2008, defendant raised money from investors to invest in PCI. Defendant was the owner and CEO of, and did business through, Metro Gem, Inc. ("Metro Gem"). Defendant raised money directly from individual investors with Metro Gem which he used to purchase PCI Notes. Defendant also induced others to raise money from investors to purchase PCI Notes.

PCI was run by Thomas J. Petters. Petters represented to investors that funds invested in PCI notes would be used to finance

the purchase of vast amounts of consumer electronics and other consumer merchandise from certain vendors. PCI would then purportedly resell the merchandise at a profit to certain "Big Box" retailers, including such well-known chains as Sam's Club and Costco. Over the years, Petters raised billions of dollars through the sale of the notes. But in reality, the transactions underlying the PCI Notes were fictitious. Documents evidencing the purported transactions were fabricated by Petters's criminal associates and the purported vendors were shell companies acting in concert with Petters. No retailers participated in the transactions underlying the PCI Notes and there were no purchases and resales of consumer electronics or other consumer merchandise. Instead, Petters diverted hundreds of millions of dollars to his own purposes and paid purported profits to investors with money raised from the sale of new notes. Petters's inventory finance operation was nothing but a Ponzi scheme; the scheme was brought to light after federal agents executed search warrants at Petters's business offices and other locations on September 24, 2008.

Defendant is not charged with knowledge of the underlying Petters Ponzi scheme; rather, he is charged with aiding and abetting misrepresentations and omissions to investors regarding the PCI Note transactions.

Starting in or about 1995, defendant began a long-term business relationship with Petters. In 1995, defendant founded

Metro Gem, and he was at all times its owner and Chief Executive Officer. The primary business of Metro Gem from 1995 up and until 2008 was obtaining funds for Petters for investment in PCI Notes.

In or around 1998, defendant began seeking larger sources of financing for Petters and PCI through institutional lenders. Defendant had previously been convicted on federal money laundering, narcotics and firearms charges. Because defendant's criminal record made it difficult for him to obtain financing directly from institutional investors, in order to bring in larger funding sources for Petters and PCI, defendant worked with other individuals to solicit institutional investment in PCI Notes.

Arrowhead Capital Partners II, L.P. ("ACP II") and Arrowhead Capital Finance, Ltd. ("ACF") (collectively referred to as the "Arrowhead Funds") were among the hedge funds defendant brought in to solicit investor money for investment in PCI Notes. In or about 1999, defendant began collaborating with Individual A to raise money for Petters and PCI through the Arrowhead Funds. From 1999 through September 2008, all documentation for transactions between PCI and ACP II and ACF (for example, instructions for wiring investor funds, promissory notes and security agreements) went through defendant or one of defendant's employees. In addition, substantially all communication between PCI/Petters and Arrowhead went through defendant or one of his employees. Petters paid a commission to defendant for his role in brokering the Arrowhead

Funds' investments. This commission was calculated as a percentage of the money defendant raised for Petters and PCI from the Arrowhead Funds. Between 2001 and 2008, defendant obtained more than \$48 million in commissions related to the Arrowhead Funds' investment in PCI Notes. During this time period, defendant knew that Individual A, and others acting at his direction, made the following three material misrepresentations and omissions to investors in the Arrowhead Funds.

First, from in or about 2001 through in or about September 2008, Individual A, and others acting at his direction, made material, false representations to investors in the Arrowhead Funds regarding investor safeguards purportedly provided by the Funds. Individual A, and others acting at his direction, falsely represented to investors that when a "Big Box" retailer purchased consumer electronics or other goods from PCI in a transaction that was financed by the Arrowhead Funds, the retailer made payment for those goods directly to a bank account controlled by Arrowhead. In truth and in fact, the Arrowhead Funds received all their payments for the purported consumer goods from PCI and not from the retailers who were purportedly buying the goods being financed.

Second, from in or about 2001 through in or about September 2008, Individual A, and others acting at his direction, knowingly omitted to inform and affirmatively concealed material information from investors regarding defendant's criminal history and his

involvement in the Arrowhead Funds' transactions with PCI. Specifically, Individual A concealed from investors that, in or about 1987, defendant was convicted in the United States District Court for the District of North Dakota of one count of conspiracy to commit money laundering, one count of a firearms crime, and one count of using an interstate communications device in furtherance of a sale of cocaine, and that he was sentenced to a total of five years in prison.

Third, in the fall of 2007, payments on all PCI Notes held by the Arrowhead Funds started to become delayed substantially beyond their 90-day due dates. By February of 2008, millions of dollars of PCI Notes were on the verge of going into default. Default occurred if payment was not received within 182 days. Instead of advising the Arrowhead investors about the approaching defaults, beginning in or about February 2008, Individual A and defendant arranged to extend the payment due date for PCI Notes so they would not be deemed to be in default, without advising investors of the extensions. The extensions were intended to conceal PCI's inability to pay and forestall investor redemptions. By concealing the extensions and the extremely late payments from investors, investors were lulled into believing their investment was secure and performing well. Documentation for all of the note extensions between Arrowhead and PCI was arranged by, and run through, defendant.

Without knowledge of the fact that the PCI Note transactions were part of a massive Ponzi scheme orchestrated by Petters, defendant knew that Individual A was making material false representations and material omissions to investors in the Arrowhead Funds, and he did nothing to correct the false representations and omissions. Instead, defendant continued to act as the conduit between Arrowhead and PCI and he received tens of millions of dollars in commissions from Petters for money brought into PCI through the Arrowhead Funds.

Defendant understands that Individual A made these misrepresentations to numerous investors and potential investors from 2001 through September 2008, both in writing and orally. With regard to the offense charged in Count 3 of the Second Superseding Indictment, defendant acknowledges that on or about March 21, 2007, Individual A sent to investor S.S.R.C.P. the 2006 Audited Financials from Arrowhead Capital Partners II, L.P., misrepresenting the PCI flow of funds and concealing Vennes's role and criminal history.

Defendant further agrees that he engaged in a monetary transaction affecting interstate commerce, in criminally-derived property of a value greater than \$10,000, such property having been derived from a specified unlawful activity, that is, mail fraud and wire fraud. Namely, on or about September 9, 2008, defendant issued a check in the amount of \$98,814.12, payable to the law firm

of Howse & Thompson, P.A., from funds that were derived from mail and wire fraud.

3. Waiver of Pretrial Motions. The defendant understands and agrees that he has certain rights to file pre-trial 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 pre-trial motions in this case.

4. Statutory Penalties.

The parties agree that Count 3 of the Indictment carries a statutory penalty of:

- a. a term of imprisonment of up to 5 years;
- b. a criminal fine of up to the greater of \$10,000.00 or twice the amount of gain or loss;
- c. a term of supervised release of up to three years;
- d. a special assessment of \$100.00, which is payable to the Clerk of Court prior to sentencing; and
- e. the costs of prosecution (as defined in 28 U.S.C. §§ 1918(b) and 1920).

The parties agree that Count 26 of the Indictment carries a statutory penalty of:

- a. a term of imprisonment of up to 10 years;
- b. a criminal fine of up to \$500,000.00 or twice the value of the criminally derived property involved in the transaction, whichever is greater;



- c. a term of supervised release of up to three years;
- d. a special assessment of \$100.00, which is payable to the Clerk of Court prior to sentencing; and
- e. 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 he were to violate any condition of supervised release, he 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. Guideline Calculations. The parties agree that the facts set forth in the factual basis section of this plea agreement are sufficient to bring the defendant's sentence as calculated under the United States Sentencing Guidelines to the statutory maximum in this case, which is 180 months. The parties acknowledge that the defendant will be sentenced in accordance with 18 U.S.C. § 3551, et seq. The parties also acknowledge that the defendant will be sentenced in accordance with federal sentencing law which includes consideration of the Sentencing Guidelines promulgated pursuant to the Sentencing Reform Act of 1984. The defendant will argue for a lower sentence under the appropriate law and statutory factors.

7. Discretion of the Court. The foregoing stipulations are binding on the parties, but do 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 vary and/or depart from the applicable guidelines. If the Court determines that the applicable guideline calculations are different from that stated above, neither party may withdraw from this agreement, and the defendant will be sentenced pursuant to the Court's determinations. Further, nothing in this plea agreement should be construed to limit the parties from presenting any and all relevant evidence to the Court at sentencing.

8. 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 of \$200.00 before sentencing.

9. Restitution. The defendant understands that he may be subject to an order of restitution under 18 U.S.C. § 3663A. If applicable, the defendant will fully and completely disclose to the United States Attorney's Office the existence and location of any assets in which he has any right, title, or interest. The defendant agrees to assist the United States in identifying, locating, returning, and transferring assets for use in payment of

restitution and fines ordered by the Court. The financial statement to be provided to the United States Attorney's Office will be 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.

10. Forfeiture. The government reserves its right to proceed against any of the defendant's assets if those assets represent real or personal property involved in violations of the laws of the United States or are proceeds traceable to such property.

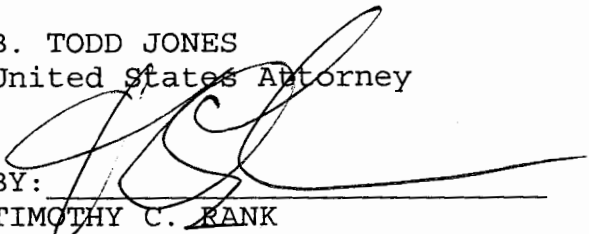
11. Waiver of Appeal. The defendant understands that Title 18, United States Code, Section 3742 affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this right, and in exchange for this plea agreement, the defendant hereby waives all rights conferred by Title 18, United States Code, Section 3742 to appeal the length of his sentence, unless the sentence exceeds 180 months. The defendant has discussed these rights with his attorney. The defendant understands the rights being waived, and the defendant waives these rights knowingly, intelligently, and voluntarily.

12. Complete Agreement. This is the entire agreement and understanding between the United States and the defendant. There

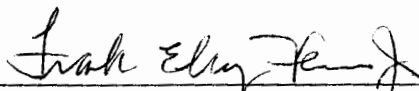
are no other agreements, promises, representations, or understandings.

Date: Feb 1, 2013

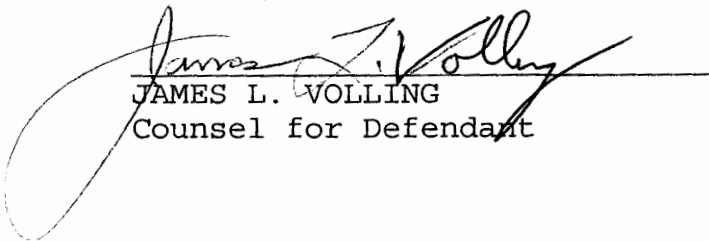
B. TODD JONES  
United States Attorney

  
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TIMOTHY C. RANK  
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Assistant U.S. Attorneys

Date: 2-1-13

  
FRANK ELROY VENNES, JR.  
Defendant

Date: 2/1/13

  
JAMES L. VOLLING  
Counsel for Defendant