



**U.S. Department of Justice**

Criminal Division

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*Washington, D.C. 20530*

March 29, 2011

Kenneth L. Wainstein, Esq.  
O'Melveny & Myers LLP  
1625 Eye Street, NW  
Washington, D.C. 20006

**FILED**

**MAR 29 2011**

Clerk, U.S. District & Bankruptcy  
Courts for the District of Columbia

Re: United States v. Jonathan M. Spiller, 09-CR-335 (RJL)

Dear Mr. Wainstein:

This letter sets forth the full and complete plea offer to your client Jonathan M. Spiller (hereinafter referred to as the "defendant"). This offer is binding only upon the Fraud Section, Criminal Division of the United States Department of Justice and the United States Attorney's Office for the District of Columbia (together, the "Government"), and will expire on March 29, 2010. Upon the Government's receipt of the executed letter, the letter itself will become the plea agreement. The terms of the offer are as follows:

1. Charges. The defendant agrees to plead guilty to Count One of Superseding Indictment 09-CR-335 (RJL), dated April 19, 2010, which charges conspiracy to violate the laws of the United States, 18 U.S.C. § 371, specifically, the Foreign Corrupt Practices Act ("FCPA"), 15 U.S.C. § 78dd-2(a). It is understood that the guilty plea, to be made before the Court by the defendant, will be based on a factual admission of guilt. The defendant agrees that the attached "Statement of the Offense" fairly and accurately describes the defendant's actions and involvement in the charged offense. During the plea hearing, the defendant will adopt the Statement of the Offense as a written proffer of evidence.

2. Potential penalties and assessments. The defendant understands that the maximum sentence that can be imposed for the violation charged in Count One of the Indictment is up to five years' imprisonment, a fine of not more than \$250,000 or twice the pecuniary gain or loss derived from the offense, and up to three years' supervised release. The defendant also understands that he is required to pay a special assessment of \$100 at the time of sentencing. Additionally, the defendant understands that in some circumstances the Court may order the defendant to pay restitution and that in other circumstances the Court must order the defendant to pay restitution. Notwithstanding the maximum sentence, the defendant understands that the sentence to be imposed in this case will be determined by the Court, guided by the factors enumerated in 18 U.S.C. §

3553(a), including a consideration of the guidelines and policies promulgated by the United States Sentencing Guidelines Commission (hereinafter the "Sentencing Guidelines"). The defendant understands that his sentence, including the applicable sentencing guideline range, will be determined solely by the Court, and that the Government cannot and does not make any promises, representations, or predictions regarding what sentence the Court will impose. The defendant further understands that if the Court imposes a sentence greater than that provided by the Sentencing Guidelines as determined by the Court, or which is in any other way unsatisfactory to him, he cannot withdraw his guilty plea. This does not, however, limit the defendant's right to appeal an unlawful sentence.

3. Defendant's Obligations. The defendant agrees that he shall cooperate fully with the Government by providing truthful, candid, and complete information as to all matters within his knowledge concerning his wrongful conduct as well as any wrongful conduct involving others. The defendant understands that such cooperation will include:

- a. Attending all meetings at which the Government requests his presence;
- b. Providing to the Government, upon request, any document, record, or other evidence relating to matters about which the Government or any designated U.S. or foreign law enforcement agency inquires, including but not limited to a full, complete and accurate personal financial statement;
- c. Testifying truthfully at any trial, hearing, or other grand jury or court proceeding if requested to do so by the Government;
- d. Providing an accounting of all assets owned or controlled by the defendant; and
- e. Bringing to the attention of the Government all crimes that he has committed, and all administrative, civil, or criminal proceedings, investigations, or prosecutions in which he has been or is a subject, target, party, or witness.

4. The Government reserves the right to evaluate the nature and extent of the defendant's cooperation and shall make the defendant's cooperation, or lack thereof, known to the Court at the time of sentencing. If in the sole and unreviewable judgment of the Government the defendant's cooperation is of such quality and significance to the investigation or prosecution of other criminal matters as to warrant the Court's downward departure from the sentence calculated pursuant to the Sentencing Guidelines, the Government may at or before sentencing make a motion pursuant to Section 5K1.1 of the Sentencing Guidelines reflecting that the defendant has provided substantial assistance and recommending a downward departure from the applicable Sentencing Guidelines range. The defendant acknowledges and agrees, however, that nothing in this agreement may be construed to require the Government to file such a motion and that the Government's Section 5K1.1 and/or Rule 35 assessment of the nature, value, truthfulness, completeness, and accuracy of the defendant's cooperation shall be binding on the defendant.

5. The defendant understands and acknowledges that the Court is under no obligation to grant a Government motion pursuant to Section 5K1.1 of the Sentencing Guidelines as referred to in paragraph 4 of this agreement, should the Government exercise its discretion to file such a motion.

6. Federal Sentencing Guidelines. Although not binding on the Court, the parties agree that the 2009 Sentencing Guidelines apply as follows:

**Foreign bribery conduct:**

Base Offense Level (§ 2C1.1(a)(2))	12
The value of the corrupt payment was more than \$200,000 and less than \$400,000 (§§ 2C1.1(b)(2), 2B1.1(b)(1)(G))	12
Subtotal	24
Acceptance of Responsibility, subject to the conditions set forth in ¶ 13 below (§ 3E1.1)	-3
Adjusted Offense Level (Assuming Criminal History Category I)	21 (37-46 months)

7. The defendant agrees not to seek any decrease in his adjusted offense level as set forth above. The defendant further agrees not to seek a downward departure for any reason from the otherwise applicable guideline range established under the Sentencing Guidelines and that a sentence within the applicable guidelines range is reasonable. The Government also agrees not to seek an upward departure for any reason from the otherwise applicable guideline range established under the Sentencing Guidelines. In the event that this plea offer is either not accepted by the defendant or is accepted and subsequently withdrawn, the parties will not be bound by the proposed interpretations of applicable Sentencing Guidelines provisions contained herein.

8. Financial Arrangements. The defendant agrees that prior to or at the time of the sentencing, he will deliver to the Clerk's Office, United States District Court, District of Columbia, a certified check in the amount of \$100 to pay the mandatory special assessment, as required in Title 18, United States Code, Section 3013. The defendant also agrees to provide to the Government at the time of his guilty plea and again at the time of his sentencing a full and complete accounting of all assets, real or tangible, held by him or in any other name for his benefit, and, to that end, to submit a standard Form 500 (Financial Statement of Debtor).

9. Reservation of Allocution. The Government and the defendant reserve their full right of allocution for purposes of sentencing and post-sentencing in this matter. Additionally, the Government specifically reserves its right to set forth at sentencing and any proceedings(s) before the Bureau of Prisons all of its evidence with respect to the defendant's criminal activities.

10. The Government reserves the right to inform the Probation Department and the Court of any relevant facts, to dispute any factual inaccuracies in the presentence report and to contest any matters not provided for in this plea agreement.

11. If in this plea agreement the Government has agreed to recommend or refrain from recommending to the sentencing judge a particular resolution of any sentencing issue, the Government reserves the right to full allocution in any post-sentence litigation in order to defend the sentencing judge's ultimate decision on such issues.

12. Waiver of Certain Rights. The defendant understands that by pleading guilty, he relinquishes certain constitutional rights – including the right to a jury trial – as well as the right to appeal and the right to collaterally attack his conviction. Additionally, the defendant acknowledges and agrees that the Court has jurisdiction and authority over this case and that it has the right to impose any sentence within the statutory maximum set for the offense to which the defendant pleads guilty. The defendant also waives any challenges to his plea based upon statute of limitations or venue.

13. Government Concessions. In exchange for the defendant's guilty plea, the Government agrees to recommend a two-level adjustment for acceptance of responsibility and a one-level adjustment for assisting authorities pursuant to U.S.S.G. § 3E1.1 based upon the defendant's recognition and timely acceptance of personal responsibility. The Government also agrees to support the defendant's request for release pending sentencing provided that the defendant obeys all the terms of the plea agreement. The Government, however, will not be required to make these recommendations if any of the following occurs: (1) the defendant fails or refuses to make a full, accurate, and complete disclosure to the Government or the probation office of the circumstances surrounding the relevant offense conduct and his present financial condition; (2) the defendant is found to have misrepresented facts to the Government prior to entering into this plea agreement; (3) the defendant commits any misconduct after entering into this plea agreement, including but not limited to, committing a state or federal offense, violating any term of release, or making a false statement or misrepresentation to any governmental entity or official; or (4) the defendant fails to comply with any term of this agreement.

14. Also, subject to other paragraphs in this agreement, the Government agrees not to bring any additional criminal charges against the defendant for the criminal activity described in the attached Statement of the Offense, provided that the defendant has disclosed all material information to the Government prior to the execution of this agreement. This agreement not to prosecute the defendant does not extend to crimes of violence. The Government further agrees to dismiss the remaining counts of the Superseding Indictment and Indictment 09-CR-350 (RJL), dated December 11, 2009, which was superseded by the Superseding Indictment, after sentencing.

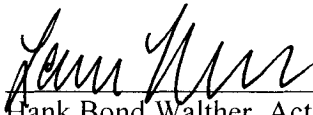
15. Breach of or failure to tender agreement. Defendant agrees that if he fails to comply with any of the provisions of this agreement, including the failure to tender such agreement to the Court, makes false or misleading statements before the Court or to any agents of the United States, commits any further crimes, or attempts to withdraw the plea, the Government will have the right to characterize such conduct as a breach of this agreement. In the event of such a breach: (a) the Government will be free from its obligations under the agreement and further may take whatever position it believes appropriate as to the sentence and the conditions of the defendant's release (for example, should the defendant commit any conduct after the date of this agreement that would form the basis for an increase in the defendant's offense level or justify an upward departure – examples of which include but are not limited to, obstruction of justice, failure to appear for a court proceeding, criminal conduct while pending sentencing, and false statements to law enforcement agents, the probation officer, or Court – the Government is free under this agreement to seek an increase in the offense level based on that post-agreement conduct); (b) the defendant will not have the right to withdraw the guilty plea; (c) the defendant shall be fully subject to criminal prosecution for any other crimes which he has committed or might commit, if any, including perjury and obstruction of justice; and (d) the defendant waives any protections afforded by Section 1B1.8(a) of the Sentencing Guidelines and Rule 11 of the Federal Rules of Criminal Procedure, and the Government will be free to use against the defendant, directly and indirectly, in any criminal or civil proceeding any of the information, statements, and materials provided by him pursuant to this agreement, including offering into evidence or otherwise using the attached Statement of the Offense.

16. In the event of a breach of this agreement, any prosecution of the defendant not time-barred by the applicable statute of limitations on the date of this agreement may be commenced against the defendant by the Government in accordance with this paragraph, notwithstanding the running of the applicable statute of limitations before the commencement of such prosecution. The defendant knowingly and voluntarily agrees to waive any and all defenses based on the statute of limitations for any prosecutions commenced pursuant to the provisions of this paragraph.


17. Fraud Section, Criminal Division of the United States Department of Justice and United States Attorney's Office for the District of Columbia Bound. The defendant understands that this agreement is binding only upon the Fraud Section, Criminal Division of the United States Department of Justice and the United States Attorney's Office for the District of Columbia. This agreement does not bind any other federal, state, or local prosecutors. It also does not bar or compromise any civil, tax, or administrative claim pending or that may be made against the defendant.

18. Complete Agreement. No other agreements, promises, understandings, or representations have been made by the parties or their counsel other than those contained in writing herein, nor will any such agreements, promises, understandings, or representations be made unless committed to writing and signed by the defendant, the defendant's counsel, and the Government.

DENIS J. MCINERNEY  
Chief, Fraud Section  
Criminal Division  
United States Department of Justice

By:   
\_\_\_\_\_  
Hank Bond Walther, Acting Deputy Chief  
Laura N. Perkins, Trial Attorney  
Fraud Section, Criminal Division  
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RONALD C. MACHEN JR.  
United States Attorney  
In and For the District of Columbia

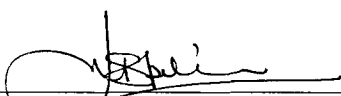
By:   
\_\_\_\_\_  
Matthew C. Solomon  
Assistant United States Attorney  
Fraud and Public Corruption Section  
United States Attorney's Office  
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Washington, D.C. 20530  
(202) 353-2457

Acceptances:

I have read this plea agreement and discussed it with my attorney Kenneth L. Wainstein, Esq. I fully understand this agreement and agree to it without reservation. I do this voluntarily and of my own free will, intending to be legally bound. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this agreement fully. I am pleading guilty because I am in fact guilty of the offense identified in paragraph one and charged in Count One of the Information.

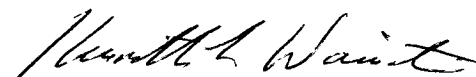
I reaffirm that absolutely no promises, agreements, understandings, or conditions have been made or entered into in connection with my decision to plead guilty except those set forth in connection with this plea agreement and matters related to it.

Date: 3.29.2011

  
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Jonathan M. Spiller

I have read each of the pages constituting this plea agreement, reviewed them with my client, and discussed the provisions of the agreement with my client fully. These pages accurately and completely set forth the entire plea agreement. I concur in my client's desire to plead guilty as set forth in this agreement.

Date: 3/29/11



Kenneth L. Wainstein, Esq.  
Attorney for the Defendant