U.S. Department of Justice

United States Attorney
Eastern District of New York

AES:DG/MTK
F.#2017R01904

271 Cadman Plaza East
Brooklyn, New York 11201

March 3, 2020

By Hand and ECF

The Honorable Kiyo A. Matsumoto
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Panayiotis Kyriacou
Criminal Docket No. 18-102 (S-1) (KAM)

Dear Judge Matsumoto:

The government respectfully submits this letter in advance of the defendant Panayiotis Kyriacou's sentencing in the above-captioned case, which is scheduled for March 17, 2020. On November 29, 2019, the defendant pled guilty, pursuant to a plea agreement, to one count of conspiracy to commit securities fraud and one count of conspiracy to defraud the United States, both in violation of 18 U.S.C. § 371. For the reasons set forth below, the government believes an incarceratory sentence is appropriate but does not oppose a sentence below the applicable range of imprisonment pursuant to the U.S. Sentencing Guidelines ("U.S.S.G." or "Guidelines").

I. Background

A. Beaufort Securities

In March and April 2014, law enforcement agents were investigating multiple Belize-based brokerage firms involved in market manipulation schemes (the "Belize Investigation"). Presentence Investigation Report ("PSR") ¶ 5. In connection with the Belize Investigation, a wiretapped phone conversation revealed that a manager of one of these Belizean firms ("Corrupt Broker 1") was executing manipulative trades of a U.S. publicly traded stock through Beaufort Securities, a brokerage firm located in London, United Kingdom. Beaufort was registered with the Internal Revenue Service as a Foreign Financial Institution ("FFI") under the Foreign Account Tax Compliance Act ("FATCA"). Id. During an April 29, 2014 call, Corrupt Broker 1 informed a co-conspirator that he was winding down his off-shore brokerage firm and was in the process of transferring certain client accounts to Beaufort Securities. Id. ¶ 6.

In or about March 2016, following an investigation, the United Kingdom's Financial Conduct Authority ("FCA"), a government agency that regulates financial services firms including brokerage firms like Beaufort Securities, found that the financial crime controls and anti-money laundering processes of Beaufort Securities were deficient. Id. ¶ 7. In or about July 2016, the Chief Executive Officer of Beaufort Securities affirmed to the FCA that Beaufort Securities had completed remedial actions to correct the deficiencies identified by the FCA. Notwithstanding these representations to the FCA, after July 2016, Beaufort Securities continued to facilitate market manipulation schemes, including executing sizable trades in pump and dump schemes involving at least 10 U.S. publicly traded stocks. These trades were executed in the United States at the direction of Beaufort Securities on behalf of its clients, and the proceeds of those trades were subsequently received in client accounts at Beaufort Securities. The trades resulted in proceeds of more than $50 million dollars to Beaufort Securities' clients. Id.

B. August-October 2016: Beginning of The Undercover Operation

On or about August 28, 2016, a Belizean citizen, acting as a confidential source ("CS-1"), emailed Beaufort Securities and requested information regarding the opening of a brokerage account. Id. ¶ 8. In response, the defendant – in his role as an investment manager at Beaufort Securities – responded to CS-1 and provided his telephone number to arrange a call to discuss the opening of a brokerage account.

Throughout September 2016, CS-1 placed consensually recorded telephone calls to the defendant to discuss the opening of brokerage accounts at Beaufort. Id. ¶ 9. In these communications, CS-1 advised the defendant that he represented wealthy U.S. citizens who wanted to deposit stock with Beaufort. The defendant informed CS-1 that Beaufort did not open accounts in the names of U.S. citizens because of tax reasons. CS-1 responded that his clients planned on opening accounts in the name of Belizean off-shore entities using Belizean nominees as shareholders, and that no U.S. citizens would appear on any of the account paperwork. The defendant advised CS-1 that this arrangement would be acceptable to Beaufort. Id.

Beginning in or about October 2016, a law enforcement agent posing as an associate of CS-1 (the "Undercover Agent"), placed consensually recorded telephone calls to the defendant and stated, in part, that he was interested in opening multiple brokerage accounts at Beaufort from which to execute trades in several multi-million dollar stock manipulation deals involving stocks traded on U.S. over-the-counter markets. Id. ¶ 10. The Undercover Agent advised the defendant that he was a U.S. citizen and that the purpose of opening multiple accounts at Beaufort was, in part, to conceal his ownership interest in the companies' stock from the Securities and Exchange Commission ("SEC"). Id. The defendant responded, in part, that Beaufort did not deal with U.S. citizens because of tax laws. The Undercover Agent then advised the defendant that the accounts would be opened using Belizean International Business Corporations ("IBCs")[1] controlled by the Undercover Agent and that no U.S. citizens would

[1] An IBC is an offshore company, formed under the laws of a foreign jurisdiction, which is not permitted to engage in business within the jurisdiction in which it is incorporated.

appear on any of the account opening documents. The defendant then agreed, in principle, that the Undercover Agent could open brokerage accounts at Beaufort. Id.

C. November 2016 Meeting

On or about November 30, 2016, the Undercover Agent and CS-1 met with the defendant at Beaufort's office in London. The meeting was consensually recorded. During this meeting, the Undercover Agent further explained the stock manipulation deals in which he planned to participate and his intent to use brokerage accounts at Beaufort to execute manipulative trades in furtherance of those deals. Id. ¶ 11. The Undercover Agent explained that he was involved in acquiring shell companies that traded in over-the-counter markets and that he was "involved in the whole aspect of these firms from the creation . . . through to the liquidation." He further stated that the companies' stock starts out as illiquid and that he then "puts the management in place" and directs management to issue press releases of "news that's not really news." The defendant responded: "That's what we need, we need for these smaller cap companies, the problem is when they, when they initially raise money, the news flow goes dry after, and then the share part starts to trickle down." The Undercover Agent further stated that "[w]e gotta pump it up . . . but you have to be very careful on how you do that [because] you don't want eyes on . . . the situation."

The Undercover Agent emphasized that, because he was a U.S. citizen, his name could not appear on any of the paperwork associated with his brokerage accounts. To that end, the defendant recommended putting CS-1's name on the account paperwork as the beneficial owner, notwithstanding that the Undercover Agent had informed the defendant that he would be the true beneficial owner of the accounts and would be exercising full control over them. The Undercover Agent once again advised the defendant that his brokerage accounts at Beaufort would be opened in the name of Belizean nominees, including CS-1. Id.

During the November 30, 2016 meeting, the defendant introduced the Undercover Agent and CS-1 to multiple Beaufort employees, including a senior member of the compliance team ("Compliance Officer-1"). The defendant informed Compliance Officer-1 that the Undercover Agent was from the United States and was interested in opening brokerage accounts. The Undercover Agent informed the defendant and Compliance Officer-1 that he and his associate, CS-1, wanted to establish six accounts at that time and were "look[ing] to do ten in total." The Undercover Agent further informed them that he would control "forty percent of the [shell company's] stock," with the other sixty percent remaining restricted, and wanted to "put four percent into each account." Id.

During the same meeting, the Undercover Agent stated to the defendant and Compliance Officer-1 that he was "hoping that [each] account generates five hundred thousand to a million . . . in liquidation." The Undercover Agent then asked the defendant what amount to report on account opening documents. The defendant advised the Undercover Agent to "[g]o on the lower end" "just to be safe," and stated that a lower estimate was "better for compliance." The defendant then recommended reporting "[one] hundred to two hundred" thousand "for each . . . the same thing for all of them." Id. ¶ 12. Later in the meeting, the Undercover Agent and the defendant discussed the potential for additional deals in the future. The Undercover Agent stated,

"when we're done with the liquidation, we don't use these accounts again for other deals . . . . So when we come to you with a second deal . . . [w]e'll come to you with ten more folders." Id. ¶ 13.

During the same meeting, Compliance Officer-1 reviewed various account opening documents for the Undercover Agent's brokerage accounts. The documents included a form that defined FATCA and stated that "its primary aim is to prevent U.S. taxpayers from using accounts held outside the U.S[.] for tax evasion." Id. ¶ 14. The form further stated, in part: "This form is to be completed by the Signatory/Power of Attorney and where there are more than one beneficial owners; each beneficial owner is required to complete a separate FATCA . . . form." Neither this form nor any of the other account opening documents referenced the Undercover Agent. Compliance Officer-1 did not object to opening brokerage accounts for the Undercover Agent. Id.

Additionally, during this meeting, the defendant also introduced the Undercover Agent to the Chief Executive Officer of Beaufort Asset Clearing Services Ltd ("Executive-1"). Beaufort Asset Clearing Service Ltd was an affiliate of Beaufort that provided clearing services. The Undercover Agent explained to Executive-1 that he traded on the U.S. over-the-counter markets, at which time Executive-1 directed the defendant to introduce the Undercover Agent to two Beaufort traders who had experience in U.S. over-the-counter market trading. The defendant also stated that one of the Beaufort traders traded in the U.S. over-the-counter markets "on a daily basis." Id. ¶ 15.

D. January 2017: Brokerage Accounts Opened at Beaufort

In or about January 2017, Beaufort opened six brokerage accounts for the Undercover Agent in the name of his Belizean IBCs. Belizean nominees were listed as the beneficial owners of those brokerage accounts. Id. ¶ 16. Notwithstanding the Undercover Agent's actual beneficial ownership of the accounts, at no time did Beaufort request FATCA Information from the Undercover Agent. Id.

E. April 2017 Meeting

On or about April 26, 2017, the Undercover Agent met with the defendant in London to discuss, among other things, opening additional brokerage accounts at Beaufort. Id. ¶ 17. The meeting was consensually recorded. During this meeting, the Undercover Agent once again described his participation in multiple market manipulation deals. The defendant again advised the Undercover Agent that Beaufort did not accept U.S. citizens as clients, but that there were "ways around it," including the use of CS-1 and other nominees to open accounts. The defendant stated, in part, that the Undercover Agent's name would not appear on any account documents, notwithstanding that the Undercover Agent had informed the defendant that he would be the true beneficial owner of the accounts. Id.

At this meeting, the defendant and the Undercover Agent also discussed how they would communicate regarding future stock trading to facilitate the stock manipulation deals. The defendant and the Undercover Agent agreed to communicate using, among other methods,

email addresses designed to hide the Undercover Agent's true identity. Id. Specifically, the defendant recommended that the Undercover Agent set up a new email address for each of his new brokerage accounts and "have that email address associated with those accounts."

F. June 2017: Laundering of Purported Fraud Proceeds

In or about June 2017, the Undercover Agent wired approximately $250,000 to brokerage accounts at Beaufort and placed a series of consensually recorded calls to the defendant in London. In one call, on or about June 16, 2017, the Undercover Agent informed the defendant that money he had wired was the proceeds of a previous stock manipulation deal during which he had utilized a different brokerage firm. Id. ¶ 18. The Undercover Agent then requested that the defendant execute multiple stock transactions to "clean up the money" and "break the trail" from "these pump and dump type stocks that we are in and out of quick and I just want to end that trail and put that money, the proceeds, into some FTSE stock." Id. Specifically, the Undercover Agent requested that the defendant purchase $100,000 worth of a Financial Times Securities 100 Index stock ("FTSE Stock A") listed on the London Stock Exchange. Shortly after the defendant purchased FTSE Stock A, the Undercover Agent requested that the defendant sell the shares of FTSE Stock A. The Undercover Agent also requested that the defendant purchase $150,000 worth of two additional FTSE stocks listed on the London Stock Exchange ("FTSE Stock B" and "FTSE Stock C") and thereafter sell FTSE Stock B and FTSE Stock C to disguise the source of those funds. The defendant executed each of the requested transactions. Id.

In another call, on or about June 23, 2017, the defendant and the Undercover Agent discussed the mechanics of the stock manipulation deals. Id. ¶ 19. The defendant advised the Undercover Agent that "as we said from day one, when we look to liquidate the stock we [do] it slowly, slowly." The Undercover Agent advised the defendant not to worry because he had been "getting around" the SEC for "twenty-something years." Id.

During a meeting on or about December 12, 2017, the defendant discussed match trades with the Undercover Agent. The defendant stated, in part: "Say if you have your guy on the other side, who will match with us, we can match with him – from our side." The defendant explained that this kind of trading was "standard practice every single day." Id. ¶ 20.

In furtherance of the stock manipulation deals, the defendant and Beaufort facilitated the manipulation of trading in the stock of HD View 360, Inc., a publicly traded U.S. microcap company that traded under the ticker symbol HDVW. Specifically, on or about January 25, 2018, the Undercover Agent called the defendant and advised him that he would need to conduct a series of match trades to facilitate the fraudulent manipulation of the price and trading volume of the company's shares. The defendant agreed to execute these match trades. On or about January 31, 2018, the defendant and Beaufort executed a match trade of HDVW stock. Id. ¶ 21. The match trade was one of four trades in HDVW that the defendant executed at the Undercover Agent's request.

G. April 2017: Introduction to Beaufort Management

In or about April 2017, the defendant advised the Undercover Agent that Beaufort Management, located in Mauritius, could assist the Undercover Agent in the formation of additional off-shore corporations. In a July 6, 2017 email, the defendant introduced the Undercover Agent to co-defendant Arvinsingh Canaye, Beaufort Management's General Manager. In the email, the defendant stated that Canaye "runs our Mauritius operation," and that the defendant had "briefly explained [to Canaye] what [the Undercover Agent is] looking for," and further explained that, "what [Canaye] said to me fits in with what [the Undercover Agent is] looking for." Id. ¶ 23.

H. June 2017 – February 2018: Money Laundering through the Purchase and Sale of Real Estate and Art

On or about June 20, 2017, the defendant, via WhatsApp, texted the Undercover Agent and advised that he had some "big real estate developments we are working on which I think could be of interest for you to diversify investments."[2] Three days later, during a call with the Undercover Agent, the defendant identified his uncle, co-defendant Aristos Aristodemou, as a real estate developer in England. The defendant proposed that the Undercover Agent meet with the defendant and Aristodemou the next time the Undercover Agent was in London to discuss a possible real estate investment.

On or about October 19, 2017, the Undercover Agent met in London with a co-conspirator ("Co-Conspirator-1"), the defendant and Aristodemou. The meeting was consensually recorded. During this meeting, the Undercover Agent again described his involvement in various stock manipulation deals. He also explained that he needed to move the proceeds of his market manipulation activities back to the United States. In response, Aristodemou and Co-Conspirator-1 advised the Undercover Agent of an investment opportunity in real estate. They further explained to the Undercover Agent that this potential investment could facilitate the laundering of the proceeds of the market manipulation deals. Id. ¶ 24. The Undercover Agent stated to Co-Conspirator-1, the defendant and Aristodemou that "our target is generally to do about two deals a month and we target to liquidate three to five million dollars per stock deal, each deal." The Undercover Agent added that he is "always looking . . . [for] new ways to move the money" and that the defendant "advised me that it might be good to speak with his uncle," i.e., Aristodemou. Later, the Undercover Agent stated that when Canaye created additional accounts, "we're gonna start to move significant amounts – many, many millions of dollars through these accounts." Id.

At the end of the meeting, after Co-Conspirator-1 and Aristodemou had left, the defendant stated: "We do a lot of business together. These guys [Aristodemou and Co-Conspirator-1] know exactly what they are doing. They make a lot of money. They make a lot of money. And the majority of their clients that they deal with are in a similar position to

[2] In around January 2017, the defendant suggested that he communicate with the Undercover Agent using WhatsApp.

yourself." The defendant further stated: "I'm glad you met. I think this solves a couple of your problems. Two birds with one stone. . . [a]nd not only that, you are getting a return . . . [a]nd legitimizing the cash." The defendant explained that legitimizing the cash "is the first factor" and "[t]he second factor, if you can make money on it as well, even better." After the Undercover Agent responded that "[l]egitimizing the money is the most important thing," the defendant stated: "That's the first point. Which you would have paid for. But you are not only getting that, you are getting a return on it as well."

On or about December 12, 2017, the Undercover Agent again met with the defendant, Aristodemou and Co-Conspirator-1 in London. The meeting was consensually recorded. During this meeting, the defendant, Aristodemou and Co-Conspirator-1 suggested to the Undercover Agent the possibility of laundering the proceeds of the stock manipulation deals through the purchase and sale of art. They offered to introduce the Undercover Agent to Matthew Green, an owner of an art gallery in London. Aristodemou explained that the Undercover Agent could purchase a painting from Green using the proceeds of the stock manipulation deals and then later sell the painting to "clean the money." Aristodemou further explained that the art business was "the only market that is unregulated," and that art was a profitable investment because of "money laundering." Id. ¶ 26. During this same meeting, the Undercover Agent and Aristodemou discussed potential amounts for a potential art purchase, including, for example, a "[f]ive million-dollar Renoir" painting. During this conversation, the defendant stated that "the beauty of art is that it's only worth as much as someone will pay for it." "There's no market for it," he added, "so it can go up however much you want." Id. ¶ 27.

On or about and between January 3, 2018 and January 19, 2018, Aristodemou sent emails to the Undercover Agent in which he suggested scheduling a meeting with Green to discuss the "nuts and bolts of the deal." Id. ¶ 28.

On or about February 5, 2018, the Undercover Agent met with the defendant, Aristodemou and Green in London. The meeting was consensually recorded. During the meeting, the Undercover Agent once again explained his involvement in stock manipulation deals and the need to launder the proceeds of those deals. In response, the defendant, Aristodemou and Green then discussed how the Undercover Agent could purchase a Pablo Picasso painting from Green to launder the proceeds of the stock manipulation deals. Specifically, the Undercover Agent would purchase and then maintain ownership of the painting for a period of time and then Green would arrange for the resale of the painting. Green would then transfer proceeds of that sale back to the Undercover Agent through a bank account in the United States. Id. ¶ 29.

On or about February 14, 2018, the Undercover Agent sent an email to Aristodemou. The defendant and Co-Conspirator-1 were copied on the email. In the email, the Undercover Agent provided Aristodemou with billing information for the purchase of the painting and requested a draft contract for the sale. Id. ¶ 30.

On or about February 19, 2018, the defendant sent a WhatsApp message to the Undercover Agent attaching an invoice from Mayfair Fine Art Limited for a painting by Pablo Picasso entitled "Personnages, Painted 11 April 1965." The invoice listed the purchaser of the

painting as one of the Undercover Agent's IBCs, and the purchase price as £6.7 million. The invoice contained wiring instructions for payment and stated that payment was due on or before March 6, 2018. Id. ¶ 31.

On or about February 21, 2018, Green caused an email to be sent to an email address in the name of one of the Undercover Agent's IBCs. The email attached the invoice for the Picasso painting with an updated address for the Undercover Agent's IBC. Id. ¶ 32. Later that day, the defendant sent the Undercover Agent a screenshot via WhatsApp of a message from Matthew Green in which Green stated to the defendant, in part, "[O]bviously because of the nature of this transaction we need to preserve a certain amount of anonymity which [the Undercover Agent] and I discussed and clarified at the Arts Club!" Id. ¶ 33.

II. Procedural History

On February 28, 2018, a grand jury returned a three-count indictment charging one count of conspiracy to commit securities fraud (Count One), in violation of 18 U.S.C. § 371, and two counts of conspiracy to commit money laundering (Counts Two and Three), in violation of 18 U.S.C. § 1956(h). Count Two charged a conspiracy to launder what was represented as the proceeds of securities fraud through Beaufort Securities and Loyal Bank ("the Beaufort and Loyal Bank Scheme."). Count Three charged a separate conspiracy to launder what was represented to be securities fraud proceeds through the purchase and sale of real estate and art (the "Real Estate/Art Scheme"). The defendant was charged in all three counts.

On March 20, 2018, a grand jury returned a superseding indictment adding two counts charging conspiracies to defraud the United States, in violation of 18 U.S.C. § 371, by failing to comply with FATCA. The defendant was charged in one of the new counts in the superseding indictment (Count Four).

On November 29, 2019, the defendant travelled from London to New York to be arraigned and plead guilty, pursuant to a plea agreement, to Counts One and Four of the Superseding Indictment, which charged the conspiracies to commit securities fraud to defraud the United States described above. The defendant has been on bail since his guilty plea.

III. Sentencing Guidelines

The government recommends that the Court apply the Guidelines calculation set forth below.

	Base Offense Level (§§ 2X1.1(a); 2B1.1(a)(2))[3]	6
Plus:	Intended Loss of More than $1,500,000 (§ 2B1.1(b)(1)(I))	+16

[3] The Base Offense Level is determined pursuant to a grouping analysis under U.S.S.G. §3D1.3 – Closely Related Counts.

Plus	Substantial Part of the Scheme was Committed from Outside the United States (§ 2B1.1(b)(10)(B)) and Offense Involved Sophisticated Means ((§ 2B1.1(b)(10)(C))	+2
Less:	Acceptance of Responsibility (§§ 3E1.1(a) and (b))	-3
Total:		21

Because the defendant is in Criminal History Category I, his advisory Guidelines range is 37-46 months' imprisonment.

A. Loss Amount

In his sentencing submission, the defendant disputes the Guidelines calculation and argues that the intended loss is less than $6,500. (Def. Ltr. 9). We address the defendant's arguments below.

First, the defendant argues that any intended loss based on the defendant's communications with the Undercover Agent is speculative. (Def. Ltr. 10). The defendant's argument ignores the substantial evidence of his participation in a securities fraud scheme intended to generate millions of dollars in illicit profits. Over the course of 18 months, the defendant agreed to facilitate what was represented to be a multi-million dollar securities fraud scheme; facilitated the opening of accounts in order to perpetuate the fraud; executed trades in furtherance of that fraud; agreed to launder what was purported to be millions of dollars in fraudulent proceeds; laundered what was represented to be $250,000 in fraudulent proceeds; and initiated a separate scheme to engage in additional money laundering outside of Beaufort, the culmination of which was the attempt to sell a Picasso painting to the Undercover Agent for just under $10 million. Against this backdrop, the discussions of multi-million dollar frauds were not "wild puffery," as the defendant contends. (Def. Ltr. 10). Rather, they were discussions that reflected the conspiracy in which the defendant was actually involved – one that was intended to cause more than $1.5 million in losses.

In addition to the overview of the defendant's conduct set forth in the PSR and above, below are instances in which the defendant and the Undercover Agent communicated about the amount of money purportedly involved in the scheme.

- On October 21, 2016, during a phone conversation, the Undercover Agent told the defendant that he was interested in opening accounts for several multi-million dollar deals involving over-the-counter stocks. The Undercover Agent stated that he would likely want to open five accounts per deal.

- On November 30, 2016, during an in-person meeting in London, the Undercover Agent and the defendant discussed the "deal size" that the Undercover Agent should indicate in the account opening documents at Beaufort. The Undercover Agent said that he hoped that each account would generate five hundred thousand to one million dollars in liquidation for each

deal. However, the defendant recommended that the Undercover Agent "go on the lower end" as that would be "better for compliance." The defendant recommended that the Undercover Agent list "[one] hundred to two hundred" thousand and the frequency of deals as less than monthly.

- On May 25, 2017, the Undercover Agent sent the defendant a WhatsApp message stating that he was going to "have fully liquidated a deal shortly." The Undercover Agent stated: "My share of deal will be about half million dollars. I will look to get that into the Beaufort accounts by mid June. At that point we can convert that temporarily by purchasing some FTSE 100 stock. At your convenience please send me a half dozen tickers for the 6 accounts." The defendant responded: "Great news . . . like the sound of that!" The defendant then suggested two companies that he believed "represent[ed] excellent value."

- On June 3, 2017, the Undercover Agent sent the defendant a WhatsApp message stating that he had sent $100,000 to one of his accounts at Beaufort and requesting that the defendant confirm receipt.

- On June 16, 2017, during a phone conversation, the defendant confirmed that approximately $100,000 had been received in one of the Undercover Agent's accounts. The Undercover Agent then stated that the $100,000 was "from one of the deals that I explained to you." The Undercover Agent further explained that his position in a stock had been valued at approximately $500,000, but that he "did a campaign and in less than a month, I got the stock from $500,000 to $3 million. So we pumped it up to like, $2.5 million more than it was." The Undercover Agent stated that this was "just a real life example of what we're going to be doing because, you know, we got out of $3 million worth of stock." He explained that he was getting 16 percent of the payouts from the deal, "so, of my payoff, you got $100,000 and there's about $400,000 more to come." The Undercover Agent then said what he wanted to do with the $500,000 at Beaufort: use it to buy and sell a FTSE stock and then wire the money to a bank in Hungary.

- On June 20, 2017, the defendant and Beaufort executed the purchase of approximately $100,000 of a FTSE stock in one of the Undercover Agent's accounts. Approximately three days later, the defendant and Beaufort sold all of that stock for approximately $95,000.

- On June 23, 2017, during a phone conversation, the Undercover Agent told the defendant that he would send another $400,000 to his accounts at Beaufort. In response, the defendant told the Undercover Agent to send different amounts for each account. The Undercover Agent told the defendant that the next $400,000 he would send would be used to buy stock; the defendant recommended splitting up that money and not just buying stock. Later in the conversation, the Undercover Agent again stated that the $500,000 was his "sixth cut of the $3 million that we made."

- On July 3, 2017, the defendant and Beaufort made three approximately $50,000 purchases of FTSE stocks in two of the Undercover Agent's accounts. On July 10, 2017, the defendant and Beaufort sold all of the purchased shares.

- In late 2017, the defendant introduced the Undercover Agent to his uncle, Aristos Aristodemou. As detailed above, the parties again discussed the Undercover Agent's securities fraud scheme and, in an October 19, 2017 meeting, the Undercover Agent stated that his target "is generally to do about two deals a month and we target to liquidate three to five million dollars per stock deal, each deal." The parties discussed the laundering of money through the purchase and sale of real estate and then, along with Matthew Green, the laundering of money through the purchase and sale of art. As part of the money laundering scheme, the co-conspirators ultimately sent the Undercover Agent an invoice to purchase a Picasso painting for £6.7 million pounds – approximately $9.4 million at the time. The defendant was indicted the following week.

In sum, there is ample evidence from which to conclude that the intended loss was greater than $1.5 million.

Second, the defendant argues that his intended loss should be determined solely based on the potential loss caused by the four trades he executed in HDVW in January and February 2018. (Def. Ltr. at 8-9). In addition to ignoring all of the evidence of the defendant's participation in a far larger scheme, the defendant's theory suggests that, but for his four trades in one company's stock, his intended loss would be zero. That conclusion is inconsistent with the record in this case and the Guidelines, which state that intended loss "includes intended pecuniary harm that would have been impossible or unlikely to occur (e.g., as in a government sting operation. . .)." U.S.S.G. § 2B1.1, Application Note 3(A).

Third, the defendant contends that the Court should consider United States v. Altomare, 673 Fed. Appx. 956 (11th Cir. 2016), in determining intending loss. (Def. Ltr. 11-12). Altomare does not support the defendant's position that intended loss should not be calculated based on the defendant's communications with the undercover agent. In Altomare, the district court calculated intended loss based on the defendant's stated intention of inflating the price of a stock by at least $1 per share. That the district court concluded that at least $1 per share was the appropriate amount (as opposed to larger amounts referenced by the defendant) reflects the district court's consideration of the particular facts in that case.[4] In this case, intended loss should also be determined based on the facts in the record – as it was for the two co-defendants who were previously sentenced by the Court (Adrian Baron and Arvinsingh Canaye).[5] Moreover, the $1.5 million figure does not reflect the Undercover Agent's stated goal of conducting multi-million dollar deals each month, or the discussions between the defendant and

[4] The 11th Circuit's decision in Altomare does not detail how the district court made its determination of intended loss. However, the government's appeal brief recounts a number of statements by the defendant in that case regarding increasing stock price by approximately $1 or possibly $2, as well as a statement that the defendant thought the price could increase by $9. Brief of the United States, United States v. Altomare, 2015 WL 4064890, at *13.

[5] Canaye stipulated to an intended loss amount of more than $1.5 million under § 2B1.1(b)(1)(I). In Baron's sentencing, the Court found an intended tax loss of approximately $140,000 under § 2T1.4(F).

the Undercover Agent about opening additional brokerage accounts at Beaufort. Rather, it reflects the intended loss from one deal.[6]

Fourth, the defendant contends that the intended loss enhancement cannot be established with "reasonable certainty." (Def. Ltr. 10). The defendant is incorrect. Under U.S.S.G. § 2X1.1, the base offense level for the securities fraud offense is the guideline for the substantive offense "plus any adjustments from such guideline for any intended offense conduct that can be established with reasonable certainty." U.S.S.G. § 2X1.1. The Guidelines' application notes explain that the "only specific offense characteristics for the guideline for the substantive offense that apply are those that are determined to have been specifically intended or actually occurred. Speculative specific offense characteristics will not be applied." U.S.S.G. § 2X1.1, Application Note 2. As an example, the Guidelines state that if two defendants are arrested "during the conspiratorial stage of planning an armed robbery," the offense level ordinarily would not include aggravating factors such as the taking of hostages "because such factors would be speculative." Id. The Guidelines further note that "[i]f it was established that the defendants actually intended to physically restrain the teller, the specific offense characteristic for physical restrain would be added." Id. Here, for all the reason set forth above, the record establishes that the defendant actually intended to facilitate a multi-million dollar securities fraud scheme.[7]

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[6] The other authority cited by the defendant is also distinguishable. In United States v. Grace, 568 F. App'x 344, 356 (5th Cir. 2014), the Fifth Circuit vacated an intended loss calculation in a bribery case where the defendant, a public official, accepted a purported bribe from an undercover agent in exchange for providing officials letters of support for projects. The Circuit vacated the district court's intended loss calculation based on the undercover agent's statement that he was "gonna get . . . 3 to 4 million in grants per city" because, among other things, the letter of support were not grant applications and did not specify a requested grant amount." Grace, 568 Fed. Appx. at 356. In addition, the court noted that in a nearly identical case, it had vacated an intended loss calculation where there was insufficient evidence to differentiate between legitimate funding an entity may have received and any benefit the defendant intended from his letters of support. Id. at 355. Here, by contrast, the conversations between the defendant and the Undercover were repeatedly and clearly about generating fraudulent proceeds and then laundering them. In United States v. Kirincic, 2007 WL 3195157, at *5 (S.D.N.Y. Oct. 30, 2007), the court distinguished between intended loss and "possible" loss that could potentially happen "down the road," but for which there "not evidence of any intention" on the defendant's part. Here, by contrast, the intended loss is tied to the defendant's conduct and not contingent upon various events that the defendant did not intend.

[7] In addition, the government notes that Count Four is governed by U.S.S.G. § 2T1.9(a), which ultimately determines the offense level by reference to U.S.S.G. § 2T4.1 (the Tax Table). In determining tax loss, "the guidelines contemplate that the court will simply make a reasonable estimate based on the available facts." U.S.S.G. § 2T1.1, Application Note 1. However, because the counts of conviction are grouped in this case, the highest offense level is applied. For the reasons set forth above, that offense level is for the securities fraud conspiracy with an intended loss of more than $1.5 million.

B. Substantial Part of Scheme Outside the United States and Sophisticated Conduct

The government agrees with the PSR's application of a two-point enhancement under U.S.S.G. § 2B1.1(b)(10)(B) or (C). With regard to U.S.S.G. § 2B1.1(b)(10)(B), the enhancement for when a substantial part of the scheme occurred outside of the United States, the defendant contends that the enhancement should not apply because he did not commit his offense from abroad in order to conceal it. (Def. Ltr. at 16-17). The defendant's argument is, as he concedes, inconsistent with the text of the Guidelines. When presented with similar arguments about the scope and purpose of the enhancement, courts have rejected them. See United States v. Hussain, 2019 WL 1995764, at *2-3 (N.D. Cal. May 5, 2019) ("[T]he difference between § 2B1.1(b)(10)(A)—which turns on the location of the defendant—and § 2B1.1(b)(10)(B)—which turns on the location of the scheme—reinforces the conclusion that § 2B1.1(b)(10)(B) covers not just domestic defendants who commit crimes abroad, but also foreign defendants . . . who commit their crimes abroad.")[8]; United States v. O'Keefe, 208 Fed. Appx. 126 (3d Cir. 2006) (holding that defendant's residence abroad "does not except him from" enhancement for substantial part of the scheme being committed from abroad). Finally, when sentencing co-defendant Canaye, who was also a foreign citizen who committed his offense from abroad, the Court applied the same enhancement (to which Canaye stipulated).

With regard to U.S.S.G. § 2B1.1(b)(10)(C), which provides an enhancement for when the "offense otherwise involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means," the defendant contends that the enhancement should not apply because he "merely instructed a trader to execute a trade on a certain amount of stock." (Def. Ltr. at 4). The defendant is incorrect. As detailed above, the defendant took numerous steps to facilitate the securities fraud conspiracy, including facilitating the opening of brokerage accounts in the names of Belizean IBCs that used Belizean nominees. This is the kind of conduct covered by this enhancement. See U.S.S.G. § 2B1.1, Application Note 9 ("Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts also ordinarily indicates sophisticated means.").[9]

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[8] Citing the legislative history of the enhancement, the defendant argues that the enhancement can apply only where the location of the criminal conduct was intended as a sophisticated method to avoid detection in the United States. (Def. Ltr. 15-16). The court in Hussain rejected the same argument. "The overarching purpose that the 1998 Amendments [which included the enhancement] describe—to penalize conduct that is done in such a way that inhibits the ability of law enforcement to discover the crime or apprehend the offender—is broader than concealed conduct. And that broader purpose is consistent with the text of the guideline because, as § 2B1.1(b)(10)(B) states, it is the fact that 'a substantial part of [the] fraudulent scheme was committed from outside the United States,' not the intent of the defendant in doing so, that 'makes it difficult for law enforcement authorities to discover the offense or apprehend the offender.'" Hussain, 2019 WL 1995764, at *3 (quoting 1998 Amendments).

[9] This Court applied the sophisticated laundering enhancement (§ 2S1.1(b)(3)) for co-defendant Canaye, who was convicted of money laundering conspiracy, and the sophisticated

IV. The Defendant's Other Arguments Regarding Offense Conduct

In his sentencing submission, the defendant notes that he was randomly assigned to respond to the Undercover Agent's inquiry to Beaufort and contends that he did "little to move things along." (Def. Ltr. 4-5). He similarly contends that he would not have participated in the illegal conduct had the Undercover Agent not followed up with him during the course of the conspiracy. (Def. Ltr. 20). The defendant is correct that the government was introduced to him through its investigation of Beaufort and that the Undercover Agent proposed the securities fraud scheme to him. However, in addition to agreeing to facilitate that scheme (as well to launder the proceeds and defraud the United States by failing to comply with FATCA), the defendant introduced the Undercover Agent to additional co-conspirators to commit money laundering outside of Beaufort. On a June 23, 2017 call, the defendant told the Undercover Agent that his "networks runs a lot deeper than Beaufort. Beaufort is the day job. The real money is outside of Beaufort." The defendant subsequently introduced the Undercover Agent to the co-conspirators who participated in money laundering through a real estate and art scheme.[10]

Next, the defendant states that did not profit from the scheme. (Def. Ltr. at 27). The government does not have evidence regarding how Beaufort's commission payments to the defendant were calculated but notes that, in his objections to the PSR, the defendant stated that he earned commissions on a quarterly basis. (Def. Objections to PSR ¶ 68). When discussing commissions with the Undercover Agent, the defendant stated that Beaufort would charge the Undercover Agent a 1% commission on each trade, "on a pay as you trade basis."

The defendant states that the Undercover Agent provided him with alcohol at restaurants and suggests that there is "no doubt that it had some impact on his willingness to go along with the various suggestions by the undercover agent." (Def. Ltr. 5). The defendant's contention that some of his illegal conduct was a result of alcohol he decided to drink at restaurants should be summarily rejected. Over approximately 18 months, the defendant

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means enhancement (§ 2T1.4(b)(2)) for co-defendant Baron, who was convicted of conspiring to defraud the United States by failing to comply with FATCA.

[10] The defendant states that after his July 2017 email introducing the Undercover Agent to Canaye, he "did not know if Mr. Canaye had done anything for the undercover agent, and did not follow up with Mr. Canaye to find out." (Def. Ltr. 6). The government notes that in November 2017, the defendant sent the Undercover Agent WhatsApp messages conveying that he had spoken with Canaye. Specifically, on November 16, 2017, the defendant sent the Undercover Agent a WhatsApp message asking "[f]or which company is [CS-1] a director, so that I can sen[d] [know your customer information] to [V]inesh…." On November 20, 2017, the defendant sent the Undercover Agent a WhatsApp message saying that he "spoke with Vinesh, all looks like moving nicely there."

participated in numerous phone conversations, emails, WhatsApp exchanges and in-person meetings with the Undercover Agent. Almost all of these communications involved no alcohol. The first in-person meeting between the defendant and the Undercover Agent took place in Beaufort's offices. When the defendant executed trades to launder purported stock fraud proceeds and to further the securities fraud scheme, he presumably did so from Beaufort's offices. And, again, it was the defendant who introduced the Undercover Agent to additional co-conspirators who engaged in money laundering through a real estate and art scheme. This conduct was the result of the defendant's decisions, made over more than a year, to engage in multiple fraudulent schemes.

V. Appropriate Sentence

The government respectfully submits that the following factors are particularly significant in determining the appropriate sentence in this case.

First, because sophisticated fraud schemes, like the instant scheme with multiple international actors, are difficult to detect and prosecute, there is greater need for general deterrence. See, e.g., Harmelin v. Michigan, 501 U.S. 957, 988 (1991) (noting that "since deterrent effect depends not only upon the amount of the penalty but upon its certainty, crimes that are less grave but significantly more difficult to detect may warrant substantially higher penalties"). Because "economic and fraud-based crimes are more rational, cool and calculated than sudden crimes of passion or opportunity, these crimes are prime candidates for general deterrence." See, e.g., United States v. Martin, 455 F.3d 1227, 1240 (11th Cir. 2006) (quoting Stephanos Bibas, White–Collar Plea Bargaining and Sentencing After Booker, 47 Wm. & Mary L. Rev. 721, 724 (2005)) (internal quotation marks omitted)); United States v. Heffernan, 43 F.3d 1144, 1149 (7th Cir. 1994) ("Considerations of (general) deterrence argue for punishing more heavily those offenses that either are lucrative or are difficult to detect and punish, since both attributes go to increase the expected benefits of a crime and hence the punishment required to deter it."); Drago Francesco, Roberto Galbiati & Pietro Vertova, The Deterrent Effects of Prison: Evidence From a Natural Experiment, 117 J. of Political Econ. 257, 278 (2009) ("Our findings provide credible evidence that a one-month increase in expected punishment lowers the probability of committing a crime. This corroborates the theory of general deterrence."). Here, the defendant participated in multiple international fraud schemes that are inherently difficult to detect and that, in part, rely upon brokers, offshores management companies and bankers to succeed. In addition, as the Guidelines state, "[b]ecause of the limited number of criminal tax prosecutions relative to the estimated incidence of such violations, deterring others from violating the tax laws is a primary consideration underlying these guidelines." U.S.S.G. Ch. 2, Pt. T, Intro. Comment.

Second, the defendant agreed to launder (and in fact did launder) what was represented to be fraud proceeds, and then sought to involve the Undercover Agent in additional laundering outside of Beaufort. To be sure, the defendant did not plead guilty to the money laundering conspiracies charged in Counts Two and Three. But it is clear that the defendant conspired to launder money in multiple ways and the government respectfully submits that this is an important consideration under 18 U.S.C. § 3553(a).

Third, the government agrees that proportionality between defendants in this case should be considered. The Court has sentenced two defendants in this case. Adrian Baron, the former Chief Business Officer of Loyal Bank, was sentenced to time served, effectively eleven months in prison, for conspiring to defraud the United States by failing to comply with FATCA. The Court determined Baron's advisory Guidelines range to be 18 to 24 months' imprisonment. Arvinsingh Canaye, the former General Manager of Beaufort Management, was also sentenced to time served, or effectively thirteen months in prison, for conspiring to commit money laundering, in violation of 18 U.S.C. § 1956(h). The Court determined Canaye's advisory Guidelines range to be 57 to 71 months' imprisonment (which was stipulated to by the parties). The government submits that two factors are particularly relevant in determining a proportionate sentence. First, as compared to his co-defendants, the defendant engaged in criminal conduct for the longest period of time; took the most steps in furtherance of the schemes; and introduced the Undercover Agent to a separate multi-million dollar money laundering scheme. Second, the defendant's role at Beaufort was substantially junior to that of Baron, who was the Chief Business Officer and former Chief Executive Office of a bank.

Finally, the Court should consider that the defendant voluntarily traveled to the United States to plead guilty. This spared the government from seeking extradition and reflects the defendant's acceptance of responsibility.

VI. Conclusion

For the reasons set forth above, the government requests that the Court impose a term of incarceration below the applicable Guidelines range and proportional to the sentences already imposed on the defendant's co-conspirators.

Respectfully Submitted,

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