



U.S. Department of Justice

United States Attorney
Southern District of New York

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

December 8, 2010

Johnny Sutton, Esq.
The Ashcroft Group, LLC
919 Congress Avenue, Suite 1500
Austin, TX 78701

Re: United States v. Daniel DeVore,
10 Cr. ____ (JSR)

Dear Mr. Sutton:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from Daniel DeVore ("DeVore" or the "defendant") to a two-count criminal Information ("Information").

Count One of the Information charges the defendant with conspiracy to commit wire fraud and securities fraud, in violation of Title 18, United States Code, Section 371, and carries a maximum sentence of five years' imprisonment, a maximum term of three years' supervised release, a maximum fine, pursuant to Title 18, United States Code, Section 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense, and a mandatory \$100 special assessment. Count Two of the Information charges the defendant with wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2, and carries a maximum sentence of twenty years' imprisonment, a maximum term of three years' supervised release, a maximum fine, pursuant to Title 18, United States Code, Section 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to a person other than the defendant as a result of the offense, and a mandatory \$100 special assessment.

The total maximum sentence of incarceration on all counts in the Information is 25 years' imprisonment.

It is further understood that the defendant shall make restitution in an amount to be specified by the Court in accordance with 18 U.S.C. §§ 3663, 3663A, and 3664. This amount shall be paid according to a plan established by the Court.

The defendant furthermore admits the forfeiture allegations with respect to Counts One and Two of the Information and agrees to forfeit to the United States, pursuant to 18 U.S.C. § 981(a)(1)(c) and 28 U.S.C. § 2461, a sum of money equal to at least \$145,750, representing the amount of proceeds that DeVore had obtained as a result of the schemes charged in the Information (the "Money Judgment"). It is further understood that any Money Judgment shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon him in addition to forfeiture.

It is understood that DeVore (a) shall truthfully and completely disclose all information with respect to the activities of himself and others concerning all matters about which this Office inquires of him, which information can be used for any purpose; (b) shall cooperate fully with this Office, the Federal Bureau of Investigation, and any other law enforcement agency designated by this Office; (c) shall attend all meetings at which this Office requests his presence; (d) shall provide to this Office, upon request, any document, record, or other tangible evidence relating to matters about which this Office or any designated law enforcement agency inquires of him; (e) shall truthfully testify before the grand jury and at any trial and other court proceeding with respect to any matters about which this Office may request his testimony; (f) shall bring to this Office's attention all crimes which 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; and, (g) shall commit no further crimes whatsoever. Moreover, any assistance DeVore may provide to federal criminal investigators shall be pursuant to the specific instructions and control of this Office and designated investigators.

It is understood that this Office cannot, and does not, agree not to prosecute DeVore for criminal tax violations. However, if DeVore fully complies with the understandings specified in this Agreement, no testimony or other information given by him (or any other information directly or indirectly derived therefrom) will be used against him in any criminal tax prosecution. Moreover, if DeVore fully complies with the understandings specified in this Agreement, he will not be further prosecuted criminally by this Office for any crimes, except for criminal tax violations, related to his participation in the following crimes, to the extent that he has disclosed such participation to this Office as of the date of this Agreement: (a) conspiracy to commit wire fraud and securities fraud from in or about late 2007 through in or about August 2010, as charged in Count One of the Information; (b) wire fraud from in or about late 2007 through in or about August 2010, as charged in Count Two of the Information; and (c) securities fraud from in or about late 2007 through in or about August 2010 in connection with his work as a consultant for Primary Global Research ("PGR"), Guidepoint Global and Vista.

This Agreement does not provide any protection against prosecution for any crimes except as set forth above. It is understood that all of the conduct set forth in subsection (c) of the preceding paragraph constitutes either relevant conduct, pursuant to United States Sentencing Guidelines

("U.S.S.G.") Section 1B1.3, or other conduct of the defendant, pursuant to U.S.S.G. § 1B1.4, that the Court may consider at the time of sentencing.

It is understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office. This Office will, however, bring the cooperation of DeVore to the attention of other prosecuting offices, if requested by him.

It is understood that the sentence to be imposed upon DeVore is within the sole discretion of the Court. This Office cannot, and does not, make any promise or representation as to what sentence DeVore will receive, and will not recommend any specific sentence to the Court. However, this Office will inform the Probation Department and the Court of (a) this Agreement; (b) the nature and extent of DeVore's activities with respect to this case and all other activities of DeVore which this Office deems relevant to sentencing; and (c) the nature and extent of DeVore's cooperation with this Office. In so doing, this Office may use any information it deems relevant, including information provided by DeVore both prior to and subsequent to the signing of this Agreement. In addition, if this Office determines that DeVore has provided substantial assistance in an investigation or prosecution, and if he has fully complied with the understandings specified in this Agreement, this Office will file a motion, pursuant to Section 5K1.1 of the Sentencing Guidelines, requesting the Court to sentence DeVore in light of the factors set forth in Section 5K1.1(a)(1)-(5). It is understood that, even if such a motion is filed, the sentence to be imposed on DeVore remains within the sole discretion of the Court. Moreover, nothing in this Agreement limits this Office's right to present any facts and make any arguments relevant to sentencing to the Probation Department and the Court, or to take any position on post-sentencing motions. DeVore hereby consents to such adjournments of his sentence as may be requested by this Office.

It is understood that, should this Office determine either that DeVore has not provided substantial assistance in an investigation or prosecution, or that DeVore has violated any provision of this Agreement, such a determination will release this Office from any obligation to file a motion pursuant to Section 5K1.1 of the Sentencing Guidelines, but will not entitle DeVore to withdraw his guilty plea once it has been entered.

It is understood that, should this Office determine, subsequent to the filing of a motion pursuant to Section 5K1.1 of the Sentencing Guidelines and/or 18 U.S.C. §3553(e), that DeVore has violated any provision of this Agreement, this Office shall have the right to withdraw such motion.

It is understood that, should DeVore commit any further crimes or should it be determined that he has given false, incomplete, or misleading testimony or information, or should he otherwise violate any provision of this Agreement, DeVore shall thereafter be subject to prosecution for any federal criminal violation of which this Office has knowledge, including perjury and obstruction of justice. Any such prosecution that is not time-barred by the applicable statute of limitations on the

date of the signing of this Agreement may be commenced against DeVore, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

It is understood that in the event that it is determined that DeVore has committed any further crimes, given false, incomplete, or misleading testimony or information, or otherwise violated any provision of this Agreement, (a) all statements made by DeVore to this Office or other designated law enforcement agents, and any testimony given by DeVore before a grand jury or other tribunal, whether prior to or subsequent to the signing of this Agreement, and any leads from such statements or testimony shall be admissible in evidence in any criminal proceeding brought against DeVore; and (b) DeVore shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, or any other federal rule that such statements or any leads therefrom should be suppressed. It is the intent of this Agreement to waive all rights in the foregoing respects.

The defendant hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, *Jencks* Act material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, and impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

The defendant recognizes that, if he is not a citizen of the United States, his guilty plea and conviction make it very likely that his deportation from the United States is presumptively mandatory and that, at a minimum, he is at risk of being deported or suffering other adverse immigration consequences. The defendant acknowledges that he has discussed the possible immigration consequences (including deportation) of his guilty plea and conviction with defense counsel. The defendant affirms that he wants to plead guilty regardless of any immigration consequences that may result from the guilty plea and conviction, even if those consequences include deportation from the United States. It is agreed that the defendant will have no right to withdraw his guilty plea based on any actual or perceived adverse immigration consequences (including deportation) resulting from the guilty plea and conviction. It is further agreed that the defendant will not challenge his conviction or sentence on direct appeal, or through litigation under Title 28, United States Code, Section 2255 and/or Section 2241, on the basis of any actual or perceived adverse immigration consequences (including deportation) resulting from his guilty plea and conviction.

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This Agreement supersedes any prior understandings, promises, or conditions between this Office and DeVore. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.

Very truly yours,

PREET BHARARA
United States Attorney

By: Antonia Apps
Reed M. Brodsky
David Leibowitz
Antonia M. Apps
Assistant United States Attorneys
(212) 637-2492/1947/2198

APPROVED:

Richard B. Zabel
RICHARD B. ZABEL
Chief, Criminal Division

AGREED AND CONSENTED TO:

Daniel DeVore
Daniel DeVore

12-10-10
DATE

APPROVED:

Johnny Sutton, Esq.
Johnny Sutton, Esq.
Attorney for Daniel DeVore

12-10-2010
DATE