

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA

v.

JOHN ED JAMES,

Defendant.

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Criminal No. 4:20-cr-00695

PLEA AGREEMENT

The United States of America, by and through Ryan K. Patrick, United States Attorney for the Southern District of Texas and Suzanne Elmilady, Assistant United States Attorney; Daniel S. Kahn, Acting Chief of the Fraud Section of the Criminal Division of the United States Department of Justice (“Fraud Section”) and Drew Bradylyons and Della Sentilles, Trial Attorneys of the Fraud Section; and Defendant John Ed James (“Defendant”), by and through Defendant’s counsel, pursuant to Rule 11 of the Federal Rules of Criminal Procedure, state that they have entered into an agreement, the terms and conditions of which are as follows:

Defendant’s Agreement

1. Defendant agrees to plead guilty to Count One of the Information, which charges Defendant with conspiracy to commit the following offenses against the United States, in violation of Title 18, United States Code, Section 371: commodities fraud, in violation of Title 18, United States Code, Section 1348(a); and wire fraud, in violation of Title 18, United States Code, Section 1343. Defendant, by entering this plea, agrees that he is waiving his right to grand jury indictment, and he is waiving any right to have the facts that the law makes essential to the punishment either charged in the Information, proved to a jury, or proven beyond a reasonable doubt.

Punishment Range

2. The statutory maximum sentence that the Court can impose for a violation of Title

18, United States Code, Section 371, is not more than 5 years of imprisonment and a fine of \$250,000, or twice the gross gain or loss, whichever is greater. In addition, Defendant may receive a term of supervised release after imprisonment of up to three years. 18 U.S.C. §§ 3559(a)(4) and 3583(b)(2). Defendant acknowledges and understands that if he should violate the conditions of any period of supervised release that may be imposed as part of his sentence, then Defendant may be imprisoned for up to two years, without credit for time already served on the term of supervised release prior to such violation. 18 U.S.C. §§ 3559(a)(4) and 3583(e)(3). Defendant understands that he cannot have the imposition or execution of the sentence suspended, nor is he eligible for parole.

Mandatory Special Assessment

3. Pursuant to Title 18, United States Code, Section 3013(a)(2)(A), immediately after sentencing, Defendant will pay to the Clerk of the United States District Court a special assessment in the amount of one hundred dollars (\$100.00) per count of conviction. The payment will be by cashier's check or money order, payable to the Clerk of the United States District Court, c/o District Clerk's Office, P.O. Box 61010, Houston, Texas 77208, Attention: Finance.

Immigration Consequences

4. Defendant recognizes that pleading guilty may have consequences with respect to his immigration status if he is not a citizen of the United States. Defendant understands that if he is not a citizen of the United States, by pleading guilty he may be removed from the United States, denied citizenship, and denied admission to the United States in the future. Defendant's attorney has advised Defendant of the potential immigration consequences resulting from Defendant's plea of guilty.

Cooperation

5. The parties understand this agreement carries the potential for a motion for departure under Section 5K1.1 of the Sentencing Guidelines. Defendant understands and agrees that whether

such a motion is filed will be determined solely by the United States through the United States Attorney for the Southern District of Texas and the Fraud Section. Should Defendant's cooperation, in the sole judgment and discretion of the United States, amount to "substantial assistance," the United States reserves the sole right to file a motion for departure pursuant to Section 5K1.1 of the United States Sentencing Guidelines. Defendant further agrees to persist in that plea through sentencing, fully cooperate with the United States, and not oppose the forfeiture of assets contemplated in paragraph 25 of this agreement. Defendant understands and agrees that the United States will request that sentencing be deferred until that cooperation is complete.

6. Defendant understands and agrees that "fully cooperate," as that term is used herein, includes providing all information relating to any criminal activity known to Defendant, including but not limited to commodities, securities, wire, mail, and honest services fraud; money laundering; false statements, perjury, and obstruction of justice; and criminal activity under applicable tax laws, whether or not related to the criminal activity for which Defendant was charged. Defendant understands that such information includes both state and federal offenses arising therefrom. In that regard:

- i. Defendant agrees that this plea agreement binds only the United States Attorney's Office for the Southern District of Texas, the Fraud Section, and Defendant; it does not bind any other United States Attorney's Office or any other unit of the Department of Justice;
- ii. Defendant agrees to testify truthfully as a witness before a grand jury or in any other judicial or administrative proceeding when called upon to do so by the United States. Defendant further agrees to waive his Fifth Amendment privilege against self-incrimination for the purpose of this agreement;
- iii. Defendant agrees to voluntarily attend any interviews and conferences as the United States may request;
- iv. Defendant agrees to provide truthful, complete, and accurate information and testimony and understands any false statements made by the defendant to the grand jury or at any court proceeding (criminal or civil), or to a government agent or attorney, can and will be prosecuted under the

appropriate perjury, false statement, or obstruction statutes;

- v. Defendant agrees to provide to the United States all documents in his possession, custody, or under his control relating to all areas of inquiry and investigation; and
- vi. Should the recommended departure, if any, not meet Defendant's expectations, the Defendant understands that he remains bound by the terms of this agreement and cannot, for that reason alone, withdraw his plea.

Defendant's obligation under this section is a continuing one and will continue after sentencing until all investigations and/or prosecutions to which the Defendant's cooperation may be relevant have been completed.

Waiver of Appeal and Collateral Review

7. Defendant is aware that Title 28, United States Code, Section 1291, and Title 18, United States Code, Section 3742, afford a defendant the right to appeal the conviction and sentence imposed. Defendant is also aware that Title 28, United States Code, Section 2255, affords the right to contest or "collaterally attack" a conviction or sentence after the judgment of conviction and sentence has become final. Defendant knowingly and voluntarily waives the right to appeal or "collaterally attack" his conviction and sentence, except that Defendant does not waive the right to raise a claim of ineffective assistance of counsel on direct appeal, if otherwise permitted, or on collateral review in a motion under Title 28, United States Code, Section 2255. In the event Defendant files a notice of appeal following the imposition of the sentence or later collaterally attacks his conviction or sentence, the United States will assert its rights under this agreement and seek specific performance of these waivers.

8. Defendant waives all defenses based on venue, speedy trial under the Constitution and Speedy Trial Act, and the statute of limitations, in the event that (a) Defendant's conviction is later vacated for any reason, (b) Defendant violates any provision of this Agreement, or (c) Defendant's plea is later withdrawn.

9. In agreeing to these waivers, Defendant is aware that a sentence has not yet been determined by the Court. Defendant is also aware that any estimate of the possible sentencing range under the Sentencing Guidelines that he may have received from his counsel, the United States or the Probation Office, is a prediction and not a promise, did not induce his guilty plea, and is not binding on the United States, the Probation Office, or the Court. The United States does not make any promise or representation concerning what sentence Defendant will receive. Defendant further understands and agrees that the United States Sentencing Guidelines are “effectively advisory” to the Court. *See United States v. Booker*, 543 U.S. 220 (2005). Accordingly, Defendant understands that, although the Court must consult the Sentencing Guidelines and must take them into account when sentencing Defendant, the Court is not bound to follow the Sentencing Guidelines nor sentence Defendant within the calculated Guidelines range.

10. Defendant understands and agrees that each and all waivers contained in the Agreement are made in exchange for the concessions made by the United States in this plea agreement.

The United States’ Agreements

11. The United States agrees to each of the following:
- i. At the time of sentencing, the United States agrees not to oppose Defendant’s anticipated request to the Court and the United States Probation Office that he receive a two-level downward adjustment pursuant to section 3E1.1(a) of the United States Sentencing Guidelines should Defendant accept responsibility as contemplated by the Sentencing Guidelines; and
 - ii. If Defendant qualifies for an adjustment under section 3E1.1(a) of the United States Sentencing Guidelines, and the offense level prior to operation of Section 3E1.1(a) is 16 or greater, the United States will move under Section 3E1.1(b) for an additional one-level reduction because Defendant timely notified authorities of his intent to plead guilty, thereby permitting the United States to avoid preparing for trial and permitting the United States and the Court to allocate their resources more efficiently.

Agreement Binding - Southern District of Texas and Fraud Section Only

12. The United States Attorney's Office for the Southern District of Texas and the Fraud Section agree that they will not further criminally prosecute Defendant for offenses arising from conduct charged in the Information. This plea agreement binds only the United States Attorney's Office for the Southern District of Texas, the Fraud Section, and the Defendant. It does not bind any other United States Attorney's Office or any other unit of the Department of Justice. The United States Attorney's Office for the Southern District of Texas and the Fraud Section will bring this plea agreement and the full extent of Defendant's cooperation to the attention of other prosecuting offices, if requested.

United States' Non-Waiver of Appeal

13. The United States reserves the right to carry out its responsibilities under the Sentencing Guidelines and otherwise in connection with Defendant's sentencing. Specifically, the United States reserves the right:

- i. to bring its version of the facts of this case, including its evidence file and any investigative files, to the attention of the Probation Office in connection with that office's preparation of a presentence report;
- ii. to set forth or dispute sentencing factors or facts material to sentencing;
- iii. to seek resolution of such factors or facts in conference with Defendant's counsel and the Probation Office;
- iv. to file a pleading relating to these issues, in accordance with Section 6A1.2 of the United States Sentencing Guidelines and Title 18, United States Code, Section 3553(a); and
- v. to appeal the sentence imposed or the manner in which it was determined.

Sentence Determination

14. Defendant is aware that the sentence will be imposed after consideration of the 2018 United States Sentencing Guidelines and Policy Statements, which are advisory, and the factors

listed in Title 18, United States Code, Section 3553(a). Defendant nonetheless acknowledges and agrees that the Court has authority to impose any sentence up to and including the statutory maximum set for the offense to which Defendant pleads guilty, and that the sentence to be imposed is within the sole discretion of the sentencing judge after the Court has consulted the applicable Sentencing Guidelines. Defendant understands and agrees that the parties' positions regarding the application of the Sentencing Guidelines do not bind the Court and that the sentence imposed is within the discretion of the sentencing judge. If the Court should impose any sentence up to the maximum established by statute, or should the Court order any or all of the sentences imposed to run consecutively, Defendant cannot, for that reason alone, withdraw a guilty plea and will remain bound to fulfill all of the obligations under this plea agreement.

15. The United States and Defendant agree that the following Sentencing Guidelines are applicable to Defendant's Guidelines range:

- i. The United States and Defendant agree to recommend to the Court, based on the Factual Basis for the Guilty Plea, that the amount of loss is approximately \$966,403 and falls within Section 2B1.1(b)(1)(H) of the Sentencing Guidelines.
- ii. The United States and Defendant agree to recommend to the Court that a two-level reduction pursuant to Section 3B1.2(b) applies because the defendant was a minor participant in the criminal activity.

16. Defendant understands that the Government's agreement to recommend an acceptance of responsibility reduction is contingent upon his continuing manifestation of acceptance of responsibility, and should Defendant deny his involvement or give conflicting statements concerning his involvement, the Government shall not be bound to recommend any reduction in offense level for acceptance of responsibility.

17. The parties agree that they will not seek any other enhancements or reductions to the offense level under the Sentencing Guidelines beyond those recommended in paragraph 15 other than in a motion for a downward departure under U.S.S.G. § 5K1.1. This paragraph does not

prohibit Defendant from arguing that consideration of the factors listed in Title 18, Section 3553(a) warrants a sentence outside the applicable Guidelines range.

Rights at Trial

18. Defendant understands that by entering into this agreement, he surrenders certain rights as provided in this plea agreement. Defendant understands that the rights of a defendant include the following:

- i. Defendant has a right to have the United States Attorney present the charges in the Information to a grand jury consisting of not less than sixteen (16) nor more than twenty-three (23) impartial citizens, who would hear the facts of the case as presented by the United States Attorney and witnesses, and then return an indictment against the defendant only if twelve (12) or more members of the grand jury found that there was probable cause to believe Defendant committed the crime charged in the Information.
- ii. If Defendant persisted in a plea of not guilty to the charges, Defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if Defendant, the United States, and the court all agree.
- iii. At a trial, the United States would be required to present witnesses and other evidence against Defendant. Defendant would have the opportunity to confront those witnesses, and his attorney would be allowed to cross-examine them. In turn, Defendant could, but would not be required to, present witnesses and other evidence on his own behalf. If the witnesses for Defendant would not appear voluntarily, he could require their attendance through the subpoena power of the court; and
- iv. At a trial, Defendant could rely on a privilege against self-incrimination and decline to testify, and no inference of guilt could be drawn from such refusal to testify. However, if Defendant desired to do so, he could testify on his own behalf.

Factual Basis for Guilty Plea

19. Defendant is pleading guilty because he is in fact guilty of the charge contained in Count One of the Information. If this case were to proceed to trial, the United States could prove each element of the offense beyond a reasonable doubt. The facts set forth below, among others, would be offered to establish Defendant's guilt. This Factual Basis does not identify all of the

persons who may have been involved in illegal activity or facts known to Defendant concerning the illegal activity in which he and others may have engaged.

At all times relevant to the Information, Defendant was a natural gas trader and principal at “Trading Firm 2,” an investment and energy trading company based in Houston, Texas.

“Brokerage Firm 1” was a registered brokerage firm in Houston, Texas, that provided brokerage services in various energy markets in exchange for commission fees. Among the services Brokerage Firm 1 provided was to facilitate block trades in natural gas futures contracts between its customers and others in the market. Brokerage Firm 1’s customers considered information pertaining to their block trade requests to be confidential, non-public information to be used by Brokerage Firm 1 only to locate a trade counterparty.

“Investment Company 1” was a company established by “Person 1” for his personal investments and business.

“Trading Firm 1” was the trade name through which Investment Company 1 operated as a trading firm. Trading Firm 1 operated from the same physical office as Brokerage Firm 1 and employed only two traders.

“Person 1,” a resident of Houston Texas, was the owner, president, and a registered “associated person” of Brokerage Firm 1, meaning he solicited, received, and executed customer orders in exchange for commission fees. As owner and president, Person 1 supervised others at Brokerage Firm 1. Person 1 was also the sole member of Investment Company 1 and one of the traders for Trading Firm 1, which Person 1 used to trade for Person 1’s own benefit. Pursuant to Brokerage Firm 1’s brokerage agreement with Company A, exchange rules, and CFTC regulations, for nonpublic information learned through the broker-customer relationship, Person 1 had a duty not to (1) disclose to unauthorized persons Company A’s material, nonpublic information, or (2) use Company A’s material, nonpublic information for his own benefit.

“Person 2” was a trader in the energy markets, including in natural gas futures contracts. Person 2 was a customer of Brokerage Firm 1 and used Person 1 to broker trades in natural gas futures contracts.

The Fraudulent Scheme

From early 2013 through at least 2016 (“Relevant Time Period”), Marcus Schultz, Defendant, Person 1, Person 2, and others knowingly and willfully agreed to and did misappropriate Company A’s material, non-public information, including, but not limited to, identity, trade interests, terms, and conditions, such as prices, purchase or sale, quantity, volume, source, delivery points, timing, and thresholds or limits to the terms to which he would agree (“Inside Information”) and engaged in fraudulent, noncompetitive trades, including prohibited prearranged trades, in natural gas futures contracts for their own personal gain. By entering into the fraudulent trades, Schultz, Defendant, Person 1, Person 2 and others caused prices to be reported, recorded, and registered that were not true, bona fide prices.

To execute the scheme, through communications relating to trade orders, strategy, and evaluation of the market, Schultz disclosed to Person 1 Inside Information in violation of his duty of loyalty, trust, and confidentiality to Company A, knowing and intending that Inside Information would be misappropriated by Defendant, Person 1, and Person 2 to enter into prearranged trades to fill Schultz’s orders and offsetting trades for their personal gain.

Person 1 misappropriated Inside Information in violation of his duty of loyalty, trust, and confidentiality to Company A to match Schultz’s orders directly with prearranged counterparties, including Defendant, Person 1, and Person 2, instead of pursuing a competitive price in the market in an arms-length transaction.

Defendant, Person 1, and Person 2 misappropriated Inside Information, filled Schultz’s orders, and entered into offsetting trades in the market at a profit for their personal gain. Schultz

made his initial bids or offers based on the terms needed to accommodate and make a profit in the offsetting transactions, rather than at competitive terms that would maximize the profit for Company A.

At times, Schultz disclosed directly to Defendant Inside Information in violation of his duty of loyalty, trust, and confidentiality to Company A, knowing and intending that Defendant would misappropriate Inside Information to enter into noncompetitive trades to fill Schultz's orders and offsetting transactions for his personal gain. Defendant misappropriated Inside Information, filled Schultz's orders, and entered into offsetting trades, including, at times, through prearranged trades with others at a profit for their personal gain. For example, on January 8, 2015 and January 27, 2015, Schultz and Defendant communicated via instant message and coordinated the execution of prearranged trades based on Schultz's Inside Information. As a result of the trades on January 8, 2015, Defendant and Schultz made a profit of \$26,750. On January 27, 2015, Defendant and Schultz made a further \$19,000 through prearranged trading.

The net profits from the fraudulent trades were split between Defendant and the individuals involved in the particular fraudulent transaction. Defendant engaged in fraudulent trades with proceeds of approximately \$966,403, and personally profited in the amount of \$343,165.

Throughout the course of the criminal conduct described in this Factual Basis, Defendant acted knowingly and willfully with the intent to defraud. For the purpose of effecting the conspiracy and its unlawful objects and executing the scheme, Defendant and others transmitted and caused to be transmitted electronic communications or "wires" in interstate commerce.

Breach of Plea Agreement

20. If Defendant should fail in any way to fulfill completely all of the obligations under this plea agreement, the United States will be released from its obligations under the plea agreement, and Defendant's plea and sentence will stand. If at any time Defendant fails to enter or attempts to

withdraw his guilty plea; challenges the knowing or voluntary nature of the plea; retains, conceals, or disposes of assets in violation of this plea agreement; or knowingly withholds evidence or is otherwise not completely truthful with the United States, then the United States may move the Court to set aside the guilty plea and reinstate prosecution. Any information and documents that have been disclosed by Defendant, including any statements made by the Defendant, including, but not limited to, the factual basis for his guilty plea, whether prior to or subsequent to this plea agreement, and all leads derived therefrom, can and will be used against Defendant in any criminal or civil proceeding.

Restitution, Forfeiture, and Fines - Generally

21. This Plea Agreement is being entered into by the United States on the basis of Defendant's express representation that he will make a full and complete disclosure of all assets over which he exercises direct or indirect control, or in which he has any financial interest. Defendant agrees not to dispose of any assets or take any action that would effect a transfer of property in which he has an interest, unless Defendant obtains the prior written permission of the United States.

22. Defendant agrees to make complete financial disclosure by truthfully executing a sworn financial statement (Form OBD-500 or similar form) within 14 days of signing this plea agreement. Defendant agrees to authorize the release of all financial information requested by the United States, including, but not limited to, executing authorization forms permitting the United States to obtain tax information, bank account records, credit histories, and social security information. Defendant agrees to discuss and answer any questions by the United States relating to Defendant's complete financial disclosure.

23. Defendant agrees to take all steps necessary to pass clear title to forfeitable assets to the United States and to assist fully in the collection of restitution and fines, including, but not limited to, surrendering title, executing a warranty deed, signing a consent decree, stipulating to facts regarding the transfer of title and the basis of forfeiture, and signing any other documents necessary

to effectuate such transfer. Defendant also agrees to direct any banks which have custody of his assets to deliver all funds and records of such assets to the United States.

24. Defendant understands that forfeiture, restitution, and fines are separate components of sentencing and are separate obligations.

Restitution

25. Defendant agrees to pay full restitution to the victim(s) regardless of the count(s) of conviction. Defendant stipulates and agrees that as a result of his criminal conduct, the victim(s) incurred a monetary loss of at least \$966,403. Defendant understands and agrees that the Court will determine the amount of restitution to fully compensate the victim(s). The United States agrees to recommend that any such liability be joint and several with Defendant's co-conspirators in the same conspiracy. Defendant agrees that restitution imposed by the Court will be due and payable immediately and that Defendant will not attempt to avoid or delay payment. Subject to the provisions of paragraph 7 above, Defendant waives the right to challenge in any manner, including by direct appeal or in a collateral proceeding, the restitution order imposed by the Court.

Forfeiture

26. Defendant stipulates and agrees that Defendant obtained at least \$343,165 from the criminal offenses and that the factual basis for his guilty plea supports the forfeiture of \$343,165. Defendant stipulates and admits that one or more of the conditions set forth in Title 21, United States Code, section 853(p), exists. Defendant agrees to forfeit Defendant's property in substitution, up to a total forfeiture of \$343,165. Defendant agrees to the imposition of a personal money judgment in that amount.

27. Defendant consents to the order of forfeiture becoming final as to Defendant immediately following this guilty plea, pursuant to Federal Rule of Criminal Procedure 32.2(b)(4)(A).

Fines

28. Defendant understands that under the Sentencing Guidelines the Court is permitted to order Defendant to pay a fine that is sufficient to reimburse the government for the costs of imprisonment or term of supervised release, if any. Defendant agrees that any fine imposed by the Court will be due and payable immediately, and Defendant will not attempt to avoid or delay payment. Subject to the provisions of paragraph 7 above, Defendant waives the right to challenge the fine in any manner, including by direct appeal or in a collateral proceeding.

Complete Agreement

29. This written plea agreement, consisting of 15 pages, including the attached addendum of Defendant and his attorney, constitutes the complete plea agreement between the United States, Defendant, and Defendant's counsel. No promises or representations have been made by the United States except as set forth in writing in this plea agreement. Defendant acknowledges that no threats have been made against him and that he is pleading guilty freely and voluntarily because he is guilty.

30. Any modification of this plea agreement must be in writing and signed by all parties.

Filed at Houston, Texas, on February 1, 2021.


JOHN ED JAMES
Defendant

Subscribed and sworn to before me on February 1, 2021.


DAVID J. BRADLEY, Clerk
UNITED STATES DISTRICT CLERK

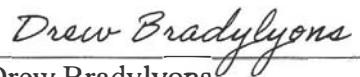
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Byrre Thum
Deputy United States District Clerk


APPROVED:

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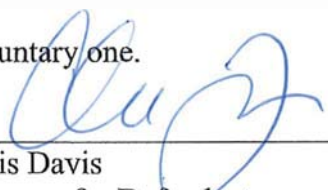

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UNITED STATES DISTRICT COURT
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v.)	CRIMINAL NO. 4:20-cr-00695
)	
JOHN ED JAMES,)	
Defendant.)	

PLEA AGREEMENT – ADDENDUM

I have fully explained to Defendant his rights with respect to the pending Information. I have reviewed the provisions of the United States Sentencing Commission’s Guidelines Manual and Policy Statements, and I have fully and carefully explained to Defendant the provisions of those Guidelines which may apply in this case. I have also explained to Defendant that the Sentencing Guidelines are only advisory and the Court may sentence Defendant up to the maximum allowed by statute per count of conviction. Further, I have carefully reviewed every part of this plea agreement with Defendant. To my knowledge, Defendant’s decision to enter into this agreement is an informed and voluntary one.

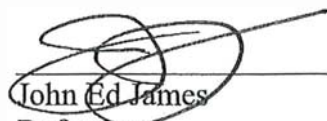


 Chris Davis
 Attorney for Defendant

1/29/2021

 Date

I consulted with my attorney and fully understand all my rights with respect to the charges pending against me. My attorney has fully explained, and I understand, all my rights with respect to the provisions of the United States Sentencing Commission’s Guidelines Manual, which may apply in my case. I have read and carefully reviewed every part of this plea agreement with my attorney. I understand this agreement and I voluntarily agree to its terms.



 John Ed James
 Defendant

1/29/2021

 Date