

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 6:10-cr- 232-Or1-35DAB

DAVID A. SMITH

PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by A. Brian Albritton, United States Attorney for the Middle District of Florida, and the defendant, DAVID A. SMITH, and the attorney for the defendant, Oliver A. Smith, Esq., mutually agree as follows:

A. **Particularized Terms**

1. **Counts Pleading To**

The defendant shall enter a plea of guilty to Counts One through Twenty-Three of the Information. Counts One through Four charge the defendant with wire fraud, in violation of 18 U.S.C. § 1343. Count Five charges the defendant with conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h). Counts Six through Twenty-Three charge the defendant with money laundering, in violation of 18 U.S.C. § 1956(a).

2. **Maximum Penalties**

Counts One through Four each carry a maximum sentence of twenty years imprisonment, a fine of \$250,000, and a term of supervised release of not more

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than three years. The fine for Counts One through Four may be subject to the alternative sentencing provision of Title 18, United States Code, Section 3571(d), which would be not more than twice the amount of the gross gain or loss. Counts Five through Twenty-Three each carry a maximum sentence of 20 years imprisonment, a fine of \$500,000 or twice the value of the property involved in the transaction, whichever is greater, a term of supervised release of not more than 3 years, and a special assessment of \$100 to be due on the date of sentencing. With respect to certain offenses, the Court shall order the defendant to make restitution to any victim of the offenses, and with respect to other offenses, the Court may order the defendant to make restitution to any victim of the offenses, or to the community, as set forth below.

3. Elements of the Offenses

The defendant acknowledges understanding the nature and elements of the offenses with which defendant has been charged and to which defendant is pleading guilty. The elements of Counts One through Four are:

Counts One through Four (Wire Fraud)

- First:** That the Defendant knowingly devised or participated in a scheme to defraud, or for obtaining money or property by means of false pretenses, representations or promises;
- Second:** That the false pretenses, representations or promises related to a material fact;
- Third:** That the Defendant did so willfully and with an intent to defraud; and
- Fourth:** That the Defendant transmitted or caused to be transmitted by wire, radio, or television in interstate commerce some

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communication for the purpose of executing the scheme to defraud.

Count Five (Conspiracy to Commit Money Laundering)

First: That two or more persons, in some way or manner, came to a mutual understanding to try to accomplish a common and unlawful plan, as charged in the indictment; and

Second: That the defendant under consideration knowing and willfully became a member of such conspiracy.

Counts Six through Twenty-Three (Money Laundering)

First That the Defendant knowingly conducted, or attempted to conduct, a "financial transaction" as hereafter defined;

Second: That the Defendant knew that the funds or property involved in the financial transaction represented the proceeds of some form of unlawful activity;

Third: That the funds or property involved in the financial transaction did in fact represent the proceeds of "specified unlawful activity" - - in this case the proceeds of wire fraud; and

Fourth: That the Defendant engaged in the financial transaction with the intent to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity.

4. **Indictment Waiver**

Defendant will waive the right to be charged by way of indictment before a federal grand jury.

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5. Waiver of Extradition

Defendant will waive any right to, and agrees not to oppose or contest, on any grounds, including, but not limited to, his prosecution or conviction in the Turks and Caicos Islands ("TCI") of offenses related to the conduct giving rise to this plea agreement, any request for extradition made by the United States to face charges either in the Information referenced in Paragraph A.1. of this Plea Agreement or in any related Indictment. The defendant agrees to and adopts as his own the factual statement contained in Paragraph B.9. In the event that the defendant breaches this Plea Agreement, the defendant agrees that this Plea Agreement, including the factual statement contained in Paragraph B.9., provides a sufficient basis for any possible future extradition request that may be made by the United States to face charges either in the Information referenced in Paragraph A.1. of this Plea Agreement or in any related Indictment.

6. Waiver of Double Jeopardy

Defendant acknowledges that his prosecution or conviction in the Turks and Caicos Islands ("TCI") of offenses related to the conduct giving rise to this plea agreement will not provide a defense to his prosecution in the United States for the offenses charged in the Information referenced in Paragraph A.1. of this Plea Agreement or in any related Indictment based on the Double Jeopardy or Due Process clauses in the Fifth Amendment to the United States Constitution.

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7. No Further Charges Against Defendant and No Charges Against Defendant's Wife

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge defendant with committing any other federal criminal offenses known to the United States Attorney's Office at the time of the execution of this agreement, related to the conduct giving rise to this plea agreement, and agrees not to charge defendant's wife, Tracy Ann Smith, with committing any federal criminal offenses known to the United States Attorney's Office of the Middle District of Florida at the time of the execution of this agreement, related to the conduct giving rise to this plea agreement.

8. Mandatory Restitution to Victim of Offense of Conviction

Pursuant to 18 U.S.C. §§ 3663(a) and (b) and 18 U.S.C. §§ 3663A(a) and (b), defendant agrees to make full restitution to every investor in Overseas Locket International Corporation Ltd., OLINT Corporation Ltd., OLINT TCI, and TCI FX Traders Ltd., and any other person, who was directly and proximately harmed as a result of the commission of the offenses of conviction.

9. Undischarged Term of Imprisonment

Pursuant to USSG §5G1.3(c) and 18 U.S.C. § 3584, at the time of sentencing, the United States will not oppose the defendant's request to the Court that any sentence that is imposed be allowed to run concurrently with any sentence that the defendant is ordered to serve in the Turks and Caicos Islands for his conduct giving rise to this plea agreement. The defendant understands that this recommendation or

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request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

10. Guidelines Sentence—Joint Recommendation

Pursuant to the Fed. R. Crim. P. 11(c)(1)(B), the United States and the defendant agree to jointly recommend to the Court that the defendant be sentenced within the defendant's applicable guideline range as determined by the Court pursuant to the United States Sentencing Guidelines, as adjusted by any departure the United States has agreed to recommend in this plea agreement. The parties understand that such a joint recommendation is not binding on the Court and that, if it is not accepted by this Court, neither the United States nor the defendant will be allowed to withdraw from the plea agreement, and the defendant will not be allowed to withdraw from the plea of guilty.

11. Acceptance of Responsibility - Three Levels

At the time of sentencing, and in the event that no adverse information is received suggesting such a recommendation to be unwarranted, the United States will recommend to the Court that the defendant receive a two-level downward adjustment for acceptance of responsibility, pursuant to USSG §3E1.1(a). The defendant understands that this recommendation or request is not binding on the Court, and if not accepted by the Court, the defendant will not be allowed to withdraw from the plea.

Further, at the time of sentencing, if the defendant's offense level prior to operation of subsection (a) is level 16 or greater, and if the defendant complies with the provisions of USSG §3E1.1(b), the United States agrees to file a motion pursuant to

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USSG §3E1.1(b) for a downward adjustment of one additional level. The defendant understands that the determination as to whether the defendant has qualified for a downward adjustment of a third level for acceptance of responsibility rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that the defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

12. Cooperation - Substantial Assistance to be Considered

Defendant agrees to cooperate fully with the United States in the investigation and prosecution of other persons, and to testify, subject to a prosecution for perjury or making a false statement, fully and truthfully before any federal court proceeding or federal grand jury in connection with the charges in this case and other matters, such cooperation to further include a full and complete disclosure of all relevant information, including production of any and all books, papers, documents, and other objects in defendant's possession or control, and to be reasonably available for interviews which the United States may require. If the cooperation is completed prior to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion at the time of sentencing recommending (1) a downward departure from the applicable guideline range pursuant to USSG §5K1.1, or (2) the imposition of a sentence below a statutory minimum, if any, pursuant to 18 U.S.C. § 3553(e), or (3) both. If the cooperation is completed subsequent to sentencing, the government agrees to consider whether such

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cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion for a reduction of sentence within one year of the imposition of sentence pursuant to Fed. R. Crim. P. 35(b). In any case, the defendant understands that the determination as to whether "substantial assistance" has been provided or what type of motion related thereto will be filed, if any, rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

13. Use of Information - Section 1B1.8

Pursuant to USSG §1B1.8(a), the United States agrees that no self-incriminating information which the defendant may provide during the course of defendant's cooperation and pursuant to this agreement shall be used in determining the applicable sentencing guideline range, subject to the restrictions and limitations set forth in USSG §1B1.8(b).

14. Cooperation - Responsibilities of Parties

a. The government will make known to the Court and other relevant authorities the nature and extent of defendant's cooperation and any other mitigating circumstances indicative of the defendant's rehabilitative intent by assuming the fundamental civic duty of reporting crime. However, the defendant understands that the government can make no representation that the Court will impose a lesser sentence solely on account of, or in consideration of, such cooperation.

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b. It is understood that should the defendant knowingly provide incomplete or untruthful testimony, statements, or information pursuant to this agreement, or should the defendant falsely implicate or incriminate any person, or should the defendant fail to voluntarily and unreservedly disclose and provide full, complete, truthful, and honest knowledge, information, and cooperation regarding any of the matters noted herein, the following conditions shall apply:

(1) The defendant may be prosecuted for any perjury or false declarations, if any, committed while testifying pursuant to this agreement, or for obstruction of justice.

(2) The United States may prosecute the defendant for the charges which are to be dismissed pursuant to this agreement, if any, and may either seek reinstatement of or refile such charges and prosecute the defendant thereon in the event such charges have been dismissed pursuant to this agreement. With regard to such charges, if any, which have been dismissed, the defendant, being fully aware of the nature of all such charges now pending in the instant case, and being further aware of defendant's rights, as to all felony charges pending in such cases (those offenses punishable by imprisonment for a term of over one year), to not be held to answer to said felony charges unless on a presentment or indictment of a grand jury, and further being aware that all such felony charges in the instant case have heretofore properly been returned by the indictment of a grand jury, does hereby agree to reinstatement of such charges by rescission of any order dismissing them or, alternatively, does hereby waive, in open court, prosecution by indictment and consents that the United States

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may proceed by information instead of by indictment with regard to any felony charges which may be dismissed in the instant case, pursuant to this plea agreement, and the defendant further agrees to waive the statute of limitations and any speedy trial claims on such charges.

(3) The United States may prosecute the defendant for any offenses set forth herein, if any, the prosecution of which in accordance with this agreement, the United States agrees to forego, and the defendant agrees to waive the statute of limitations and any speedy trial claims as to any such offenses.

(4) The government may use against the defendant the defendant's own admissions and statements and the information and books, papers, documents, and objects that the defendant has furnished in the course of the defendant's cooperation with the government.

(5) The defendant will not be permitted to withdraw the guilty pleas to those counts to which defendant hereby agrees to plead in the instant case but, in that event, defendant will be entitled to the sentencing limitations, if any, set forth in this plea agreement, with regard to those counts to which the defendant has pled; or in the alternative, at the option of the United States, the United States may move the Court to declare this entire plea agreement null and void.

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15. Forfeiture of Assets

The defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to Title 18, United States Code, Sections 981(a)(1)(C), 982(a)(1), and Title 28, United States Code, Section 2461(c), whether in the possession or control of the United States or in the possession or control of the defendant or defendant's nominees.

The assets to be forfeited specifically include, but are not limited to, the following:

- a. A forfeiture money judgment in the amount of \$128,000,000.00, which constitutes proceeds obtained directly or indirectly as a result of the wire fraud charged in Counts One through Four.
- b. 1739 Glenwick Drive, Windermere, Florida, which was purchased with a \$159,881.10 down payment traceable to the wire fraud proceeds.
- c. All precious gemstones, precious metals, and jewelry recovered on or about January 12, 2010, from the residence of Tanya Masone.
- d. \$40,103.90 transferred from David A. Smith to Bette Gordon and her husband Paul Gordon, as part of a \$199,985.00 wire transfer conducted on or about July 24, 2006.

The defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil, and/or administrative forfeiture action. The defendant also hereby agrees that the forfeiture described herein is not excessive and, in any event, the defendant waives any constitutional claims that the defendant may have that the forfeiture constitutes an excessive fine.

The defendant admits and agrees that the conduct described in the Factual Basis below provides a sufficient factual and statutory basis for the forfeiture of the

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property sought by the government. Pursuant to the provisions of Rule 32.2(b)(1), the United States and the defendant request that at the time of accepting this plea agreement, the court make a determination that the government has established the requisite nexus between the property subject to forfeiture and the offense(s) to which defendant is pleading guilty and enter a preliminary order of forfeiture. Pursuant to Rule 32.2(b)(3), the defendant agrees that the preliminary order of forfeiture shall be final as to the defendant at the time it is entered, notwithstanding the requirement that it be made a part of the sentence and be included in the judgment.

The defendant agrees to forfeit all interests in the properties described above and to take whatever steps are necessary to pass clear title to the United States. These steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and signing of any other documents necessary to effectuate such transfers.

Defendant further agrees to take all steps necessary to locate property and to pass title to the United States before the defendant's sentencing. To that end, defendant agrees to fully assist the government in the recovery and return to the United States of any assets, or portions thereof, as described above wherever located. The defendant agrees to make a full and complete disclosure of all assets over which defendant exercises control and those which are held or controlled by a nominee. The defendant further agrees to be polygraphed on the issue of assets, if it is deemed necessary by the United States.

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The defendant agrees that the United States is not limited to forfeiture of the property described above. If the United States determines that property of the defendant identified for forfeiture cannot be located upon the exercise of due diligence; has been transferred or sold to, or deposited with, a third party; has been placed beyond the jurisdiction of the Court; has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty; then the United States shall, at its option, be entitled to forfeiture of any other property (substitute assets) of the defendant up to the value of any property described above. This Court shall retain jurisdiction to settle any disputes arising from application of this clause. The defendant agrees that forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the defendant's sentence.

Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty this Court may impose upon the defendant in addition to forfeiture.

B. Standard Terms and Conditions

1. Restitution, Special Assessment and Fine

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, shall order the defendant to make restitution to any victim of the offenses, pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1) (limited to offenses committed on or after April 24, 1996); and the Court may order the defendant to make restitution to any victim of the offenses, pursuant to 18 U.S.C. § 3663 (limited to offenses committed on or after November 1, 1987),

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including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. On each count to which a plea of guilty is entered, the Court shall impose a special assessment, to be payable to the Clerk's Office, United States District Court, and due on date of sentencing. The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

The defendant understands that the offenses to which the defendant is pleading provides for imposition of a term of supervised release upon release from imprisonment, and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

3. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the counts to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit, upon execution of this plea agreement,

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an affidavit reflecting the defendant's financial condition. The defendant further agrees, and by the execution of this plea agreement, authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court.

4. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether

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or not such decision is consistent with the government's recommendations contained herein.

5. Defendant's Waiver of Right to Appeal and Right to Collaterally Challenge the Sentence

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal defendant's sentence or to challenge it collaterally on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by 18 U.S.C. § 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by 18 U.S.C. § 3742(a).

6. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

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7. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

8. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant

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pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also understands that defendant will be adjudicated guilty of the offenses to which defendant has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

9. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that defendant does hereby admit that the facts set forth below are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt:

FACTS

For more than three years, defendant DAVID A. SMITH ("SMITH") executed a scheme to defraud thousands of investors located in the Middle District of Florida and elsewhere out of over \$220 million. In addition to defrauding those investors, SMITH conspired to launder the proceeds that were received, and he participated in the laundering of millions of dollars of proceeds that were obtained as a result of wire fraud.

The Scheme to Defraud

On or about February 3, 2005, SMITH, a citizen of Jamaica, incorporated Overseas Locket International Corporation ("OLINT") in Panama, with its principal place of business in Kingston, Jamaica. SMITH described OLINT as a private investment

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club, where he would pool investors' money to engage in foreign currency ("Forex") trading on their collective behalf.

On or about October 13, 2005, SMITH established "OLINT Corporation" in Jamaica. SMITH described OLINT as a private investment club, where he would use investors' money to engage in foreign currency ("Forex") trading. The principal place of business for OLINT Corporation was in Kingston, Jamaica.

On or about April 18, 2006, SMITH incorporated and registered OLINT TCI Corporation, Ltd. ("OLINT TCI"), in The Turks and Caicos Islands ("TCI"). SMITH again described OLINT TCI as a private investment club. OLINT TCI received funds from investment club members located in the United States, Jamaica, and other Caribbean islands, but excluding the TCI.

On or about August 15, 2006, SMITH created and caused to be created a company known as TCI FX TRADERS LTD. ("TCI FX"), with a registered office in Providenciales, Turks and Caicos Islands. The Board of Directors for TCI FX consisted of SMITH and another individual who was a resident of TCI.

On or about October 23, 2006, the Financial Services Commission, Turks and Caicos Islands, issued a Mutual Fund License to TCI FX TRADERS LTD. ("TCI FX").

i-Trade FX, LLC ("i-Trade") is a United States company, located in Lake Mary, Florida, that was licensed to deal in foreign currency trading. On March 29, 2006, i-Trade applied to the National Futures Association ("NFA") for a license as a Futures Commission Merchant ("FCM"), to be able to operate as an off-market trader in the

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Forex market. The NFA is a non-governmental regulatory association in the United States with the authority to license, audit, and monitor FCMs.

On August 3, 2006, i-Trade became a licensed FCM. SMITH was the majority capital investor in i-Trade, with an investment of over \$2 million. SMITH's contributions enabled i-Trade to meet the minimum capital requirements mandated by the NFA.

On March 5, 2007, JIJ Investments ("JIJ") was incorporated in the State of Florida. On or about April 2, 2007, SMITH executed a Subscriber Agreement with JIJ Investments Inc. ("JIJ"). On or about May 15, 2007, an unindicted co-conspirator represented to the NFA that JIJ Investments was a real estate investment endeavor, with a potential secondary focus of "spot Forex investments and trading." In actuality, JIJ was created by SMITH and his co-conspirators as a vehicle to avoid NFA regulatory oversight of SMITH's accounts and funds at i-Trade. After JIJ was created as a corporate entity, several accounts in the name of JIJ were opened at four U.S. financial institutions: Bank of America, Wachovia, Fidelity Investments, and JP Morgan Investments.

Beginning no later than February 2005, and continuing through on or about July 15, 2008, SMITH executed a scheme and artifice to defraud the thousands of investors in OLINT, OLINT Corporation, OLINT TCI, and TCI FX Traders, by operating a massive Ponzi scheme, in which he paid returns to separate investors from their own money or money paid by subsequent investors, rather than from any actual profit earned.

The substance of the scheme and artifice, and the manner and means used to accomplish its ends, included, among other things, the following:

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SMITH solicited and caused others to solicit prospective clients to open trading accounts with OLINT, OLINT Corporation, OLINT TCI, and TCI FX, based upon, among other things, his promise to use investors' funds to engage in foreign currency trading (Forex), and representations that by investing in Forex trading through him, OLINT, OLINT Corporation, OLINT TCI, and TCI FX, club members could expect a high return on their investment each month, with only twenty percent (20%) of their investment at any risk. In truth and in fact, as SMITH knew, those representations were false.

As part of his scheme, SMITH created and caused to be created a broad infrastructure at OLINT and OLINT Corporation in Jamaica to generate the appearance and impression that OLINT was operating a legitimate private investment club and foreign currency trading business in which client funds were actively traded as he had promised, and to conceal the fact that no such business was actually being conducted. Among other things, SMITH employed numerous employees to work in an office located in Jamaica, where they performed functions such as opening client accounts, processing redemption requests, and talking with clients in person and over the telephone about foreign currency trading and the respective client's account balances.

SMITH made, and caused others to make, false representations concerning his investment strategies to clients and prospective clients of OLINT, OLINT Corporation, OLINT TCI, and TCI FX. Among other things, SMITH marketed to clients an alleged investment strategy based on trading in foreign currencies on the open market.

Further, to induce new and continued investments by clients and prospective clients, SMITH created client account statements each month showing purported profits

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in varying amounts of no less than five percent (5%) monthly, but on average, ten percent (10%) each month, and never with a loss during any monthly reporting period. SMITH further caused such false and fraudulent account statements to be sent to clients through electronic mail to clients' email accounts, and later SMITH created an internet website through which clients could access their own account statements. SMITH also verbally told potential and current investors, and others, that he had never suffered a loss during a single trading period, and that he always experienced gains.

Over 6,000 investors in OLINT, OLINT Corporation, OLINT TCI and TCI FX are located in Jamaica, The Turks and Caicos Islands, Orange County, Florida, in the Middle District of Florida, and elsewhere. In reliance on SMITH's false representations, those investors, which consist of individual investors, other private investment clubs, "feeder clubs," and others, invested over \$220 million in accounts that were established at OLINT, OLINT Corporation, OLINT TCI, and TCI FX. From the outset of the scheme, and continuing throughout its operation, SMITH obtained investor funds via interstate and foreign wire transfers from financial institutions located inside and outside the United States and the Middle District of Florida, via international mailings, and via international commercial courier service deliveries.

SMITH failed to honor his promises to OLINT, OLINT Corporation, OLINT TCI, and TCI FX, investors by, among things, failing to invest their funds in Forex trading as he had promised. Contrary to his promises to clients that he would use their funds to invest in Forex trading on their behalf, and would engage in certain Forex trading strategies, SMITH used most of the investors' funds to meet the periodic and specific

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redemption requests of other investors. In furtherance of the scheme, for example, SMITH transferred and caused to be transferred funds deposited by OLINT TCI and TCI FX clients to individual OLINT and OLINT Corporation investors, in order to meet the specific redemption requests of OLINT investors. In addition, SMITH transferred and caused to be transferred millions of dollars invested by OLINT, OLINT Corporation, OLINT TCI, and TCI FX, clients to his personal bank accounts, which he used to finance a lavish and expensive life-style, and from which he and others received millions of dollars in goods, services, and other benefits, including, but not limited to: the purchase of a \$2 million residence and other property in Providenciales, Turks and Caicos Islands and elsewhere; a down payment for the purchase of a Lear jet and frequent travel on the jet; hosting guests and paying all their expenses at hotels and restaurants; sponsoring a Jazz Festival in Jamaica; the purchase of expensive vehicles for himself and others; the purchase of jewelry for himself and others; the purchase of expensive vacations in the Caribbean and the United States; political contributions; and gambling at casinos.

SMITH transferred some of the funds that he obtained as part of his fraud scheme to i-Trade:

- On or about February 13, 2006, SMITH transferred and caused to be transferred approximately \$1 million of OLINT investors' funds to i-Trade as a capital contribution to the firm.
- On or about June 2, 2006, SMITH transferred and caused to be transferred \$1,198,412.16 from an OLINT TCI account to i-Trade as an additional capital contribution to the firm.

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- On or about October 31, 2006, Smith transferred and caused to be transferred \$1 million of investors' funds to i-Trade as an additional capital contribution to the firm.

In or about September 2006, SMITH was listed with the NFA as a principal of i-Trade.

On or about the dates set forth below and corresponding to each count of the Information, in the Middle District of Florida, and elsewhere, for the purpose of executing the scheme and artifice to defraud and attempting to do so, SMITH knowingly transmitted and caused to be transmitted by means of wire communication in interstate and foreign commerce, certain writings, signs, signals, pictures and sounds, as more fully set forth in the following table:

COUNT	DATE	DESCRIPTION OF WIRE COMMUNICATION
1	September, 2006	Overseas Locket International Corp. Private Club Member Statement for Christopher and Kenneth Walker, account # 11011519, showing a monthly gain of 10.22% or \$19,751, published on OLINT's internet website, www.clubmembers@overseaslocket.com
2	January, 2008	Overseas Locket International Corp. Private Club Member Statement for Christopher and Kenneth Walker, account # 11011519, showing a monthly gain of 11.44%, or \$178,840, published on OLINT's internet website, www.clubmembers@overseaslocket.com
3	October, 2006	Overseas Locket International Corp. Private Club Member Statement for Eric Harrington, account # 11012211, showing a monthly gain of 11.05% or \$6,772.24, received by electronic mail.
4	May, 2008	Overseas Locket International Corp. Private Club Member Statement for Eric Harrington, account # 11012211, showing a monthly gain of 5.44% or \$427,270.43, published on OLINT's internet website, www.clubmembers@overseaslocket.com

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SMITH agrees and acknowledges that the loss amount to be calculated, and the amount of restitution in this case, will include any and all funds provided for investment to SMITH, OLINT, OLINT Corporation, OLINT TCI, TCI FX Traders, or any other corporation or entity associated or affiliated with SMITH, minus those funds repaid to individual investors as repayment of principal before the offense was detected, as that term is used in Application Note 3(E)(i) of Section 2B1.1 of the Sentencing Guidelines, and that any payment of purported gains to an individual investor shall not be used to offset the amount of loss to another individual investor. Because of the number of investors who were victimized from the Ponzi scheme executed by SMITH, the parties have not been able to compute or agree upon the exact amount of loss and restitution in this case. SMITH agrees and acknowledges, however, that the amount of loss and restitution in this case is at least \$66 million, as reported in The Official Liquidator's First Interim Report to the Supreme Court of the Turks and Caicos Islands regarding Olint Corporation TCI Ltd., dated August 6, 2009. SMITH further agrees and acknowledges that the United States hereby reserves the right to present evidence at any proceeding in this case and advance arguments in support of any amount of loss and restitution.

Money Laundering

SMITH conspired with others to launder millions of dollars of proceeds that were obtained as a result of the wire fraud scheme that is more fully described above, and he in fact laundered those millions of dollars. The purpose of the money laundering engaged in by SMITH and his conspirators was to conceal and disguise the nature, the location, the source, the ownership, or the control of the proceeds of the wire fraud

Defendant's Initials *SM*

Chief Approval *DM*

scheme that was being executed by, among other things, moving the proceeds from trading accounts held by SMITH at i-Trade into and between investment accounts at various financial institutions, where they were not subject to scrutiny by the National Futures Association regulators, and where SMITH's investors did not know of the existence of JIJ, the investment accounts owned by JIJ, or that their investments with SMITH had been transferred into and between these JIJ investment accounts.

Specifically, the initial deposits by SMITH into i-Trade on February 13, 2006, and June 2, 2006, were his contribution of \$2 million capital to the firm. i-Trade would need that much in capital investment in order to then take SMITH's deposits and place them into trading accounts and meet the NFA's then existing capitalization requirements for an FCM. SMITH transferred those amounts to i-Trade, because, among other things, the Jamaican authorities had issued a cease and desist order in March 2006 that barred SMITH from obtaining new clients. As a result, SMITH needed to find an alternative to the Jamaican bank accounts that were being used until that point.

After making a \$2 million capital contribution in i-Trade, SMITH caused deposits of investor funds to be made into accounts at i-Trade. These financial transactions promoted the wire fraud scheme, because they allowed SMITH and his conspirators to use i-Trade as a substitute for the banks they had been using. Similarly, when NFA auditors questioned SMITH's role in i-Trade as a principal, and SMITH's account activities or lack thereof, SMITH and his co-conspirators created a new corporate entity, JIJ Investments, to serve as an alternate depository which the NFA had no authority to examine or regulate, and about which SMITH's investors knew nothing.

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Millions of dollars of proceeds obtained from the wire fraud scheme were deposited in accounts at i-Trade. In November 2006, the NFA conducted the first of several audits of i-Trade. NFA auditors were told during the initial audit that SMITH and his wife claimed to personally own the funds in the OLINT account, which at that time exceeded \$20 million. The NFA auditors also saw numerous wire transfers consisting of large deposits and withdrawals, while showing very little trading activity.

Subsequent NFA audits at i-Trade showed that, from November 2006 to January 2007, four deposits totaling \$59 million were made into OLINT's account at i-Trade. These deposits were followed by eight withdrawals, totaling approximately \$35 million. Between August 2006 and May 2007, SMITH wire-transferred over \$100 million of investors' funds into the OLINT and TCI FX accounts at i-Trade.

The NFA audits showed that, while Smith wire-transferred into i-Trade millions of dollars in the names of either OLINT and TCI FX, only a small portion of this money was actually being invested in the Forex market. Specifically, as detailed in the table below, the accounts showed deposits and withdrawals with minimal trading activity:

Account Name	Account Number	Account Owner(s)	Description of Activity
OLINT	**0121	David and Tracy Smith	4 deposits (ranging from \$12 million to \$20 million) and 11 withdrawals (ranging from \$520,000 to \$20 million) from September 14, 2006, through April 10, 2007. Significant amounts of trading occurred after December

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Account Name	Account Number	Account Owner(s)	Description of Activity
			2006. All funds (\$2,006,929.26) were withdrawn on May 18, 2007. No further activity was noted through December 3, 2007. NFA noted a net trading loss of \$810,709 during the life of the account.
OLINT	**0543	David and Tracy Smith	2 deposits (\$500,000 each) and one withdrawal (\$938,062) from November 9, 2006, through March 30, 2007. Very little trading activity occurred. All funds (\$938,062) were withdrawn on March 30, 2007. No further activity was noted through December 3, 2007. NFA noted a net trading loss of \$61,900 for the life of this account.
OLINT	**0544	David and Tracy Smith	2 deposits (\$750,000 each) and one withdrawal (\$1,465,646) from November 9, 2006, through March 30, 2007. Account traded frequently; however, the last activity in the account was the one withdrawal noted above on March 30, 2007. Account has held a \$0 balance, with no activity from March 30, 2007, through December 3, 2007. NFA

Defendant's Initials DS

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Account Name	Account Number	Account Owner(s)	Description of Activity
			noted the account experienced a net trading loss of \$34,057 over the life of this account.
OLINT	**0592	David and Tracy Smith	1 deposit (\$2 million) and 1 withdrawal (\$1,781,663) from November 20, 2006, through March 30, 2007. Daily trading activity occurred; however, the last activity in the account was the one withdrawal noted above on March 30, 2007. Account has held a \$0 balance, with no activity, from March 30, 2007, through December 3, 2007. NFA noted a net trading loss of \$217,125 over the life of this account.
OLINT	**0262	David Smith and John Wildish	2 deposits (\$20 million and \$20.045 million) and 4 withdrawals (\$914,823; \$110,000; \$109,890; and \$39,020,176). No trading activity occurred and all funds (\$39,020,176) were withdrawn on March 30, 2007. No profits or losses for this account were noted, as there was no trading activity in the account.

Defendant's Initials DS

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Account Name	Account Number	Account Owner(s)	Description of Activity
TCI FX	*1536	David Smith and John Wildish	9 deposits (\$2,751,000; \$350,000; \$1.9 million; \$1 million; \$700,000; \$1 million; \$700,000; \$700,000; \$3,070,922) from June 21, 2007, through February 20, 2008. Account was closed on February 20, 2008, and all funds (\$7,898,859) were withdrawn, which was the only withdrawal from the account. Very limited trading activity was noted. NFA noted the account had losses of \$1,163,331 over the period June 21, 2007, through February 20, 2008.

Despite the fact that JIJ's stated purpose was to "focus on real estate investments, with a potential secondary focus of spot forex investments and trading," SMITH and his co-conspirators had actually created JIJ as a vehicle to avoid NFA regulatory oversight of SMITH's accounts and funds at i-Trade, and to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of SMITH's wire fraud. After JIJ was created as a corporate entity several accounts in the name of JIJ were opened at four U.S. financial institutions: Wachovia, Bank of America, Fidelity Investments, and JP Morgan Investments.

Defendant's Initials DS

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To conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of SMITH's wire fraud, SMITH and his co-conspirators transferred millions of dollars in funds obtained from the wire fraud scheme between accounts belonging to SMITH and accounts that had been opened at i-Trade and JIJ:

- From March 2007 to February 2008, SMITH and his co-conspirators transmitted and transferred approximately \$76 million of investors' funds from defendant SMITH's accounts at i-Trade to one or more JIJ accounts.
- From May 2007 to October 2007, SMITH transmitted and transferred approximately \$21 million of investors' funds from defendant SMITH's bank accounts in the Turks and Caicos Islands to one or more JIJ accounts.
- From June 2007 to December 2007, SMITH and his co-conspirators transmitted and transferred approximately \$24 million dollars of investors' funds from JIJ accounts to SMITH's bank accounts in Jamaica.
- From October 2006 to February 2008, SMITH and his co-conspirators transmitted and transferred approximately \$101 million dollars in investors funds from one or more JIJ accounts to one or more of defendant SMITH's bank accounts in the Turks and Caicos Islands.

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On or about the dates set forth in the table below and corresponding to each count in the Information, in Orange County, Florida, in the Middle District of Florida, Jamaica, The Turks and Caicos Islands, and elsewhere, SMITH, unlawfully and knowingly conducted and attempted to conduct a financial transaction, knowing that the property involved in the financial transaction represented the proceeds of some form of unlawful activity, that in fact involved the proceeds of a specified unlawful activity, that is, wire fraud, in violation of Title 18, United States Code, Section 1343, as alleged in Counts One through Four above, and knowing that the transaction was designed in whole or in part to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of such specified unlawful activity:

Count	Date	Amount	From	To	Wire Transfer/ Distribution
6	March 23, 2007	\$10,000,000	i-Trade – Bank of America Account # *****3888 Lake Mary, Florida	JIJ Investments, LLC (JIJ) - Wachovia Account #*****4333	#20070323-00162406
7	March 26, 2007	\$10,000,000	JIJ - Wachovia Account #*****4333	i-Trade - Bank of America Account # *****3888 Lake Mary, Florida	#20070326-00021055
8	March 28, 2007	\$2,000,000	i-Trade – Bank of America Account # *****3888 Lake Mary, Florida	JIJ Investments, LLC– Wachovia Account # *****4333	#20070328-00119619
9	March 28, 2007	\$30,000,000	i-Trade - Bank of America Account # *****3888 Lake Mary, Florida	JIJ – J.P. Morgan Chase Account # ****265-5	#20070328-00104855
10	March 28, 2007	\$29,000,000	i-Trade - Fidelity Account # *****9976 Lake Mary, Florida	JIJ - Fidelity Account #*****9229	#A408673

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Count	Date	Amount	From	To	Wire Transfer/ Distribution
11	May 21, 2007	\$1,091,400	TCI FX Traders (TCI FX) – First Caribbean International Bank Account # ***1316	JIJ – Wachovia Account # *****4391	#0705212080009204
12	June 1, 2007	\$4,000,000	JIJ - Fidelity Account # ****9229	OLINT – National Commercial Bank (NCB) Account # ****9587	# 37221573
13	October 16, 2007	\$500,000	JIJ – Fidelity Account # ***2291	JIJ – Wachovia Bank Account # *****4391	#20071016- 00057348
14	October 24, 2007	\$2,500,000	JIJ – Fidelity Account. # ***2291	JIJ – Wachovia Bank Account # *****4391	#20071024- 00043247
15	October 31, 2007	\$19,999,985	OLINT – NCB Account # ****7866	JIJ - Wachovia Account # *****4391	#20071031- 00077139
16	December 19, 2007	\$19,999,985	JIJ - Wachovia Account # *****4391	OLINT - NCB Account # ****7866	# 2007121900023143
17	January 17, 2008	\$21,979,823.60	JIJ - Fidelity Account # ****9229	JIJ - Wachovia Bank Account # *****4391	#2008011700048535
18	January 23, 2008	\$30,000,000	JIJ – J.P. Morgan Chase Account # 5016265-5	JIJ - Fidelity Account #**9229	#0082900005016265
19	January 24, 2008	\$30,000,000	JIJ - Fidelity Account #****9229	TCI FX - TCI Bank Ltd Account # ****6601	# 38030550
20	January 31, 2008	\$21,979,823.60	JIJ - Wachovia Account # *****9251	OLINT TCI - Hallmark Bank and Trust Account # ****9601	# 2008013100056460
21	February 12, 2008	\$5,281,000.69	JIJ - J.P. Morgan Chase Account #****265-5	JIJ - Fidelity Account #*****9229	Unspecified on wire transfer documentation
22	February 12, 2008	\$3,070,922.10	JIJ - Fidelity Account #****9229	-Trade – BOA Account # *****5506	# 38098077
23	February 26, 2008	\$10,906,067.38	JIJ - Fidelity Account #****9229	TCI FX - TCI Bank Ltd. Account # ****6601	# 38141158

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After investors' funds were deposited into and transferred out of the several i-Trade accounts for OLINT and TCI FX, and/or deposited into and transferred out of the several JIJ accounts, then transferred and transmitted to SMITH's control in the Turks and Caicos Islands, SMITH transmitted and transferred, and caused to be transmitted and transferred, some of the funds to individual investors who were demanding repayment of their investments. Some investors received all of their principal and purported gains. Some investors received all of their principal and none of their purported gains. Some investors received a fraction of their principal and none of their purported gains. Some investors were paid nothing.

During the entire time that SMITH operated his Ponzi scheme, the only source of income for SMITH and his wife was from investors' funds. SMITH's operation of the Ponzi scheme effectively ended on July 15, 2008, when the Royal Turks and Caicos Police Force, Financial Crimes Unit, executed search warrants at SMITH's place of business and residence in Providenciales, Turks and Caicos Islands.

SMITH agrees and acknowledges that the amount of funds laundered in violation of 18 U.S.C. § 1956(a) and (h), is more than \$100 million.

Additional Facts for Asset Forfeiture and criminal violations

There were over 6,000 victims of the wire fraud scheme executed by SMITH. One of SMITH's investors was his sister, B.G., who resides with her husband, P.G., in Orange County, Florida. In 2004, B.G. and P.G. invested \$3,000 into OLINT, at SMITH's request, which they considered a favor to help a family member involved in a new business. The monthly account statements on their account showed an increase in


Defendant's Initials BS

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value each month of approximately 10%, never with a loss. In subsequent years, B.G. and P.G. increased the amount of money they invested in OLINT from time to time, until they had transferred a total of approximately \$80-90,000. In 2006, B.G. and P.G. owned a home in Weston, Florida, which they had listed for sale as part of a planned move to the Orlando, Florida, area. The Weston home did not sell, and B.G. and P.G. needed approximately \$200,000 to make a down payment on a residence they had selected in the Orlando area. SMITH agreed to loan B.G. and P.G. \$200,000 to make the down payment, and on or about July 24, 2006, SMITH arranged to have \$199,985.00 wired into B.G. and P.G.'s bank account. On August 28, 2006, B.G. and P.G. closed on their new residence at 1739 Glenwick Drive, Windermere, Florida, with a down payment of \$159,881.10. B.G. and P.G. used the balance of the money that SMITH had wired to them to purchase upgrades and improvements to the residence. B.G. and P.G. have not made any payments to SMITH as payment on this loan.

B.G.'s and P.G.'s residence in Weston, meanwhile, still had not sold, and SMITH offered to purchase the property for \$700,000.00. The terms of the sale were verbal, and according to the agreement between B.G. and P.G. and SMITH, B.G. and P.G. would remain as the titled owners of the property; the \$200,000.00 that SMITH had wired to their bank account in July 2006 would be counted toward the \$700,000.00 total price; and SMITH would transfer the remaining \$500,000.00 into two investment accounts that B.G. and P.G. held at OLINT. SMITH did transfer \$500,000.00 into B.G.'s and P.G.'s OLINT accounts, and each month thereafter they withdrew approximately

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\$4,000.00. In total, B.G. and P.G. have withdrawn \$396,000.00 from their OLINT accounts.

In April or May 2008, SMITH's mother visited SMITH at his home in the Turks and Caicos Islands. She then traveled to Orlando, Florida. SMITH's mother hand carried a package from SMITH and his wife to be delivered to T.M., a family friend. Among other items in the package were several items of jewelry, including a necklace, earrings, and a bracelet. T.M. called SMITH's wife and asked her what she wanted T.M. to do with the jewelry, and SMITH's wife told her to "hang on to it for now." On January 14, 2010, T.M. delivered the jewelry to special agents with Immigration and Customs Enforcement. The fair market value of the jewelry is approximately \$15,675.00.

10. Entire Agreement

This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

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11. Certification

The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

DATED this 21st day of July, 2010.

DSmith

DAVID A. SMITH
Defendant

Oliver A. Smith

Oliver A. Smith
Attorney for Defendant

A. BRIAN ALBRITTON
United States Attorney

By: Bruce S. Ambrose

Bruce S. Ambrose
Assistant United States Attorney

RBHandberg

Roger B. Handberg, III
Assistant United States Attorney
Chief, Orlando Division

Defendant's Initials DS

Chief Approval RBH