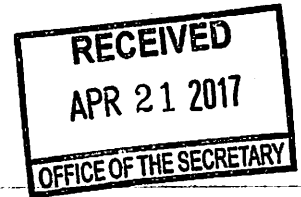


UNITED STATES OF AMERICA
Before the
UNITED STATES SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17681



In the Matter of

BRYAN WAYNE ANDERSON

Respondent.

**MOTION BY DIVISION OF
ENFORCEMENT FOR A FINDING
THAT RESPONDENT IS IN
DEFAULT AND FOR IMPOSITION
OF REMEDIAL SANCTIONS**

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I. BACKGROUND

On November 16, 2016, this matter was instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”). The Order Instituting Proceedings (“OIP”) was mailed to the Respondent at the [REDACTED] in Montgomery, Alabama by the Secretary, and personally served upon him by a Bureau of Prisons employee. Respondent acknowledged receipt of it, in writing, on November 21, 2016. See Exhibit A to Declaration of Robert Schroeder (“Schroeder Decl.”) (April 11, 2017 memorandum from the Federal Bureau of Prisons acknowledging its receipt, on November 21, 2016, of Article Number 7015 3439 0000 9273 3045 from the U.S. Securities and Exchange Commission by U.S. Mail for Respondent, an inmate at the [REDACTED] in Montgomery, Alabama), Exhibit B to Schroeder Decl. (Bureau of Prisons mail log with Respondent’s name and signature, showing that he received Article Number 7015 3439 0000 9273 3045 on November 21, 2016), and Exhibit C to Schroeder Decl. (certified return receipt from the [REDACTED] [REDACTED] in Montgomery, Alabama to the U.S. Securities and Exchange Commission for Article Number 7015 3439 0000 9273 3045).

The Respondents’ Answer was therefore due on December 11, 2016, pursuant to Rule of Practice 220(b), requiring the filing of an Answer within twenty days of service of the OIP. Respondent failed to file an Answer to the OIP. See Schroeder Decl, ¶ 2, .

In July 2014, the Alabama Securities Commission issued a cease and desist order against Respondent that became permanent on September 14, 2014 (*In the Matter of Bryan Wayne Anderson*, Alabama Securities Commission Administrative Order No. CD-2014-0014). See also Exhibit D to Schroeder Decl. (Cease and Desist Order and Notice of Right to a Hearing by the Alabama Securities Commission). The Alabama Securities Commission’s cease and desist order

alleged that, in 2012 and 2013, Anderson persuaded three investors to invest in his “hedge fund/box trading program”, but deposited their funds into an account in his own name. *Id.*

On December 29, 2014, the United States Attorney’s Office for the Northern District of Alabama issued a three-count criminal information against Respondent, charging him with wire fraud, money laundering, and securities fraud, in violation of Title 18, United States Code, Sections 1343 and 1957, and Title 15, United States Code, Sections 77q(a)(2) and 77x, for fraudulent misconduct against eighteen individual and family investors, which incorporated the allegations and investors referenced in the Alabama Securities Commission’s cease and desist order. The criminal information also included two criminal forfeiture counts, in the amounts of \$3,063,614.40 and \$368,000.00, respectively, in violation of Title 18, United States Code, Section 981(a)(1)(C), Title 28, United States Code, Section 2461(c), and Title 18, United States Code, Section 982 (a)(1). *See Exhibit E to Schroeder Decl. (Criminal Information in United States of America v. Bryan W. Anderson).*

On February 9, 2015, Respondent entered into an Amended Plea Agreement, and agreed to: (i) plead guilty to Counts One, Two and Three of the Criminal Information; (ii) pay restitution in the amount of \$3,063,614.40 to the investors referenced in the Amended Plea Agreement; and (iii) consent to forfeiture in the amounts of \$3,063,614.40 and \$368,000.00, as described in the forfeiture counts of the Criminal Information. *See Exhibit F to Schroeder Decl. (Amended Plea Agreement in United States of America v. Bryan W. Anderson).*

According to Respondent’s Amended Plea Agreement, he fraudulently induced eighteen individual and family group investors to invest approximately \$8.4 million in a stock option trading program and a real estate company. By the time Respondent’s scheme to defraud had collapsed, twelve of the investors suffered losses totaling \$3,063,614.40. *Id.*

On August 15, 2015, Respondent was sentenced to a term of imprisonment of 87 months on Counts One and Two, and a term of imprisonment of 60 months on Count Three, to be served concurrently with the sentences imposed on Counts One and Two, followed by three years of supervised release. He was directed to pay restitution in the amount of \$3,063,614.40, and was subject to an order of forfeiture in the same amount. See Exhibit G to Schroeder Decl. (Judgment in a Criminal Case in *United States of America v. Bryan W. Anderson*) and Exhibit H to Schroeder Decl. (Transcript of Sentencing Hearing in *United States of America v. Bryan W. Anderson*).

Accordingly, the Division now moves pursuant to Rules 155(a)(2) and 220(f) for a finding that Respondent is in default, and the imposition of remedial sanctions. The Division submits that Respondent should be barred from associating with a broker, dealer, investment advisor, transfer agent, nationally recognized statistical rating organization (NRSRO), or investment company, and be barred from participating in any offering of penny stock, including acting as a promoter, finder, consultant, agent or other person, or inducing or attempting to induce the purchase or sale of penny stock, pursuant to Sections 15(b)(6) of the Exchange Act and 203(f) of the Advisers Act.

The Division bases its request for relief on the following documents entered or issued by the Federal Bureau of Prisons, the U.S. Securities and Exchange Commission, the Alabama Securities Commission in its administrative proceeding, and the United States District Court in the action entitled *United States of America v. Bryan W. Anderson*, Case No. 2:14-cr-00421-VEH-TMP (N.D. Al.):

- (1) April 11, 2017 memorandum from the Federal Bureau of Prisons acknowledging its receipt, on November 21, 2016, of Article Number 7015 3439 0000 9273 3045 from the U.S. Securities and Exchange Commission that was sent by certified

U.S. Mail to Respondent, an inmate at the [REDACTED] in Montgomery, Alabama, attached to Schroeder Decl. as Exhibit A;

- (2) Federal Bureau of Prisons mail log with Respondent's name and signature, showing that Respondent received Article Number 7015 3439 0000 9273 3045 on November 21, 2016, attached to Schroeder Decl. as Exhibit B;
- (3) Certified return receipt from the [REDACTED] in Montgomery, Alabama to the U.S. Securities and Exchange Commission for Article Number 7015 3439 0000 9273 3045, attached to Schroeder Decl. as Exhibit C;
- (4) Cease and Desist Order and Notice of Right to a Hearing by the Alabama Securities Commission, attached to Schroeder Decl. as Exhibit D;
- (5) Criminal Information in *United States of America v. Bryan W. Anderson*, filed December 29, 2014 (Doc. 1), attached to Schroeder Decl. as Exhibit E;
- (6) Amended Plea Agreement in *United States of America v. Bryan W. Anderson*, filed February 9, 2015 (Doc. 11), attached to Schroeder Decl. as Exhibit F;
- (7) Judgment in a Criminal Case in *United States of America v. Bryan W. Anderson*, filed August 14, 2015 (Doc. 29), attached to Schroeder Decl. as Exhibit G;
- (8) Transcript of Sentencing Hearing in *United States of America v. Bryan W. Anderson*, filed August 25, 2015 (Doc. 34), attached to Schroeder Decl. as Exhibit H.

The Division requests, pursuant to Rule of Practice 323, that official notice be taken of each of the above documents, and any other relevant documents filed in the aforementioned administrative proceeding and criminal case.

II. ARGUMENT

A. The Respondent Has Failed To Answer After Properly Being Served, And Is In Default

Because the Respondent has never responded to the OIP, he is in default. Rule 155(a) of the Commission's Rules of Practice states that:

A party to a proceeding may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against the party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true, if that party fails: ...

- (2) To answer, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding

Moreover, the OIP itself provides that “If Respondent fails to file the directed answer . . . the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true” (OIP at p. 3.)

The Respondent was properly served with the OIP and is on notice of these proceedings. Rule 141(a)(2)(i) sets forth permissible methods of service of the OIP upon individuals, which include “delivering a copy of the order instituting proceedings to the individual,” and which defines “delivery” to include “handing a copy of the order to the individual; . . . or sending a copy of the order addressed to the individual by U.S. Postal Service certified, registered or Express Mail and obtaining a confirmation of receipt. . . .” Here, Respondent was: (1) personally served with the OIP by a Federal Bureau of Prisons employee, which Respondent acknowledged in writing. *See* Exhibit B to Schroeder Decl.. The OIP had been sent to the Respondent at the Federal Correctional Institution where he is incarcerated by the Secretary for the U.S. Securities and Exchange Commission by certified U.S. Mail, which was confirmed by return receipt. *See* Exhibits A and C to Schroeder Decl..

The Division requests that the Respondent be found to be in default, as he has failed to timely file and serve an Answer after having been served with the OIP. (*See* Schroeder Dec. ¶ 2).

B. The Facts Alleged In The OIP Must Be Deemed True

As stated in the OIP served on Respondent, failure to answer may result in him being deemed in default and these proceedings may be determined against him upon consideration of

the OIP, the allegations of which may be deemed to be true. (OIP ¶ IV, citing Rules 155(a), 220(f), and 310.) Those facts which may be deemed true include that:

1. In July 2014, the Alabama Securities Commission issued a cease-and-desist order against Anderson that became permanent on September 14, 2014. (*In the Matter of Bryan Wayne Anderson*, Alabama Securities Commission Administrative Order No. CD-2014-0014). (OIP ¶ II.B.2.)
2. The Alabama Securities Commission's order alleged that in 2012 and 2013 Anderson persuaded three Alabama investors to invest in his "hedge fund/box trading program" but he deposited their funds into an account in his own name. (OIP ¶ II.B.3.)
3. Anderson pled guilty to (1) one count of wire fraud in violation of Title 18, United States Code, Section 1343; (2) one count of money laundering in violation of Title 18, United States Code, Section 1957; and (3) one count of securities fraud in violation of Title 15 United States Code, Sections 77q(a)(2) and 77x before the United States District Court for the Northern District of Alabama, in *United States v. Bryan W. Anderson*, Docket No. 2:14-cr-00421-VEH-TMP (N.D. Al.). On August 14, 2015, a judgment in this case was entered against Anderson. He was sentenced to a term of imprisonment of seven years and three months to be followed by three years of supervised release, directed to pay restitution of \$3,063,614.40 and was subject to a separate order of criminal forfeiture for this same amount. (OIP ¶ II.B.4.)
4. According to Anderson's Plea Agreement, from 2009 through May 2014 he persuaded twelve victims to invest approximately \$6.7 million in a stock option trading program and a real estate development company. The Plea Agreement further states that Anderson promised his investors a guaranteed rate of return without risk while in fact he used most of their funds to repay other investors or for his own personal expenses. The Plea Agreement also noted that Anderson had repaid \$3.7 million to his victims. (OIP ¶ II.B.5.)

As stated in Section III of the OIP, the purpose of this proceeding is not only to determine whether the above allegations are true, but what remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act. As the allegations may be deemed true because the Respondent is in default, the remaining issue is the appropriate remedies to be imposed on Respondent in the public interest.

C. The Appropriate Remedial Sanctions That Should Be Imposed Upon Respondent In This Case

Pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act, Anderson should be: (1) barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization (NRSRO); and (2) barred from participating in any offering of penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in penny stock, or inducing or attempting to induce the purchase or sale of any penny stock. It is in the public interest to impose these sanctions against Anderson.

There are several well-recognized factors that are to be considered in determining the appropriate remedy in the public interest. Those factors are: (1) the egregiousness of Respondent's actions; (2) the isolated or recurrent nature of the infractions; (3) the degree of scienter involved; (4) the sincerity of the Respondent's assurances against future violations; (5) the Respondent's recognition of the wrongful nature of his or her conduct; and (6) the likelihood that the Respondent's occupation will present opportunities for future violations. *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979); *In the Matter of Bernath*, Initial Decision Release No. 993 at 4, 2016 SEC LEXIS 1222 *10-11 (April 4, 2016) (*Steadman* factors used to determine whether a bar is in the public interest, in a case where sanctions were imposed by summary disposition). The Commission also considers the age of the violation, the degree of harm to investors and the marketplace resulting from the violation, and the deterrent effect of administrative sanctions. *Bernath*, at 4 and *11, citing *In the Matter of Schield Mgmt Co.*, 58 S.E.C. 1197, 1217 n.46, 2006 SEC LEXIS 195, at *35-36 (Jan. 31, 2006) (revoking adviser's registration and barring majority owner from association), and *In the Matter of Melton*, 56 S.E.C.

695, 698, 2003 SEC LEXIS 1767, at *4-5 (July 25, 2003). The Commission has held that “conduct that violates the antifraud provisions of the securities laws is especially serious and subject to the severest of sanctions under the securities laws.” *In the Matter of Siris*, Exchange Act Rel. No. 71068, 2013 SEC LEXIS 3924 *23 (Dec. 12, 2013), quoting *In the Matter of Bugarski*, Exchange Act Release No. 66842, 2012 SEC LEXIS 1267, at *18 n.26 (Apr. 20, 2012) (imposing industry and penny stock bars), quoting *Melton*, 56 S.E.C. at 713.

All of the *Steadman* factors are present in this case, as are the additional factors considered by the Commission. First, pursuant to Rules 155(a) and 220(f), the allegations of the OIP are deemed true when a Respondent fails to timely answer and is in default. The allegations against the Respondent includes that, on February 9, 2015, Anderson pled guilty to (1) one count of wire fraud, in violation of Title 18, United States Code, Section 1343; (2) one count of money laundering, in violation of Title 18, United States Code, Section 1957; and (3) one count of securities fraud, in violation of Title 15 United States Code, Sections 77q(a)(2) and 77x before the United States District Court for the Northern District of Alabama, in *United States v. Bryan W. Anderson*, Docket No. 2:14-cr-00421-VEH-TMP (N.D. Al., 2014). On August 13, 2015, Anderson was sentenced to a term of imprisonment of seven years and three months to be followed by three years of supervised release, directed to pay restitution of \$3,063,614.40 and was subject to a separate order of criminal forfeiture for the same amount.

Applying collateral estoppel principles, the Respondent is precluded from contesting any findings made against him in the criminal action. See *In the Matter of Gunderson*, Exchange Act Release No. 61234, 2009 SEC LEXIS 4322 *15-16 (Dec. 23, 2009). Although no one factor is dispositive in determining the appropriate relief in the public interest, the record in the district court action establishes the presence of each of the six *Steadman* factors, as well as each of the

three additional factors considered by the Commission.

1. Respondents' Violations Were Egregious

The Respondent pled guilty to three counts of fraud in the criminal action. Respondent fraudulently induced eighteen individual and family group investors to invest approximately \$8.4 million in a purported stock option trading program and a real estate company. See Exhibit F to Schroeder Decl. at p. 5-6. Anderson misrepresented that some investor funds would be used to trade options (*id. at 4-5*) and told other investors that he would invest their funds into real estate that he would then lease. *Id. at 5.* He falsely told investors they would receive a guaranteed return, from 5% to 20% for a specified time, usually thirty to sixty days. *Id. at p. 7.* He also falsely assured investors they could access their money at any time. *Id.* Respondent “spent about 25 percent of his adult working life engaged in this fraud scheme – in this Ponzi scheme. And that’s exactly what it was. He lied and lied and lied.” See Exhibit H to Schroder Decl, p. 24. By the time Respondent’s scheme to defraud had collapsed, twelve of the investors suffered losses totaling \$3,063,614.40. *Id. at p. 6.* Respondent “has not repaid a single person. Insurance companies have made those payments.” *Id. at 25.* Respondent also used his 401(k) plan to cover-up his scheme. *Id.* Although Respondent continually told his victims that their investments were safe, he never purchased the investments he said he would make for them. *Id., at 26.* Rather, he would immediately transfer the monies he fraudulently received from his victims to a bank account that he controlled. *Id.* He also preyed upon the elderly. *Id., at 27 - 29, 32.* He stole their “hard-earned money that they were going to use to retire ...” *Id., at 28.* In doing so, he turned their lives “upside down”. *Id., at 29.* As a result, his victims were no longer able to retire, take anticipated vacations with their grandchildren, care for aging parents and other family members in need, etc. Rather, they had to continue working, sell property, and take-out loans to pay for their children’s educations because they had lost their life savings, *Id., at 28 -*

30, 32, while Respondent was using their money to enjoy the “high life.” *Id.*, at 29. Anderson’s primary residence was valued at \$600,000, and he had a second lake home valued at \$500,000 (which he was attempting to remodel so it could sleep 17 people, at a cost of \$150,000.00). He also had a time-share in Las Vegas, and took family vacations. *Id.*, at 25, 29, 30. Although Respondent had many opportunities to cease his fraudulent behavior, he failed to do so. *Id.*, at 41 - 42. Anderson’s misconduct was severely egregious.

2. Respondents’ Violations Were Recurrent

The court determined that Respondent had stolen his victims’ money for four years and labeled him a “thief.” Exhibit H to Schroeder Decl. at 49. “A person who steals money on one instance has not necessarily become a thief, but a person who steals money for four years has become a thief.” *Id.* Given the length of his fraudulent conduct, the amount of the loss, that Anderson “never” put the money he received from his victims into an investment account and didn’t attempt to “get any money back for anybody”, *id.* at 42., Anderson’s violations were recurrent.

3. Respondent Acted With High Scienter

As set forth above, given the number of victims, the length of Respondent’s fraudulent conduct, the amount of the loss, and that Respondent never invested the money he received from his victims as he said he would but, instead, transferred it to himself, he acted with high scienter.

4. Respondent Has Made No Assurances Against Future Violations

Although the court prohibited Respondent from seeking or obtaining employment involving finance, investment, banking, or that involves access to individuals money, investments, securities or bank accounts, or that otherwise places Respondent in a fiduciary role with respect to an individual’s finances, that prohibition only applies to his three-year period of supervised release. *Id.*, at 48. Respondent has not, and cannot, make any assurances against

future violations by him once his three-year period of supervised release ends.

5. Respondent Did Not Recognize The Wrongful Nature Of His Conduct

Although Respondent has apologized for the “terrible choices” he made, *id.*, at 21, he first did so immediately prior to being sentenced by the court. His allocution seems to have been motivated, at least in part, by a desire to minimize his sentence, since, prior to his sentencing, he “never once apologized [to his victims] and said he was sorry and told us the truth of what he did with our money”, despite being given the opportunity to do so “30 times” by one of his victims. *Id.*, at 35. Accordingly, Respondent did not recognize the wrongful nature of his conduct during the pendency of his fraudulent activity.

6. There Is A Likelihood That Respondent Will Have Opportunities For Future Violations

As stated above, Respondent will have the opportunity for future violations once he is released from incarceration, and after his three-year period of supervised release concludes.

7. The Violations Are Sufficiently Recent

The Respondent engaged in fraudulent activity from 2009 through May 2014. *See* Exhibit F to Schroeder Decl. at 4. Thereafter, a cease-and-desist order was filed against him by the Alabama Securities Commission in July 2014, and a criminal information was filed against him by the United States Attorney’s Office for the Northern District of Alabama in December 2014. *See* Exhibits D and E to Schroeder Decl.. Respondent pled guilty to the criminal charges in February 2015, was sentenced in August 2015, and is currently incarcerated. *See* Exhibits F, G and H to Schroeder Decl.. The Commission instituted this follow-up action on November 16, 2016.

8. Investors Were Significantly Harmed

The harm to investors in this case was significant. The Respondent fraudulently induced

eighteen individual and family group investors to invest approximately \$8.4 million in a stock option trading program and a real estate company. *See* Exhibit F to Schroeder Decl. at p. 5.

9. Administrative Sanctions Will Have A Deterrent Effect

Previously, the Commission has rejected arguments that the imposition of remedial sanctions in addition to those posed by a district court simply adds to the sanctions already imposed and is therefore not in the public interest. In particular, the Commission explained in *Bugarski* that:

While the sanctions imposed by the district court – the permanent injunction, disgorgement, and third-tier civil penalties – are severe, this simply underscores the seriousness of Respondents’ misconduct. . . . As we have previously held, an injunction against violations of the antifraud provisions of the securities laws “has especially serious implications for the public interest,” and “ordinarily, and in the absence of evidence to the contrary, it will be in the public interest to. . . suspend or bar from participation in the securities industry. . . a respondent who is enjoined from violating the antifraud provisions.

2012 SEC LEXIS *17-18, *quoting Melton*, 56 S.E.C. at 713.

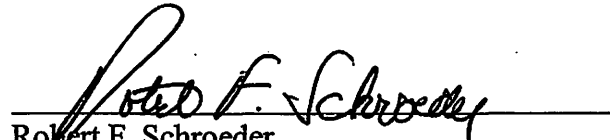
Here, Respondent has been convicted of wire fraud, money laundering, and securities fraud. *See* Exhibit G to Schroeder Decl.. He has been sentenced to a lengthy term of incarceration, restitution and forfeiture, and was ordered to refrain from seeking or obtaining employment in the finance, investment and banking fields, or acting in a fiduciary role during his three-year period of supervised release. *Id.*, *see also* Exhibit H to Schroeder Decl.. Accordingly, Respondent should be permanently barred from associating with all of the types of entities in the securities industry that are set forth in Advisers Act Section 203(f).

III. CONCLUSION

For the reasons stated, the Respondent should be found in default, and a permanent bar should be imposed against him.

Dated: April 20, 2017

Respectfully submitted,


Robert F. Schroeder
Senior Trial Counsel
U.S. Securities and Exchange Commission
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schroederr@sec.gov
Counsel for the Division of Enforcement

Certificate of Service

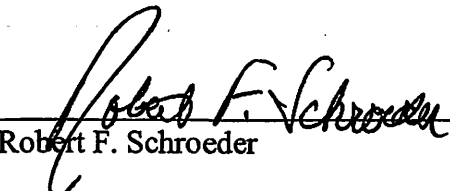
I certify that on April 20, 2017, I caused the foregoing **MOTION BY DIVISION OF ENFORCEMENT FOR A FINDING THAT RESPONDENT IS IN DEFAULT AND FOR IMPOSITION OF REMEDIAL SANCTIONS AND DECLARATION OF ROBERT F. SCHROEDER WITH ATTACHED EXHIBITS A - H** to be served on the following persons by the method of delivery indicated below:

By UPS and email:

Honorable Carol Fox Foelak
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E., Mail Stop 2585
Washington, D.C. 20549-2585

**By Certified United States Mail, Return
Receipt Requested:**

Mr. Bryan W. Anderson
Inmate Number [REDACTED]
*SPECIAL MAIL – OPEN ONLY IN THE
PRESENCE OF THE INMATE*
FPC Montgomery
[REDACTED]
[REDACTED]
Montgomery, Alabama [REDACTED]



Robert F. Schroeder

UNITED STATES OF AMERICA
Before the
UNITED STATES SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-17681

In the Matter of

BRYAN WAYNE ANDERSON
Respondent.

DECLARATION OF ROBERT F. SCHROEDER

I, Robert F. Schroeder, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am the attorney representing the Division of Enforcement in this proceeding. I have personal knowledge of the following facts and, if called as a witness, would testify competently thereto.

2. The Division of Enforcement has not been served with an Answer in this proceeding by Respondent Bryan Wayne Anderson. On April 18, 2017, I telephoned the Office of the Secretary and spoke with Jill Peterson, who confirmed that no Answer has been filed in this proceeding.

3. Attached as Exhibit A is a true and correct copy of an April 11, 2017 memorandum from the Federal Bureau of Prisons acknowledging its receipt, on November 21, 2016, of Article Number 7015 3439 0000 9273 3045 from the U.S. Securities and Exchange Commission by certified U.S. Mail that was sent to Respondent, an inmate at the [REDACTED] in Montgomery, Alabama.

4. Attached as Exhibit B is a true and correct copy of a Federal Bureau of Prisons mail log with Respondent's name and signature, showing that Respondent received Article Number 7015 3439 0000 9273 3045 on November 21, 2016 (the mail log has been redacted to remove the name of other inmates on it).

5. Attached as Exhibit C is a true and correct copy of a certified U.S. Mail return receipt from the [REDACTED] in Montgomery, Alabama to the U.S. Securities and Exchange Commission for Article Number 7015 3439 0000 9273 3045.

6. Attached as Exhibit D is a true and correct copy of a July 2014 Cease and Desist Order and Notice of Right to a Hearing by the Alabama Securities Commission.

7. Attached as Exhibit E is a true and correct copy of the criminal information filed on December 29, 2014, in *United States of America v. Bryan W. Anderson*, Docket No. 2:14-cr-00421-VEH-TMP (N.D. Al.) (Doc. 1).

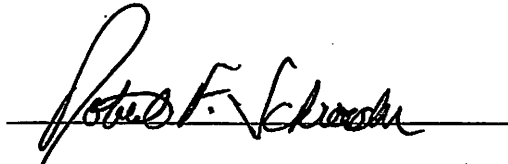
8. Attached as Exhibit F is a true and correct copy of the Amended Plea Agreement in *United States of America v. Bryan W. Anderson*, Docket No. 2:14-cr-00421-VEH-TMP (2014), filed February 9, 2015 (Doc. 11).

9. Attached as Exhibit G is a true and correct copy of the Judgment in a Criminal Case in *United States of America v. Bryan W. Anderson*, Docket No. 2:14-cr-00421-VEH-TMP (2014), filed August 14, 2015 (Doc. 29).

10. Attached as Exhibit H is a true and correct copy of the Transcript of Sentencing Hearing in *United States of America v. Bryan W. Anderson*, filed August 25, 2015 (Doc. 34).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 20, 2017, at Atlanta, Georgia.

A handwritten signature in black ink, appearing to read "Robert F. Schroeder", is written over a solid horizontal line.

Robert F. Schroeder

Exhibit

A



U.S. Department of Justice
Federal Bureau of Prisons

██████████
Montgomery, Alabama ██████████

April 11, 2017

MEMORANDUM FOR RECORD

FROM:

A. BARNES, SCSS

SUBJECT:


Certified Mail for Bryan Anderson # ██████████

On November 21, 2016 at 9:30 am, the mailroom officer signed for a certified letter # 70153430000092733045 sent from U.S. Securities & Exchange. That letter was signed for and issued to inmate Anderson, Bryan # ██████████ at 10:45 am on November 21, 2016. I have attached a copy of the certified mail log for your records.

Exhibit

B

Mail Room Certified/Legal Mail Log

Inmate Name	Reg. No.	Date/Time Received from ISM	Name & Address of Sender	Circle Legal or Write Tracking Number	Date/Time Delivered to Inmate	Signature of Inmate	Inmate Location Housing Unit
Anderson, Bryan	[REDACTED]	11/21/16 0930	U.S. SECURITIES & EXCHANGE Washington, Dc. 20549	LEGAL / CERTIFIED/EXPRESS 7015 3430 0000 9273 3045	11/21/14 1045		07

Exhibit

C

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Bryan W. Anderson
 Inmate Number [REDACTED] -- SPECIAL MAIL
 OPEN ONLY IN THE PRESENCE OF
 INMATE
 [REDACTED] Montgomery
 [REDACTED]
 Montgomery, AL [REDACTED]
 9590 9402-1322-5265 0706-81

2. Article Number (Transfer from service label)

7015 3430 0000 9273 3045

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *[Signature]*

B. Received by (Printed Name)

G. FISCHER

C. Date

D. Is delivery address different from item 1?

If YES, enter delivery address below:

3- 17681

- Priority Mail
- Registered Mail
- Registered Mail Restricted Delivery
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation
- Signature Confirmation Restricted Delivery

8041476

Exhibit

D

STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION

IN THE MATTER OF:)
)
BRYAN WAYNE ANDERSON) ADMINISTRATIVE ORDER
) NO. CD – 2014- 0014
RESPONDENTS)

CEASE AND DESIST ORDER

The Alabama Securities Commission ("Commission"), having authority to administer and provide for the enforcement of all provisions of Title 8, Chapter 6, Code of Alabama 1975, the Alabama Securities Act ("Act"), upon due consideration of the subject matter hereof, and having confirmed information of the offers for sale and/or sale of securities, into, within or from the state of Alabama, has determined as follows:

RESPONDENTS

1. BRYAN WAYNE ANDERSON ("ANDERSON") (CRD #3116269) is an Alabama resident with a residential address of 582 Founders Park Drive West, Birmingham, AL 35226.

STATEMENT OF FACTS

2. ANDERSON was previously registered in the state of Alabama as a broker dealer agent with MetLife Securities Inc. (CRD # 14251), from October 15, 1998 through February 13, 2012.

3. ANDERSON was subsequently registered with Pruco Securities, LLC (CRD# 5685), as both a broker dealer agent, from February 6, 2012 through October 4, 2012, and as an investment adviser representative, from March 8, 2012 through October 4, 2012.

4. In March 2012, while working as a registered representative for Pruco Securities, ANDERSON sold an Alabama resident (INVESTOR 1) a \$4 million dollar

Variable Universal Life Insurance policy. ANDERSON represented that it was the best tax shelter product available; the investment funds could be deposited tax free; and INVESTOR 1 could liquidate 100% of deposited funds plus interest at anytime.

5. In June 2012, ANDERSON advised INVESTOR 1 that the policy was not performing as well as ANDERSON had anticipated. ANDERSON solicited Investor 1 to invest in a "hedge fund / box trading program", managed by ANDERSON. ANDERSON represented that the program functioned best when the market was performing poorly. ANDERSON guaranteed a rate of return of 1.5% over a period of nine months. ANDERSON further represented that he would match whatever amount INVESTOR 1 placed with him, so that they were equally invested.

6. On June 22, 2012, INVESTOR 1 wired \$150,000.00 from their personal bank account to the Bancorp South bank account of ANDERSON. ANDERSON issued a Promissory Note, which stated that INVESTOR 1 would receive; "the principal sum of \$200,000.00, together with interest in arrears from the date hereof on the unpaid principal balance, at the rate of 1.5% for the following nine months."

7. On July 18, 2012, on the advice of ANDERSON, INVESTOR 1 terminated two Pruco Securities managed accounts originally purchased on ANDERSON's recommendation. ANDERSON claimed that the accounts were performing poorly and ANDERSON's "hedge fund / box trading program" could provide a far better return.

8. On July 23 & 24, 2012, Pruco Securities returned \$283,443.82 to INVESTOR 1. On July 25, 2012, INVESTOR 1 wired \$280,000.00 from their personal bank account to the Bancorp South account of ANDERSON. On July 25, 2012, ANDERSON issued a second Promissory Note to INVESTOR 1, which stated that ANDERSON would pay INVESTOR 1; "the principal sum of \$230,000.00, together with interest in arrears from the date hereof on the unpaid balance, at the rate of 18%." The note was to be due and payable on May 25, 2012.

9. On August 13, 2012, ANDERSON was discharged from Pruco Securities, LLC and termed from the industry.

10. In September 2012, ANDERSON approached a second Alabama resident (INVESTOR 2) about investing in ANDERSON's "hedge fund / box trading program". On September 24, 2012, based on ANDERSON's advice, INVESTOR 2 closed out their TD Ameritrade account and wired \$91,561.64 to ANDERSON's Bancorp South account. ANDERSON issued a Promissory Note stating that INVESTOR 2 would receive; "the principal sum of \$105,000.00, together with interest in arrears from the date hereof on the unpaid principal balance, at the rate of 11%." The amount was to be paid in full on November 5, 2012.

11. In October 2013, ANDERSON approached a third Alabama resident (INVESTOR 3) about cashing out a Prudential annuity originally sold by ANDERSON. ANDERSON requested that INVESTOR 3 invest the proceeds into ANDERSON's "hedge fund / box trading program". On October 23, 2013, INVESTOR 3 cashed out the PRUDENTIAL annuity and gave ANDERSON a cashier's check in the amount of \$20,000.00. ANDERSON issued a Promissory Note that stated INVESTOR 3 would receive; "the principal sum of \$20,000.00, together with interest in arrears from the date hereof on the unpaid principal balance, at the rate of 11%. The unpaid balance, together with any accrued interest, shall be due and payable in full on November 25, 2013."

12. A review of records available to the Commission disclosed that a substantial portion of the investor funds received were never placed into a "hedge fund / box trading program" as represented by Anderson. Investor funds were actually deposited into either a brokerage or personal bank account controlled by ANDERSON.

13. A review of the Commission's registration files disclosed no current record of registration, nor any exemption from registration, for ANDERSON as a broker dealer, broker dealer agent, investment advisor, or investment advisor representative in the state of Alabama, from August 13, 2012 to the date of this Order.

14. A review of the Commission's registration files disclosed no record of registration, nor any exemption from registration, for ANDERSON's "hedge fund / box trading program".

CONCLUSIONS OF LAW

15. Pursuant to Section 8-6-2(10) Code of Alabama 1975, the definition of a "security" includes a note, bond, investment contract or evidence of indebtedness as a security. The promissory notes offered by ANDERSON are securities as defined in the Act.

16. Pursuant to Section 8-6-2(2) Code of Alabama 1975, the definition of "agent" includes any individual who represents a dealer or issuer in effecting or attempting to effect sales of securities. By soliciting and effecting sales of the promissory notes, ANDERSON acted as an agent under the Act.

17. Pursuant to Section 8-6-3(a) Code of Alabama 1975, it is unlawful for any person to transact business in the state as a dealer or agent for securities unless he is registered under the Act. ANDERSON was registered as a broker dealer agent and as an investment advisor representative with the state of Alabama, for a limited portion of the relevant period detailed in this Order. However, ANDERSON sold securities not approved for sale by his broker dealer and therefore acted as an agent for transactions not permitted under his registration. Based on the foregoing, ANDERSON was not appropriately registered to execute the transactions in question and acted as an agent for such transactions in violation of the act.

18. Pursuant to Section 8-6-4, Code of Alabama, 1975, it is unlawful for any person to offer or sell any security in this state unless said security: (1) is registered under the Act; (2) the security is exempt from registration under section 8-6-10; or (3) the transaction is exempt under section 8-6-11. The securities offered by ANDERSON; to wit: the promissory notes for his "hedge fund / box trading program" were neither registered, nor exempt from registration and were offered / sold in violation of the Act.

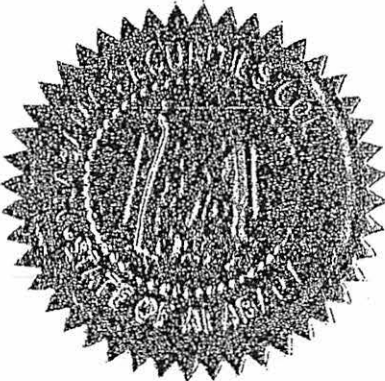
This Order does not prevent the Commission from seeking such other civil or criminal remedies that are available to it under the Act.

This Order is appropriate in the public interest for the protection of investors and is consistent with the purposes of the Act.

Additionally, if the allegations set forth herein are found to be true, through administrative adjudication, failure of the RESPONDENT to make a timely request for hearing, or default of the RESPONDENT, it is the intention of the Commission to impose sanctions upon the RESPONDENT. Such sanctions may include, inter alia, an administrative assessment imposed on RESPONDENT, an additional administrative assessment for investigative costs arising from the investigation of the violation(s) described herein against RESPONDENT, and a permanent order to bar RESPONDENT from participation in any securities related industry in the state of Alabama.

ACCORDINGLY, IT IS HEREBY ORDERED that RESPONDENT immediately **CEASE AND DESIST** from further offers or sales of any security into, within, or from the State of Alabama.

Entered at Montgomery, Alabama, this 17th day of July, 2014.



ALABAMA SECURITIES COMMISSION
401 Adams Avenue, Suite 280
Montgomery, AL 36104
(334) 242-2984

BY: 

EDWIN L. REED
Deputy Director

STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION

IN THE MATTER OF:)

BRYAN WAYNE ANDERSON)

RESPONDENT)

) ADMINISTRATIVE ORDER
) NO. CD 2014-0014
)
)

TO: BRYAN WAYNE ANDERSON
582 FOUNDERS PARK DRIVE WEST
BIRMINGHAM AL 35226

NOTICE OF RIGHT TO A HEARING

THE SHOW CAUSE ORDER TO WHICH THIS NOTICE IS ATTACHED, MADE A PART THEREOF AND INCORPORATED THEREIN, IS IMPORTANT AND YOU SHOULD READ IT IN ITS ENTIRETY. You may request a public hearing before the Alabama Securities Commission concerning this Order by making a written request directed to the Commission pursuant to Section 8-6-32, Code of Alabama 1975. Please direct your request to the Commission as follows:

Alabama Securities Commission
ATTENTION: LEGAL DEPT
401 Adams Avenue Suite 280
Montgomery, Alabama 36104

IF A WRITTEN REQUEST FOR A HEARING BEFORE THE ALABAMA SECURITIES COMMISSION IS NOT SUBMITTED WITHIN 28 DAYS AFTER RECEIPT OF THIS ORDER, THIS ORDER SHALL CONSTITUTE A FINAL ORDER OF THE COMMISSION.

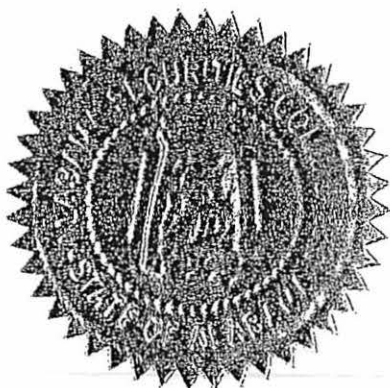
In lieu of a formal hearing, you may request an informal meeting with the Director or the Commission staff to resolve the matter. You will not waive your rights to a formal hearing. The Commission staff requests that you submit a verified statement, setting

forth full details concerning your activities giving rise to this Order, no matter whether you are requesting a formal hearing, an informal meeting, or just desire to provide your side of the matter.

Please identify yourself as a Respondent and refer to the Order number when requesting a hearing, informal meeting, or otherwise corresponding with the Commission staff concerning this matter.

Appeals from any final Order of the Commission shall be made to the Circuit Court of Montgomery County, Alabama.

Date this 17th day of July, 2014.



A handwritten signature in black ink, appearing to read "Edwin L. Reed", written in a cursive style.

Edwin L. Reed
Deputy Director

Exhibit

E

challenge of his termination from Pruco through a FINRA arbitration, the defendant **Anderson** was no longer registered with FINRA as of May 29, 2014.

4. During the times the defendant **Anderson** was employed with the companies described above and registered as a financial broker, he was introduced to and knew numerous clients and individual investors (Investors) who placed their trust and confidence in his services and the products he offered.

COUNT ONE: 18 U.S.C. § 1343 (Wire Fraud)

PURPOSE OF THE SCHEME AND ARTIFICE

5. The allegations of paragraphs 1 through 4 of this information are hereby re-alleged and incorporated by reference as if fully set forth herein. It is further alleged that from in or about 2009 and continuing through on or about May 30, 2014, during his employment with MetLife Securities, Inc. and continuing thereafter, to include the time after his termination from Pruco, the defendant, **BRYAN W. ANDERSON**, knowingly devised and intended to devise a scheme and artifice to defraud and to obtain money and property from Investors by means of materially false and fraudulent pretenses, representations, and promises.

THE SCHEME AND ARTIFICE

6. It was part of the scheme and artifice that the defendant **Anderson** made solicitations to Investors to invest in stock options that employed various trading strategies. **Anderson** referred to one option as box trading. The stock options

Anderson described were not registered securities, nor was **Anderson** authorized to solicit investor monies for these funds.

7. It was a further part of the scheme and artifice that the defendant **Anderson** also offered Investors an investment opportunity known as 360 Properties, LLC, a company **Anderson** started in 2003. This company initially was formed to develop residential real estate, but in or around 2009 **Anderson** began falsely representing to certain Investors who invested in 360 Properties, LLC that their investment returns would come from income derived from leased properties when he knew and believed no such properties existed. Some of the client/investors in 360 Properties, LLC believed their investments were affiliated with MetLife. The defendant **Anderson** did nothing to correct those false impressions and beliefs.

8. It was a further part of the scheme and artifice that from in or about January 2009 and continuing through in or about January 2014 the defendant **Anderson** made false representations and promises that caused approximately eighteen individual and family Investors (Investors) to wire, mail, or otherwise deliver more than \$8.4 million of their monies and funds to **Anderson** for deposit into bank accounts **Anderson** and his wife maintained, controlled, and owned at BancorpSouth Bank, which was headquartered in Tupelo, Mississippi. During this

period and continuing until approximately May 30, 2014, when **Anderson's** scheme and artifice to defraud and to obtain money collapsed and was made more fully known to Investors, approximately twelve of **Anderson's** Investors suffered losses totaling approximately \$3,063,614.40.

9. It was a further part of the scheme and artifice that the defendant **Anderson** would and did transfer Investor money from one account he and his wife maintained and controlled to another, making only a small percentage of any of the investments he had represented and promised to Investors he would make. Analysis of several bank and investment accounts maintained and controlled by the defendant **Anderson** and his wife revealed that **Anderson**, in fact, operated a Ponzi scheme with Investor funds whereby he paid returns to existing Investors with funds acquired from new Investors. Only a relatively small percentage of Investor funds were ever utilized for options trading, box trading, or any other investment strategy/opportunity **Anderson** had represented and promised, but were used instead to pay other Investors and for **Anderson's** personal expenses.

10. It was a further part of the scheme and artifice that the defendant **Anderson** placed some Investor money he actually used for options trading into his wife's TD Ameritrade account.

11. It was a further part of the scheme and artifice that the defendant **Anderson** falsely told investors they would receive a guaranteed rate of return, from 5% to 20%, for a specified time, usually thirty to sixty days. **Anderson** further told Investors their invested funds would be pooled with the funds of other investors and that the invested funds would be in his name only.

12. It was a further part of the scheme and artifice that the defendant **Anderson** would and did from time to time issue promissory notes to the Investors when they invested. **Anderson** told Investors that each time they invested funds a note would be issued which showed the amount of principal along with the amount of interest they would earn at the expiration date. The promissory notes issued by the defendant **Anderson** were essentially worthless and were also not registered in any capacity.

13. It was a further part of the scheme and artifice that the defendant **Anderson** falsely assured Investors they could access their money at any time, that their principal was always protected, and that their investment was 100% risk free.

14. It was a further part of the scheme and artifice that the defendant **Anderson** did not pay all of the money he promised to Investors and repeatedly missed deadlines to pay them. In addition, **Anderson** made up stories and gave explanations which he knew were not true about why he had not been able to pay Investors their money in order to lull them into not taking legal action. From the

time he was terminated from Pruco, the defendant **Anderson's** primary source of income was Investor funds which Investors had been falsely told were being invested in the funds **Anderson** had fraudulently represented and described.

THE WIRE COMMUNICATION

15. On or about the 15th day of January, 2014, in Jefferson County within the Northern District of Alabama, and elsewhere, the defendant,

BRYAN W. ANDERSON,

having devised the above-described scheme and artifice to defraud and to obtain money and property by means of false and fraudulent pretenses, representations, and promises, and for the purpose of executing that scheme and artifice on one such occasion, did knowingly and willfully transmit and cause to be transmitted by means of wire communications in interstate commerce certain writings, signs, signals, pictures, and sounds, that is, electronic transmissions sufficient to cause a wire transfer of funds in the amount of \$571,378.30 from K.C.'s Wells Fargo bank account to **Anderson's** BancorpSouth account XXXX-286-8, in the name of 360 Properties, LLC.

All in violation of Title 18, United States Code, Section 1343.

**COUNT TWO : (18 U.S.C. § 1957)
(Monetary Transaction in Criminally Derived Property)**

16. The allegations of Paragraphs 1 through 15 of this Information are hereby re-alleged and incorporated by reference herein. The United States Attorney further charges:

17. That on or about the 15th day of January, 2014, in Jefferson County, within the Northern District of Alabama, and elsewhere, the defendant,

BRYAN W. ANDERSON,

did knowingly engage and attempt to engage in a monetary transaction, in and affecting interstate commerce, in criminally derived property of a value greater than \$10,000 and which involved the proceeds from specified unlawful activity, that is Wire Fraud, in violation of Title 18, United States Code, Section 1343, that is, **Anderson** received a wire transfer of investment funds from Investor K.C. into **Anderson's** BancorpSouth account XXXX-286-8, in the name of 360 Properties, LLC, and wired \$368,000.00 of that investment into his BancorpSouth XXXX-752-8 bank account.

All in violation of Title 18, United States Code, Section 1957.

**COUNT THREE: (15 U.S.C. §§ 77q(a)(2) and 77x
(Securities Fraud)**

18. The allegations of Paragraphs 1 through 17 of this Information are hereby re-alleged and incorporated by reference herein. The United States Attorney further alleges:

19. That on or about the 20th day of August, 2013, in Jefferson County, within the Northern District of Alabama, and elsewhere, the defendant,

BRYAN W. ANDERSON,

did knowingly and willfully, both directly and indirectly, by use of means and instruments of transportation and communication in interstate commerce in connection with the sale of securities, obtain money and property by means of untrue statements of material fact and by omissions of material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in that the defendant **Anderson** fraudulently obtained \$100,000.00 from an individual with the initials T.M. by falsely representing and promising T.M. that the money would be invested in a box trade hedge fund for the benefit of T.M., which money was wired from a bank account controlled by T.M. at Bryant Bank to an account **Anderson** controlled at BancorpSouth and then unlawfully converted and diverted by him for non-investment purposes.

All in violation of Title 15, United States Code, Sections 77q(a)(2) and 77x.

FIRST NOTICE OF FORFEITURE:
[Forfeiture – 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c)]

1. The Introduction and allegations of Count One of this Information are re-alleged and incorporated by reference as though set forth fully herein for the purpose of alleging forfeiture to the United States pursuant to the provisions of Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

2. Pursuant to Rule 32.2(a), Fed. R. Crim. P., the defendant is hereby notified that, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), the defendant,

BRYAN W. ANDERSON

upon conviction of the offense set forth in Count One of this Information, shall forfeit to the United States any property, real or personal, that constitutes or is derived from proceeds traceable to the commission of the said violations. Property subject to forfeiture under this provision includes, but is not limited to, the following:

JUDGMENT FOR PROCEEDS: A sum of money equal to \$3,063,614.40 in United States currency, representing the amount of proceeds obtained as a result of the offenses alleged.

3. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c), to seek forfeiture of any other property of said defendant up to the value of the forfeiture property described above.

All in accordance with Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), and Rule 32.2, Federal Rules of Criminal Procedure.

SECOND NOTICE OF FORFEITURE:

[Forfeiture – 18 U.S.C. § 982(a)(1)]

1. The Introduction and allegations of Count Two are re-alleged and incorporated by reference as though set forth fully herein for the purpose of alleging forfeiture to the United States pursuant to the provisions of Title 18, United States Code, Section 982(a)(1).

2. Pursuant to Rule 32.2(a), Fed. R. Crim. P., the defendant is hereby notified that, pursuant to Title 18, United States Code, Section 982(a)(1), the defendant,

BRYAN W. ANDERSON

upon conviction of the offense set forth in Count Two of this Information, shall forfeit to the United States any property, real or personal, involved in such offense or any property traceable to such property. Property subject to forfeiture under this provision includes, but is not limited to, the following:

MONEY JUDGMENT: A sum of money equal to \$368,000 in United States currency, representing the amount of property involved in the offense.

3. If any of the above-described forfeitable property, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third party;
- c. has been placed beyond the jurisdiction of the court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be divided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b)(1),

to seek forfeiture of any other property of said defendant up to the value of the forfeiture property described above.

All in accordance with Title 18, United States Code, Section 982(a)(1), and Rule 32.2, Federal Rules of Criminal Procedure.

JOYCE WHITE VANCE
United States Attorney

/s/

J. PATTON MEADOWS
Assistant United States Attorney

Exhibit

F

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA)

v.)

) Case No.: 2:14-cr-00421-VEH-TMP


BYRAN W. ANDERSON)

AMENDED PLEA AGREEMENT

The Government and defendant BRYAN W. ANDERSON, hereby acknowledge the following plea agreement in this case.

PLEA

The defendant agrees to (i) plead guilty to **COUNTS ONE, TWO and THREE** of the Information filed in the above numbered and captioned matter; (ii) pay restitution of \$3,063,614.40 to named victim Investors as recommended by the Government in this Plea Agreement; and consent to forfeiture in the amounts of \$3,063,614.40 and \$368,000.00 as described in the first and second notices of forfeiture set out in the Information. In exchange, the United States Attorney, acting on behalf of the Government and through the undersigned Assistant United States Attorney, pursuant to Fed. R. Crim. P. 11(c)(1)(A), agrees to recommend the disposition specified below, subject to the conditions in paragraphs VII and VIII.

Defendant's Initials 

TERMS OF THE AGREEMENT

I. MAXIMUM PUNISHMENT

The defendant understands that the maximum statutory punishment that may be imposed for the crime of Wire Fraud, in violation of 18 U.S.C. § 1343 as charged in **COUNT ONE**, is:

- A. Imprisonment for not more than 20 years;
- B. A fine of not more than \$250,000.00, or;
- C. Both (a and b);
- D. Supervised release of not more than 5 years; and;
- E. Special Assessment Fee of \$100.

The defendant further understands that the maximum statutory punishment that may be imposed for the crime of Money Laundering, in violation of 18 U.S.C. § 1957 as charged in **COUNT TWO**, is:

- A. Imprisonment for not more than 10 years;
- B. A fine of not more than \$250,000.00, or;
- C. Both (a and b);
- D. Supervised release of not more than one year; and;
- E. Special Assessment Fee of \$100;

The defendant further understands that the maximum fine which may be imposed for violation of either Count One or Count Two may be higher than

Defendant's Initials BA

\$250,000 per count under certain circumstances and as much as twice the gross gain or twice the gross loss if the defendant derived pecuniary gain from either offense, or if either offense resulted in a pecuniary loss to a person other than the defendant under the provisions codified at 18 U.S.C. § 3571(d)

The defendant further understands that the maximum statutory punishment that may be imposed for the crime of Securities Fraud, in violation of 15 U.S.C. §§ 77q(a)(2) and 77x as charged in **COUNT THREE**, is:


- A. Imprisonment for not more than 5 years;
- B. A fine of not more than 250,000.00, or;
- C. Both (a and b);
- D. Supervised release of not more than three years; and;
- E. Special Assessment Fee of \$100;

II. FACTUAL BASIS FOR PLEA

The United States would be prepared to prove the following facts beyond a reasonable doubt at the trial of this case:

Summary of Evidence:

At all material times to the Information, the defendant Bryan W. Anderson was a resident of Jefferson County, Alabama; he and his wife maintained bank accounts at BancorpSouth, a financial institution whose headquarters was in

Defendant's Initials 

Tupelo, Mississippi.

Anderson was employed as a licensed and registered financial broker according to the Financial Industry Regulatory Authority (FINRA). He was employed as a registered broker with Metropolitan Life Insurance Company from October 1998 to July 2007; with MetLife Securities, Inc. (MetLife) from October 1998 to February 2012; and with Pruco Securities, LLC (Pruco) from February 2012 to September 13, 2012, at which time he was terminated from Pruco.

Anderson tried unsuccessfully to challenge his termination from Pruco through a FINRA arbitration. He was no longer registered with FINRA as of May 29, 2014.

During the time Anderson was employed as a financial broker with the above named companies, he was introduced to and came to know numerous clients and individual investors (Investors) who place their trust and confidence in him and in his services and the products he offered.

The Scheme

Beginning in or around 2009 and continuing through on or about May 30, 2014, during the time of his employment with MetLife and continuing with his employment with and later termination from Pruco, Anderson devised a scheme and artifice to defraud Investors and to obtain money and property from them by making materially false and fraudulent pretenses, representations, and promises.

Acting outside the scope of his employment as a financial broker with the

aforementioned companies, Anderson made solicitations, directly and indirectly, to Investors to invest their funds and monies in certain stock options employing various trading strategies. Anderson described and offered one of these strategies as box trading. The stock options Anderson described to Investors were not registered securities, nor was Anderson authorized to solicit Investor monies for these funds.

Anderson also offered Investors an investment opportunity known as 360 Properties, LLC (360 Properties). This was a company Anderson and another individual had started in 2003. This company was initially formed to develop residential real estate, but approximately in 2009 Anderson began to falsely represent to certain Investors who invested in 360 Properties that their investment returns would come from income derived from leased properties, when he then knew and believed that no such properties existed. Some of these Investors believed their investments with 360 Properties were in some way affiliated with MetLife. Anderson did nothing to correct those false impressions and beliefs.

During the period of Anderson's scheme and artifice, and through the false and fraudulent pretenses, representations, and promises he made to defraud Investors and to obtain money and property from them, Anderson induced and otherwise caused approximately eighteen individual and family group investors (Investors) to wire, mail, or otherwise deliver more than \$8.4 million of their

monies and funds to him and into bank accounts he and his wife maintained, controlled, and owned at BancorpSouth. By the time Anderson's scheme and artifice collapsed and was made more fully known to Investors in late May 2014, approximately twelve of the Investor units had suffered losses totaling \$3,063,614.40.

A list of the Investors who lost money through one or more of Anderson's investment schemes is set out as follows:

Investor Victims	Principal Invested	Amount Paid Back	Loss
S. and L. B.	411,000.00	(351,723.00)	59,277.00
P. and L. B.	427,225.00	(161,790.00)	265,435.00
L.B.	1,255,600.00	(176,522.31)	1,079,077.69
K.C.	571,378.30	(165,500.00)	405,878.30
M and N. C.	392,323.13	(346,196.82)	46,126.31
M.G.	790,000.00	(171,000.00)	619,000.00
J. and C. H.	845,900.00	(550,048.00)	295,852.00
D. and A. H.	1,183,143.26	(1,123,075.00)	60,068.26
F. and K. M.	223,084.09	(186,893.25)	36,190.84
N. M.	20,000.00	(6,400.00)	13,600.00
T. and B.A. M.	580,000.00	(414,791.00)	165,209.00
G.N.	20,000.00	(2,100.00)	17,900.00
Grand Total	6,719,653.78	(3,656,039.38)	3,063,614.40

As part of the scheme, Anderson often transferred Investor money from one account he and his wife maintained and controlled to another without making any of the investments he had represented and promised to Investors he would make. Only a relatively small percentage of Investor funds were utilized for options trading, box trading, or any other investor strategy/opportunity Anderson had represented and promised, but were used instead to pay other Investors and for Anderson's personal expenses.

Anderson placed some Investor money that he actually used for options trading into his wife's TD Ameritrade account. Anderson, in fact operated a Ponzi scheme with Investor funds. He falsely told Investors they would receive a guaranteed rate of return, from 5% to 20% for a specified time, usually thirty to sixty days. He also falsely told Investors their investment funds would be pooled with the funds of other Investors and that the invested funds would be in his name only.

Anderson falsely assured Investors they could access their money at any time, that their principal was always protected, and that their investments were 100% risk free. To further provide Investors with a false sense of security, Anderson also from time to time issued promissory notes to Investors when they invested. Anderson told Investors that each time they invested funds a note would be issued which showed the amount of principal along with the amount of interest

Defendant's Initials 

they would earn at the expiration date. The promissory notes issued by Anderson were essentially worthless and were not registered in any capacity.

As the scheme began to fall apart, Anderson repeatedly missed deadlines to pay Investors. He made up stories and gave explanations which he knew were not true about why he had not been able to pay them their money in order to lull them into not taking legal action.

The Wire Fraud

To execute the above described scheme and artifice on one occasion, January 15, 2014, Anderson knowingly and willfully transmitted and caused to be transmitted by means of wire communications in interstate commerce certain writings, signs, signals, pictures, and sounds, that is, electronic transmissions sufficient to cause a wire transfer of \$571,378.30 from Investor K.C.'s Wells Fargo bank account to Anderson's BancorpSouth account XXXX-286-8 in the name of 360 Properties, LLC.

The Money Laundering

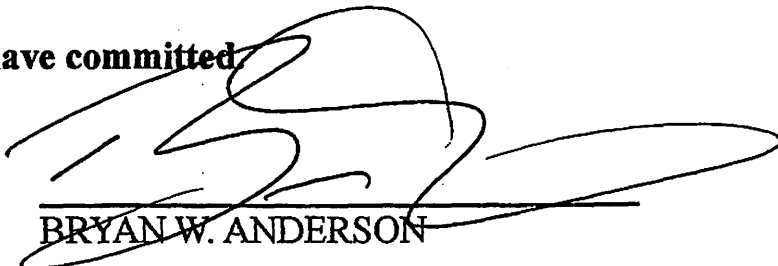
Anderson further engaged in a monetary transaction on January 15, 2014, in and affecting interstate commerce, in criminally derived property, which involved the proceeds from the specified unlawful activity of wire fraud, by transferring by wire approximately \$368,000.00 of K.C.'s \$571,378.30 investment, which was deposited into Anderson's BancorpSouth bank account XXXX-286-8 to his

BancorpSouth XXXX-752-8 bank account.

The Securities Fraud

On August 20, 2013, Anderson knowingly and willfully, directly and indirectly, by use of means and instruments of transportation and communication in interstate commerce in connection with the sale of securities, obtained money and property by means of untrue statements of material fact and by omissions of material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, in that Anderson fraudulently obtained \$100,000.00 from T.M. by falsely representing and promising T.M. that the money would be invested in a box trade hedge fund for the benefit of T.M., which money was wired from a bank account controlled by T.M. at Bryant Bank to an account Anderson controlled at BancorpSouth and then unlawfully converted and diverted by him for non-investment purposes.

The defendant hereby stipulates that the facts stated above are substantially correct and that the Court can use these facts in calculating the defendant's sentence. The defendant further acknowledges that these facts do not constitute all of the evidence of each and every act that the defendant and/or any co-conspirators may have committed.


BRYAN W. ANDERSON

Defendant's Initials BA

III. RECOMMENDED SENTENCE

Subject to the limitations in paragraph VIII regarding subsequent conduct and pursuant to Rule 11(c)(1)(B), Fed.R.Crim.P., the government will recommend the following disposition:

A. The government will recommend a two level reduction in the defendant's adjusted offense level, based upon the defendant's affirmative acceptance of personal responsibility for the defendant's criminal conduct. The government agrees to recommend pursuant to U.S.S.G. § 3E1.1(b) an additional one level decrease in recognition of the defendant's prompt acceptance of personal responsibility for the defendant's conduct. The government may oppose *any* adjustment for acceptance of responsibility if the defendant (a) fails to admit each and every item in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statements about the defendant's involvement in the offense; (d) is untruthful with the Court, the Government, or the United States Probation Officer; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw the plea of guilty for any reason other than those expressly enumerated in the Limited Waiver of Right to Appeal and Post-Conviction Relief section of this plea agreement;

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B. The government will recommend that the defendant be sentenced at the low-end of the advisory United States Sentencing Guideline range as that is determined by the Court on the date that the sentence is pronounced, and after both parties have had full right of allocution.

C. That following any term of imprisonment which may be imposed, the defendant be placed on supervised release for three years, subject to the standard conditions of supervised release as set forth in U.S.S.G § 5D1.3, and to the following special condition(s):

1. That the defendant be required to pay restitution. The defendant agrees to pay restitution as outlined below:

\$3,063,614.40 to the name victims who lost money due to the defendant's scheme as spelled out in the Information.

If any other restitution becomes known to the Government before the date of sentencing, the Government reserves the right to request additional restitution.

2. Full restitution shall be due and owing as of the date sentence is pronounced, with any outstanding balance to be paid in full by the expiration of the term of supervised release;

3. If the Court permits the defendant to pay the restitution in increments, such payments must be made in compliance with the

Defendant's Initials BR

payment schedule set by the Court; and

4. The defendant shall not establish any new lines of credit without permission from the United States Probation Office or the Court;

D. The government makes no recommendation regarding a fine in this case.

E. That the defendant pay a special assessment fee of \$300.00, said amount due and owing as of the date sentence is pronounced.

IV. WAIVER OF RIGHT TO APPEAL AND POST-CONVICTION RELIEF

In consideration of the recommended disposition of this case, I, BRYAN W. ANDERSON, hereby waive and give up my right to appeal my conviction and/or sentence in this case, as well as any fines, restitution, and forfeiture orders that the Court might impose. Further, I waive and give up the right to challenge my conviction and/or sentence, any fines, restitution, forfeiture orders imposed or the manner in which my conviction and/or sentence, any fines, restitution, and forfeiture orders were determined in any post-conviction proceeding, including, but not limited to, a motion brought under 28 U.S.C. § 2255.

The defendant reserves the right to contest in an appeal or post-conviction proceeding any or all of the following:

Defendant's Initials

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- A. Any sentence imposed in excess of the applicable statutory maximum sentence(s);
- B. Any sentence imposed in excess of the guideline sentencing range determined by the Court at the time sentence is imposed; and,
- C. Ineffective assistance of counsel.


The defendant acknowledges that before giving up these rights, the defendant discussed the Federal Sentencing Guidelines and their application to the defendant's case with the defendant's attorney, who explained them to the defendant's satisfaction. The defendant further acknowledges and understands that the government retains its right to appeal where authorized by statute.

I, BRYAN W. ANDERSON, hereby place my signature on the line directly below to signify that I fully understand the foregoing paragraphs, and that I am knowingly and voluntarily entering into this waiver.


BRYAN W. ANDERSON

V. UNITED STATES SENTENCING GUIDELINES

Defendant's counsel has explained to the defendant, that in light of the United States Supreme Court's decision in United States v. Booker, the federal sentencing guidelines are advisory in nature. Sentencing is in the Court's

Defendant's Initials 

discretion and is no longer required to be within the guideline range. The defendant agrees that, pursuant to this agreement, the Court may use facts it finds by a preponderance of the evidence to reach an advisory guideline range, and defendant explicitly waives any right to have those facts found by a jury beyond a reasonable doubt.

VI. AGREEMENT NOT BINDING ON COURT

The defendant fully and completely understands and agrees that it is the Court's duty to impose sentence upon the defendant and that any sentence recommended by the government is **NOT BINDING UPON THE COURT**, and that the Court is not required to accept the government's recommendation. Further, the defendant understands that if the Court does not accept the government's recommendation, the defendant does not have the right to withdraw the guilty plea.

VII. VOIDING OF AGREEMENT

The defendant understands that should the defendant move the Court to accept the defendant's plea of guilty in accordance with, or pursuant to, the provisions of *North Carolina v. Alford*, 400 U.S. 25 (1970), or tender a plea of *nolo contendere* to the charges, this agreement will become NULL and VOID. In that event, the Government will not be bound by any of the terms, conditions, or recommendations, express or implied, which are contained herein.

Defendant's Initials BN

VIII. SUBSEQUENT CONDUCT

The defendant understands that should the defendant violate any condition of pretrial release or violate any federal, state, or local law, or should the defendant say or do something that is inconsistent with acceptance of responsibility, the United States will no longer be bound by its obligation to make the recommendations set forth in paragraph III of the Agreement, but instead, may make any recommendation deemed appropriate by the United States Attorney in her sole discretion.

IX. OTHER DISTRICTS AND JURISDICTIONS

The defendant understands and agrees that this agreement DOES NOT BIND any other United States Attorney in any other district, or any other state or local authority.

X. COLLECTION OF FINANCIAL OBLIGATION

In order to facilitate the collection of financial obligations to be imposed in connection with this prosecution, the defendant agrees to fully disclose all assets in which the defendant has any interest or over which the defendant exercises control, directly or indirectly. The defendant also will promptly submit a completed financial statement to the United States Attorney's Office, in a form that it provides and as it directs. The defendant also agrees that the defendant's financial statement

Defendant's Initials BA

and disclosures will be complete, accurate, and truthful. Finally, the defendant expressly authorizes the United States Attorney's Office to obtain a credit report on the defendant in order to evaluate the defendant's ability to satisfy any financial obligation imposed by the Court.

XI. AGREEMENT REGARDING RELEVANT CONDUCT AND RESTITUTION

As part of the defendant's plea agreement, the defendant admits to the above facts associated with the charges and relevant conduct for any other acts. The defendant understands and agrees that the relevant conduct contained in the factual basis will be used by the Court to determine the defendant's range of punishment under the advisory sentencing guidelines. The defendant admits that all of the crimes listed in the factual basis are part of the same acts, scheme, and course of conduct. This agreement is not meant, however, to prohibit the United States Probation Office or the Court from considering any other acts and factors which may constitute or relate to relevant conduct.

XII. TAX, FORFEITURE AND OTHER CIVIL/ADMINISTRATIVE PROCEEDINGS

Unless otherwise specified herein, the defendant understands and acknowledges that this agreement does not apply to or in any way limit any pending or prospective proceedings related to defendant's tax liabilities, if any, or

to any pending or prospective forfeiture or other civil or administrative proceedings.

The defendant agrees to identify all assets over which the defendant exercises or exercised control, directly or indirectly, within the past five years, or in which the defendant has or had during that time any financial interest. The defendant agrees to take all steps as requested by the Government to obtain from any other parties by any lawful means any records of assets owned at any time by the defendant. The defendant agrees to provide and/or consent to the release of the defendant's tax returns for the previous five years. The defendant agrees to forfeit to the Government all of the defendant's interests in any asset of a value of more than \$1,000 that, within the last five years, the defendant owned, or in which the defendant maintained an interest, the ownership of which the defendant fails to disclose to the United States in accordance with this agreement.

Immigration Status

Defendant recognizes that pleading guilty may have consequences with respect to his/her immigration status if he/she is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offense(s) to which defendant is pleading guilty. Removal and other immigration consequences are the subject of a separate proceeding, however, and defendant

Defendant's Initials BD

understands that no one, including any attorney or the district court, can predict to a certainty the effect of conviction on immigration status. Defendant nevertheless affirms that she wants to plead guilty regardless of any immigration consequences that plea may entail, even if the consequence is automatic removal from the United States.

XIII. DEFENDANT'S UNDERSTANDING

I have read and understand the provisions of this agreement consisting of 20 pages. I have discussed the case and my constitutional and other rights with my lawyer. I am satisfied with my lawyer's representation in this case. I understand that by pleading guilty, I will be waiving and giving up my right to continue to plead not guilty, to a trial by jury, to the assistance of counsel at that trial, to confront, cross-examine, or compel the attendance of witnesses, to present evidence in my behalf, to maintain my privilege against self-incrimination, and to the presumption of innocence. I agree to enter my plea as indicated above on the terms and conditions set forth herein.

As a further part of the provisions of this agreement, I have requested and been given assurances by the government that based on my acceptance of complete and full responsibility for committing the acts charged in the Information together with the relevant conduct associated with such charges, which involved the use of bank accounts and trading accounts that were maintained in the name of my wife

Defendant's Initials BA

and in the name of my wife and me jointly, that my wife will not be prosecuted for any actions regarding the use of those accounts as related to the charges in this case.

NO OTHER PROMISES OR REPRESENTATIONS HAVE BEEN MADE TO ME BY THE PROSECUTOR, OR BY ANYONE ELSE, NOR HAVE ANY THREATS BEEN MADE OR FORCE USED TO INDUCE ME TO PLEAD GUILTY.

I further state that I have not had any drugs, medication, or alcohol within the past 48 hours except as stated here:

N/A

I understand that this Plea Agreement will take effect and will be binding as to the Parties **only** after all necessary signatures have been affixed hereto.

I have personally and voluntarily placed my initials on every page of this Agreement and have signed the signature line below to indicate that I have read, understand, and approve all of the provisions of this Agreement, both individually and as a total binding agreement.

2/9/15
DATE


BRYAN W. ANDERSON


XV. COUNSEL'S ACKNOWLEDGMENT

I have discussed this case with my client, BRYAN W. ANDERSON, in detail and have advised my client of all of my client's rights and all possible defenses.

Defendant's Initials. BA

My client has conveyed to me that my client understands this Agreement and consents to all its terms. I believe the plea and disposition set forth herein are appropriate under the facts of this case and are in accord with my best judgment. I concur in the entry of the plea on the terms and conditions set forth herein.

2/9/15
DATE

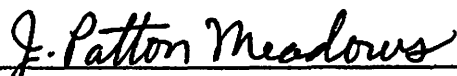


JOHN A. LENTINE, ESQ.
Defendant's Counsel

XVI. GOVERNMENT'S ACKNOWLEDGMENT

I have reviewed this matter and this Agreement and concur that the plea and disposition set forth herein are appropriate and are in the interests of justice.

2/9/15
DATE

JOYCE WHITE VANCE
United States Attorney


J. PATTON MEADOWS
Assistant United States Attorney

Defendant's Initials 

Exhibit

G

**UNITED STATES DISTRICT COURT
Northern District of Alabama**

UNITED STATES OF AMERICA

v.

Case Number 2:14-CR-421-VEH-TMP-1

BRYAN W. ANDERSON
Defendant.

**JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)**

The defendant, BRYAN W. ANDERSON, was represented by John A. Lentine.

The defendant pleaded guilty to counts 1, 2, and 3. Accordingly, the defendant is adjudged guilty of the following counts, involving the indicated offenses:


<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Count Numbers</u>
18 USC § 1343	Wire Fraud	1
18 USC § 1957	Money Laundering	2
15 USC § 77q(a)(2) and 77x	Securities Fraud	3

As pronounced on August 13, 2015, the defendant is sentenced as provided in pages 2 through 7 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$300.00, for counts 1, 2, and 3, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 14th day of August, 2015.



VIRGINIA EMERSON HOPKINS
United States District Judge

Defendant: BRYAN W. ANDERSON
Case Number: 2:14-CR-421-VEH-TMP-1

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 87 months on each of counts 1 and 2, and a term of 60 months as to count 3, separately with each count to be served concurrently .

The Court makes the following recommendations to the Bureau of Prisons: that defendant be (1) housed at the appropriate facility closest to Birmingham, AL, and (2) allowed to participate in RDAP.

The defendant shall surrender to the facility designated by the US Marshal for this district on October 19, 2015 by 12:00 NOON.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____ at _____
_____, with a certified copy of this Judgment.

United States Marshal

By

Deputy Marshal

Defendant: BRYAN W. ANDERSON
Case Number: 2:14-CR-421-VEH-TMP-1

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 36 months as to counts 1, 2, and 3, separately and concurrently. The Probation Office shall provide the defendant with a copy of the standard conditions and any special conditions of supervised release.

STANDARD CONDITIONS OF SUPERVISED RELEASE

While the defendant is on supervised release pursuant to this Judgment:

- 1) The defendant shall not commit another federal, state or local crime; specifically, the defendant shall not illegally possess a controlled substance and shall not own or possess a firearm or destructive device.
- 2) The defendant shall not leave the judicial district without permission of the Court or probation officer.
- 3) The defendant shall report to the probation officer as directed by the Court or probation officer and shall submit a truthful and complete written report within the first five (5) days of each month.
- 4) The defendant shall answer truthfully all inquiries by the probation officer, shall provide the probation officer access to requested financial information, and shall follow the instructions of the probation officer.
- 5) The defendant shall support his or her dependents and meet other family responsibilities.
- 6) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 7) The defendant shall notify the probation officer ten (10) days prior to any change in residence or employment. (On change of residence to a new jurisdiction of a person convicted either of a crime of violence or of a drug trafficking offense, the Probation Office is responsible for complying with the notice provisions of 18 U.S.C. § 4042(b).)
- 8) The defendant shall refrain from excessive use of alcohol, except that a defendant while in the Drug and Alcohol Intensive Counseling and Aftercare Service Program (DAICASP) (or comparable program in another district) shall consume no alcohol. The defendant shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances.
- 9) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 10) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 11) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 12) The defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer.
- 13) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the Court.
- 14) The defendant shall comply with any directions from the probation officer to serve notice of third party risks the defendant may pose, and shall cooperate with the officer's efforts to confirm compliance.
- 15) The defendant shall comply with the probation office's Policies and Procedures Concerning Court Ordered Financial Obligations to satisfy the balance of any monetary obligation resulting from the sentence imposed in the case. Further, the defendant shall notify the probation office of any change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine, restitution, or assessment fee. If the defendant becomes more than 60 days delinquent in payments of financial obligations, the defendant may be (a) required to attend a financial education or employment preparation program under the administrative supervision of the probation officer, (b) placed on home confinement subject to electronic monitoring for a maximum period of 90 days under the administrative supervision of the probation officer (with the defendant to pay the cost of monitoring unless the probation officer determines that the defendant does not have the ability to do so), and/or (c) placed in a community corrections center for up to 180 days under the administrative supervision of the probation officer (with the defendant to pay the cost of subsistence unless the probation officer determines that the defendant does not have the ability to do so).
- 16) Unless excused by a special condition of probation or supervised release in the Judgment or by a subsequent court order, the defendant shall comply with 18 U.S.C. § 3563 (a) (probation) or § 3583 (d) (supervised release) regarding mandatory drug testing (with the defendant to contribute to the cost of drug testing unless the probation officer determines that the defendant does not have the ability to do so). A positive urinalysis may result in the defendant's placement in the probation office's Drug and Alcohol Intensive Counseling and Aftercare Service Program (DAICASP) (or comparable program in another district) under the administrative supervision of the probation officer.

Defendant: BRYAN W. ANDERSON
Case Number: 2:14-CR-421-VEH-TMP-1

CONTINUATION OF STANDARD CONDITIONS OF SUPERVISED RELEASE

- (17) Upon imposition of the special condition by the Court or upon a court order entered during the period of probation or supervision for good cause shown, the defendant shall be placed in the Drug and Alcohol Intensive Counseling and Aftercare Service Program (DAICASP) (or comparable program in another district) based upon a history of drug or alcohol abuse, a positive urinalysis, or evidence of excessive use of alcohol. This program includes (a) testing by the probation officer or an approved vendor to detect drug or alcohol abuse; (b) a drug treatment program which includes education, individual or group counseling, or residential treatment, provided by the probation office or an approved vendor; (c) placement in a community corrections center (halfway house) for up to 270 days; and/or (d) home confinement subject to electronic monitoring for up to 180 days. Participation in the program shall be under the administrative supervision of the probation officer, and the defendant shall contribute to the costs of participation unless the probation officer determines that the defendant does not have the ability to do so.
- (18) The defendant may be placed in the probation office's computer restriction/monitoring program (or comparable program in another district) by virtue of a special condition of probation or supervised release contained in the Judgment. This program may include the following: (a) The defendant shall not possess or use any computer or portable electronic device which has the capability of communicating with any other electronic device without the prior approval of the probation officer or the Court. This includes, but is not limited to, any computer, personal digital assistant, satellite equipment, cellular telephone, or services such as computer on-line bulletin board services and/or internet service. The defendant shall notify the probation officer before altering or effecting repairs to any computer he uses. (b) The defendant shall permit the probation officer to conduct periodic, unannounced examinations of any computer and computer-related equipment the defendant uses, other than equipment owned by his/her employer that is maintained at a place of employment other than the defendant's home. The examination may include the retrieval and copying of all data from the computer, and internal or external peripheral equipment, and any software. (c) The defendant, under the administrative supervision of the probation officer, shall allow, at his expense, the installation of any hardware/software on any computer system he uses, other than equipment owned by his employer, to monitor his/her computer use (and/or to prevent access to prohibited materials), and he/she shall submit to such monitoring. The defendant shall consent to the placement of a notice on any computer upon which monitoring hardware/software is installed to warn others of the existence of the monitoring. (d) The defendant shall not use any computer or computer-related equipment owned by his/her employer except for strict benefit of his employer in the performance of his/her job-related duties. (e) The defendant shall consent to third-party disclosure to any employer or potential employer of any computer-related restrictions which have been imposed upon him/her. (f) The defendant shall provide the U.S. Probation Office with accurate information about all hardware and software which comprise any computer system he/she uses; all passwords used by the defendant, and information pertaining to all internet service providers used by the defendant, whether specifically subscribed by the defendant or not. The defendant shall provide written authorization for release of information from the defendant's internet service provider. (g) The defendant shall furnish his/her personal and business telephone records to the probation officer upon request. Furthermore, the defendant shall provide the probation officer with written authorization for release of information from the defendant's telephone service provider. (h) The defendant shall not possess or use any type of data encryption or stenography software or technique. The defendant shall not alter, delete, or hide records pertaining to computer access, retrieval, or storage.
- (19) The defendant shall cooperate in the collection of DNA under the administrative supervision of the probation officer.
- (20) If ordered to a period of supervised release after incarceration, the defendant shall report in person, within 72 hours of release from the custody of the Bureau of Prisons, to the probation office in the district where the defendant is released.
- (21) For a defendant convicted for the first time of a domestic violence crime as defined in 18 U.S.C. § 3561(b), the defendant shall attend a public, private, or private non-profit offender rehabilitation program approved by the court and under the administrative supervision of the probation office, if an approved program is available within a 50-mile radius of the defendant's legal residence.
- (22) For any defendant required to register under the Sex Offender Registration and Notification Act, the defendant shall comply with the terms of the Act under the administrative supervision of the probation officer. Specifically, the defendant, if convicted of a sexual offense as described in 18 U.S.C. § 4042(c)(4) shall report the address where the defendant will reside and any subsequent change of residence to the probation office, and shall register as a sex offender in any State where the defendant resides, is employed, carries on a vocation, or is a student.

Defendant: BRYAN W. ANDERSON
Case Number: 2:14-CR-421-VEH-TMP-1

SPECIAL CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this Judgment:

- 1) The defendant shall not incur any new debts (other than normal debts for utilities and rental expenses, or mortgage payments) or open any new lines of credit without permission of the probation officer unless the defendant is in compliance with the payment of any monetary obligations ordered.
- 2) The defendant shall participate, under the administrative supervision of the probation officer, in the Drug and Alcohol Intensive Counseling and Aftercare Service Program (DAICASP) conducted by the probation office (or a comparable program conducted in the district of supervision). (See the Standard Conditions for a brief description of possible terms of such participation.)
- 3) The defendant is prohibited from seeking or obtaining employment involving finance, investments, banking, or otherwise involves access to individuals' money, investments, securities, or bank accounts, or that places the defendant in a fiduciary role with regard to people's finances.

Defendant: BRYAN W. ANDERSON
Case Number: 2:14-CR-421-VEH-TMP-1

RESTITUTION

The court, pursuant to the Victim and Witness Restitution Act, finds that the following are victims of defendant's criminal conduct and have sustained loss in the indicated amounts and orders restitution by the defendant as follows:

<u>Name & address of payees</u>	<u>Amount</u>
S. And L. Bi	\$59,277.00 Dft received credit for this amt at sentencing
P. And L. Br	\$265,435.00
L. Bu.	\$1,079,077.69
K. C.	\$405,878.30
M. And N. C.	\$46,126.31 Dft received credit for this at sentencing
M. G.	\$619,000.00
J. And C. H.	\$295,852.00 Dft received credit for this at sentencing
D. And A. H.	\$60,068.26
F. And K. M.	\$36,190.84 Dft received credit for this at sentencing
N. M.	\$13,600.00
T. And B.A.M.	\$165,209.00
G.N.	\$17,900.00
TOTAL AMOUNT:	\$3,063,614.40

Payments of restitution WITH INTEREST are to be made to Clerk, U. S. District Court, for transfer to the payees. Restitution is due and payable immediately.

Defendant: BRYAN W. ANDERSON
Case Number: 2:14-CR-421-VEH-TMP-1

Based on FINRA arbitration settlements, the Court notes that the following victims have been paid in full for restitution purposes in this case:

S. and L. Bi. (restitution amount \$59,277.00)

M. and N.C. (restitution amount \$46,126.31)

J. and C.H. (restitution amount \$295,852.00)

and F. and K.M. (restitution amount \$36,190.84) have received settlements from arbitration, and are considered paid in full for restitution purposes in this case.

To the extent that victims settle their claims for restitution or settle their claims relating to the losses from this criminal conduct whether in mediation or arbitration, those settlements are full payment toward the restitution otherwise owed by this defendant.

Note: Each victim's recovery is limited to the amount of their loss and the defendant's liability for restitution ceases as to that victim if and when the victim receives full restitution from any source.

FORFEITURE

The defendant is ordered to forfeit the following property to the United States: \$3,063,614.40

Payments made during the term of imprisonment, the term of supervision, or otherwise, do not preclude the government from using other assets or income of the defendant to satisfy this restitution obligation.

NOTE: The Court orders criminal forfeiture, and a separate Final Order of Forfeiture will be issued. The Court strongly urges that any proceeds collected as a result of the Final Order of Forfeiture be applied toward the amount of restitution ordered in this case in accordance with the Attorney General's Guidelines and Procedures for Restoration of Forfeited Property to Crime Victims via Restitution in lieu of Remission.

Exhibit

H

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA

Government

V.

CASE NO. 2:14-cr-421-VEH-TMP

BRYAN W. ANDERSON

Defendant

TRANSCRIPT OF SENTENCING HEARING

BEFORE HONORABLE VIRGINIA EMERSON HOPKINS
UNITED STATES DISTRICT JUDGE

August 13, 2015
Birmingham, Alabama

APPEARANCES:

REPRESENTING THE GOVERNMENT: J. Patton Meadows, Esquire
U.S. Attorney's Office
1801 4th Avenue North
Birmingham, AL 35203

REPRESENTING THE DEFENDANT: John A. Lentine, Esquire
Christopher Daniel, Esquire
Sheffield & Lentine PC
205 North 20th Street, Suite 323
Birmingham, AL 35203

ALSO PRESENT: Bryan W. Anderson, Defendant
Mary Bennett, USPO
Julie Krueger, USPO
Mike Marquet, FBI
David Strubinger, FBI

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1 (August 13, 2015, 1:35 p.m.)

2 THE COURT: Good afternoon.

3 MR. LENTINE: Good afternoon.

4 MR. MEADOWS: Good afternoon.

5 THE COURT: The matter before the court is the case
6 of the United States of America versus Bryan W. Anderson, Case
7 Number 14-421. This is a sentencing hearing. Which one of
8 counsel is going to speak for the defendant?

9 MR. LENTINE: I will be, Your Honor.

10 THE COURT: All right, Mr. Lentine. Mr. Lentine,
11 have you and your client had 35 days in which to review the
12 presentence report?

13 MR. LENTINE: Yes, Your Honor, we have.

14 THE COURT: And I noted that you did file objections.

15 MR. LENTINE: Yes, Your Honor.

16 THE COURT: So we'll take up those objections. Thank
17 you. I'll take them up after I go over this issue with your
18 client.

19 Mr. Anderson, have you read and discussed the presentence
20 investigation report and any addendum or revision to it with
21 your attorneys?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: I have taken to asking this of all
24 defendants at sentencing hearings. What is your highest level
25 of education?

1 THE DEFENDANT: Some college.

2 THE COURT: Can you read, write and understand the
3 English language?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: Any facts that are set out in the
6 presentence investigation report that are not objected to
7 before your sentence is imposed are considered to have been
8 proven for purposes of determining an appropriate sentence in
9 this case. Do you have any objections that were not made by
10 your attorneys to the contents of the presentence investigation
11 report?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: As we are now in a nonmandatory
14 sentencings guideline era and have been since the 2005 decision
15 of the Supreme Court in *United States versus Booker*, I rely on
16 the Supreme Court's explanation in *Koon versus United States* of
17 the role of the sentencing judge in such an era vis-a-vis the
18 value of the sentencing guidelines.

19 As stated in *Koon*, the goal of the sentencing guidelines
20 is to reduce unjustified sentencing disparities and so reach
21 toward the evenhandedness and neutrality that are the
22 distinguishing marks of any principled system of justice. In
23 this regard, the guidelines provide uniformity, predictability
24 and a degree of detachment. However, as *Koon* also pointed out,
25 it must be remembered that it has been constant in the federal

1 judicial tradition for the sentencing judge to consider every
2 defendant as an individual and every crime as a unique study in
3 the human failings that sometimes mitigate and sometimes
4 enhance the crime and the punishment to ensue.

5 I note that in the defendant's plea agreement, he waived
6 any right he may have for a jury determination of the facts of
7 this case and he admitted certain facts that bear upon the
8 computation of his offense level under the guidelines.

9 I will now turn to the defendant's objections. The
10 government did not file any objections. They did, however,
11 respond to the defendant's objections.

12 I'm first going to see whether or not the defendant agrees
13 with those objections that probation believes have been
14 resolved -- that they, in fact, are resolved. So the first
15 objection was to the offense conduct as set out in paragraph 8
16 of the presentence report. And in that first objection, the
17 defendant says he was no longer a registered broker with FINRA
18 on or about September 13th, 2012, as opposed to the date of May
19 29th, 2014, which is what was stated in the presentence report.

20 In response, the probation officer amended the presentence
21 report to reflect that the defendant's license to sell and
22 exchange securities in Alabama was termed on October 4th, 2012,
23 and that this terming of his license meant he had no license,
24 but he was not barred from reapplying for such a license. Is
25 that -- have we resolved the first objection, Mr. Lentine?

1 MR. LENTINE: Your Honor, I believe we have, other
2 than to add that there was no reapplication for a license after
3 that that I know of, so I think that would resolve it if the
4 probation office is in agreement with that and the government
5 is in agreement with that.

6 THE COURT: Well, does the government believe or
7 probation believe that there was a reapplication or an
8 application -- yes, a reapplication?

9 MR. MEADOWS: No, Your Honor.

10 THE COURT: So was that an acceptable addition to the
11 presentence report?

12 MR. MEADOWS: Yes, Your Honor.

13 THE COURT: All right. So we will add to
14 paragraph 8, as amended, at the very end, "Anderson did not
15 reapply for a license."

16 Now, the second objection was to the offense level
17 computation. I can either read the defendant's objection, or I
18 can read the probation officer's summary of that objection. I
19 think what I'll do is I'll read the probation officer's summary
20 of that objection. And then to the extent that Mr. Lentine
21 thinks that I have -- he would like to express it differently,
22 I'll let him do that.

23 All right. As set out in the addendum to the presentence
24 report regarding this objection to the offense level
25 computations in paragraph 34, probation explains that the

1 objection is based on an argument that the advisory guideline
2 calculations place an undue emphasis on loss and trigger an
3 unfair layering of enhancements. And the defendant points out
4 that the loss was driven by market fluctuations and was
5 accidental due to a downturn in the financial market.

6 The defendant also states that the loss amounts as
7 reflected in the report are not accurate because, due to civil
8 litigation, many of the victims have received settlements and
9 their losses have been recovered. Also, as part of this
10 objection, the defendant objects to the two-level enhancement
11 applied pursuant to U.S. Sentencing Guideline 2B1.1(2) (A) (i)
12 because two of the victims have indicated that they do not wish
13 to be included or identified as victims in this case.

14 In the last part of the defendant's objection, he objects
15 to the four-level enhancement that was applied pursuant to
16 2B1.1(b) (19) (A) (ii) for being a registered broker or dealer.
17 The defendant concedes that he was a registered broker for at
18 least a portion of the time of the offense conduct.
19 Consequently, he believes he should only receive half of this
20 enhancement.

21 Do you want me to go ahead and read the response by the
22 probation office and by the government, or do you want to talk
23 to me about this before I read that?

24 MR. LENTINE: No, Your Honor. There is no -- I have
25 read it. Mr. Anderson has read it. There's no reason for the

1 court to go ahead and read the response. If the court wishes
2 me to just reply briefly, I will.

3 THE COURT: All right.

4 MR. LENTINE: While these are objections, they do
5 fall more, I think, under the court's overall view of 3553(e)
6 in consideration under the guidelines. Many of the -- many
7 other courts or several other courts have noted that the loss
8 issues involved in certain cases can create an unreasonable or
9 irrational or inordinate emphasis on intended loss amounts or
10 actual -- versus actual loss amounts.

11 In this situation, what we were trying to express, maybe
12 not as articulately as possible, was that the guidelines look
13 to the loss at the time, as was pointed out by the probation
14 office, not at the time that we reach sentencing. As I pointed
15 out, that the loss amount at the time these offenses occurred
16 and at the time the guidelines were considered do not take into
17 consideration repayment, nor the fact that by the time we get
18 to actual sentencing, that loss amount could be significantly
19 reduced. And if that loss amount was considered, then the
20 guidelines would reflect a lesser amount.

21 But the objection is more along the lines of the fact that
22 the failure of the guidelines to adequately take that into
23 consideration mean that the loss that has occurred, regardless
24 of whether there's been repayment, or that the loss that
25 occurred reflects the loss that exists, since it doesn't -- the

1 guidelines don't provide for that, that the guidelines in that
2 way do not correctly reflect what should be a reasonable
3 sentence in that particular situation.

4 And also, if I could clarify that objection, too. The
5 initial loss dealt with investments. I'm not saying that other
6 losses that occurred during the conduct were not the product --
7 all the product of a financial fall or financial tradings that
8 didn't work. Much of those losses occurred during the criminal
9 conduct that Mr. Anderson did when he lied to his investors
10 about what the money was being used for.

11 So the initial loss of money was in the trading aspect of
12 it. But other losses were incurred as investors gave money
13 that was not all invested. So that was that argument as toward
14 that particular aspect of it.

15 While the decision of two people to say that they don't
16 wish to be considered victims, while that still does not have a
17 major effect, in my view, on the guideline application because
18 of -- still the number amount allows for that particular
19 enhancement, the loss of two people I think does not have a
20 major effect on that.

21 And the last part of the broker not being a broker at a
22 certain point in time, the guidelines don't really deal with
23 that situation at all. It just says broker, and it
24 contemplates, I believe, somebody being a broker during the
25 entire time period. Therefore, the guidelines don't adequately

1 consider when someone is no longer either licensed to do it and
2 has not reapplied for it, but actions take place when they're
3 no longer a broker as defined in the guidelines.

4 So while those objections are objections, I think they
5 might be, since they're not adequately considered by the
6 guidelines, I think the court can still make that calculation
7 and consider these arguments more for a 3553(e) -- a 3553(a)
8 issue in regard to what a reasonable sentence is. Thank you,
9 Your Honor.

10 THE COURT: All right. Given that explanation,
11 Mr. Meadows, is there something you would like to say? Because
12 right now, I'm dealing with objections.

13 MR. MEADOWS: Ma'am? I'm sorry.

14 THE COURT: I'm still calculating the guidelines.

15 MR. MEADOWS: Yes, Your Honor.

16 THE COURT: And so therefore, I am dealing with
17 matters that do fall within the guidelines.

18 MR. MEADOWS: We tried to address these issues in our
19 response to his objections. And we believe that the loss is
20 correctly set out in the presentence report by the U.S.
21 Probation Office as being north of \$3 million: \$3,063,614.40.
22 And we believe that the evidence showed that the defendant in
23 this case did intend to do all of those acts which ultimately
24 resulted in the loss of that amount by the victims and that
25 that was stipulated to as part of the facts in the plea

1 agreement which he's bound by.

2 There's a difference, of course, in the restitution. And
3 while we have submitted to the court that the court should
4 order the full restitution, even against the two victims who
5 said they did not want to be considered for restitution
6 purposes, we cited a case that actually says victims may not
7 veto the court's ability to -- and the obligation of the
8 district court to impose orders of restitution, there will
9 certainly be some credit for restitution that has been paid or
10 that will be paid in the future due to ongoing mediation
11 involving FINRA claims.

12 But we believe the guidelines do correctly set out
13 different categories depending on the loss and that those are
14 adequately provided for in the guidelines and that the
15 probation office has correctly followed that in trying to
16 calculate correctly for the court the guidelines in this case.
17 And we also believe that the four levels should apply because
18 what is described in the information in this case is a scheme
19 that covered a number of years. And certainly, on the front
20 end of that scheme and for at least half of that scheme period,
21 he was a registered broker, and the people who dealt with him,
22 including Mr. Craig, who was the individual that lost the money
23 that is set out in Count 1, had been dealing with him for years
24 when he was a broker. And, of course, then it later turned out
25 he was termed, as that term has been used before the court this

1 morning, at a point in time. But we say that that does not
2 diminish the fact that he was a broker for the purposes of the
3 scheme and that the court should consider the four-level
4 enhancement.

5 THE COURT: I don't think you mean consider. I think
6 you mean apply.

7 MR. MEADOWS: Yes, Your Honor, apply.

8 THE COURT: Okay. As I understand the defendant's
9 argument here in court is because -- this is how I understand
10 your argument, and I'm simply stating it so that you give me an
11 opportunity to correct my understanding if I have misunderstood
12 it -- is that the guidelines computations as to this issue are
13 correct. However, they reach to issues that are not addressed
14 by the guidelines and therefore should be looked at by the
15 court in terms of a variance at sentencing.

16 MR. LENTINE: Yes, Your Honor. I believe that's
17 probably the proper legal way to review it, yes.

18 THE COURT: Well, then, because I'm determining
19 simply the guidelines at this stage, I overrule the objections.
20 That does not mean that these issues are waived for purposes of
21 what is a reasonable sentence.

22 Well, your third objection just flows from your prior
23 objection so -- which is to paragraph 43 that based on the
24 objections that we've just gone through, the offense level
25 should have been lower. So I am going to overrule that

1 objection consistent with my prior ruling. That's your third
2 objection, the one to paragraph 43. The probation officer says
3 your objections number 4 and number 6, part B, which relate to
4 paragraphs 45, 46 and 60, in probation's opinion don't seem to
5 be objections.

6 MR. LENTINE: No, Your Honor, they're not. In fact,
7 there really isn't any other specific objection as to the
8 guideline calculations made by the defense other than those
9 that the court has previously addressed.

10 THE COURT: All right. Then to the extent that they
11 were set out in a document that is entitled, "Objection," I
12 will overrule them because they're not, in fact, objections,
13 but I will consider them for purposes of any argument relating
14 to what's a reasonable sentence.

15 MR. LENTINE: Yes, Your Honor. And the title of
16 my -- as I generally file -- it's "Objections and Supplements."
17 So certain things are more supplement factually, but I just
18 wanted to let the court know those were the things.

19 THE COURT: All right. And it's not a criticism, but
20 I have to be super careful and assume things are objections
21 rather than assume they're not as opposed to overlooking an
22 objection that was raised. But with that clarification, there
23 being no unresolved objections that are, in fact, objections,
24 the court finds that the factual statements contained in the --
25 adopts the factual statements contained in the presentence

1 report and makes specific findings that the guidelines offense
2 level is 29, the criminal history category is I and the
3 advisory guideline imprisonment range is from 87 months to 108
4 months. Further, the supervised release period is from one
5 year to three years. And the fine range is from \$15,000 to
6 \$736,000. Restitution is an issue in this case.

7 And we have now reached the stage of allocution. And I
8 understand that there are some -- I don't know if, Mr. Lentine,
9 you have any people who you would like to speak. But
10 certainly, I would like to hear from you or cocounsel in
11 mitigation before I pronounce sentence, and then I would like
12 to hear from your client if he chooses to speak to me.

13 MR. LENTINE: Your Honor, I will be speaking on
14 behalf of Mr. Anderson. And Mr. Anderson is prepared to speak
15 to the court also. Would the court like us to come to the --

16 THE COURT: Yes, I think that probably is a better
17 place --

18 MR. LENTINE: Yes, Your Honor.

19 THE COURT: -- in terms of microphones.

20 MR. LENTINE: May it please the court. Your Honor,
21 for the first time when I met Mr. Anderson, he had basically
22 acknowledged he had three goals that he wanted to accomplish
23 with what he had done. The first was to acknowledge his
24 wrongdoing. The second was to accept responsibility for it.
25 And the third, to make whole those people who he had damaged.

1 The court now has to consider obviously what is an
2 appropriate but not greater than sufficient sentence to punish
3 Mr. Anderson. We can go over the facts of this case, and it
4 would take us almost as long as a trial, but if I could surmise
5 it in this way or summarize it in this way, I would say this:
6 Mr. Anderson is 40 years old. For 36, 36 1/2 years of his
7 life, he had never committed a crime, never hurt another
8 individual.

9 When this scheme, for the lack of a better word as the
10 government is going to call it, started, Mr. Anderson had been
11 quite successful in his field. All the assets that he had
12 acquired was from his work, his own work, not from any money
13 that was taken from these other individuals.

14 He did not go out and buy a new home. He did not go out
15 and buy jet skis. He did not travel across the country or
16 across the world as the court has seen with other individuals
17 who have started schemes solely to become, I think the court
18 had put it, robber barons. That was not what he started to do.

19 What he did was to take money and investments and trade
20 them in risky situations and lost people's money. That was bad
21 enough. But what made it worse was the fact that, as he will
22 acknowledge, rather than tell his investors at the time what he
23 had done and try to repay it then, he continued to take money
24 to use from other investors, some of which he invested, the
25 majority of which were being used not only to support his

1 family, but to pay back other investors.

2 Basically, he lied. And he told people that he lied. We
3 have tape recordings of where people had tape recorded him
4 where he told them that he had lost the money that he was going
5 to repay them. Obviously, that didn't happen. At least it
6 didn't happen where everybody was repaid back their full
7 amounts quickly. What he did do was cash in his 401(k) and use
8 what assets he had to pay as best he could. Unfortunately, he
9 chose to continue to do this until this ended, I believe,
10 around January of 2014.

11 Luckily, most of these people have been repaid through
12 settlements through civil litigation. Not all of them and not
13 all the entire amounts, but a significant amount.

14 In fact, if the court looks at the government's memorandum
15 that was filed, it was filed under seal, called the supplement
16 to government's response to defendant's objections, of those
17 individuals that are listed on page 2 -- one, two, three, four
18 five, six -- six of those individuals have either been paid
19 back through settlements through civil litigation and are --
20 the amounts remaining are roughly at this point about a million
21 two hundred and fifty thousand, a million three hundred
22 thousand that is left over.

23 Some of these folks have not been totally paid yet.
24 They've received settlements. But if the court would look on
25 that amounts paid back where the amounts that were paid back

1 by -- through Mr. Anderson during the time period before the
2 civil litigation and mediation took place, so what was left
3 over was what was being paid back at this time.

4 So while the court -- and while the defense does not
5 object in any way, shape or form to the restitution amount as
6 listed of \$3,063,614.40, the actual amounts that are really
7 outstanding are somewhere around one million two hundred and
8 fifty to one million three hundred thousand dollars. And I
9 give that amount because I'm taking off the Browns who are
10 listed at two hundred sixty-five thousand four hundred and
11 eighty-five thousand (sic) who I do not believe will make a
12 claim for that restitution amount.

13 The reason I bring that up is this. Generally, as the
14 court has seen in fraud cases or these kind of cases, it's done
15 with the sole intent to take money and to use that money
16 personally and not pay any of it back at any time, at any
17 place, in any manner. It is done sheerly out of greed. And
18 that was not how this started. This did not start out of that,
19 because this man did not live in luxury, nor is he in luxury at
20 this time. Everything he has financially is gone. And he has
21 made efforts to repay those that he has wronged. And he wishes
22 to continue to do that regardless of what the court does in
23 regard to what the court determines is a reasonable sentence in
24 this case.

25 So here we have a 40-year-old man with no prior criminal

1 history who was a successful businessman prior to this and has
2 lost everything and has hurt people and acknowledges that he
3 has. And he is trying and has been trying to make repayment
4 for what he has done.

5 I think the big question for the court is is sending him
6 to prison the way to give these people the reparations they are
7 due and repayment they are due, and is this a sufficient way to
8 punish? You know, the court can consider all the different
9 aspects of 3553(a). I don't think there is an issue of
10 recidivism. He's never been criminal before. He'll never work
11 in this industry again. He's not in need of vocational
12 training or that kind of an issue, although at the proper time
13 I will ask the court to recommend the RDAP program because of
14 alcoholic issues that he had during this time and up to now.

15 But we're dealing with a situation where I think that if
16 we're talking about specific deterrence, it's done. I mean, he
17 is never going to do this kind of thing again. He's not going
18 to be back before this court. Quite frankly, if he had made
19 and paid back -- if he had made money and paid back all the
20 investors, we wouldn't be here. None of us would be here. But
21 he chose to do it this way, and he is here to pay the
22 consequences for that.

23 But the consequences should be what's reasonable, what's
24 sufficient in punishment, not the fact that every fraud is the
25 same or every case demands the maximum. It doesn't. If that

1 was true, our prisons would be overflowing with people. And
2 that's why the court, in my time before the court, has always
3 looked at an individual to determine not only the nature and
4 offense conduct, but that individual in deciding what is an
5 appropriate sentence.

6 I think probably the most important thing that can be
7 talked about here is the need for the victims in this case to
8 be made whole. And he has demonstrated that he has tried to do
9 that. Several of those who have suffered have been made whole
10 or are close to being made whole, and several of those who
11 still have outstanding money that's owed to them still have
12 been a part of the mediation and I believe are going to be
13 going forward in arbitration.

14 So regardless of whether the money comes from him, as he
15 will continue to pay as he is required to do, but the only
16 thing that really matters is repayment -- punishment and
17 repayment, because that's really what we're talking about.
18 Repayment cannot happen with somebody in a jail cell. It just
19 doesn't happen.

20 Obviously, his ability to pay, as he would have been years
21 ago, is much different because he will not have the same kind
22 of employment, because once a person is a felon, everything
23 changes for them. It's no longer being able to work in
24 positions that they used to have because once that brand is on
25 you, it never goes away, but that doesn't relieve anybody from

1 their responsibilities as he does not wish to be relieved from
2 his responsibilities.

3 The court has had before you before someone who stole
4 millions, who went in with a scheme specifically to rob, who
5 made no payment back and never showed any remorse for their
6 actions. And I know the court looks to other cases such as
7 that in deciding what is a reasonable and sufficient sentence.
8 If memory serves in that particular case, the court imposed a
9 71 month sentence, which in my calculations is roughly 5.9
10 years. That was a individual who stole millions with the idea
11 of just to steal just for gain, just to buy things and to own
12 things and to travel and to flaunt it.

13 That isn't this man. This man has made every effort and
14 continues to make the effort to repay. He did not go in with
15 the idea to steal and to buy a new house or anything of that
16 nature. Everything that he had that the government had noted,
17 like a house and a lake house, that was all money and things
18 that he paid for prior to any of this happening.

19 But I can understand how people sitting behind me feel
20 betrayed, and that's a powerful emotion. And that leads people
21 to want the worst for others because of that hurt. But the big
22 hope for everybody is that hopefully repayment will in some way
23 ease some of that suffering that they've had. But it will not
24 ease anybody's suffering that this man goes to prison for seven
25 to eight to nine years. It's not a sentence that I believe

1 would be reasonable -- or I believe would be greater than
2 sufficient. I think a sentence -- I had asked the court to
3 consider two possibilities. One, five years probation, or the
4 other, an incarceration term of somewhere between 36 months to
5 60 months, three to five years. I believe that range is
6 sufficient given these circumstances.

7 This is not a case that this man came in solely for greed.
8 He made terrible choices. He continued to make terrible
9 choices, and he harmed people. Now, his job is to accept the
10 consequences of his actions and to repay. And he can best do
11 that not by languishing in prison for seven, eight, nine years,
12 but to do that in a way where he, if the court deems it
13 necessary that he receive custodial incarceration, that when he
14 comes out he can prove what he has said about what he wishes to
15 do in repaying the people that he's hurt.

16 Your Honor, I don't think any individual should be
17 considered by the worst thing that they have ever done in their
18 life. For 36 years, this man had never hurt another
19 individual. He hurt people now, and he should pay for that,
20 and he's going to pay for that. The question is: What is
21 reasonable in doing that? And I think a sentence between 36
22 months to 60 months is reasonable. It is punishment that
23 allows him the opportunity when he finishes it to be on -- I
24 would request the court give him the maximum amount of
25 supervised release in order to make sure that restitution is

1 repaid, but to prove to the court that he's better than what he
2 did.

3 Your Honor, Mr. Anderson wishes to address the court, and
4 if the court would allow him to turn to address the people
5 behind him.

6 THE COURT: All right.

7 THE DEFENDANT: Thank you. Your Honor, I would like
8 to start by apologizing to the people who I've hurt because of
9 my actions. I apologize to each and every one of you for what
10 I have done and for what you have had to go through because of
11 it. There is not a day that goes by that I don't think about
12 the pain I have caused each of you. All of you are good
13 people, and all I want to do is make things right and get your
14 money back to you.

15 I made terrible choices. And instead of being a stand-up
16 person, I am admitting what I had done was wrong. I chose to
17 continue to make terrible decisions and choices that made
18 matters worse for everyone. I tried to justify my actions by
19 my hope that I could make the money back and repay all of you.

20 I know my apology is little consolation for the pain I
21 have caused each of you, and I swear I'll repay what I owe in
22 the hope that it will make all of you whole. I am sorry to you
23 for what I have done.

24 Your Honor, I spent my life working hard to provide for my
25 family. I did well at my job, had respect for my peers and was

1 able to provide for my family better than I ever could have
2 imagined. By making these terrible decisions and choices that
3 I did, it has cost me everything. I have lost my career, home,
4 friends and all the things I worked so hard to accumulate. And
5 because of my actions, I hurt families like my own.

6 My actions have affected my family as well. I have hurt
7 my family who have lost friends. My children have had to
8 change schools. And my entire family must live under a cloud
9 of what I've done. They deserve better, as do the victims. I
10 will have to reearn my family's respect and trust going
11 forward. They have stood by me because they know the person
12 who made these bad decisions is not who I am.

13 I have always taught my children to be honest, trustworthy
14 and true to themselves. It was extremely hard to look myself
15 in the mirror after punishing my eight year old for lying and
16 then later having to explain to him that I have lied and hurt
17 so many people because of those lies. I have always taught my
18 children when you make a mistake, you own up to it immediately
19 and not cover it up, because it will only make things worse. I
20 did not listen to my own teachings and became a real life
21 example of exactly what I shouldn't have done.

22 Telling my children what I have done, the terrible
23 decisions and choices I have made and the people and their
24 families I have hurt was one of the hardest things I have ever
25 done. Now my children will suffer for what I have done, and I

1 will have to live with that. The last thing I wanted to do in
2 my life was let my family and the victims, many of whom I
3 considered friends, down. I will spend the rest of my days on
4 this earth trying to make that up to my family and the people I
5 have hurt. Thank you, Your Honor.

6 MR. LENTINE: Your Honor, the only last thing I would
7 say is I'm not going to go back over those issues in the
8 guidelines that I didn't think were adequately considered, but
9 I think as the court and the arguments that I have made in
10 regard to repayment, in regard to the other arguments I've
11 made, showed that the guidelines don't look forward. They look
12 only to what happened at a particular time and don't see any
13 variance in that things can change over time, such as repayment
14 or such as issues that the guidelines just don't consider. And
15 that's why we have the court who can look at everything and
16 determine what is a sufficient and reasonable sentence. And I
17 do believe a sentence, as I have requested, if it's going to be
18 custodial, between 36 months and 60 months is a reasonable one.
19 Thank you, Your Honor.

20 THE COURT: Thank you.

21 MR. LENTINE: Do you wish us to sit, Your Honor?

22 THE COURT: Yes. I think the government probably is
23 going to want to come to that table. Would the government like
24 to speak?

25 MR. MEADOWS: Yes, Your Honor. And did you want to

1 hear from the government before you did the victims that wanted
2 to address the court?

3 THE COURT: You can do whatever order you prefer.

4 MR. MEADOWS: I'll go ahead and speak.

5 THE COURT: All right.

6 MR. MEADOWS: Your Honor, we can hope that the
7 defendant in this case is sincere in the things he just said to
8 the court and just told the victims. But regardless of that,
9 it was a bad serious scheme that he participated in for years.
10 And in one of the pleadings that was filed with the court,
11 there was an effort to try to describe that as an aberration.
12 And yet, it turned out if you add up the years, that he had
13 spent about 25 percent of his adult working life engaged in
14 this fraud scheme -- in this Ponzi scheme. And that's exactly
15 what it is. He lied and lied and lied.

16 And the court has the letters from all the victims who
17 wanted to write a letter to the court describing how his lying
18 and his taking their money had devastated them. He had taken
19 from the elderly. He took from young married couples trying to
20 make money to put away for college educations. He devastated
21 retirement plans. The consequences of his crimes are enormous.
22 And they can't just be taken away by coming here and saying
23 he's sorry. That's a first start, but that does not assuage
24 the terrible hurt, the terrible crime that he has committed
25 against these people and against the United States.

1 He did act out of greed. The reports show that his home
2 was valued at \$600,000. He had a very expensive five hundred
3 and something thousand dollar lake home. He had a timeshare
4 resort in Las Vegas. I believe those are items of -- signs of
5 wealth. And he was able to maintain that lifestyle by
6 committing the fraud. And how else would he have been able to
7 maintain that lifestyle without the fraud?

8 Most of the persons he said had been repaid. And this is
9 a point that needs -- we need to pause just a minute about
10 this. He has not repaid a single person. Insurance companies
11 are having to make those payments. And those insurance
12 companies are having to spend their money that they didn't
13 expect to have to spend on something like this to try to make
14 some of the victims whole or relatively whole. And that causes
15 all of us to have to pay more for insurance. When they have to
16 pay hundreds of thousands of dollars out -- and thank goodness
17 that they exist. Most Ponzi schemes do not have a backdrop
18 where FINRA mediation and arbitration are possibilities. But
19 he has not paid a dime of that money. Insurance companies
20 have.

21 THE COURT: So when it was said that he cashed out
22 his 401(k), he was cashing out his 401(k) to continue to cover
23 up the scheme?

24 MR. MEADOWS: That's my understanding, Your Honor. I
25 don't know of him taking 401(k) proceeds and paying that money

1 to the victims after the scheme was discovered and he was
2 confronted with it. He continued to lie to the victims time
3 after time. And they gave him an opportunity to tell the truth
4 time after time. And he continued writing these little
5 promissory notes that looked official. He continued assuring
6 them their investments were safe. And all along, you could
7 look at those financial records, that money would come into one
8 account and go right out the next minute to another account he
9 controlled. It never did purchase investments like he said it
10 would. Only a very infinitesimally small amount of any of the
11 amount of the money ever given by the victims went for these
12 type of investments that he had described. And he was in a
13 much more sophisticated position in trying to describe it, and
14 they relied on him. He was a confidence man, just like you
15 would expect in a Ponzi scheme.

16 I wanted to say too that he will get credit, I'm sure, for
17 the restitution that is being ultimately paid by these
18 insurance companies. But it's not unusual, you know, sometimes
19 for parents to come in and pay down money that their child may
20 owe or a family member and sometimes an employer will even do
21 it. And it counts for their restitution. But it's different,
22 in my opinion, from them being able to do it. He's not able to
23 do it. He spent all that money doing what he wanted to do and
24 taking very risky chances with the money he did invest.

25 We have recommended to the court the low end of the

1 guideline range. And we did that based on the dollars. And I
2 know that sometimes the guidelines may seem to be rigid and
3 inflexible and that the court does have 3553(a) options and
4 consideration of those factors which it must determine, but we
5 feel like in this case that the low end of the guidelines is an
6 appropriate sentence because he did come in at a relatively
7 early stage in the -- after he had been discovered, after he
8 had gotten an attorney, Mr. Lentine, and did cooperate and tell
9 what he did, and I think that does need to be considered.

10 I don't doubt that he would like to see all of these
11 victims restored. And hopefully, most of them can receive
12 something. But not all of them will, Your Honor, not all of
13 them are probably going to get anything. And some of them do
14 want to talk to you.

15 But I don't think three to five years would be a
16 sufficient sentence like has been suggested to correct this.
17 This scheme went on for that long. And he kept adding more
18 people along the way to it. I think Ms. Burton was one that
19 was added relatively late in the scheme. And she is a more
20 elderly person. And he had lied to her son and tried to be
21 friends with him, along with Mr. Derek Weaver who I think wrote
22 a letter to the court. But it's just been devastating to them.

23 We would ask the court to consider everything that's in
24 the presentence report and consider what the victims have had
25 to say to the court in the letters. And there are three

1 victims that would like to briefly address the court at this
2 time.

3 THE COURT: All right.

4 MR. MEADOWS: Ms. Alicia Huey would be the first one.

5 THE COURT: Hi, Ms. Huey.

6 MS. ALICIA HUEY: Good afternoon, Your Honor.

7 THE COURT: The way we're going to do this is I need
8 you to just first tell me your name and then spell it so that
9 the record is accurate, and then you can just say whatever you
10 want to say to me.

11 MS. ALICIA HUEY: Thank you. It's Alicia Huey,
12 A-L-I-C-I-A, H-U-E-Y.

13 THE COURT: Thank you.

14 MS. ALICIA HUEY: Thank you for allowing me to speak
15 to you today, Your Honor. I was told during the investigation
16 that it was amazing how much disposable income people had. The
17 money that Bryan Anderson stole from us was not disposable
18 income. This was our hard-earned money that we were going to
19 use to retire that we entrusted to him, money we were going to
20 use to enjoy our grandchildren, family and the securities of
21 life.

22 We took a trip with the kids and grandkids, 14 of us, in
23 2013. The grandchildren still talk about watching their
24 grandpa get on this huge slide and a lifeguard coming to rescue
25 him when he got to the bottom. There were so many great

1 memories of that trip that we planned another one for 2014. We
2 had to cancel that trip because of what Bryan Anderson did to
3 us, stealing all of our money. The grandchildren were
4 devastated that they could not vacation again with their
5 cousins and grandfather.

6 Bryan Anderson turned our life upside down. Our security
7 blanket was shredded. We have called -- had called a real
8 estate agent to list our house because we can no longer afford
9 to live there because we have no retirement. We have a lake
10 house we also had to put on the market.

11 Your Honor, my husband just turned 74 years old. He
12 wanted to spend more time with his friends and his family, not
13 spend more time at the office working all day long. Statistics
14 show that most married couples fight about money. Bryan
15 Anderson's actions has put a huge stress on our marriage. We
16 think about every single penny we spend and wonder how we're
17 ever going to save any money again.

18 When someone like Bryan steals from you, they don't just
19 take your money, they take your pride and your comfort, your
20 security and your memories of what should have been. You're
21 embarrassed that you could be so stupid to do something like
22 this, trusting someone with your money, them telling you all
23 day long, day in and day out, they've invested it and how well
24 it's doing, only to find out that they've stolen it from you.

25 Bryan took family vacations and enjoyed the high life. He

1 even asked me to remodel his lake house to the tune of \$150,000
2 so that it would sleep 17. I realize that he's paid me with
3 the money from the people that are sitting behind me.

4 Luke, Chapter 12, Verse 48, says, "To whom much is given,
5 much is expected." Don and I have both been generous in our
6 lives with charity, our church, and we've given to many
7 wonderful organizations and helped friends when they needed it.
8 We committed to the building fund at our church, which we no
9 longer can fulfill that commitment now.

10 I told my dad on his deathbed that I would take care of my
11 mother the rest of her life. I help her every month, and I
12 can't afford to do that anymore. I also can't bear to tell my
13 mother what's happened. She was always so proud and supporting
14 of me; and to tell her what I've done is something that I can't
15 bear, nor can I put her under that stress.

16 I've helped my brother. I've sent my nephews to school.
17 I paid my sister's power bill when she couldn't. These are all
18 things that I can't do anymore because Bryan Anderson has been
19 a thief. This year I was put on [REDACTED]
20 [REDACTED]. I've never had any health issues before. But the
21 stress of this situation is to blame.

22 Bryan Anderson came to our lives -- came into our lives,
23 befriended us and took all of our savings. He sent me flowers
24 every year on my birthday, came to parties at our house, would
25 stop by my husband's office and have a peanut butter sandwich

1 with him, developing such a rapport with us and gaining our
2 confidence with his knowledge and talk of the stock market and
3 how well our investments were doing.

4 Your Honor, I had a good friend one time that told me that
5 my husband is the most generous man he'd ever met. If Bryan
6 Anderson had ever come to Don and said, "I need to borrow some
7 money," I guarantee you he would have given it to him. I ask
8 that you consider the effects on our life, our family and our
9 health in your sentencing, and I would ask that you consider a
10 heavier sentence for this man. Thank you for allowing me to
11 speak today.

12 THE COURT: Yes, ma'am.

13 MR. MEADOWS: The next witness, Your Honor, that
14 would like to address the court is Bryan Messina.

15 MR. NORMAN MESSINA: Norman.

16 MR. MEADOWS: Norman Messina.

17 MR. NORMAN MESSINA: And my wife, Gaethea.

18 MS. GAETHEA MESSINA: I'm Gaethea.

19 MR. NORMAN MESSINA: My wife.

20 MR. MEADOWS: And Gaethea.

21 MR. NORMAN MESSINA: Yes. Thank you, sir.

22 MS. GAETHEA MESSINA: Thank you, Your Honor, for
23 having me come up here.

24 THE COURT: Yes, ma'am. Could you first start with
25 just your name and spelling it?

1 MS. GAETHEA MESSINA: Yes. My name is Gaethea
2 Messina. That's G-A-E-T-H-E-A. Messina, M-E-S-S-I-N-A.

3 THE COURT: Thank you.

4 MS. GAETHEA MESSINA: Thank you, Your Honor. And I
5 have written you a letter, but I'm going to address this to
6 Bryan, if I may?

7 THE COURT: All right.

8 MS. GAETHEA MESSINA: Bryan, we trusted and welcomed
9 you into our home with options that you would lead us to a
10 retirement plan. We moved all of our retirement and other
11 moneys that we had in savings to a Prudential account where you
12 were employed at the time. Mr. Messina and I trusted you as a
13 son, and I felt you were a genuine, sincere person. How wrong
14 were we.

15 Now my husband and I are 70 and 71 years old, had to take
16 out loans to help our sons to keep their homes and children in
17 school. We no longer have the option to retire, and this has
18 affected our entire family.

19 We were looking forward to retirement, but now we are
20 trying to do everything we can to keep our family together and
21 afloat. What you have done to our family and many of the
22 families in this courtroom is unbelievable. And one day,
23 Bryan, whether you believe or not, you will be standing in
24 front of the ultimate judge, our Heavenly Father.

25 I still pray for you, Bryan, and I pray for your soul and

1 that you will make -- and that you will make amends with all
2 the people that you have affected with your deceit. And
3 hopefully, God will show mercy on your soul.

4 Thank you, Your Honor.

5 THE COURT: Yes, ma'am.

6 Mr. Messina, did you want to talk to me?

7 MR. NORMAN MESSINA: Just one moment, please, Your
8 Honor.

9 THE COURT: Okay. And is your first name Norman?

10 MR. NORMAN MESSINA: N-O-R-M-A-N.

11 THE COURT: Thank you.

12 MR. NORMAN MESSINA: Messina, M-E-S-S-I-N-A.

13 THE COURT: All right. Thank you.

14 MR. NORMAN MESSINA: I hope that the courts do not
15 fall for this act that they put on today. That's what it was,
16 an act. You know, about 40 years ago, I was with a company.
17 It went bankrupt. And I got all my money out and I invested
18 it. Well, it was all stolen. It was in a limited partnership.
19 And now this has happened. And in my opinion, this sentence
20 couldn't give him enough time in prison for what he's done to
21 all of these people.

22 I am sorry.

23 He has a son. I know you're well aware of Bernie Madoff.
24 His son committed suicide after all this stuff that you did,
25 Bryan. I hope your son does not do that. Your son doesn't

1 deserve what you did. You have to answer for your sins; he
2 doesn't. And that's all I have to say.

3 Thank you, Your Honor.

4 THE COURT: Thank you, Mr. Messina.

5 MS. GAETHEA MESSINA: Thank you, Your Honor.

6 THE COURT: Thank you, Mrs. Messina.

7 MR. MEADOWS: I think Frank Messina is the last
8 victim, Your Honor.

9 MR. FRANK MESSINA: Hi, Your Honor.

10 THE COURT: Hello.

11 MR. FRANK MESSINA: This is Frank Messina, F-R-A-N-K.
12 Your Honor, I know you spoke of recordings. I was one of the
13 people that sent up several recordings of Mr. Anderson saying
14 that he was going to repay me. When all this was done, we
15 received some payment from the insurance companies, but our
16 entire savings is gone. My wife and I is another one of the
17 victims, Kimberly. What we thought we had with Bryan Anderson
18 at the end of this was about ten times more than what we were
19 repaid.

20 And I have Bryan on recording. And Bryan doesn't -- he
21 put an act about his family. He doesn't care about his family.
22 I have him on recording talking about his wife and his son
23 saying, "They don't mean anything. All the bottom line is I
24 want to get you guys paid back."

25 And he has yet -- I gave him -- I have about 30

1 recordings -- 30 times to apologize and be a man and just say,
2 "Frank, I screwed up." We were friends. He went to -- our
3 kids go to school together. They did. And he never once
4 apologized and said he was sorry and told us the truth of what
5 he did with our money.

6 And I have him on recording saying he was going to pay me
7 back the entire amount -- with interest; is that right,
8 Bryan? -- with interest and penalties on one of his fake
9 promissory notes that he gave us.

10 That's all. He's a con man. He's very sharp in what he
11 does. And I just hope that the court will give him the top of
12 the minimum of your sentence that was recommended by the U.S.
13 government, a minimum of 87 weeks -- 87 months, excuse me.
14 That's all, Your Honor.

15 MR. MEADOWS: I think that's all, Your Honor.

16 MR. LENTINE: Your Honor, if I could have one moment?
17 I feel sort of compelled to respond just briefly. If the court
18 will look at page 2 of the government's supplement, the
19 government's response to the defendant objections, because
20 something that Mr. Meadows says I don't think is totally
21 accurate. If the court will look at where it says principal
22 invested and then look at amount paid back, that was amounts
23 paid back prior to the insurance companies paying off these.

24 I have a copy of where Mr. Frank Messina, who was owed --
25 who was paid back \$186,893.25, who has told us today he hadn't

1 recovered all, has recently received the remainder of \$336,190.
2 And as for the Hueys, the court will note the amount paid back
3 prior to the FINRA was \$1,123,075, with \$60,000 still out. So
4 not all the money that was being said was not paid, he didn't
5 have -- they hadn't got. So, I mean, just in fairness, we're
6 not trying to undercut issues in regard to what was owed or
7 what isn't owed; but in fairness, money that was paid back was
8 paid back. And that's in the government's own acknowledgment
9 in its brief on that. And that's all I have to say, Your
10 Honor.

11 THE COURT: Who are you saying, if you know,
12 Mr. Lentine, paid the amount paid back on page 2 under the
13 amount paid back column as to the Messinas and the Hueys?

14 MR. LENTINE: These were the government's, in our
15 calculations, as to what was principal -- was invested at the
16 beginning and that it was paid back and that the remaining
17 amount of loss was the loss and restitution that the government
18 is asking for, \$3,063,000, which we had not objected to.

19 THE COURT: Let me ask my question in a better way.
20 Who are you saying was the source of the money that was paid
21 back under the column on page 2 that has the header, amount
22 paid back?

23 MR. LENTINE: My understanding, Your Honor, was that
24 this was before the FINRA so it was not coming out of -- it was
25 money that was paid back through him. Now, I imagine the

1 government is going to say that that was money from other
2 people, other investors. But I'm just pointing out this is my
3 belief is this is money that was paid back by Mr. Anderson
4 prior to the actual civil mediation that led to the final
5 amounts of the loss, which is \$3,093,000, which is still owed.
6 And of that loss, Mr. Messina -- Mr. Frank Messina has been
7 paid for that amount of money. Not all of the others have, but
8 there's several outstanding that have not been paid yet.

9 THE COURT: All right. Well, I guess I'll ask
10 Mr. Meadows. And I understand you have someone from FINRA here
11 who might be able to answer this question if you don't have the
12 information. But on that column -- I mean, somebody created
13 this chart on page 2 of document 21. And I hope you know how
14 they decided -- I hope you know how they decided to set it up,
15 because I have a -- what Mr. Lentine has said is that
16 Mr. Anderson paid back the amounts that are under the amount
17 paid back column on that page -- and this is as of June 15th,
18 2015; it's not as of today -- and that the source of those
19 funds may well have been -- now, what he said was you were
20 going to say. He didn't say what he was going to say what the
21 source of those funds were. He said you were going to say the
22 source of those funds were that he continued to get money from
23 other people who thought they were investing and, instead of
24 investing it, paid it to earlier investors, which is a classic
25 Ponzi scheme.

1 So I guess what I'm asking you is: Do you know in that
2 amount paid back column whether that money was recycled money
3 that Mr. Anderson got from other investors and then paid out
4 earlier investors or whether that money came from FINRA or
5 whether that money came from Mr. Anderson's 401(k) or what do
6 you know?

7 MR. MEADOWS: Your Honor, that second column that
8 he's referred to where it says amount paid back, that money is
9 primarily, if not almost entirely, the result of payments that
10 other investors made that were just shuffled around or recycled
11 as part of the Ponzi scheme. That column does not include
12 moneys that have recently been acquired through the FINRA
13 mediation. This case was indicted well before that. And those
14 numbers were part of the plea agreement well before the FINRA
15 mediation.

16 And as a matter of fact, Mr. Frankowski is here and can
17 explain the differences. He is the attorney, Your Honor, for
18 those victims which elected to pursue FINRA mediation as a way
19 to try to be made whole. And I think what he's going to say is
20 that their mediation will encompass a larger amount of time
21 than we have in our indictment.

22 Our indictment basically covered a five-year period. And
23 these numbers are a snapshot of what happened for these victims
24 in that five-year period.

25 The FINRA mediation does not overlay and overlap in an

1 image that is precisely the same. It is larger in many
2 instances. But Mr. Frankowski may better explain that to the
3 court maybe.

4 THE COURT: Well, I guess I'm just -- that's fine. I
5 don't know that I need to understand the FINRA.

6 MR. MEADOWS: Okay.

7 THE COURT: What I was trying to do was see whether
8 or not because there were statements made by Mr. Lentine about
9 the defendant cashing out his 401(k), but that money could have
10 been used to support his lifestyle or it could have been -- I
11 mean, if that money -- I don't know what that money was used
12 for. So I was just trying to see whether or not when this
13 chart was created the government had a source of that money.
14 And you're saying yes, it was Mr. Anderson, but it is your
15 belief, Mr. Meadows, that all or virtually all of those dollars
16 that are in that column are dollars that Mr. Anderson got by
17 continuing the scheme of getting new investors or additional
18 moneys from existing investors; is that accurate?

19 MR. MEADOWS: That's accurate. And that's also based
20 on bank records that were obtained in this investigation and
21 which were utilized by the FBI in coming up with these numbers.

22 THE COURT: I didn't mean that you made it up. I
23 assumed you were basing it on documents.

24 MR. MEADOWS: Yes, Your Honor.

25 THE COURT: There were a number of letters. And

1 there was an additional letter filed on June 17th from
2 Mrs. Louise Burton. Mr. Lentine also submitted letters.

3 First, I need to state that I know that I have the
4 authority to impose a sentence other than that recommended by
5 the advisory guidelines, but I find no reason to depart from
6 the sentence called for by application of the guidelines
7 inasmuch as the facts as found are the kind contemplated by the
8 sentencing commission.

9 Am I going to need to set a forfeiture evidentiary
10 hearing?

11 MR. LENTINE: No, Your Honor.

12 MR. MEADOWS: No, Your Honor.

13 THE COURT: All right. The amount would be
14 \$3,063,614.40 if there's no forfeiture hearing.

15 MR. LENTINE: That's correct, Your Honor.

16 MR. MEADOWS: Yes, Your Honor.

17 THE COURT: All right. There is the language that I
18 will include. I don't see it here. But basically, it says
19 that if a person has been paid in full, then they don't get
20 paid again. That's all it says. So you get restitution once
21 no matter who the source is. So I need to include that
22 language.

23 All right. Pursuant to the Sentencing Reform Act of 1984,
24 it is the judgment of the court that the defendant, Bryan W.
25 Anderson, is hereby committed to the custody of the Bureau of

1 Prisons to be imprisoned for a term of 87 months on each of
2 Counts 1 and 2 with the term of 60 months on Count 3
3 separately, with each count to be served concurrently.

4 Having considered the guideline computations and having
5 taken them under advisement, the court finds that the sentence
6 imposed is sufficient but not greater than necessary to comply
7 with the statutory purposes of sentencing. Furthermore, the
8 sentence is reasonable when considering the sentencing factors
9 found at 18 U.S.C. Section 3553(a).

10 The nature and circumstances of the offense and the
11 history and characteristics of the defendant, I do recognize
12 that he doesn't have any prior criminal history and that there
13 are no aspects of coercion or violence involved in this crime,
14 but the length of time over which the criminal conduct occurred
15 is a factor that is detrimental to the defendant in terms of --
16 because he had more opportunities to stop. He had many
17 opportunities to stop this conduct. And instead, he continued
18 down it.

19 The offense is a serious offense, and the law does need to
20 have respect for -- reflected and it needs to be justly
21 punished. The offense needs to be justly punished. There is
22 some feeling that -- or sometimes it's expressed that if you --
23 white collar crime and then you do no time. And I totally
24 don't agree that that's true.

25 There are factors associated with violent conduct that

1 does cause more lengthier sentences to be imposed upon people,
2 but that doesn't mean that just because there's no violence or
3 threat of violence that people shouldn't go to jail for doing
4 what they intentionally did. Assuming that Mr. Anderson just
5 started out recklessly making investments, that doesn't mean
6 that it was okay to knowingly go get money to basically buy
7 himself time to continue -- I know he says he hoped to get the
8 money back, and I think on some level he may have hoped to get
9 the money back.

10 I think anybody that -- but the money that he took and
11 never even put into an investment account, he wasn't trying to
12 get any money back for anybody. So his actions are speaking
13 louder to me than his words.

14 This sentence will protect the public from further crimes
15 by this defendant. Yes, he will not have an opportunity to be
16 a broker again, but -- or have a broker's license or a
17 securities license, but others who might be tempted to do what
18 he did need to be adequately deterred, and this sentence will
19 do that.

20 I agree that he doesn't need educational or vocational
21 training. But I will, as requested, have the condition of
22 RDAP. Since there was no violence involved with this crime,
23 there are additional benefits to him besides the fact that your
24 attorney says that alcohol is a problem that you need
25 assistance with, and you can get that assistance while you're

1 incarcerated.

2 I've considered the need to avoid unwarranted sentence
3 disparities among defendants, and that is one of the things
4 that the guidelines help me to avoid. I've considered the need
5 to provide restitution to any victims of the offense, but I
6 will point out that the Eleventh Circuit has made very clear
7 that paying restitution is not a reason to not put people in
8 jail. And I am going to respect and follow that binding
9 authority.

10 The defendant is ordered to pay restitution of
11 \$3,063,614.40, with interest, to the victims and in the amounts
12 indicated in the restitution section of the presentence report.
13 The following victims, according to the FINRA arbitration
14 settlements, have been paid in full for restitution purposes.

15 S and L, first initial B, second letter of the last name
16 I, that restitution amount was \$59,277. M and N, last initial
17 C, that restitution amount was \$46,126.31. J and C, last
18 initial H, restitution amount of \$295,852. And F and KM,
19 restitution amount of \$36,190.84, who have received settlements
20 from arbitration and now are considered paid in full for
21 restitution purposes in this case.

22 I will further state that once a victim has received full
23 restitution from any source, then the restitution owed by the
24 defendant is offset by that, and the victim does not get paid
25 twice. So if FINRA pays a settlement, it does reduce the

1 defendant's restitution.

2 Was there -- I'm sorry.

3 MR. LENTINE: Yes, Your Honor. The only thing we
4 wanted to add, there has been two others since before our --
5 since Mr. Meadows had filed and that we have discussed that
6 have just come in in the last two days.

7 THE COURT: Do I have -- do you have those in
8 writing? Is this additional information on restitution --

9 MR. LENTINE: Yes, Your Honor.

10 THE COURT: -- that's document 25?

11 MR. MEADOWS: I don't have the document, Your Honor,
12 but we've been informed from Mr. Frankowski that two victims
13 have had their FINRA mediation settled, but they have not
14 received any payment yet. It may be 30 days or so before they
15 receive their payment. But I could give the court those
16 initials if that would be helpful.

17 THE COURT: Well, what if I just say, "Also to the
18 extent that victims have engaged in FINRA" -- is it arbitration
19 or mediation?

20 MR. LENTINE: It was mediation now, but arbitration
21 is next. So I understand that those that did not resolve those
22 claims in mediation will next move into arbitration in regard
23 to those amounts.

24 THE COURT: All right. I could add language, that
25 way we don't have to keep reopening this. "To the extent that

1 victims settle their claims for restitution or settle their
2 claims relating to their losses from this criminal conduct,
3 whether in mediation or arbitration, those settlements are full
4 payment toward the restitution otherwise owed by this
5 defendant."

6 MR. MEADOWS: Yes, Your Honor.

7 MR. LENTINE: Yes.

8 MR. MEADOWS: They would receive credit.

9 THE COURT: He would receive credit?

10 MR. MEADOWS: That's correct, Your Honor.

11 THE COURT: And then I will also add the language --
12 and then I don't have to keep updating. And then I would say
13 that each victim's recovery is limited to the amount of their
14 loss. And by loss, I mean principal loss. Plus, I have
15 ordered interest to be paid. And the defendant's liability for
16 restitution ceases if and when a -- as to a particular victim
17 if and when that particular victim receives full restitution
18 from whatever source.

19 The court has considered the information in the
20 presentence report concerning the defendant's financial
21 circumstances. The court has relied on that information and,
22 in doing so, finds that the following manner and schedule of
23 payment are appropriate.

24 I'm going to say that payment is due and payable
25 immediately. And the reason I'm saying that is because I'm

1 ordering interest, and I want the interest to begin accruing
2 immediately. I understand that he's not going to be able to
3 make payments while he's incarcerated, absent something
4 occurring that causes money to be available to him, which I
5 don't know what that would be. But because so many of these
6 payments are coming from a source other than Mr. Anderson and
7 because such a large amount is coming from a source other than
8 Mr. Anderson and because Mr. Anderson kept taking money telling
9 people that they would -- it would grow, I think it's only
10 appropriate that when he does make the payments that he is
11 going to end up having to pay to whoever he has to pay them in
12 whatever amount remains to be paid, he should pay it with
13 interest.

14 The court orders criminal forfeiture as to Count 1, and a
15 separate final order of forfeiture will be issued. The court
16 strongly urges that any proceeds collected as a result of the
17 final order of forfeiture be applied toward the amount of
18 restitution ordered in this case in accordance with the
19 Attorney General's guidelines and procedures for restoration of
20 forfeited property to crime victims via restitution in lieu of
21 remission.

22 I am not imposing a fine due to the defendant's inability
23 to pay a fine in addition to restitution. I don't think that
24 the loss amounts overstate his conduct. I think that the loss
25 amounts are not just actual losses; they're also intended

1 losses. And intended means foreseeable. It doesn't mean you
2 have to have this intent to achieve a particular dollar amount
3 of loss; that the conduct is intentional and the loss is
4 foreseeable. And whether or not the loss is actually incurred
5 doesn't change the guidelines computation if it's an intended
6 loss.

7 Secondly, the fact that his license -- his securities
8 license was termed and I'll just take halfway through this
9 four-year scheme doesn't mean that it was -- that people
10 weren't trusting him because of the position they knew he held.
11 I don't have any way of knowing that they knew that his license
12 had been termed. And so I don't think that that fact would
13 have caused any overinflation of the guidelines in terms of
14 what's a reasonable sentence for this defendant.

15 I am not imposing a fine due to the defendant's inability
16 to pay a fine in addition to restitution. It is further
17 ordered that the defendant shall pay to the United States a
18 special assessment fee of \$300. The assessment fee is due
19 immediately.

20 Upon release from imprisonment, the defendant shall be
21 placed on supervised release for a term of three years as to
22 Counts 1, 2 and 3 separately and currently. While on
23 supervised release, the defendant shall comply with the
24 standard conditions of supervised release of record in this
25 court and the following special conditions.

1 To aid in the collection of restitution, the defendant
2 shall not incur any new debts other than normal debts for
3 utilities, rental expenses or mortgage payments or open any new
4 lines of credit without permission of the probation officer
5 unless the defendant is in compliance with the payment of any
6 monetary obligations ordered.

7 Second, based on the defendant's reported history of
8 alcohol abuse, he shall participate under the administrative
9 supervision of the probation officer in the drug and alcohol
10 intensive counseling and aftercare service program conducted by
11 the probation office or a comparable program conducted in the
12 district of supervision.

13 Third, due to the nature of the offense, the defendant is
14 prohibited from seeking or obtaining employment involving
15 finance, investment, banking or that otherwise involves access
16 to individuals' money, investments, securities or bank accounts
17 or that otherwise places the defendant in any kind of a
18 fiduciary role with regard to individual's finances. And you
19 might say well, what would that be? No one can give you their
20 power of attorney. You cannot be the personal representative
21 of anybody's estate, including your wife's. All of those are
22 fiduciary. You can't do it while you're under supervised
23 release.

24 I will say that I agree with Mr. Lentine that a person is
25 not defined by the worst thing they do in their life, but when

1 a person does that same thing consistently for four years --
2 well, I'll just say, I tell my children -- or I told them when
3 they were young enough to listen to me -- well, now, they're
4 old enough that they're starting again. But anyway, I told
5 them -- and I believe this -- you become who you are. What I
6 mean by that is how you act defines the person that you are.
7 And so for four years, he acted as a thief and so he became a
8 thief and he stole. A person who steals money on one instance
9 has not necessarily become a thief, but a person who steals
10 money for four years has become a thief.

11 Now, I will also say going forward, you can change who you
12 are by changing your actions and you can redefine yourself by
13 changing your actions, and that's within your control and no
14 one else's.

15 Is there any objection from any party as to the findings
16 of fact, the calculations, the sentence or the manner in which
17 the sentence was pronounced or imposed?

18 MR. MEADOWS: None by the government.

19 MR. LENTINE: None by the defense, Your Honor, but
20 two requests, if I may. One, I would ask the court to
21 recommend that Mr. Anderson be housed in a facility as close to
22 Birmingham as possible. I know the court can't make a specific
23 recommendation, but I would ask the court to do that. And the
24 other, Your Honor, is I would ask -- Mr. Anderson has been out
25 on bond this entire time. He's not been a flight risk. He's

1 not left. And I would ask the court to allow him to
2 voluntarily surrender to the institution that is designated by
3 the Bureau of Prisons when that institution is designated.

4 THE COURT: Does the government have any objection to
5 continuing the defendant on the same bond?

6 MR. MEADOWS: No, Your Honor.

7 THE CLERK: October 19th.

8 THE COURT: All right. I will recommend that the
9 defendant be placed in the appropriate facility closest to
10 Birmingham; that he be allowed to participate in the RDAP
11 program, which has to do with addictions.

12 Mr. Anderson, you have the right to appeal the sentence
13 imposed within 14 days if you believe that the sentence
14 violated the law. You did enter into a plea agreement that
15 waived virtually all of your rights to appeal your conviction
16 and sentence and to appeal collaterally.

17 As I told you at your plea hearing, such waivers are
18 generally enforceable. However, if you believe that the waiver
19 in your plea agreement is unenforceable, you can appeal and
20 present that theory to the appellate court.

21 With a few exceptions, any notice of appeal must be filed
22 within 14 days of judgment being entered in your case. If
23 you're unable to pay the cost, you may apply for leave to
24 appeal in forma pauperis and for the appointment of counsel.
25 If you're allowed by the court to proceed on appeal in forma

1 pauperis, upon your request the clerk of court will assist you
2 in preparing and filing a notice of appeal.

3 I did want to say one thing to Ms. Huey because you talked
4 about being embarrassed -- there you are, yes, ma'am -- by the
5 trust that you and your husband placed in the defendant. And I
6 would just ask you to look around this room at the other people
7 who are here and ask yourself if these aren't people that you
8 would be proud to be associated with. And if these are people
9 that you think are good people and that you're proud to be
10 associated with and that you would welcome into your home,
11 maybe you can judge -- you and your husband can judge yourself
12 less harshly and let go of some of that embarrassment, because
13 it's widely -- the trust was widely shared, and you should not
14 burden your heart in that way.

15 MS. ALICIA HUEY: Thank you.

16 THE COURT: I hope.

17 All right. The defendant is continued -- has a stand
18 committed date, which means he has to report to the facility
19 designated by the Bureau of Prisons on October 19th, 2015 by
20 noon, and he is continued on the same bond.

21 That means, Mr. Anderson, that you must continue to comply
22 with all the conditions previously set in the bond in this case
23 in order to remain out of custody pending your sentencing
24 report date. Do you understand what you need to do and what
25 you need to refrain from doing in order to not be taken into

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custody before October 19th, 2015?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. That concludes this hearing,
and court is adjourned. Thank you.

(Proceedings concluded at 3:10 p.m.)

CERTIFICATE OF REPORTER

I, Margaret Wasmund, RDR, CRR, Official Court Reporter for the United States District Court for the Northern District of Alabama, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings reported by me using the stenotype reporting method in conjunction with computer-aided transcription, and that same is a true and correct transcript to the best of my ability and understanding.

I further certify that the transcript fees and format comply with those prescribed by the court and the Judicial Conference of the United States.

Dated this 21st day of August 2015.

Margaret Wasmund

MARGARET WASMUND, RDR, CRR
OFFICIAL COURT REPORTER

Proceedings recorded by mechanical stenography; transcript produced by computer.