

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 5849

ADMINISTRATIVE PROCEEDING
File No. 3-19497

In the Matter of

ANTHONY VASSALLO,

Respondent.

**DIVISION OF ENFORCEMENT'S MOTION FOR THE ENTRY OF FINDINGS AND
IMPOSITION OF REMEDIAL RELIEF BY DEFAULT AGAINST RESPONDENT
ANTHONY VASSALLO**

David Zhou
John K. Han
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I. Introduction

In accordance with the Order to Show Cause, dated September 3, 2021, the Division of Enforcement (“Division”) hereby moves for the entry, by default, of findings and the imposition of remedial relief in the form of a permanent bar against respondent Anthony Vassallo. Vassallo did not respond to the Order Instituting Proceedings (“OIP”) within the time allowed. Based upon the OIP’s allegations, which are now deemed true, and the allegations deemed true in the SEC’s district court action, the Commission should determine that permanent bars against Vassallo are appropriate and in the public interest under Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”).

II. Procedural and Factual Background

The Commission issued the OIP on September 24, 2019. The Division served the OIP upon Vassallo on September 30, 2019. Vassallo did not file an answer. On September 3, 2021, the Commission issued an Order to Show Cause, ordering Vassallo to deliver a response to the Order to Show Cause by October 18, 2021. The Order also instructed the Division to file a motion for default and other relief by November 15, 2021 if Vassallo did not respond to the Order. Vassallo has not responded to the Order.

As alleged in the OIP, the Commission filed a civil action entitled *SEC v. Anthony Vassallo*, No. 2:09-CV-0665-LKK-DAD, in the United States District Court for the Eastern District of California, alleging that from May 2004 through November 2008, Vassallo perpetrated an offering fraud and Ponzi scheme that deprived approximately 150 investors of about \$40 million. OIP ¶ 2. Vassallo, who was the president and a director of a pooled investment fund named Equity Investment Management and Trading, Inc. (“EIMT”) and also was an investment adviser, falsely represented to investors that EIMT invested the money raised in buying and selling securities. *Id.* ¶¶ 1, 3. In reality, Vassallo stopped trading in securities on behalf of EIMT by September 2007 and withdrew virtually all investor funds from EIMT’s accounts and misappropriated the money for the use of himself and his fellow wrongdoers. *Id.* ¶ 3. In classic

Ponzi scheme fashion, further payments made to certain EIMT investors were funded with money from new investments in EIMT. *Id.*

The OIP also alleges that on May 23, 2014, the district court entered a final judgment in the Commission's action against Vassallo. *Id.* ¶ 2. The judgment permanently enjoined Vassallo from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, and Section 206(1), 206(2), and 206(4) of the Investment Advisers Act of 1940 ("Advisers Act") and Rule 206(4)-8 thereunder. *Id.* The judgment also ordered Vassallo to pay more than \$44 million of disgorgement and prejudgment interest, along with a total civil penalty of \$650,000. *Vassallo*, No. 2:09-CV-0665-LKK-DAD, Final Judgment at 4-5 (E.D. Cal. May 23, 2014) (Dkt. No. 504).

The OIP further alleges that the United States Attorney filed a criminal indictment against Vassallo in *United States v. Anthony Vassallo III*, No. 2:09-CR-00179-01 (E.D. Cal.). OIP ¶ 4. The indictment charged Vassallo with defrauding EIMT investors and obtaining money and property by means of materially false and misleading statements in connection with the same offering fraud and Ponzi scheme underlying the Commission's civil action. *Id.*; *see also United States v. Vassallo*, No. 2:09-CR-00179-01, Indictment at 2-4 (E.D. Cal. Apr. 15, 2009) (Dkt. No. 19). As part of his plea agreement with the U.S. Attorney, Vassallo agreed to a statement of facts that set forth the facts the criminal authorities would have been able to prove beyond a reasonable doubt if the case had proceeded to trial. *See United States v. Vassallo*, No. 2:09-CR-00179-01, Plea Agreement, Ex. A ("Criminal Statement of Facts") at A-1 (E.D. Cal. Feb. 1, 2013) (Dkt. No. 115) (attached as Appendix 1). Similar to the Commission's complaint, the statement of facts in the criminal case stated, among other things, that Vassallo made misrepresentations to EIMT investors about EIMT's trading in securities, and that he had stopped trading in securities on behalf of EIMT by September 2007. *Id.* The statement of facts also stated that the loss to investors exceeded \$44.8 million. *Id.* at A-2.

On September 19, 2013, the district court entered an amended judgment against Vassallo based on his guilty plea to one count of wire fraud in violation of 18 U.S.C. § 1343. OIP ¶ 4. The court sentenced Vassallo principally to 192 months' imprisonment and ordered him to pay more than \$43 million of restitution. *Id.*

III. Legal Argument

A. Vassallo Should Be Held in Default and the OIP's Allegations Should Be Deemed True.

As an initial matter, the Commission should find that Vassallo has defaulted and that, as a result, the OIP's allegations should be deemed true. Rule 220(f) of the Commission's Rules of Practice provides that if a "respondent fails to file an answer... within the time provided, such person may be deemed in default pursuant to Rule 155(a)." 17 C.F.R. § 201.220(f). In turn, Rule 155(a) of the Commission's Rules of Practice allows the Commission to "determine the proceeding against [a respondent] upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true." 17 C.F.R. § 201.155(a).

Vassallo should be deemed in default. After the OIP was issued, Vassallo failed to answer within the 20 days specified by the Rules of Practice. On September 3, 2021, the Commission issued the Order to Show Cause, which required Vassallo to submit a response by October 18, 2021 or be deemed in default. Because the Division has not received any response from Vassallo to date, the Commission should hold him in default, and, as a consequence, deem the allegations of the OIP to be true.

B. Vassallo Should Be Permanently Barred Pursuant to Section 203(f) of the Advisers Act.

The Commission should impose a permanent bar against Vassallo pursuant to Section 203(f) of the Advisers Act. In relevant part, Section 203(f) authorizes the Commission to suspend or bar a person from the securities industry if it finds that (1) the person was enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of any

security, *or* was convicted of certain criminal offenses, including wire fraud in violation of 18 U.S.C. § 1343, within 10 years of the commencement of the proceeding; (2) the person was associated with an investment adviser at the time of the misconduct; and (3) such remedial relief is in the public interest. *See In the Matter of Jaswant Gill*, Advisers Act Release No. 5858, Comm’n Op. at 4 (Admin. Proc. File No. 3-19204, Sept. 10, 2021) (citing 15 U.S.C. § 80b-3(e) and (f)). As detailed below, Vassallo satisfies each of these factors and should be permanently barred.

1. Vassallo Was Both Enjoined and Convicted of Wire Fraud.

The Commission should find that Vassallo meets the first prong of Section 203(f) for two independent reasons: he is subject to a permanent injunction related to trading in securities, and he was criminally convicted of wire fraud within 10 years of the proceedings. As set forth in the OIP, the district court entered permanent injunctions in May 2014 against violations by Vassallo of Section 17(a) of the Securities Act, Section 10(b) and Rule 10b-5 of the Exchange Act, and Section 206(1), (2), and (4) and Rule 206(4)-8 of the Advisers Act. OIP ¶ 2. Separately, the district court entered a criminal judgment against Vassallo in September 2013 following his guilty plea to one count of wire fraud in violation of 18 U.S.C. § 1343. OIP ¶ 4. The criminal judgment was entered within 10 years of the issuance of the OIP, which occurred in September 2019.

2. Vassallo Was Associated with an Investment Adviser at the Time of His Misconduct.

The Commission should also find that Vassallo was associated with an investment adviser at the time of his misconduct and thus satisfies the second prong. Section 202(a)(11) of the Advisers Act defines an “investment adviser” to include any person who, for compensation, engages in the business of advising others as to the value of securities or as to the advisability of investing in, purchasing, or selling securities. 15 U.S.C. § 80b-2(a)(11). The OIP specifically alleges that Vassallo acted as an investment adviser during his misconduct, and the Commission’s complaint further alleged that Vassallo was compensated for advising others about securities. OIP ¶ 1; *Vassallo*, No. 2:09-CV-0665-LKK-DAD, Compl. ¶ 14 (E.D. Cal. Mar. 11, 2009) (Dkt. No.

1).¹ “Because at the time of his misconduct [Vassallo] was an investment adviser, he necessarily also was a person associated with an investment adviser.” *In the Matter of Lawrence Allen DeShetler*, Advisers Act Release No. 5411, Comm’n Op. at 4 (Admin. Proc. File No. 3-18854, Nov. 21, 2019). In addition, the OIP alleges that Vassallo was the president and a director of EIMT, *see* OIP ¶ 1, and those roles further support a finding that he was both an adviser and a person associated with an adviser, *see SEC v. Haligiannis*, 470 F. Supp. 2d 373, 378-79, 383 (S.D.N.Y. 2007) (CEO and president of investment adviser firm who made all investment decisions for the firm held to be an investment adviser himself).

3. A Permanent Bar Against Vassallo Is in the Public Interest.

Finally, the Commission should find that it is in the public interest to permanently bar Vassallo from the securities industry. To assess this third prong of Section 203(f), the Commission considers “the egregiousness of the respondent’s actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent’s assurances against future violations, the respondent’s recognition of the wrongful nature of his conduct, and the likelihood that the respondent’s occupation will present opportunities for future violations.” *DeShetler*, Comm’n Op. at 4 (citing *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979), *aff’d on other grounds*, 450 U.S. 91 (1981)). “The remedy is intended to protect the trading public from further harm, not to punish the respondent.” *Gill*, Comm’n Op. at 5. Here, all of the factors support the imposition of a permanent bar against Vassallo in order to protect the trading public.

First, Vassallo’s misconduct involved a high degree of scienter. It is well-established that Vassallo’s wire fraud conviction under 18 U.S.C. § 1343 involved a specific intent to defraud. *See, e.g., United States v. Pelisamen*, 641 F.3d 399, 409 (9th Cir. 2011) (“The elements of wire fraud are: . . . (3) specific intent to defraud.”); *United States v. Daniel*, 329 F.3d 480, 487 (6th Cir. 2003) (“To convict a defendant of wire fraud the government must prove specific intent”); *accord*

¹ Rule 323 of the Commission’s Rules of Practice permits the Commission to take official notice of the records of underlying civil and criminal proceedings. *See Gill*, Comm’n Op. at 4 n.7 (citing 17 C.F.R. § 201.323).

Gill, Comm’n Op. at 5 (“Wire fraud requires a specific intent to defraud.”). Because Vassallo pleaded guilty to wire fraud, he necessarily acted with a high degree of scienter.

Second, Vassallo engaged in egregious and recurrent misconduct. Indeed, he fraudulently deprived approximately 150 investors of more than \$40 million over a four-year time period. OIP ¶¶ 1, 3; *accord* Criminal Statement of Facts at 1-2. Vassallo also operated EIMT as a Ponzi scheme by using newly-received investor money to make payments to earlier investors. OIP ¶ 3. The criminal statement of facts that Vassallo agreed to as part of his plea agreement further specified that Vassallo made numerous false statements and misrepresentations to deceive investors into believing that EIMT actively traded in securities using sophisticated software, successfully obtained profits of about 36 percent annually, and possessed tens of millions of dollars of liquid assets in its accounts. *See* Criminal Statement of Facts at 1. In addition, Vassallo misappropriated investor funds for the use of himself and his fellow wrongdoers. OIP ¶ 3. Vassallo’s deception of advisory clients and misappropriation of investor money for his personal benefit are egregious violations of the securities laws. *See DeShetler*, Comm’n Op. at 4-5 (finding analogous conduct of deceiving investors and misappropriating funds to be egregious and recurrent conduct that warranted permanent bars).

Third, Vassallo has not provided sufficient assurances that he will avoid committing future violations because he has not fully accepted responsibility for his wrongdoing. Although Vassallo did plead guilty in February 2013, he subsequently tried to withdraw his plea in May 2013 so that he could continue fighting the criminal charges. *See United States v. Vassallo*, No. 2:09-CR-00179-01, Def. Mot. to Withdraw Guilty Plea (E.D. Cal. May 16, 2013) (Dkt. No. 124) (attached as Appendix 2). His attempt to retract his sworn admission of guilt—which was rejected by the court in June 2013, *see United States v. Vassallo*, No. 2:09-CR-00179-01, Order Denying Def. Mot. to Withdraw Guilty Plea (E.D. Cal. June 12, 2013) (Dkt. No. 129)—makes clear that Vassallo did not fully accept responsibility for his fraudulent conduct. More recently, his lack of response

to the OIP also indicates a failure to provide an assurance against future violations. *See DeShetler*, Comm'n Op. at 5.

Finally, Vassallo's prior work as an investment adviser presents the risk that he may return to that occupation after he completes his prison sentence. He was the president of EIMT and served as an investment adviser for more than four years before his arrest. At his sentencing hearing in November 2014, Vassallo did not say that he intended to leave the securities industry. *See In the Matter of George Charles Cody Price*, Adviser Act Release No. 4631, Comm'n Op. at 5 (Admin. Proc. File No. 3-16946, Jan. 30, 2017) (finding that the respondent's occupation presented a risk because the respondent did not indicate any plan to leave the industry). To the contrary, he insisted that he made investment decisions in "good faith," "invest[ed] the bulk of investor funds in the hopes of getting a return," and "did [his] best to disclose to these people the high risks involved in investing" with him. *United States v. Vassallo*, No. 2:09-CR-00179-01, Sentencing Hearing Tr. at 28-30 (E.D. Cal. Nov. 16, 2014) (Dkt. No. 153) (attached as Appendix 3). Vassallo blamed the failure of his investments on fraud by "other scam artists." *Id.* at 28. Because Vassallo believes he did nothing wrong, he may very well try to restart his career as an investment adviser. "Although [Vassallo] is currently incarcerated, absent a bar, he would have the opportunity to re-enter the securities industry and commit further violations upon his release." *Gill*, Comm'n Op. at 5.

As a result, it is in the public interest under the relevant *Steadman* factors for the Commission to bar Vassallo from association with any investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization pursuant to Section 203(f) of the Advisers Act. *See, e.g., id.* at 6 (permanently barring Gill); *DeShetler*, Comm'n Op. at 5-6 (permanently barring DeShetler).

IV. Conclusion

For the foregoing reasons, the Division of Enforcement respectfully requests that the Commission make findings and impose, by default, remedial relief in the form of a permanent bar against Vassallo.

Dated: November 15, 2021

/s/ David Zhou
David Zhou, Trial Attorney
Division of Enforcement

Appendix 1

FILED

FEB -1 2013

**CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

BY _____ DEPUTY CLERK *CB*

1 BENJAMIN B. WAGNER
United States Attorney
2 JEAN M. HOBLER
LEE S. BICKLEY
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501 I Street, Suite 10-100
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7 United States of America

8
9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12
13 Plaintiff,
14
15 v.
16 ANTHONY VASSALLO
17
18 Defendant.

CASE NO. 2:09-CR-00179 GEB
PLEA AGREEMENT
DATE: FEB. 1, 2013
TIME: 9:00 A.M.
COURT: HON. G. BURRELL

17
18 **I. INTRODUCTION**

19 **A. Scope of Agreement.**

20 The Indictment in this case charges the defendant with violations of Title 18, United States Code
21 sections 1341, 1343, and 1957 (mail fraud, wire fraud, and money laundering). This document contains
22 the complete plea agreement between the United States Attorney's Office for the Eastern District of
23 California (the "government") and the defendant regarding this case. This plea agreement is limited to
24 the United States Attorney's Office for the Eastern District of California and cannot bind any other
25 federal, state, or local prosecuting, administrative, or regulatory authorities.

26 **B. Rule 11(c)(1)(C) Specific Sentence Agreement.**

27 The government and the defendant agree that a specific sentence, set forth below in paragraph
28 VI.B, would be appropriate in this case. Consequently, this plea agreement is being offered to the Court

1 pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure.

2 Under the provisions of Rule 11(c)(3), the Court may accept or reject the plea agreement, or may
3 defer its decision as to the acceptance or rejection until there has been an opportunity to consider the
4 presentence report. If the Court accepts the plea agreement, the Court will inform the defendant that it
5 will embody in the judgment and sentence the disposition provided for in this plea agreement. If the
6 Court rejects this plea agreement, the Court shall so advise the parties. If the Court contemplates a
7 higher sentence, it shall advise the defendant of the opportunity to withdraw his plea, and advise him
8 that if he persists in a guilty plea the disposition of the case may be less favorable to him than is
9 contemplated by this plea agreement. If the Court contemplates a lower sentence, it shall advise the
10 government of the opportunity to withdraw from this agreement, which the government may then do
11 without consequence. If the Court rejects this agreement and the defendant chooses not to withdraw his
12 plea, all other terms, conditions, waivers, etc. in this agreement remain in effect.

13 **II. DEFENDANT'S OBLIGATIONS**

14 **A. Guilty Plea.**

15 The defendant will plead guilty to Count 2, charging a violation of Title 18, United States Code
16 section 1343, wire fraud, pursuant to a scheme to defraud. The defendant agrees that he is in fact guilty
17 of these charges and that the facts set forth in the Factual Basis For Plea attached hereto as Exhibit A are
18 accurate.

19 **B. Restitution.**

20 The Mandatory Victim Restitution Act requires the Court to order restitution to the victims of
21 certain offenses.

22 Defendant agrees that his conduct is governed by the Mandatory Restitution Act pursuant to 18
23 U.S.C. § 3663A(c)(1)(A)(ii) and agrees to pay the full amount of restitution to all victims affected by
24 this offense, including, but not limited to, the victims covered in the factual basis, victims covered in
25 those counts to be dismissed as part of the plea agreement pursuant to 18 U.S.C. § 3663A(a)(3), and
26 other victims as a result of the defendant's conduct for the offenses charged from the periods of April
27 2006 through December 2008. The amount of restitution will be determined by the Court, but the
28 Government estimates that the amount will range between \$35 and \$46 million dollars. Payment of

1 restitution shall be by cashier's or certified check made payable to the Clerk of the Court.

2 A receiver has been appointed in a related civil case and has recovered some funds for investors.
3 The parties agree that the total amount of restitution shall be credited by the amounts disbursed by the
4 receiver to the victims of this crime. It is the defendant's obligation to provide documentation to this
5 Court of the distributions by the receiver in order to reduce his restitution obligations.

6 **C. Fine.**

7 The defendant agrees to pay a criminal fine if and as ordered by the Court as part of his sentence.
8 The defendant understands that this plea agreement is voidable at the option of the government if he
9 fails to pay the fine as required by this plea agreement.

10 **D. Special Assessment.**

11 The defendant agrees to pay a special assessment of \$100.00 at the time of sentencing by
12 delivering a check or money order payable to the United States District Court to the United States
13 Probation Office immediately before the sentencing hearing. The defendant understands that this plea
14 agreement is voidable at the option of the government if he fails to pay the assessment prior to that
15 hearing. If the defendant is unable to pay the special assessment at the time of sentencing, he agrees to
16 earn the money to pay the assessment, if necessary by participating in the Inmate Financial
17 Responsibility Program.

18 **E. Violation of Plea Agreement by Defendant/Withdrawal of Plea.**

19 If the defendant violates this plea agreement in any way, withdraws his plea, or tries to withdraw
20 his plea (other than as permitted under Rule 11(c)(1)(C), *i.e.*, rejection by the Court of a specific
21 sentence agreement), this plea agreement is voidable at the option of the government. The government
22 will no longer be bound by its representations to the defendant concerning the limits on criminal
23 prosecution and sentencing as set forth herein. One way a cooperating defendant violates the plea
24 agreement is to commit any crime or provide any statement or testimony which proves to be knowingly
25 false, misleading, or materially incomplete. Any post-plea conduct by a defendant constituting
26 obstruction of justice will also be a violation of the agreement. The determination whether the
27 defendant has violated the plea agreement will be under a probable cause standard.

28 If the defendant violates the plea agreement, withdraws his plea, or tries to withdraw his plea, the

1 government shall have the right (1) to prosecute the defendant on any of the counts to which he/she
2 pleaded guilty; (2) to reinstate any counts that may be dismissed pursuant to this plea agreement; and (3)
3 to file any new charges that would otherwise be barred by this plea agreement. The defendant shall
4 thereafter be subject to prosecution for any federal criminal violation of which the government has
5 knowledge, including perjury, false statements, and obstruction of justice. The decision to pursue any or
6 all of these options is solely in the discretion of the United States Attorney's Office.

7 By signing this plea agreement, the defendant agrees to waive any objections, motions, and
8 defenses that the defendant might have to the government's decision. Any prosecutions that are not
9 time-barred by the applicable statute of limitations as of the date of this plea agreement may be
10 commenced in accordance with this paragraph, notwithstanding the expiration of the statute of
11 limitations between the signing of this plea agreement and the commencement of any such prosecutions.
12 The defendant agrees not to raise any objections based on the passage of time with respect to such
13 counts including, but not limited to, any statutes of limitation or any objections based on the Speedy
14 Trial Act or the Speedy Trial Clause of the Sixth Amendment to any counts that were not time-barred as
15 of the date of this plea agreement.

16 In addition, (1) all statements made by the defendant to the government or other designated law
17 enforcement agents, or any testimony given by the defendant before a grand jury or other tribunal,
18 whether before or after this plea agreement, shall be admissible in evidence in any criminal, civil, or
19 administrative proceedings hereafter brought against the defendant; and (2) the defendant shall assert no
20 claim under the United States Constitution, any statute, Rule 11(f) of the Federal Rules of Criminal
21 Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by
22 the defendant before or after this plea agreement, or any leads derived therefrom, should be suppressed.
23 By signing this plea agreement, the defendant waives any and all rights in the foregoing respects.

24 **F. Asset Disclosure.**

25 The defendant agrees to make a full and complete disclosure of his/her assets and financial
26 condition, and will complete the United States Attorney's Office's "Authorization to Release
27 Information" and "Financial Affidavit" within five (5) weeks from the entry of the defendant's change
28 of plea. The defendant also agrees to have the Court enter an order to that effect. The defendant

1 understands that this plea agreement is voidable at the option of the government if the defendant fails to
2 complete truthfully and provide the described documentation to the United States Attorney's office
3 within the allotted time.

4 **III. THE GOVERNMENT'S OBLIGATIONS**

5 **A. Dismissals.**

6 The government agrees to move, at the time of sentencing, to dismiss without prejudice the
7 remaining counts in the pending Indictment. The government also agrees not to reinstate any dismissed
8 count except as provided herein.

9 **B. Government's Obligations to Court.**

10 The government is free to provide full and accurate information to the Court and Probation,
11 including answering any inquiries made by the Court and/or Probation and rebutting any inaccurate
12 statements or arguments by the defendant, his attorney, Probation, or the Court. The defendant also
13 understands and agrees that nothing in this Plea Agreement bars the government from defending on
14 appeal or collateral review any sentence that the Court may impose.

15 **IV. ELEMENTS OF THE OFFENSE**

16 At a trial, the government would have to prove beyond a reasonable doubt the following
17 elements of the offense(s) to which the defendant is pleading guilty, wire fraud:

18 First, the defendant knowingly participated in, devised, and intended to devise a scheme
19 or plan to defraud, or a scheme or plan for obtaining money or property by means of false or
20 fraudulent pretenses, representations, or promises;

21 Second, the statements made or facts omitted as part of the scheme were material; that is,
22 they had a natural tendency to influence, or were capable of influencing, a person to part with
23 money or property;

24 Third, the defendant acted with the intent to defraud; that is, the intent to deceive or
25 cheat; and

26 Fourth, the defendant used, or caused to be used, wire, radio, or television
27 communication in interstate or foreign commerce to carry out or attempt to carry out an essential
28 part of the scheme.

1 The defendant fully understands the nature and elements of the crimes charged in the Indictment
2 to which he is pleading guilty, together with the possible defenses thereto, and has discussed them with
3 his attorney.

4 **V. MAXIMUM SENTENCE**

5 **A. Maximum Penalty.**

6 The maximum sentence that the Court can impose is 20 years (240 months) of incarceration, a
7 fine of \$250,000, ^{OR twice the gain or loss} a 3 year period of supervised release and a special assessment of \$100 per count of
8 conviction. By signing this plea agreement, the defendant also agrees that the Court can order the
9 payment of restitution for the full loss caused by the defendant's wrongful conduct. The defendant
10 agrees that the restitution order is not restricted to the amounts alleged in the specific counts to which
11 the defendant is pleading guilty. The defendant further agrees that he will not attempt to discharge in
12 any present or future bankruptcy proceeding any restitution imposed by the Court.

13 **B. Violations of Supervised Release.**

14 The defendant understands that if he violates a condition of supervised release at any time during
15 the term of supervised release, the Court may revoke the term of supervised release and require the
16 defendant to serve up to 3 additional years imprisonment.

17 **VI. SENTENCING DETERMINATION**

18 **A. Statutory Authority.**

19 The defendant understands that the Court must consult the Federal Sentencing Guidelines and
20 must take them into account when determining a final sentence. The defendant understands that the
21 Court will determine a non-binding and advisory guideline sentencing range for this case pursuant to the
22 Sentencing Guidelines. The defendant further understands that the Court will consider whether there is
23 a basis for departure from the guideline sentencing range (either above or below the guideline
24 sentencing range) because there exists an aggravating or mitigating circumstance of a kind, or to a
25 degree, not adequately taken into consideration by the Sentencing Commission in formulating the
26 Guidelines. The defendant further understands that the Court, after consultation and consideration of the
27 Sentencing Guidelines, must impose a sentence that is reasonable in light of the factors set forth in 18
28 U.S.C. § 3553(a).

1 right to bring a collateral attack, including a motion under 28 U.S.C. § 2255 or § 2241, challenging any
2 aspect of the guilty plea, conviction, or sentence, except for non-waivable claims of ineffective
3 assistance of counsel.

4 Notwithstanding the agreement in paragraph III.A above that the government will move to
5 dismiss counts against the defendant, if the defendant ever attempts to vacate his/her plea/pleas, dismiss
6 the underlying charges, or modify or set aside his/her sentence on any of the counts to which the
7 defendant is pleading guilty, the government shall have the rights set forth in Section II.E.

8 **C. Waiver of Attorneys' Fees and Costs.**

9 The defendant agrees to waive all rights under the "Hyde Amendment," Section 617, P.L. 105-
10 119 (Nov. 26, 1997), to recover attorneys' fees or other litigation expenses in connection with the
11 investigation and prosecution of all charges in the above-captioned matter and of any related allegations
12 (including without limitation any charges to be dismissed pursuant to this plea agreement and any
13 charges previously dismissed).

14 **VIII. ENTIRE PLEA AGREEMENT**

15 Other than this plea agreement, no agreement, understanding, promise, or condition between the
16 government and the defendant exists, nor will such agreement, understanding, promise, or condition
17 exist unless it is committed to writing and signed by the defendant, counsel for the defendant, and
18 counsel for the United States.

19 **IX. APPROVALS AND SIGNATURES**

20 **A. Defense Counsel.**

21 I have read this plea agreement and have discussed it fully with my client. The plea agreement
22 accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to
23 plead guilty as set forth in this plea agreement.

24 Dated:

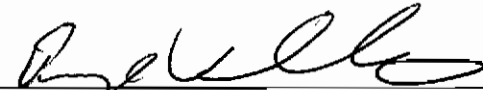
25 
26 MARK REICHEL
27 Attorney for Defendant

28 **B. Defendant:**

I have read this plea agreement and carefully reviewed every part of it with my attorney. I

1 understand it, and I voluntarily agree to it. Further, I have consulted with my attorney and fully
2 understand my rights with respect to the provisions of the Sentencing Guidelines that may apply to my
3 case. No other promises or inducements have been made to me, other than those contained in this plea
4 agreement. In addition, no one has threatened or forced me in any way to enter into this plea agreement.
5 Finally, I am satisfied with the representation of my attorney in this case.

6 Dated: 2-1-2013



7 ANTHONY VASSALLO
8 Defendant

9
10 **C. Attorney for United States:**

I accept and agree to this plea agreement on behalf of the government.

11 Dated: 2/1/2013

12 BENJAMIN B. WAGNER
13 United States Attorney



14 JEAN M. HOBLER
15 LEE S. BICKLEY
16 Assistant United States Attorneys

EXHIBIT A: Factual Basis for Plea

1
2 Were this case to proceed to trial, the government could prove the following beyond a reasonable
3 doubt:

4 In or about 2004, Defendant Anthony Vassallo began a stock trading business. Beginning in or
5 before April 2006, under the name Equity Investments Management & Trading (EIMT), Vassallo
6 recruited investors through "sub-funds," other entities set up by sub-fund managers who would collect a
7 group of investors' funds and forward them to EIMT. The agreements between EIMT and the subfunds
8 specifically contemplated that EIMT would be using automated trading systems through a trading
9 company known as TradeStation. Investors were told by Vassallo or by the sub-fund managers that
10 Vassallo had software that detected minute changes in the Russell 2000 stock index, which permitted
11 Vassallo to time the market and obtain profits represented to be approximately 3% per month or 36%
12 per year, and that Vassallo had been using this strategy successfully for several years with the exception
13 of one loss situation, which he had corrected such that it would not recur. Investors and sub-fund
14 managers were also told by Vassallo and others that Vassallo closed his transactions by the end of each
15 day, so that each night the investments were in a cash (liquid) position. Such cash positions by day's
16 end, investors were told, lessened the risk of loss of investor funds.

17 In fact, Vassallo was not able to time the market using specialized software and regularly lost
18 money on the investments he made. TradeStation account statements show that in the first month of
19 trading, EIMT lost money on its trades. Each TradeStation account statement from inception in April
20 2006 through September 2007, with the exception of August 2006 and April 2007, reflects a loss on
21 trades by Vassallo's company. In addition, records relating to Vassallo's investment fund under the
22 "Vassallo Group" from March 2005 until April 2006 show an overall loss on investment activity in the
23 months leading up to the creation of the EIMT fund at TradeStation.

24 Thus, Vassallo's managed investments did not regularly return money, and certainly not at a rate
25 approximating 3% per month or 36% per year. Instead of obtaining the returns represented to investors,
26 Vassallo focused on raising capital from new investors. That capital was used to pay investors their
27 "earnings on investment" as if the investments had actually made money. By July 2007, Vassallo was
28 no longer actively trading at TradeStation and by September 2007 the EIMT account was barred by
TradeStation from further trade activity. Nonetheless, Vassallo continued to advise investors and
potential investors that he traded investment funds through TradeStation. At one point, to quell investor
fears, Vassallo used a TradeStation trade strategy modeling function to create a simulated account
reflecting that EIMT had \$50 million invested at TradeStation. Vassallo showed this simulated account
document to investors to bolster his claim that EIMT actually had \$50 million in an account. Vassallo
also created and opened bank accounts under other business names to facilitate the continued intake of
cash, including Equity Investment Group (EIG), Equity Investment Group II (EIG II), and Veritas.
Sometimes one of the "funds" was "rolled over" into another fund.

As late as December 2008, Vassallo advised a new investor that he invested in the Russell 2000
index, and showed this investor a simulated TradeStation account statement, representing that it was
real, and indicating that he had over \$65 million in assets invested. Vassallo described his investment as
a "low risk fund," which used a software program to time his purchases and sales. At that point,
Vassallo was no longer trading and had not been trading for approximately one year and had nothing
like \$65 million in assets invested. The new investor transferred \$250,000 into EIG's account on
December 19, 2008. It was the following month, January 2009, that Vassallo admitted to a group of
investors that he had ceased trading and their money had been lost.

To perpetuate his scheme, Vassallo recruited and worked with sub-fund managers, who took his
direction regarding how to obtain and provide investments to EIMT and related entities. Vassallo set up
an office in Folsom, California, staffed it, and equipped it with computers. Vassallo created dummy
screens to convince investors of the existence and validity of his profit-generating, predictive software.
Vassallo maintained a website through which investors could check their investments, and Vassallo
directed his co-conspirator, Ken Kenitzer, to enter information in the website that made it appear as if

1 the investments were performing as promised. When the scheme began to unravel in late 2008,
2 Vassallo, directly and through intermediaries such as his brother and sub-fund managers, engaged in
3 stalling tactics, and advised investors that they could not receive their funds because, variously, Vassallo
4 was "restructuring" the funds, TradeStation was conducting an audit, or the SEC had frozen the
5 TradeStation account due to a baseless investor complaint.

6
7 Through the sub-funds, over 300 individuals invested in Vassallo's scheme, contributing at least
8 \$83,260,860. Of that amount, \$55,118,756 was returned to investors, although \$16,724,850 of that
9 constituted amounts paid to some investors above the amount of their original investments. Thus, actual
10 loss to the investors totaled \$44,866,954.

11
12 As part of the investment scheme, Vassallo regularly transferred or caused to be transferred
13 funds from TradeStation, located in Florida, to the EIMT and related entity bank accounts, housed in
14 Folsom, California, and vice versa. Specifically, on April 2, 2007, Vassallo caused to be transferred via
15 wire transfer utilizing interstate wires \$11.9 million from the TradeStation account to the EIMT account.
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Appendix 2

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5 Attorney for Defendant
6 ANTHONY VASSALLO

7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10
11 UNITED STATES OF AMERICA,) Case No. 09 179 GEB
12 Plaintiff,)
13 v.) **DEFENDANT'S MOTION FOR**
14) **WITHDRAWAL OF GUILTY PLEA**
15 ANTHONY VASSALLO) Date: TBA
Time: 9:00 a.m.
Judge: Garland E. Burrell,
16 Defendant.) Jr.

17
18 Defendant, ANTHONY VASSALLO, (hereinafter "Anthony"),
19 through counsel files this motion to withdraw his previously
20 entered guilty plea.

21 MOTION

22 The defendant does not need to show a "fair and just
23 reason" for the withdrawal. Defendant has plead guilty with a
24 written plea agreement pursuant to Fed. R. Crim. P.
25 11(c)(1)(C), and awaits sentencing. He now desires to
26 immediately withdraw his plea and does not need to make a
27 showing of any reason for this decision and the court is

28 Motion to withdraw guilty plea

1 required to grant the motion as the plea agreement has not
2 yet been accepted by the court.

3 In United States v. Hyde, 520 U.S. 670, 117 S. Ct.
4 1630, (1997) the Supreme Court explained that in cases of
5 pleas under Fed. R. Crim. P. 11(c)(1)(C), those pleas can be
6 set aside by the defendant without the need to show a "fair
7 and just reason" as required by the other sections governing
8 plea agreements under Rule 11. There, the Court instructed
9 that until a plea agreement has been accepted by the court a
10 defendant is always free to withdraw the plea without the
11 need for a showing of a "fair and just reason." It then
12 further explained that, for cases like the case now before
13 the court

14 Under the Sentencing Guidelines, a District Court is
15 required to defer its decision about whether to accept a
16 type A or type C agreement until after it has reviewed the
17 presentence report, unless the court believes that a
18 presentence report is not required. United States
19 Sentencing Commission, Guidelines Manual § 6B1.1(C)
20 (Nov. 1995) (USSG).

21 Id at p. 675, Fn 2.

22 Here, Mr. Vassallo is in that position. The court must
23 defer its decision to accept or reject his plea agreement
24 until after the probation report has been received and
25 considered by the court at the time of sentencing, and that
26 has not occurred, due to the nature of this type of plea
27 agreement.
28

1 In the alternative, the defendant asserts that there is
2 in fact a fair and just reason for the withdrawal. Fed. R.
3 Crim. P. 32(e) states that if a motion to withdraw a plea of
4 guilty is made before sentence is imposed, the court may
5 permit the plea to be withdrawn if the defendant shows any
6 fair and just reason.

7 Here, the defendant asserts that he was not properly
8 prepared to accept the guilty plea as he was forced to enter
9 the plea because he had no other alternative; he was in the
10 Butte County Jail in Oroville, had been denied bail in
11 attempts at bail, and could not prepare for his trial or
12 defense from the Butte County Jail. The reasons include but
13 are not limited to:

14 1. There were not facilities for him to hold his legal
15 materials;

16 2. He had difficulty meeting with his attorneys who had
17 offices in Sacramento, a distance of over 1 and ½ hours from
18 the jail he was housed;

19 3. It was extremely difficult to use telephones in the
20 interview booths with his attorneys to "review" the evidence;

21 4. It was hard for him to receive the written materials
22 from his attorneys while he was in the jail;

23 5. The Butte County Jail is not a place where a
24 defendant can prepare for a trial which was the magnitude of
25 trial his was scheduled to be.

1 As a result of the foregoing, defendant chose to accept
2 ta guilty plea which was done solely because he felt he could
3 not fight his case and go to trial effectively and DATED: May
4 16, 2013.

5 Respectfully submitted,

6 MARK J. REICHEL, ESQ.

7 /s/ MARK J. REICHEL

8 MARK J. REICHEL

9 Attorney for defendant
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Appendix 3

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

---oOo---

BEFORE THE HONORABLE GARLAND E. BURRELL, JR., JUDGE

---oOo---

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. 2:09-cr-00179

ANTHONY VASSALLO, III,

Defendant.

_____ /

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REPORTER'S TRANSCRIPT

JUDGMENT AND SENTENCE

FRIDAY, JUNE 21, 2013

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Reported by: DIANE J. SHEPARD, CSR #6331, RPR

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APPEARANCES

For the Government:

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SACRAMENTO, CALIFORNIA

FRIDAY, JUNE 21, 2013

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THE CLERK: Calling 09-179, United States versus Anthony Vassallo.

MS. HOBLER: Good morning, Your Honor. Jean Hobler and Lee Bickley for the United States.

THE COURT: Thank you. Good morning.

MR. REICHEL: Good morning, Your Honor. Mark Reichel with Mr. Vassallo. Mr. Vassallo is present and in custody.

THE COURT: Thank you. Good morning. This matter is scheduled for sentencing. Is there any reason why we should not proceed with the hearing?

MS. HOBLER: No, Your Honor.

MR. REICHEL: No, Your Honor. The Court has denied the prior motion to discharge counsel by written order. My client does not desire to proceed with sentencing, however.

THE COURT: That's an overbroad statement, and it mischaracterizes the scope of my ruling. The scope of my ruling focused on this proceeding only.

MR. REICHEL: I understand, Your Honor. We have the written order in front of us.

THE COURT: I know it, but what you just said did not convey understanding of the scope of my ruling. Perhaps I should summarize it for you.

1 A defendant's right to counsel of choice doesn't
2 include the right to unduly delay a proceeding. In this
3 particular case, the focus of my order was on this sentencing
4 proceeding.

5 A request to discharge counsel can be denied in
6 connection with this proceeding when granting the motion would
7 lead to delay of this scheduled proceeding. And the interest
8 and the prompt and efficient administration of justice
9 outweighs the defendant's need for new counsel to adequately
10 defend himself at this sentencing proceeding.

11 As stated in the order filed yesterday, June 20th,
12 2013, ECF number 136, it is evident that defendant's request to
13 fire Mr. Reichel is an improper attempt to delay this scheduled
14 sentencing proceeding.

15 Further, no need for different representation at
16 today's proceeding exists since the only issue to be decided is
17 whether I will accept the parties' specific sentence agreement
18 contained in the conditional plea agreement.

19 I have read and considered the presentence report.
20 Mr. Reichel, have you read and considered the presentence
21 report and discussed it in detail with your client?

22 MR. REICHEL: Yes, we have, Your Honor.

23 THE COURT: Mr. Vassallo, have you received and read
24 a copy of the presentence report and discussed it with
25 Mr. Reichel in detail?

1 THE DEFENDANT: I have.

2 THE COURT: Counsel, are there any objections to any
3 statements of material fact, sentencing classification,
4 sentencing guideline ranges or policy statements contained in
5 or omitted from the presentence report?

6 MS. HOBLER: No, Your Honor.

7 MR. REICHEL: On Mr. Vassallo's behalf, Your Honor,
8 we did not file objections to the report nor sentencing
9 memorandum because he did not want to -- he did not want the
10 sentence that was set forth in the plea agreement. So we don't
11 have -- we did not file any objections to the probation report.
12 They are therefore waived.

13 THE COURT: Since there are no objections, I adopt
14 the findings in the presentence report and determine them to be
15 true and correct.

16 Therefore, the applicable offense level is 38. The
17 criminal-history category is I. The advisory guideline
18 imprisonment range is 235 to 240 months imprisonment.

19 I'm going to pause. I heard a sound in the courtroom
20 that sounded like a cell phone. You must check your cell
21 phones to see if they are turned off. It interrupts the
22 proceeding. It causes a judge, like myself, to pause and think
23 about the cell phone, whether the call is for me. If you do
24 not turn it off, if I hear it again, I'm going to direct
25 security personnel to take it from you.

1 I don't know what I'm going to do with it after I
2 take it from you. I will ponder that issue thereafter. I may
3 very well conduct a proceeding against you for contempt of
4 court because I'm giving you an order now. I'm going to pause
5 while you check to see if your cell phones are turned off.

6 (Pause in proceedings.)

7 THE COURT: I believe I have paused long enough. I
8 will continue with the sentencing proceeding.

9 MS. HOBLER: Your Honor, if I may, I believe I heard
10 the Court say that the sentencing range was 235 to 240, and
11 under level 38 I believe it's 235 to 293.

12 THE COURT: 293.

13 MS. HOBLER: Yes, Your Honor.

14 THE COURT: Do you agree?

15 MR. REICHEL: I didn't hear if the Court said 240,
16 Your Honor.

17 THE COURT: I did say 240. She's right.

18 MR. REICHEL: I agree with her correction.

19 THE COURT: Thank you for the correction.

20 MS. HOBLER: Certainly, Your Honor.

21 THE COURT: The probation officer recommends a
22 downward variance from the advisory guideline range to a prison
23 sentence of 192 months, conveying in paragraph 14 of the
24 presentence report that this variance is recommended because a
25 portion of the \$83,260,850 that was invested in defendant's

1 fraudulent scheme was returned to investors, resulting in
2 \$44,866,954 being the estimation of actual loss to the victims.

3 Probation therefore concluded that a two-level
4 downward variance from the advisory guidelines more adequately
5 reflects the loss amount, and that a sentence of 192 months is
6 sufficient but not greater than necessary to achieve the goals
7 in the federal sentencing statute.

8 Mr. Reichel, do you desire to say anything before I
9 pronounce sentence?

10 MR. REICHEL: No, Your Honor -- I'm sorry, Your
11 Honor, I do. On the issue if the Court is going to impose a
12 sentence --

13 THE COURT: I need you to make better use of the
14 microphone.

15 MR. REICHEL: Thank you, Your Honor.

16 On behalf of Mr. Vassallo, I would ask the Court to
17 make a recommendation that he be allowed to participate in the
18 Bureau of Prisons 500-hour drug treatment program while
19 incarcerated. The probation report, under the heading
20 "substance abuse," paragraph, I think, 46 and 47, discusses
21 Mr. Vassallo's drug usage during the applicable time period of
22 this offense.

23 And while he has been under Pretrial Services
24 supervision and testing for a while now, I believe he would
25 benefit. He asked for the Court to make the recommendation

1 that he would benefit from the drug treatment program while he
2 is incarcerated.

3 THE COURT: Did Probation make that recommendation?

4 MR. REICHEL: It is not made by the probation
5 department, Your Honor. And I did ask them this morning their
6 position on it, and they told me that they do not oppose that
7 recommendation.

8 THE COURT: The effect of that recommendation, if I
9 make it, could motivate the Bureau of Prisons to place him in
10 that program, and it could reduce his ultimate sentence,
11 couldn't it, by a year?

12 MR. REICHEL: It could, Your Honor. My understanding
13 -- and I have a decent understanding but not complete and
14 accurate -- is that if he completes a 500-hour program while
15 incarcerated, that they have the discretion to reduce his
16 sentence for up to 12 months.

17 THE COURT: Okay.

18 MR. REICHEL: That's the sum of my knowledge of it.

19 THE COURT: Do you have anything else to say,
20 Mr. Reichel?

21 MR. REICHEL: That if the Court imposes an
22 incarceration, that it be a facility near his home in Northern
23 California so far as it accords with the space availability,
24 the Bureau of Prisons programs for the drug treatment program,
25 and security classifications for Mr. Vassallo.

1 He has numerous family members in Northern
2 California, and I think it would facilitate any rehabilitation,
3 if he was incarcerated, to have visits from the family and to
4 make ease of visits from the family. And the probation
5 department, I think, made such a recommendation, by the way.

6 THE COURT: You are correct. Probation did make the
7 recommendation that he be incarcerated at an institution in
8 Northern California. Is that the recommendation you're asking
9 for?

10 MR. REICHEL: Yes, Your Honor.

11 THE COURT: Probation also states that I should
12 schedule a hearing for restitution. You didn't say anything
13 about that.

14 MR. REICHEL: I agree, Your Honor. I talked to the
15 prosecution prior to the proceedings this morning, and we
16 suggested a date approximately 90 days out, if that works with
17 the Court, and that works with me.

18 THE COURT: You know, I called the probation officer
19 yesterday concerning that matter, and the probation officer
20 said that it should be a date 60 days from today's date.

21 MS. HOBLER: Your Honor, let me just give you a sense
22 of where the Government is on restitution, which may help
23 clarify where things are.

24 We have, in fact, independently hired the receiver's
25 certified public accountant, who has done quite a bit of work

1 in the area of what money came in and out of this entire
2 scheme. And he is in the process of working up figures that
3 will help the Court assess the appropriate restitution amount
4 in this case.

5 This is not an easy task by any stretch of the
6 imagination. There were over 300 victims. It's over
7 \$80 million that came in and out of various accounts. I have a
8 draft of that from him. I expect sometime in the next two to
9 three weeks I will be able to get that draft to Probation and
10 to Mr. Reichel, or whoever is representing Mr. Vassallo, and
11 get that to the Court so we can proceed with the restitution
12 hearing.

13 THE COURT: The issue at this moment is when should I
14 schedule the restitution hearing. The probation officer has
15 asked that I schedule it in 60 days. Mr. Reichel just said
16 that he wants me to schedule it in 90 days.

17 MS. HOBLER: I think to be absolutely safe and to not
18 move it around unnecessarily, I think 90 days would be the
19 safest option. If the probation office has some significant
20 reason they want it in 60 days, then we can certainly work to
21 make that happen.

22 THE COURT: I can tell you what he told me. My
23 understanding of what he told me yesterday -- this is the only
24 question I asked him -- is that I only have authority to deal
25 with the matter in 90 days -- I'm sorry -- my authority expires

1 after 90 days, and Probation prefers to have some cushion just
2 in case something happens, so that's Probation's preference.

3 MS. HOBLER: That does make sense, Your Honor. I
4 think we can absolutely set it for 60 days, and if for some
5 reason that's not going to happen, then we will come back to
6 the Court as early as possible to indicate why, after
7 conferring with Mr. Storey.

8 THE COURT: Okay. If coming back to the Court is
9 conveying that you may want to have more time, you don't
10 necessarily have to come in. You could do that by stipulation
11 and proposed order. If I agree with you, I would sign it.

12 MS. HOBLER: Thank you, Your Honor. I appreciate
13 that.

14 THE COURT: Do you have a sentencing date in 60 days
15 -- I mean restitution date?

16 THE CLERK: August 23rd.

17 THE COURT: Do you have anything else you want to
18 address, Mr. Reichel?

19 THE DEFENDANT: Do I get a chance to say something?

20 THE COURT: I'm talking to you first, Mr. Reichel.

21 MR. REICHEL: I do not have anything further, Your
22 Honor.

23 MS. HOBLER: Your Honor, if I may, there are a number
24 of victims who indicated a desire to have their statements read
25 to the Court, as well as a number of victims who have appeared

1 today and wish to address the Court directly. Would the Court
2 like that to occur before allocution?

3 THE COURT: And by allocution, you mean before I give
4 the defendant an opportunity to speak?

5 MS. HOBLER: Yes, Your Honor.

6 THE COURT: What's your position on it, Mr. Reichel?

7 MR. REICHEL: I don't have a position, Your Honor.
8 Either way.

9 THE COURT: Can you confer with your client? I
10 absolutely have to give your client an opportunity to address
11 me should that be his desire. This is a timing question, and
12 it's between you and your client.

13 (Discussion between defendant and counsel.)

14 MR. REICHEL: It's Mr. Vassallo's preference, Your
15 Honor, that the victims be allowed to speak, and those that are
16 present here today be allowed to speak first, and then he would
17 speak after that.

18 THE COURT: Okay.

19 MS. HOBLER: Your Honor, my preference would be to
20 start with the statements to be read, and then to have the
21 victims come up who are present and wish to speak directly to
22 the Court.

23 THE COURT: Mr. Reichel?

24 MR. REICHEL: No objection, Your Honor.

25 THE COURT: You can proceed.

1 MS. HOBLER: Thank you, Your Honor.

2 And I apologize to any victims who are here whose
3 names I mispronounce. The first is from Scott Alcade.

4 "Mr. Vassallo, you took it upon yourself to live a
5 lifestyle that was all a lie. You used my money and that of
6 the others to travel and live the good life on the money that
7 people like me and others worked so hard to earn and save. You
8 conned us into investing in your scheme, not by promising
9 wildly outrageous returns, but rather modest gains when the
10 market was starting to turn turbulent. You determined people's
11 future by stealing their retirement funds. While I lost
12 relatively little compared to some and am young enough to
13 recoup, you have sentenced some in this group to work till the
14 day they die as they have no more savings thanks to you. Your
15 attorneys have made arrangements for you to plead guilty to
16 just a single charge of wire fraud. Good for you and them.
17 You are going to get whatever time in prison and will serve it
18 and be out soon and back to the world to do as you please. If
19 it were only that simple for people whose lives you have
20 financially ruined. We do not get to plead out and take a
21 lesser loss. We will get whatever the receivers can collect
22 sometime in the future. I'm going to assume it will be pennies
23 on the dollar, if anything at all. Some of your victims now
24 have to work forever and will never know retirement as you've
25 spent their savings. You did not have the right to choose for

1 them, but you did it so selfishly anyways (sic), and I doubt
2 that you know the meaning of the word remorse. You lied to me,
3 my friends, and my only hope is that someday you mature enough
4 to fully grasp what you have done to so many people."

5 The second is from Melissa Cervantes. "Being a new
6 business owner, I took \$100,000 from my home equity loan in
7 order to get some income to invest it in the company. This
8 income was planned to be reinvested in the company as a start.
9 Due to this fraud, the company has only a debt without profits.
10 As a result of no profits, the equity loan interest has
11 accumulated over the years putting me in a financial crisis. I
12 was forced to use all my savings, use my credit cards, and work
13 longer hours (in an unstable job, seven days a week) in order
14 to keep up with the home equity loan payments, mortgage
15 payments, and card payments, which every month are harder to
16 meet. Physically, I am very tired and feel weak at many times
17 for the lack of sleep and for the longer hours that I work
18 every day. This routine has affected my relationship with my
19 family, who at times do not understand why I am not spending
20 time with them like I used to, but, at the same time, they are
21 concerned for my health. Also, it has affected the economic
22 stability of my family. Emotionally, I am in a constant stress
23 and anxiety to the point of being depressed. My greatest fear
24 is to lose my home at this point. That is my only shelter and
25 only asset. The total debt up to date is \$118,184.57, and it

1 is still adding up as the days and months without financial
2 relief. Considering the interest and the amount of time in
3 which this situation will be resolved, I anticipate that I
4 should be entitled to \$130,000. I'm not able to attend the
5 sentencing due to financial hardship that resulted from hiring
6 a lawyer to pursuit (sic) the return of the \$130,000 is even
7 farther away from my reach (sic). However, I do hope that the
8 sentencing of this individual and the money that was taken in
9 false pretense can be given back to all the victims."

10 The third is from Carol Jean Garrow. I believe she
11 goes by Jean. "Normally, I am a very forgiving person but, as
12 yet, I have not been able to forgive any of the people involved
13 in the EFP investment scheme."

14 Your Honor, EFP refers to Exclusive Financial
15 Partners, which is one of the sub-funds in this case.

16 "I invested my entire life savings in the form of an
17 IRA. The minimum investment was all I had. I thought an IRA
18 provided a level of safety that has since been proven to me
19 that I was so very wrong. I am now 62 years old, and it is too
20 late in my life to recover. I am alone. I have no husband to
21 help pick up the shortfall. My profession is pet grooming.
22 Grooming is a job that takes a heavy toll on the body. My
23 knees, back, shoulders are all worn out. It is not physically
24 possible for me to groom enough pets to recover my losses in
25 the scheme. They not only took every penny I had saved but

1 also kept me from earning anything anywhere else. I have to
2 face the fact I will have to work to the day I die or be out on
3 the street. Retirement is no longer an option. San Diego is
4 my home, my family's, and the home of most of my life-long
5 friends. In the not too distant future, I will be forced to
6 leave San Diego and start all over in a place where I have no
7 support system, no friends, no family. Somewhere that is not
8 as expensive to live simply because I have lost everything to
9 these thieves. My Social Security won't even pay the rent
10 here. Please, Judge, I am asking you to punish this man in as
11 severe a manner as the law allows. This kind of abuse will
12 continue until the corrupt know they will be held accountable
13 for the damage they do to our lives."

14 The fourth is from Kathleen Hamon. "Mr. Vassallo and
15 Mr. Kenitzer. How did this crime affect me? You're kidding,
16 of course. How would you think it would affect me? I will
17 turn 80 years old on April 12th of this year. I have four
18 children, eight grandchildren, and eleven great grandchildren.
19 How did this crime affect me? Trust is the word that comes to
20 mind. Silly me. I trusted Mr. Vassallo and Mr. Kenitzer. The
21 interest from the \$200,000 I invested was to have been my
22 income for the rest of my life. Then, my children would
23 benefit and their lives would have been made a little easier.
24 I lost a beautiful house in Pine Grove since I could no longer
25 make the payments because I trusted Vassallo and Kenitzer.

1 They don't deserve to be addressed as Mr. They are thieves,
2 and they let this drag out for years. If they had pled guilty
3 from the beginning, maybe I could have recovered some of my
4 investment. As it is, I am told there will be pennies on the
5 dollar, if anything at all. I collect over \$800 Social
6 Security. I have a part-time job on Saturday and Sunday
7 afternoons when I could be spending time with my only daughter
8 who lives near me. Instead, so far it is the only job I can
9 find at my age. Still looking, though. Fortunately, I had
10 another house in which I invested and had planned to leave to
11 my children and extended family. Now I have a problem paying
12 the property tax on that one and had to get a loan for that.
13 So now you ask me how this crime affected me? I am devastated
14 because, again, I trusted someone, and the two men I trusted
15 were crooks. My friend, a fellow investor, and I even
16 hesitated for more than two years before we took the plunge
17 into the deep end of the pool. Every one was being paid on
18 interest promised. These two crooks were smart. They didn't
19 make promises that would have raised a red flag. The interest
20 was a little better than some and not as nice as others. Who
21 would have thought they were liars."

22 I should note that this next sentence is in all caps.

23 "Well, they are liars. And I hope God will forgive
24 them for cheating the people who trusted them. I am in a sorry
25 state and am doing my best to keep my head above water. I ask

1 you, who is going to hire an 80-year-old woman. Thank God I am
2 in good health and there is still hope. I hope they get the
3 most just and longest sentence possible, the rest of their
4 lives, hopefully. But we are still supporting them with free
5 room and board, free medical care, dental care, TV and possibly
6 a gym. Do you want me to ask you one more time how this crime
7 affected me? I could go on and on. Please send the pennies on
8 the dollar."

9 The next is from Brad Harrington. "I took a loan
10 against my home to come up with the money for this program, but
11 I have lost my house due to foreclosure. I wanted to retire in
12 a few years, but now I can't. I will have to work until I die.
13 When I first heard the news, [REDACTED]. I
14 really don't want Anthony Vassallo to go to jail, but what I
15 want is for him to pay me back or my estate in case I die.
16 Just like child support, get an extra of his income garnish
17 (sic) and send me a monthly check, and he doesn't have to pay
18 jail time. I want every dime back."

19 The next statement is from Russ Katich. "My name is
20 Russ. I am a 57-year-old carpenter. Anthony Vassallo's
21 company squandered \$274,000 of my retirement. Like most of
22 you, a lifetime of savings. Now I have very little to retire
23 on. Bernie Madoff got 150 years for his Ponzi scheme. Anthony
24 Vassallo and company have ruined many people's retirement
25 plans. Now I must start over at 57 to rebuild a financial plan

1 for my future. Anthony Vassallo has squandered more than two
2 decades of my savings. I take responsibility for my decision
3 to invest in his scheme and deeply regret my decision. Anthony
4 Vassallo's sentence should be at least equal to Bernie Madoff's
5 sentence. 150 years of pain he has caused so many people."

6 The next statement is from Louis and Jean McCammon.
7 "Original 165,000 and interest it had made. We are retired and
8 living off Social Security. We have restructured our loan and
9 are trying to hold onto our home. As both of us are nearly 80,
10 it is nearly impossible to find part-time work. In another
11 year it will be even worse to keep up. We have no peace of
12 mind. It wears on our health as we need medication to sleep at
13 night."

14 The next is from Julie Martinez. Your Honor, I had
15 given a list of the individuals who wanted their statements
16 read to the Court yesterday. Ms. Martinez indicated to us
17 yesterday that she wanted her statement read, so it was not on
18 the original list.

19 "How can you put a price on what he stole from me?
20 Everything, my dreams, my hopes, my child's dreams of a good
21 life. I recently had to file bankruptcy. Many countless
22 nights of crying. My health has suffered. [REDACTED]
23 [REDACTED]. I lost my home and will never be
24 able to buy another one or help my children buy homes. Because
25 of the bankruptcy, I now will have no credit for 10 years. I

1 cannot buy my 17-year-old daughter a car. I lost my faith in
2 my church because the men that screwed me were Mormon, too. I
3 worked so hard all my life for that money, and now I will be
4 poor because of Mr. Vassallo's selfish acts. His actions have
5 taken years off of my life. The stress of losing so much money
6 makes me have sleepless nights. It brings tears to my eyes
7 thinking I'll be homeless and will have no money for food or
8 essentials. My car is broken down, and I will now have to walk
9 or take the bus for the rest of my life. I could go on and on
10 about the endless hurt he has caused me and my family."

11 The next statement is from Eddie Moreno. "My entire
12 savings of \$310,398 from working 37 years in a factory, 12-hour
13 days, 6 days a week, has been taken from me by Mr. Vassallo in
14 a scam. My marriage is coming to an end over this. My wife
15 also lost \$19,086. As all our dreams from retirement will
16 never happen, we can hardly make our house payment and had to
17 borrow money to keep it from foreclosure. I am now disabled,
18 unable to work, so my wife must continue to work until the day
19 she dies. Due to the stress of this, [REDACTED]
20 last April. I have an elderly mother-in-law who needs care. I
21 was to provide that. Now unable due to this money loss. It
22 appears Mr. Vassallo will have a roof over his head every
23 night. He will have medical and dental care and three meals a
24 day. This is much more than I have after he stole my life
25 savings."

1 The next statement is from Judy Moreno. "The loss of
2 my retirement account of \$19,086 has prolonged my retirement as
3 I may never be able to retire ever. This has affected my
4 marriage, my health, my ability to trust others. This scam of
5 Mr. Vassallo has cost myself \$19,086 plus another \$310,398 that
6 my husband was scammed out of. This was our life savings. My
7 plan to retire has passed (was to be April of 2011) with no
8 date in sight now. I have had to borrow money from family to
9 keep my name from being foreclosed on" -- I'm sorry -- I think
10 that's "keep my home from being foreclosed on. Health problems
11 due to the stress of this loss. Due to having to continue to
12 work, I am unable to take care of my elderly mother, which
13 always was the plan, and there are no other siblings to care
14 for her. At least Mr. Vassallo has the peace of mind knowing
15 he will be getting three meals a day where he's going. That's
16 more than I know about my faith (sic) due to this money loss."

17 The last statement, Your Honor, is from individuals
18 who had originally stated they wished to address the Court
19 directly, but yesterday told us that they wished to have their
20 statement read instead.

21 Phillip and Janis Prieto. "We were lead to believe
22 our funds would be invested in sound financial investments,
23 but, to the contrary, these scoundrels embezzled our funds and
24 used them for their own personal gain. My family has been
25 financially and emotionally hurt by these criminals. We

1 invested a significant portion of our life savings with these
2 crooks. We were led to believe our hard earned funds would be
3 invested in sound financial investments, but, to the contrary,
4 these scoundrels embezzled our funds and used them for their
5 own personal gain. They truly deserve to go to jail and should
6 be forced to make restitution to all investors. This loss has
7 exerted a great deal of stress on my family, and we have spent
8 many nights saddened, depressed, and in shock. They have
9 shattered our dreams for retirement, and we will be forced to
10 continue working rather than looking forward to retirement. My
11 wife was going to retire from her nursing job in one year, and
12 now she must continue work for another 7 to 10 years. We were
13 looking forward to assisting our grandchildren with their
14 financial needs such as college, and now they will suffer as
15 well as a result of these con-artists. Do not be lenient their
16 sentencing."

17 Those are all of the statements I have, Your Honor.
18 I believe Mr. Harvey Douglas is here and wishes to address the
19 Court.

20 THE COURT: From what location? From where he is,
21 using a portable microphone, or do you want him to take a spot
22 in the jury box, or to use the witness stand?

23 MS. HOBLER: Does the Court have a preference?

24 THE COURT: I will leave it up to the Government and
25 the victim.

1 MS. HOBLER: I think, logistically speaking, the
2 handheld microphone might be the easiest, Your Honor.

3 MR. HARVEY: Thank you, Your Honor. My name is
4 Douglas Harvey. I have known Anthony Vassallo for most of his
5 life. Anthony's father was a foreman in my construction
6 company for years. Anthony and his brothers worked briefly for
7 me as laborers, and over the years I have attended family
8 functions with Anthony and his family.

9 Anthony stole 250,000 from me, 390,000 from my
10 mother, and 500,000 from my brother. I invested in these funds
11 because I personally knew and trusted Anthony and his family
12 for 30 years. I stayed in these funds because of my
13 relationship.

14 On numerous occasions, I met with Anthony and Ken
15 Kenitzer and discussed investment strategy. At the time the
16 scheme collapsed, I was actually contemplating becoming a fund
17 manager under Ken Kenitzer's guidance.

18 They deceived me and lied to me in such a convincing
19 manner that I couldn't wait to invest more money with them.
20 Anthony actually encouraged me to hire an attorney to check out
21 the fund, which I eventually did. Unfortunately, the attorney
22 that I hired told me to get out in December of 2008, which is
23 when the fund collapsed.

24 The theft of my money has had enormous impact on me.
25 The collapse of the fund occurred at the same time I settled my

1 divorce and also corresponded with the collapse in the
2 financial markets. My net worth declined 80 percent in little
3 over of one year.

4 I am now 65 years old, and I cannot retire. My son
5 is a sophomore in college, and I am paying for his education.
6 56,000 that I had set aside for his college fund was invested
7 in EIG in 2008 and was taken from my son's college fund. That
8 investment in November, late November, was most likely the last
9 money invested in the scheme because it fell apart in early
10 December, just a few days after I invested that money.

11 The main thing that I want the Court and Anthony to
12 know is how hard I worked for my money that you stole from me.
13 I started my small construction company in 1978. I worked from
14 early in the morning until late at night for years trying to
15 make ends meet. My clients met me on weekends. I averaged
16 working 60 to 70 hours a week for 30 years, and now I have to
17 continue working very hard in still a horrible economy to try
18 to make ends meet. I only work 55 to 60 hours a week now
19 because that's all the energy I have left.

20 Very few of my friends know about this theft. It is
21 too embarrassing to discuss. My brother and sister are furious
22 with me because I lost the 390,000 of my parents' trust in the
23 scam. I know I have no one to blame for this mess, but I hope
24 the Court understands the negative impact that Anthony has made
25 on my life.

1 Anthony, I believe you are evil. You have shown no
2 remorse for your crimes. Your energy has been only directed to
3 try to lessen your sentence. This is shameful, and I hope that
4 the Judge and the court gives you the sentence that you
5 deserve. Thank you, Your Honor.

6 MS. HOBLER: Your Honor, this is Mr. Keith Tofanelli,
7 who had originally indicated he wished to address the Court
8 directly, but he's feeling a little emotional and asked if I
9 would instead read his statement.

10 "The money that I entrusted with Anthony Vassallo was
11 my wife's and my life savings, money accumulated from
12 self-sacrificing, doing without vacations, dining out, and many
13 other luxuries. I had a high-risk job, which not only placed
14 hardships on me, but also on my wife and child's formative
15 years. This job forced us to relocate several times. All in
16 the hopes of providing our family with a sound future. It came
17 as a tremendously great shock when I found out that our trust,
18 my IRA had been poured into a Ponzi scheme, and Anthony
19 Vassallo never had any intentions of returning any portion of
20 my money. July 3rd, 2011 I [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

I have no hopes of ever earning the

1 money to make up for the loss that Anthony Vassallo has
2 subjected me to. I had no choice but to liquidate property and
3 assets at a loss. Now I need my money more than ever after
4 suffering from that horrible accident of 2011. I am forced to
5 bear the weight of this injustice for the rest of my life. I
6 have no sympathy for Anthony Vassallo. He deserves the maximum
7 penalty of the law in my opinion."

8 MR. TOFANELLI: Is it possible for you to multiply
9 the sentence by the number of victims?

10 THE COURT: You've asked me a question. I think the
11 prosecutor should speak to the victim concerning the question
12 that he asked. You can speak out loud in responding, but you
13 can use the microphone, and I think it's a question that the
14 prosecution should respond to.

15 MS. HOBLER: The current state of law in the
16 sentencing guidelines does not contemplate such a multiplier.
17 There is a factor in there that accounts for the number of
18 victims, but it is a range of victims.

19 MR. TOFANELLI: Did I read correctly that he wanted
20 to withdraw his guilty plea?

21 MS. HOBLER: Yes, you did read that correctly, and
22 Judge Burrell denied that motion.

23 MR. TOFANELLI: Thank you for denying that. Just
24 makes me feel that he is not remorseful at all if he can't --
25 if he doesn't feel like he's guilty for what he has done, and I

1 just -- I hope you're not going to be lenient on him. Thank
2 you.

3 MS. HOBLER: If Mr. Hill, and Mr. Shiflet or
4 Mr. Hormann wish to address the Court if they are in the
5 courtroom?

6 Your Honor, may I introduce Mr. Orville Hormann.

7 MR. HORMANN: Thank you, Your Honor. I think most of
8 us are in the same position listening to these other victims.
9 Indeed tragic. While I don't want to expound on it, some of us
10 may forgive you, Anthony, but you still need to be held
11 accountable for your actions and be remorseful. I hope you
12 will at some point. I hope the Court realizes that you need to
13 serve out your sentence, and, in addition, to protect other
14 people in the future from that happening. Thank you, Your
15 Honor.

16 MS. HOBLER: Were there any other victims who wished
17 to address the Court? Your Honor, I think that is everyone.

18 THE COURT: Mr. Vassallo, under the law, I'm required
19 to provide you with an opportunity to address me before I
20 impose sentence. You are not obligated to take advantage of
21 this opportunity, but I have to give it to you. Do you desire
22 to say anything before I sentence you?

23 THE DEFENDANT: I do. First, I would like to say how
24 deeply I do care for these investors, two of which were my own
25 grandmothers that I care deeply for. These were the people

1 that I care about and love most in this world, and I started
2 this company to bless their lives was my intention and not to
3 harm them. I do feel terrible about what I have just heard,
4 and I understand the feelings behind what has been said today,
5 but I would like to set the record straight.

6 There are many things that have been believed and
7 that have been said that are not true. That I did not live
8 this lavish lifestyle. That I invested the money that I was
9 given. Even the U.S. Probation Department in their report has
10 said that this case is set apart from other cases of this type
11 because the defendant did invest the bulk of investor funds in
12 the hopes of getting a return, and I did return 66 percent the
13 money.

14 The receiver in this case has also, in his fifth
15 declaration, page two, says that this is different from Ponzi
16 schemes that he has seen in the last 18 years because I
17 invested the money. I tried to get a return. I was defrauded
18 by other scam artists, three of which were attorneys --
19 licensed attorneys that were in good standing with the Bar
20 Association, that made promises and returns to me, of which I
21 passed on to my investors.

22 There were no expensive or exotic material
23 possessions to be marshaled by the receiver. I did not have
24 any assets. I did not own homes and vehicles. The probation
25 department has stated in their report that according to the

1 credit bureau, I put myself \$825,000 in debt at the time of
2 running this company. I took money out of my own home and
3 invested along with these individuals in the hopes of getting a
4 return. I wanted the best for those people, and I believed in
5 these investments.

6 And I did my best to disclose to these people the
7 high risks involved in investing in this, provided them over
8 100 pages of documentation that stated the high degree of risk
9 involved in investing in this fund. Thirty-two different
10 sections of the contract stated how incredibly risky this
11 venture is, and that they all received, reviewed, and signed
12 and agreed that they recognized that he or she may lose all or
13 a portion of their investment in the fund in their subscription
14 agreements.

15 I mentioned that this is speculative and high-risk
16 in every way possible, and I was under the impression that
17 money in this fund was not, as has been stated today,
18 retirement funds and medical funds and things that -- monies
19 that were relied upon. I was under the impression that it was
20 risk capital, and that's what the contract stated, and that's
21 what investors affirmed to me.

22 The contracts also gave me a broad authority to make
23 many different types of investments. Stock trading in the
24 market was one of these investments, but the contract
25 specifically contemplated many other investments of foreign

1 securities, currencies, commodities, futures, options,
2 intangible investment instruments, stocks, bonds, notes,
3 options, warrants. All of these were authorized in my
4 contracts for me to make, and I did so in good faith with
5 individuals that I believed were telling me the truth when they
6 reported gains to me that I reported on to my investors.

7 I wish this would have been successful. I don't
8 believe we would be here today if these investments had in fact
9 made money, but the fact that they were made at the time of the
10 worst market collapse that we have seen in 100 years fed into a
11 lot of failure as well as fraud and scams that I was not aware
12 of.

13 I do take responsibility for what has happened, and I
14 wish that I can change things. I am not in some cozy prison as
15 has been alluded to today. I am in a filthy, deplorable
16 environment. I have been put in cells with murderers. I have
17 witnessed violence and beatings on a daily basis. I saw a man
18 get beat by three individuals last night, ten feet from me. I
19 am being housed with violent offenders under the most vile
20 circumstances, and it is not three meals a day and a comfy
21 living as has been said.

22 And I stand to face and spend the next 16 years of my
23 life in a cold prison cell where I can't hug my children or I
24 have to look at their faces through glass, like I do right now.
25 And though they try to put on a brave face for me, I see the

1 total devastation in their eyes. They have been left
2 fatherless because of this.

3 We have all lost a lot, and I wish that I could pay
4 these people back. I wish that I could do something, and I
5 hope in the future that that may be possible. But I just
6 wanted the truth of these facts to be heard, and I do not
7 believe that they have been.

8 And that is why I attempted to withdraw my plea
9 agreement. Because I entered this plea agreement under advice
10 that this Court has deemed startling and utterly without merit,
11 and I entered this plea agreement under conditions and legal
12 advice that had I known the truth of things, I would not have
13 entered into as such, and I felt it was my right to withdraw
14 it.

15 I hope that we can move on from this, and every day
16 is a day closer to this being over, and just know that I am
17 suffering because of this, and I am not getting off the hook,
18 and I have sleepless nights over what has happened, and I will
19 so in the future. That is all I have to say. Thank you.

20 THE COURT: Does the Government desire to say
21 anything before I pronounce sentence?

22 MS. HOBLER: Your Honor, we are not here to try this
23 case. I will just state for the record that we disagree with
24 many of the factual assertions made by Mr. Vassallo, and I
25 think those are belied by the factual basis for the plea and

1 the presentence report. Thank you.

2 THE COURT: The Government is correct in what it just
3 stated. The defendant admitted to the factual basis, which is
4 attached as Exhibit A to his plea agreement, which states in
5 part: At one point, to quell investor fears, Vassallo used a
6 TradeStation trade strategy modeling function to create a
7 simulated account reflecting that EIMT had 50 million invested
8 at TradeStation. Vassallo showed this simulated account
9 document to investors to bolster his claim that EIMT actually
10 had 50 million in an account. Vassallo also created and opened
11 bank accounts under other business names to facilitate the
12 continued intake of cash including Equity Investment Group,
13 EIG, Equity Investment Group II, EIG-II, and Veritas.
14 Sometimes one of the funds was rolled over into another fund.

15 As late as December 2008 Vassallo advised a new
16 investor that he invested in the Russell 2000 Index and showed
17 this investor a simulated TradeStation account statement
18 representing that it was real and indicating that he had over
19 65 million in assets invested.

20 Vassallo described his investment as a low-risk fund
21 which used a software program to time his purchases and sales.
22 At that point, Vassallo was no longer trading and had not been
23 trading for approximately one year and had nothing like 65
24 million in assets invested.

25 The new investor transferred \$250,000 into EIG's

1 account on December 19th, 2008. It was the following month,
2 January 2009, that Vassallo admitted to a group of investors
3 that he had ceased trading and their money had been lost.

4 The admissions go on, and I won't read all of them
5 into the record.

6 Years ago, when I was in new judge, I was about to
7 sentence somebody, and I questioned the accuracy of an
8 allegation in the presentence report. The prosecutor didn't
9 say anything about it. Defense counsel said nothing about it.
10 And I said nothing about it. I sentenced that individual.

11 As I was leaving the bench, I thought to myself, I
12 think a miscarriage of justice may have just occurred.
13 Somebody should do something about it, and I thought I'm that
14 somebody. And I did something about it.

15 Not only did I convene another sentencing hearing, as
16 I was authorized under the then rule, at that sentencing
17 hearing I gave that defendant an opportunity to withdraw her
18 guilty plea because I couldn't remember the interaction I had
19 with her at the time I took her plea. She didn't take that
20 opportunity. But it changed me.

21 And so when I take a guilty plea, I'm aware of the
22 responses I get. So you're lying. You pled guilty, and you
23 told me the things that I have stated in the order I filed
24 yesterday, and nothing about your appearance or your demeanor
25 indicated to me that the sworn averments, your sworn testimony

1 was false. So you're a liar.

2 Numerous victims have discussed their financial
3 crisis as a result of your criminal activity and the
4 heart-wrenching consequences they are enduring as a result of
5 having been victimized by your fraudulent offenses.

6 The Government has stated that over 300 victims exist
7 and a staggering amount of money was taken from them.

8 Defendant has evinced an utter disrespect for the law and a
9 refusal to acknowledge his transgressions inflicted by his
10 scams.

11 Considering the federal sentencing factors in Section
12 3553(a), a substantial prison sentence will be imposed,
13 hopefully to deter him from committing crimes in the future and
14 to protect the public from such criminal activity.

15 I will follow Probation's recommended sentence of
16 192 months, which is consistent with the parties' conditional
17 plea agreement. This sentence is a variance from the advisory
18 guideline range, and I've already stated Probation's reasons
19 for that variance earlier in the proceeding, so I will not
20 repeat them.

21 I find that a sentence of 192 months is sufficient
22 but not greater than necessary to achieve the goals in the
23 federal sentencing statute.

24 The defendant's request that I give a recommendation
25 for a drug treatment program is rejected. It's not recommended

1 by the probation officer, and I see no reason under the
2 circumstances why I should say anything that reduces the
3 sentence I just imposed.

4 There is no indication that there is a causal
5 connection between any use of alcohol or any other substance
6 that the defendant has consumed and the crime of which he has
7 been convicted. And if he has a problem, he's not going to be
8 legally consuming drugs or alcohol during the time of
9 incarceration. I don't see any reason why I should help him
10 reduce his sentence, and so I don't make that recommendation.

11 Pursuant to the Sentencing Reform Act of 1984, it is
12 the judgment of the Court that the defendant, Anthony Vassallo,
13 III, is hereby committed to the custody of the Bureau of
14 Prisons to be imprisoned for a term of 192 months.

15 The defendant shall pay a special assessment of \$100.
16 Payment to begin immediately.

17 No fine is imposed because in light of the staggering
18 amount of restitution owed, the defendant lacks the ability to
19 pay a fine.

20 It is further ordered that the defendant shall pay
21 restitution in the amount of the payment to be determined at a
22 restitution hearing scheduled to commence at 9:00 a.m. on
23 August 23rd of this year.

24 Upon release from imprisonment, the defendant shall
25 be placed on supervised release for a term of 36 months.

1 Within 72 hours of release from the custody of the
2 Bureau of Prisons, the defendant shall report in person to the
3 probation office in the district to which he is released.

4 While on supervised release, the defendant shall not
5 commit another federal, state or local crime, shall not possess
6 a firearm, ammunition or a destructive device as defined in
7 federal law, or any other dangerous weapon, and shall not
8 illegally possess controlled substances.

9 The defendant shall cooperate in the collection of
10 DNA as directed by the probation officer, and shall comply with
11 the standard conditions which have been recommended by the
12 United States Sentencing Commission and which I adopt.

13 Further, the defendant shall refrain from any
14 unlawful use of a controlled substance and shall submit to one
15 drug test within 15 days of release from imprisonment and at
16 least two periodic drug tests thereafter not to exceed four
17 drug tests per month.

18 I adopt the special conditions recommended by the
19 probation officer on pages 21 and 22 of the presentence report
20 and impose all of those listed as special conditions.

21 I recommend that the defendant be incarcerated at an
22 institution in Northern California but only insofar as this
23 recommendation accords with the security classification and the
24 space availability of the Bureau of Prisons.

25 Anything further?

1 MS. HOBLER: No, Your Honor -- yes, the Government
2 moves to dismiss the remaining counts in the Indictment.

3 THE COURT: Motion granted. Defendant is remanded to
4 the custody of the United States Marshal to serve the sentence
5 just imposed. This matter is adjourned.

6 (End of transcript.)

7

8 CERTIFICATION

9

10 I, Diane J. Shepard, certify that the foregoing is a
11 correct transcript from the record of proceedings in the
12 above-entitled matter.

13

14

15 /s/ DIANE J. SHEPARD
16 DIANE J. SHEPARD, CSR #6331, RPR
17 Official Court Reporter
18 United States District Court

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