

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19920

<p>In the Matter of</p> <p style="text-align:center">Patrick Morgan Schiro,</p> <p>Respondent.</p>

**DIVISION OF ENFORCEMENT’S MOTION FOR ENTRY OF AN ORDER OF
DEFAULT AND IMPOSITION OF REMEDIAL SANCTIONS**

Pursuant to Commission Rules or Practice 154, 155(a) and 220(f), 17 C.F.R. §§ 201.154, 155(a) and 201.220(f), the Division of Enforcement (“Division”) respectfully moves the Securities and Exchange Commission (the “Commission”) for an order finding Respondent Patrick Morgan Schiro (“Respondent” or “Schiro”) in default, and imposing remedial sanctions against him, and submits this Memorandum of Law, together with the November 2, 2022 Declaration of Todd D. Brody (“Brody Dec.”) and exhibits annexed thereto, in support.0

I. Background

A. Allegations in the OIP

On August 24, 2020, the Order Instituting Proceedings (“OIP”) in this matter was issued pursuant to Section 203(f) of the Investment Advisers Act of 1940. *See Patrick Morgan Schiro*, Investment Advisers Act Release No. 5564 (August 24, 2020). As alleged in the OIP, Schiro,

currently age 50, was, between July 2014 and October 2015, a person associated with an investment adviser, purporting to advise clients on their investments in securities through Black Rock Morgan LLC (“BRM”), a company which he controlled, in exchange for compensation. OIP ¶ II.A.

On March 17, 2017, Schiro pled guilty to one count of wire fraud in violation of Title 18 United States Code, Section 1343, before the United States District Court for the Eastern District of New York, in *United States v. Patrick Morgan Schiro*, Crim. No. 17-cr-130 (E.D.N.Y.) (the “Criminal Action”). OIP ¶ II.B.1. On April 13, 2018, Schiro was sentenced to a prison term of 28 months followed by 3 years of supervised release. OIP ¶ II.B.2. On December 12, 2018, an amended judgment was entered against Schiro, ordering him to make restitution in the amount of \$481,583. OIP ¶ II.B.2.

The count of the superseding criminal information to which Respondent pled guilty alleged, *inter alia*, that between July 2014 and October 2015, Respondent made materially false and misleading statements and defrauded clients of BRM by misappropriating their assets. OIP ¶ II.B.3.

B. The Underlying Criminal Action and Criminal Sanctions

On March 17, 2017, the United States Attorney’s Office for the Eastern District of New York filed a superseding criminal information against Respondent in the Criminal Action. As alleged in the Criminal Action, between July 2014 and October 2015, Respondent made materially false and misleading statements and defrauded clients of BRM by misappropriating their assets. Brody Dec., Ex. A.¹

¹ In addition to the Superseding Information in the Criminal Action (Brody Dec., Ex. A), the Division submits the following filings from the Criminal Action in support of its motion,

On March 17, 2017, Schiro pled guilty to one count of wire fraud in violation of Title 18 United States Code, Section 1343 before the United States District Court for the Eastern District of New York, in the Criminal Action. OIP ¶ II.B.1; Brody Dec., Ex. B. At his criminal sentencing, the court found that Schiro was a “fraudster” and had “an utter lack of remorse.” Brody Dec., Ex. C. On April 13, 2018, the court sentenced Respondent to a prison term of 28 months followed by 3 years of supervised release. OIP ¶ II.B.2.; Brody Dec., Ex. C. On December 12, 2018, an amended judgment was entered against Respondent, ordering him to make restitution in the amount of \$481,583. OIP ¶ II.B.2.; Brody Dec., Ex. D.

C. Schiro Did Not Answer the OIP

The OIP was published by the Commission’s Office of the Secretary on August 24, 2020, and Schiro was personally served with the OIP on October 14, 2020 at his address at [REDACTED] [REDACTED] See Declaration of Sheldon Mui, dated March 9, 2021, previously filed with the Commission.

In the OIP, Schiro was directed to file an Answer within twenty days after service of the OIP. See OIP at IV; see also Rules 160(a) and 220(b) of the Commission’s Rules of Practice, which provides that a time period runs unto the end of the next day that is not a Saturday or Sunday; and that the answer is due within 20 days of service, 17 C.F.R. §§ 201.160(a) and 201.220(b). Under these provisions, Schiro’s answer was due no later than November 3, 2020.

each of which the Commission may take official notice of pursuant to Commission Rules of Practice 323, 17 C.F.R. § 201.323: the March 17, 2017 Plea Hearing transcript from the Criminal Action (Brody Dec., Ex. B); the April 13, 2018 Sentencing Hearing transcript from the Criminal Action (Brody Dec., Ex. C); and the December 12, 2018 Amended Judgment in the Criminal Action (Brody Dec., Ex. D).

Schiro never filed an answer to the OIP with the Secretary's Office, and did not otherwise attempt to communicate with the Division. The Division has not received any response to the OIP, nor does the docket of this proceeding reflect any filing by Schiro in response to it. Brody Dec. ¶ 2 and 3.

D. Schiro Did Not Respond to the September 23, 2022 Commission Order to Show Cause Against Schiro

After the Division filed a motion for entry of default and leave to file motion for summary disposition on March 9, 2021, the Commission, on September 23, 2022, issued an Order to Show Cause (the "Order") that found that Schiro's answer "was required to be filed within 20 days of service of the OIP," and that as of the date of the Order, he had not done so, Order at 1.

The Order required Schiro to show cause by October 7, 2022 why he should not be deemed in default, and why this proceeding should not be determined against him. The Order further noted that when a party defaults, "the allegations in the OIP will be deemed to be true and the Commission may determine the proceeding against that party upon consideration of the record without holding public hearing. *Id* at 1-2. The Order also ordered the Division, in the event that Schiro did not file a response by October 7, 2022, to file a motion for entry of default and the imposition of remedial sanctions by November 4, 2022.

The Division has not received any response to the Order, nor does the docket of this proceeding reflect any filing by Schiro in response to it. Brody Dec. ¶ 2 and 3. Accordingly, the Division now moves for a finding that Schiro is in default, and for the imposition of remedial sanctions. Specifically, the Division requests that the Commission order that Schiro be barred

from associating with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization.

II. Argument

A. Schiro Should be Deemed in Default

Rule 155(a) of the Commission's Rules of Practice states:

A party to a proceeding may be deemed to be in default and the Commission or the hearing officer may determine the proceeding against that party upon consideration of the records, 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 ...

17 C.F.R. § 201.155(a). The OIP specifically provides that “[i]f 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 ¶ IV, citing Rules 155(a), 220(f), 221(f), and 310; Order at 1-2.

Rule 141(a)(2)(i) sets forth permissible methods of service of the OIP upon individuals, which include “handing a copy of the order to the individual ...” 17 C.F.R. § 201.141(a)(2)(i).

Here, Schiro was personally served with the OIP on October 14, 2020 at his address at [REDACTED]. See Declaration of Sheldon Mui, dated March 9, 2021.

The Division requests that Schiro be deemed in default. Schiro failed to timely respond to the OIP after having been properly served pursuant to Rule 141 and has also failed to respond to the Order.

B. The Facts Alleged in the OIP Should be Deemed True

As set forth above, failure to file an answer may result in the allegations of the OIP being deemed true. In this case, that includes the following:

1. Between July 2014 and October 2015, Respondent was a person associated with an investment adviser, purporting to advise clients on their investments in securities through BRM, a company which he controlled, in exchange for compensation.
2. On March 17, 2017, Respondent pled guilty to one count of wire fraud in violation of Title 18 United States Code, Section 1343, before the United States District Court for the Eastern District of New York, in *United States v. Patrick Morgan Schiro*, Crim. No. 17-cr-130.
3. On April 13, 2018, a judgment was entered against Respondent sentencing him to a prison term of 28 months followed by 3 years of supervised release, with restitution to be determined at a later date. On December 12, 2018, an amended judgment was entered against Respondent, ordering him to make restitution in the amount of \$481,583.
4. The count of the superseding criminal information to which Respondent pled guilty alleged, *inter alia*, that between July 2014 and October 2015, Respondent made materially false and misleading statements and defrauded clients of BRM by misappropriating their assets.

The facts alleged in the OIP demonstrate that the sanctions requested against Schiro are appropriate and in the public interest.

C. The Appropriate Remedial Sanctions in this Case

The Commission has typically considers the *Steadman* factors when determining appropriate public-interest remedies. *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979). Those factors are: (1) the egregiousness of the Respondents' actions; (2) the isolated or recurrent nature of the infractions; (3) the degree of scienter involved; (4) the sincerity of the Respondents' assurances against future violations; (5) the Respondents' recognition of the wrongful nature of their conduct; and (6) the likelihood that the Respondents' occupations will present opportunities for future violations. *Id.* The Commission also considers the age of the violations, the degree of

harm to investors and the marketplace resulting from the violations, and the deterrent effect of administrative sanctions. *Lonny S. Bernath*, ID Release No. 993 at 4, 2016 WL 131539 at *4 (April 4, 2016).

In this case, nearly all of the relevant factors suggest that a full collateral bar is appropriate and in the public interest. The conduct at issue was egregious and resulted in investor losses in excess of \$480,000. Schiro's misconduct was repeated and exhibited a high degree of *scienter*, taking place from July 2014 through October 2015. During this period, Schiro, acting as an investment adviser to clients to whom he owed a fiduciary duty, defrauded his clients, made materially false and misleading statements to his clients, and misappropriated his clients' assets.

Moreover, Schiro has not come forward to defend this lawsuit or otherwise make any assurances against future violations, which presents the likelihood that he will commit future violations if the full collateral bar is not imposed against him.

III. Conclusion

For the foregoing reasons, Schiro should be deemed in default and the Commission should impose a full associational bar which is appropriate and also in the public interest.

Dated: November 2, 2022

Respectfully submitted,

/s/ Todd D. Brody
Todd D. Brody, Esq.
Sheldon Mui, Esq.

Attorneys for the Division of Enforcement
Securities and Exchange Commission
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Suite 20-100
New York, NY 10004
brodyt@sec.gov
muis@sec.gov
212-336-0080

CERTIFICATE OF SERVICE

On November 2, 2022, I have caused the **Motion For An Entry Of An Order Of Default And Imposition Of Remedial Sanctions, and the accompanying Declaration of Todd D. Brody dated November 2, 2022**, to be served on the following parties and other persons entitled to notice by placing the same in the United States mail or by delivery as listed below and addressed as follows:

Vanessa A. Countryman
Office of the Secretary
Securities and Exchange Commission
100 F. Street, N.S.
Washington, D.C. 20549
(Emailed to APFilings@sec.gov)

Mr. Patrick Morgan Schiro



(United States First Class Mail)

Dated: November 2, 2022
New York, New York

s/ Todd D. Brody
Todd D. Brody

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19920

In the Matter of

Patrick Morgan Schiro,

Respondent.

DECLARATION OF
TODD D. BRODY

I, Todd D. Brody pursuant to 28 U.S.C. §1746, declare as follows under penalty of perjury:

1. I am employed as a Senior Trial Counsel by Plaintiff Securities and Exchange Commission (the “Commission”) in the Commission’s New York Regional Office of the Division of Enforcement (the “Division”). I submit this declaration in support of the Division’s motion for entry of an order of default and imposition of remedial sanctions against Respondent Patrick Morgan Schiro (“Schiro”).

2. As of the filing of this declaration, the Division has not received any response to either the Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940 and Notice of Hearing (“OIP”) issued on August 24, 2020 or the Commission’s September 23, 2022 Order to Show Cause.

3. The docket of this proceeding does not reflect any filing by Schiro.

4. Attached hereto as Exhibit A is a true and correct copy of the March 17, 2017 Superseding Criminal Information in *United States v. Patrick Morgan Schiro*, Crim. No. 17-cr-130 (E.D.N.Y.) (“Criminal Action”), which the Division obtained from the public docket maintained for the United States District Court for the Eastern District of New York.

5. Attached hereto as Exhibit B is a true and correct copy of the March 17, 2017 Plea Hearing transcript from the Criminal Action, which the Division obtained from the court reporter for the United States District Court for the Eastern District of New York.

6. Attached hereto as Exhibit C is a true and correct copy of the April 13, 2018 Sentencing Hearing Transcript from the Criminal Action, which the Division obtained from the court reporter for the United States District Court for the Eastern District of New York.

7. Attached hereto as Exhibit D is a true and correct copy of the December 12, 2018 Amended Judgment from the Criminal Action, which the Division obtained from the public docket maintained for the United States District Court for the Eastern District of New York.

Dated: New York, New York
November 2, 2022

/s/ Todd D. Brody
Todd D. Brody

WMP:DKK
F. #2016R01038

03/17/17 PM 1:40

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

I N F O R M A T I O N

- against -

Cr. No. 17-130
(T. 18, U.S.C., §§ 981(a)(1)(C), 1343,
2 and 3551 et seq.; T. 21, U.S.C., §
853(p); T. 28, U.S.C., § 2461(c))

PATRICK MORGAN SCHIRO,

Defendant.

-----X

THE UNITED STATES ATTORNEY CHARGES:

I N T R O D U C T I O N

At all times relevant to this Information, unless otherwise indicated:

I. The Defendant

1. The defendant PATRICK MORGAN SCHIRO, a resident of Rockville Centre, New York, was a purported portfolio manager. On or about February 27, 2014, SCHIRO incorporated a business in New York State called Black Rock Morgan LLC (“BRM”). SCHIRO established a BRM office in Rockville Centre, New York, and a virtual office on Wall Street in New York, New York.

II. The Fraudulent Scheme

2. The defendant PATRICK MORGAN SCHIRO engaged in a scheme to defraud investors by utilizing BRM as a sham investment business. In or about and between July 2014 and April 2016, SCHIRO induced five individuals, whose identities are known to

the United States Attorney, to invest a total of \$440,397 in BRM based on material misrepresentations and omissions about, among other things: (i) BRM's assets under management; (ii) BRM's investment strategies; (iii) the number of client accounts managed by BRM; and (iv) BRM's performance.

A The Fraudulent Inducement

3. In or about and between July 2014 and August 2014, the defendant PATRICK MORGAN SCHIRO induced Investor 1, an individual whose identity is known to the United States Attorney, to invest in BRM based on material misrepresentations and omissions. Specifically, SCHIRO sent Investor 1 a document (the "BRM Overview"), which represented, among other things, that BRM: (i) "offer[ed] a range of alternative and traditional investment strategies for institutional and private investors around the world"; (ii) had "core competencies," including "a team of investment professionals with significant sector-specific expertise"; and (iii) offered services in "tax mitigation and cash flow planning" and "risk mitigation, legal structures and transferring risk to insurance companies." These representations in the BRM Overview were false because BRM: (i) invested money in securities through a single trading platform and did not offer a range of investment strategies; (ii) did not have a team of investment professionals; and (iii) did not offer the strategies and kinds of services and planning described in the BRM Overview. Additionally, in a telephone conference in or about August 2014, SCHIRO told Investor 1 that he had many clients and managed millions of dollars in assets. Contrary to these representations, BRM did not have any clients or investments at the time of these

representations. In or about August 2014, SCHIRO sent or caused to be sent an account application to Investor 1 by facsimile, which application falsely represented to Investor 1 that SCHIRO would create or cause to be created, and then manage, an account on behalf of Investor 1. SCHIRO also concealed his prior fraud conviction from Investor 1. In reliance on these material misrepresentations and omissions by SCHIRO, Investor 1 sent a total of \$242,273 by multiple wire transfers and a check to a bank account held in the name of BRM (the "BRM Bank Account").

4. In or about September 2014, the defendant PATRICK MORGAN SCHIRO induced Investor 2, an individual whose identity is known to the United States Attorney, to invest in BRM based on material misrepresentations and omissions. Specifically, SCHIRO sent Investor 2 the BRM Overview, which contained the misrepresentations described above. Additionally, in a telephone conference in or about September 2014, SCHIRO told Investor 2 that he managed more than 200 accounts at BRM and that he also managed a private equity fund with \$200 million in assets. Contrary to these representations, BRM did not have 200 accounts and SCHIRO did not manage a private equity firm. SCHIRO also concealed his prior fraud conviction from Investor 2. In reliance on these material misrepresentations and omissions by SCHIRO, Investor 2 sent a total of \$143,400 by wire transfer to the BRM Bank Account.

5. In or about September 2014, the defendant PATRICK MORGAN SCHIRO induced Investor 3, an individual whose identity is known to the United States Attorney, to invest in BRM based on material misrepresentations and omissions.

Specifically, in a telephone conference, SCHIRO told Investor 3 that BRM had high rates of return. Contrary to this representation, BRM did not have high rates of return when SCHIRO solicited an investment from Investor 3. In addition, on or about September 24, 2014, SCHIRO sent Investor 3 the BRM Overview, which contained the misrepresentations described above. SCHIRO also concealed his prior fraud conviction from Investor 3. In reliance on these material misrepresentations and omissions by SCHIRO, Investor 3 mailed a check to BRM in the amount of \$2,270 that was then deposited in the BRM Bank Account.

6. In or about December 2014, the defendant PATRICK MORGAN SCHIRO induced Investor 4, an individual whose identity is known to the United States Attorney, to invest in BRM based on material misrepresentations and omissions. Specifically, in a telephone conference, SCHIRO told Investor 4 that BRM had many clients, generally with multi-million dollar accounts. Contrary to this representation, BRM had no clients who had invested more than \$1 million. In addition, on or about December 22, 2014, SCHIRO sent Investor 4 the BRM Overview, which contained the misrepresentations described above. SCHIRO also concealed his prior fraud conviction from Investor 4. In reliance on these material misrepresentations and omissions by SCHIRO, Investor 4 sent \$27,287 by wire transfer to the BRM Bank Account.

7. In or about October 2015, the defendant PATRICK MORGAN SCHIRO induced Investor 5, an individual whose identity is known to the United States Attorney, to invest in BRM based on material misrepresentations and omissions. Specifically, in telephone conferences, SCHIRO told Investor 5, among other things, that

BRM: (i) did not usually take in clients for less than a \$1 million investment; (ii) had approximately \$150 million in assets under management; (iii) had rates of return of up to 80 percent; and (iv) had offices in New York and Chicago. Contrary to these representations, BRM: (i) had no clients who had invested \$1 million; (ii) did not have even \$1 million in assets under management; (iii) had not generated rates of return that were even close to 80 percent; and (iv) had no office in Chicago. In reliance on these material misrepresentations and omissions by SCHIRO, Investor 5 sent \$25,167 by wire transfer to the BRM Bank Account.

B. The Fraudulent Misappropriation and Concealment

8. The defendant PATRICK MORGAN SCHIRO invested only a small portion of the funds invested by Investors 1 through 5 (the "Investors"). Specifically, between July 2014 and April 2016, SCHIRO transferred a total of approximately \$138,100 from the BRM Bank Account to a trading account (the "BRM Trading Account"). During that time period, no other money was transferred from the BRM Bank Account to the BRM Trading Account or to any other account or entity that engaged in the purchase and sale of securities.

9. Contrary to his representations to investors, the defendant PATRICK MORGAN SCHIRO used a significant amount of the invested money on his personal expenses. For example, between July 2014 and October 2016, SCHIRO used approximately \$190,000 from the BRM Bank Account to pay one of his children's university tuition, withdrew approximately \$59,000 in cash, sent approximately \$28,000 to one of his children,

and made hundreds of small withdrawals at restaurants, Amazon.com, gas stations, and other stores.

10. In order to conceal the fact that he had misappropriated investor funds, the defendant PATRICK MORGAN SCHIRO made a series of material misrepresentations and omissions to deceive those investors into believing that their investments were performing well. For example, in or about August 2015, Investor 2, who invested a total of \$143,400 in BRM, received an account statement that falsely asserted the "Total Portfolio Profit/Loss" was \$266,343.20, a purported gain of 56.49%, and the "Current Portfolio Value" was \$737,820.71. These electronic account statements also falsely represented the investment activity in the victims' accounts by listing specific purchases or sales of securities that SCHIRO had not actually purchased or sold. Additionally, in or about June 2016, during a telephone call with Investor 1, who invested a total of \$242,273 in BRM, the defendant PATRICK MORGAN SCHIRO falsely stated that Investor 1's account was valued at \$711,000.

11. To conceal his fraudulent scheme, the defendant PATRICK MORGAN SCHIRO fraudulently induced Investor 1 to send SCHIRO additional money by falsely representing to Investor 1 on at least four occasions that Investor 1's account had generated "cash calls" that required the investment of additional funds. In reality, SCHIRO's investment activities had not generated such "cash calls." Instead, SCHIRO made these false statements about the need for more funds from Investor 1 because the balance in the BRM Bank Account had become low or even overdrawn. For example, on or about

December 18, 2014, the BRM Bank Account balance fell from \$368.29 to an overdraft of \$622.86. That same day, SCHIRO caused an email to be sent to Investor 1 stating "Your account has generated a cash call" and enclosed a document assessing the cash call at \$2,143.50. On or about December 22, 2015, Investor 1 sent by wire transfer \$2,143.50 to the BRM Bank Account, whose value had fallen to an overdraft of \$1,031 over the previous few days. SCHIRO did not transfer this money to the BRM Trading Account.

12. In late 2015 and 2016, four of the defendant PATRICK MORGAN SCHIRO's investors asked for all or part of their investments in BRM to be returned. SCHIRO often ignored these requests. At times, SCHIRO refused to redeem the investments and sent or caused to be sent fabricated emails in an effort to conceal his fraudulent misappropriation. Despite multiple redemption requests by his investors, SCHIRO has failed to return their funds.

WIRE FRAUD

13. The allegations contained in paragraphs one through 12 are realleged and incorporated as if set forth fully in this paragraph.

14. In or about and between July 2014 and June 2016, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, the defendant PATRICK MORGAN SCHIRO, together with others, did knowingly and intentionally devise a scheme and artifice to defraud Investors 1 through 5, and to obtain money and property from them by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice,

transmitted and caused to be transmitted by means of wire communication in interstate and foreign commerce, writings, signs, signals, pictures and sounds, to wit: in or about August 2014, the defendant PATRICK MORGAN SCHIRO sent or caused to be sent by facsimile from the Eastern District of New York to Investor 1, located in Garland, Texas, an account application that falsely represented to Investor 1 that SCHIRO would create or cause to be created, and then manage, an account on behalf of Investor 1.

(Title 18, United States Code, Sections 1343, 2 and 3551 et seq.)

CRIMINAL FORFEITURE ALLEGATION

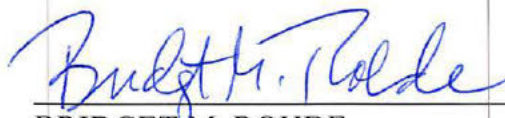
15. The United States hereby gives notice to the defendant that, upon his conviction of the offense charged herein, the government will seek forfeiture in accordance with Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), which require any person convicted of such offense to forfeit any property, real or personal, constituting or derived from proceeds obtained directly or indirectly as a result of such offense.

16. 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), to seek forfeiture of any other property of the defendant, up to the value of the forfeitable property described in this forfeiture allegation.

(Title 18, United States Code, Section 981(a)(1)(C); Title 21, United States Code, Section 853(p); Title 28, United States Code, Section 2461(c))



BRIDGET M. ROHDE
ACTING UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

F. #2016R01038
FORM DBD-34
JUN. 85

No. _____

UNITED STATES DISTRICT COURT

EASTERN *District of* NEW YORK

CRIMINAL DIVISION

THE UNITED STATES OF AMERICA

vs.

PATRICK MORGAN SCHIRO,

Defendant.

INFORMATION

(T. 18, U.S.C., §§ 981(a)(1)(C), 1343, 2 and 3551 et seq.;
T. 21, U.S.C., § 853(p); T. 28, U.S.C., § 2461(c))

A true bill.

Foreperson

Filed in open court this _____ *day,*

of _____ *A.D. 20* _____

Clerk

Bail, \$ _____

David K. Kessler, Assistant U.S. Attorney (718) 254-7202

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X
 UNITED STATES OF AMERICA, : 17-CR-0130(LDH)
 :
 -against- : United States Courthouse
 : Brooklyn, New York
 :
 PATRICK SCHIRO, : Friday, March 17, 2017
 : 11:00 a.m.
 Defendant. :
 - - - - -X

TRANSCRIPT OF CRIMINAL CAUSE FOR GUILTY PLEA
BEFORE THE HONORABLE LASHANN DEARCY HALL
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Government: BRIDGET M. ROHDE, ESQ.
 United States Attorney
 Eastern District of New York
 271 Cadman Plaza East
 Brooklyn, New York 11201
 BY: DAVID K. KESSLER, ESQ.
 Assistant United States Attorney

For the Defendant: FEDERAL DEFENDERS OF NEW YORK
 For the Defendant -
 Patrick Schiro
 One Pierrepont Plaza
 16th Floor
 Brooklyn, New York 11201
 BY: LEN KAMDANG, ESQ.

Court Reporter: Anthony D. Frisolone, FAPR, RDR, CRR, CRI
 Official Court Reporter
 Telephone: (718) 613-2487
 Facsimile: (718) 613-2694
 E-mail: Anthony_Frisolone@nyed.uscourts.gov

Proceedings recorded by computerized stenography. Transcript produced by Computer-aided Transcription.

1 (In open court.)

2 (Defendant present in open court.)

3 COURTRROOM DEPUTY: All rise. The United States
4 District Court for the Eastern District of New York is now in
5 session. The Honorable LaShann DeArcy Hall is now presiding.

6 (Honorable LaShann DeArcy Hall takes the bench.)

7 COURTRROOM DEPUTY: Calling criminal cause for guilty
8 plea in Docket No. 17-CR-0130, *United States of America*
9 *against Patrick Schiro*.

10 Counsel, please note your appearances for the
11 record.

12 MR. KESSLER: For the United States of America,
13 Assistant United States Attorney David K. Kessler.

14 Good afternoon, your Honor.

15 MR. KAMDANG: Len Kamdang for Patrick Schiro.

16 Good afternoon, your Honor.

17 COURTRROOM DEPUTY: Criminal cause for pleading
18 Docket No. 17-CR-0130. United States of America versus
19 Patrick Schiro.

20 Counsel, state your name for the record.

21 MR. KESSLER: Good morning, your Honor. David
22 Kessler for the United States.

23 THE COURT: Good morning.

24 MR. KESSLER: And with me is Special Agent Matt
25 Mahaffey.

1 MR. KAMDANG: Len Kamdang on behalf of Patrick
2 Schiro.

3 THE DEFENDANT: Good morning, Patrick Schiro.

4 THE COURT: Good morning. All right. You all may
5 be seated. I want to make sure I don't mispronounce your last
6 name.

7 Is it Kamdang?

8 MR. KAMDANG: Yes, your Honor.

9 THE COURT: Mr. Kamdang, I understand that your
10 client wishes to plead guilty to the information.

11 MR. KAMDANG: That's correct, your Honor.

12 THE COURT: Mr. Schiro, your attorney advises me
13 that you wish to plead guilty to the information in which you
14 are charged and that you are doing so pursuant to an agreement
15 with the Government; is that correct, sir?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Now, Mr. Schiro, this is a serious
18 decision and I must be certain that you make it understanding
19 your rights and the consequences of your plea.

20 I'm going to explain to you the rights that you'll
21 be giving up by pleading guilty. And before I accept your
22 plea, sir, there are a number questions that I must ask you to
23 establish that it is a valid plea and that you are acting
24 knowingly and voluntarily.

25 If you do not understand any of my questions, please

1 say so and I will reword my question. If you would like to
2 consult with your attorney at any time for any reason, please
3 let me know and I will give you as much time as you need to do
4 so.

5 Now, Mr. Schiro, I need you to answer my questions
6 under oath and at this time I ask that you be sworn.

7 COURTROOM DEPUTY: Please raise your right hand.

8 (Defendant sworn.)

9 THE DEFENDANT: I do.

10 COURTROOM DEPUTY: State your name for the record.

11 THE DEFENDANT: Patrick Schiro.

12 THE COURT: Mr. Schiro, do you understand that you
13 are now under oath and if you answer my questions falsely,
14 your answers may be used against you in another prosecution
15 for perjury or making a false statement.

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Can you once again state your full name
18 for the error.

19 THE DEFENDANT: Patrick Morgan Schiro.

20 THE COURT: Thank you, sir. How old are you?

21 THE DEFENDANT: 45.

22 THE COURT: And how much education have you had,
23 sir?

24 THE DEFENDANT: Some college.

25 THE COURT: Okay. Where did you attend school? You

1 said some college. Where?

2 THE DEFENDANT: BMCC.

3 THE COURT: Okay. Sir, you're able to speak and
4 understand English?

5 THE DEFENDANT: Yes.

6 THE COURT: Mr. Kamdang, have you been able to
7 communicate with Mr. Schiro in English?

8 MR. KAMDANG: Yes.

9 THE COURT: Mr. Schiro, have you been treated for
10 hospitalized for any mental illness?

11 THE DEFENDANT: [REDACTED]

12 THE COURT: Okay.

13 THE DEFENDANT: I'm sorry, your Honor, that's
14 actually incomplete. I also [REDACTED]

15 THE COURT: Okay. So let me ask you this,
16 Mr. Schiro. Are you currently, or have you recently been,
17 under the care a doctor or psychiatrist for any reason?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. And your doctor or
20 psychiatrist prescribed you with [REDACTED]?

21 THE DEFENDANT: Yes.

22 THE COURT: The psychiatrist or the primary care
23 physician?

24 THE DEFENDANT: First psychiatrist and then a
25 primary care.

1 THE COURT: Okay. Were you diagnosed with any
2 condition of any kind? [REDACTED]

3 THE DEFENDANT: [REDACTED]

4 THE COURT: [REDACTED]

5 THE DEFENDANT: [REDACTED]

6 THE COURT: Okay. And are you currently taking --
7 you said it was [REDACTED] and?

8 THE DEFENDANT: [REDACTED]

9 THE COURT: And [REDACTED]

10 Are you currently taking [REDACTED]?

11 THE DEFENDANT: Yes.

12 THE COURT: When is the last time that you took the
13 medication, [REDACTED]?

14 THE DEFENDANT: An hour how ago.

15 THE COURT: One hour ago?

16 THE DEFENDANT: (Nodding).

17 THE COURT: Does the medication interfere with your
18 ability to comprehend the proceedings today?

19 THE DEFENDANT: I feel fine, your Honor.

20 THE COURT: So you would say that your mind is
21 clear?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: [REDACTED]
24 [REDACTED]

25 THE DEFENDANT: [REDACTED]

1 THE COURT: When was that?

2 THE DEFENDANT: I'm currently on what's called a

3 [REDACTED]

4 THE COURT: Describe that for me, sir.

5 THE DEFENDANT: A [REDACTED] is the slow decrease
6 of a drug, of an addictive drug. In my case, it's a taper
7 which happens very slowly because I have [REDACTED] and that
8 class of drugs, when withdrawn, will give you seizures.

9 THE COURT: Right. Do you know the dosage of the
10 [REDACTED] that you are on currently?

11 THE DEFENDANT: [REDACTED]

12 THE COURT: [REDACTED]

13 THE DEFENDANT: [REDACTED]

14 THE COURT: All right. Mr. Schiro, do you
15 understand what's happening here today?

16 THE DEFENDANT: Yes.

17 THE COURT: Mr. Kamdang, do you have any concerns
18 concerning Mr. Schiro's competency with regard to these
19 proceedings?

20 MR. KAMDANG: I don't, your Honor. We met this
21 morning and reviewed everything again. I thought that all of
22 his questions were thoughtful and his responses were all
23 appropriate. I feel that he understands what's happening
24 today.

25 THE COURT: All right. Mr. Schiro, before we

1 proceed with any change of plea, I want to discuss with you
2 the waiver of indictment in this case as you would be pleading
3 to an information.

4 Mr. Schiro, you have a constitutional right to be
5 charged by an indictment of a grand jury, but you can waive
6 that right; that is, give up the right and consent to be
7 charged by information of the Government.

8 So instead of an indictment, the felony charges
9 against you have been brought by the Government by an
10 information which is to be filed with the Court.

11 Mr. Schiro, do you have waive reading of the
12 information?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Now, unless you waive indictment, sir,
15 you may not be charged with a felony unless a grand jury finds
16 by return of an indictment that there is probable cause to
17 believe that a crime has been committed and that you committed
18 it. If you do not waive indictment, the Government may
19 present the case to the grand jury and ask the grand jury to
20 indict you.

21 Now, sir, a grand jury is composed of at least 16
22 and not more than 23 people, and at least 12 grand jurors must
23 find that there is probable cause to believe that you
24 committed the crime with which you are charged before you may
25 be indicted. The grand jury may or may not indict you.

1 If you waive indictment by the grand jury, the case
2 will proceed against you on the Government's information just
3 as though you have been indicted.

4 Have you discussed waiving your right to indictment
5 by the grand jury with your attorney, sir?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: And do you understand your right to
8 indictment by a grand jury?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: Have any threats or promises been made
11 to induce you to waive indictment?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: Mr. Kamdang, do you know of any reason
14 why Mr. Schiro should not waive his right to an indictment?

15 MR. KAMDANG: No, your Honor.

16 THE COURT: Mr. Schiro, do you agree to waive
17 indictment on the charges set forth in the information which
18 is to be filed with the Court?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: Do you have the waiver of indictment for
21 Mr. Schiro to sign, please.

22 I have in front of me the waiver of indictment which
23 I've executed. Please pass this down so that I want to make
24 sure that Mr. Schiro can see that.

25 Mr. Schiro, I've handed you the waiver of

1 indictment. I'd like you to confirm that that document bears
2 your signature.

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: All right. I find that Mr. Schiro's
5 decision to waive the indictment is made knowingly,
6 intelligently, and voluntarily. I, therefore, accept
7 Mr. Schiro's waiver of the indictment.

8 All right. Mr. Kamdang, have you discussed this
9 matter with your client?

10 MR. KAMDANG: I have, your Honor.

11 THE COURT: And does he understand the rights he'd
12 be waiving by pleading guilty?

13 MR. KAMDANG: Yes, your Honor.

14 THE COURT: And is he capable of understanding the
15 nature of these proceedings?

16 MR. KAMDANG: Yes.

17 THE COURT: And, again, I will ask you again, do you
18 have any questions regarding Mr. Schiro's competency,
19 particularly in light of the prescription medication that he
20 is taking, the [REDACTED].

21 MR. KAMDANG: I don't have those concerns.

22 THE COURT: All right. Have you advised him of the
23 maximum and minimum sentence and fine that can be imposed?

24 MR. KAMDANG: Yes.

25 THE COURT: Now, Mr. Schiro, have you reviewed a

1 copy of the information pending against you. Again, that is
2 the written charge that is made against you in this case.

3 THE DEFENDANT: Yes.

4 THE COURT: Okay. And have you fully discussed the
5 charge as well as the case in general with your attorney?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Now, in the information you are charged
8 with wire fraud, to wit: You together with others did
9 knowingly and intentionally devise a scheme and artifice to
10 defraud Investors 1 through 5 to obtain money and property
11 from them by means of materially false and fraudulent
12 pretenses, representations, and promises and for the purpose
13 of executing such scheme and artifice transmitted and caused
14 to be transmitted by means of wire communication and
15 interstate and foreign commerce writings, signs, signals,
16 pictures, and sounds.

17 You are charged to wit: That in or about August of
18 2014, you sent or caused to be sent by facsimile from the
19 Eastern District of New York to Investor 1 located in Garland,
20 Texas an account application that falsely represented to
21 Investor 1 that you would create or cause to be created and
22 then manage an account on behalf of Investor 1.

23 The information also includes a criminal forfeiture
24 allegation which provides notice that upon conviction of the
25 aforementioned offense, the Government will seek forfeiture of

1 any property, real or personal, which constitutes or is
2 derived from proceeds traceable directly or indirectly as a
3 result of the aforementioned offense.

4 Mr. Schiro, do you understand the charges that have
5 been made against you?

6 THE DEFENDANT: I have a question.

7 MR. KAMDANG: One moment.

8 THE COURT: Yes.

9 (A brief pause in the proceedings was held.)

10 MR. KAMDANG: Your Honor, Mr. Schiro wants to
11 clarify that in his allocution that he was acting alone here
12 to the extent that there were other people who were employed
13 or did things they were unaware of the illegality of his
14 scheme. His allocution will relate to his actions and his
15 actions alone. This isn't a conspiracy such as his allocution
16 will make out the charge.

17 THE COURT: The conduct that he engaged in that
18 makes him specifically guilty of the charge in Count One.

19 MR. KAMDANG: Yes, your Honor.

20 THE COURT: We'll deal with it when we get to the
21 allocution.

22 At this point, Mr. Schiro, what I want to make sure
23 that you understand is what has been charged in the
24 information.

25 Do you understand what's been charged in the

1 information?

2 THE DEFENDANT: Okay.

3 THE COURT: Why don't you take a moment,
4 Mr. Kamdang.

5 (A brief pause in the proceedings was held.)

6 MR. KAMDANG: I think we're ready to proceed.

7 THE COURT: Mr. Schiro, I'm going to read this
8 paragraph to you again because I want to make sure that the
9 record is clear.

10 In the information, sir, you are charged with wire
11 fraud to wit: You together with others did knowingly and
12 intentionally devise a scheme, an artifice to defraud
13 Investors 1 through 5, to obtain money and property from them
14 by means of materially false and fraudulent pretenses,
15 representations, and promises. And for the purpose of
16 executing such scheme and artifice transmitted and caused to
17 be transmitted by means of wire communication and interstate
18 and foreign commerce writings, signs, signals, pictures and
19 sounds.

20 You are charged to wit: That in or about
21 August 2014 you sent or caused to be sent by facsimile from
22 the Eastern District of New York to Investor 1 located in
23 Garland, Texas an account application that falsely represented
24 to Investor 1 that you would create or cause to be created and
25 then manage an account on behalf of Investor 1.

1 Do you understand that that is the charge that has
2 been made against you, sir?

3 THE DEFENDANT: Yes.

4 THE COURT: You further understand that there is a
5 criminal forfeiture allegation, sir.

6 THE DEFENDANT: There's only one thing.

7 THE COURT: Mr. Kamdang, why don't you take a moment
8 with your client and then if you have a question for the
9 Court, Mr. Schiro, I'll certainly hear it.

10 (A brief pause in the proceedings was held.)

11 THE COURT: Mr. Kamdang, if this is going to be an
12 issue that is going to require -- there seems to be some real
13 confusion as to what constitutes the charge here, and it is
14 the charge that I understand that Mr. Schiro was here to plead
15 guilty to of a multi-count information which obviously causes
16 some concern for the Court.

17 MR. KESSLER: Your Honor, may I just put a couple
18 things on the record that may clear this up?

19 THE COURT: Please.

20 MR. KESSLER: There is only one count in the
21 information, but that may be part of the confusion.

22 THE COURT: Is there only --

23 MR. KESSLER: Yes.

24 THE COURT: -- the wire fraud?

25 MR. KESSLER: Just the wire fraud.

1 THE COURT: I misunderstood that.

2 MR. KESSLER: No, that's okay, your Honor. So I
3 just want to make it clear. There is no conspiracy count --

4 THE COURT: No.

5 MR. KESSLER: -- charged in this indictment.

6 THE COURT: The wire fraud count as stated in the
7 information --

8 MR. KESSLER: Exactly.

9 THE COURT: -- does read that in or about between
10 July 2014 and June 2016, both dates being approximate and
11 inclusive within the Eastern District of New York and
12 elsewhere, the defendant Patrick Morgan Schiro, together with
13 others, did knowingly and intentionally devise a scheme, an
14 artifice to defraud Investors 1 through 5, and to obtain money
15 and property from them by means of materially false and
16 fraudulent pretenses, representations, and promises. And for
17 the purposes of executing such scheme and artifice,
18 transmitted and caused to be transmitted by means of wire
19 communication and interstate and foreign commerce writings,
20 signs, signals, pictures, sounds to wit:

21 In or about August 2014 the defendant, Patrick
22 Morgan Schiro, sent or caused to be sent by facsimile from the
23 Eastern District of New York to Investor 1 located in Garland,
24 Texas an account application that falsely represented to
25 Investor 1 that Schiro would create or cause to be created an

1 account managed on behalf of Investor 1.

2 Certainly, the second portion of this charge is
3 specific and exclusive to Mr. Schiro. It seems at least,
4 based on what I am able to glean, that the concern comes from
5 the earlier part of the wire fraud charge which suggests that
6 Mr. Schiro acted -- not suggests -- it states that Mr. Schiro
7 acted together with others.

8 MR. KESSLER: I understand. What I'm trying to make
9 clear is there is no charge. There could be a wire fraud
10 conspiracy charge. That is a charge that exists that is not
11 in this indictment, in this information. That was the first
12 thing I was trying to put on the record.

13 The second thing is the elements of wire fraud,
14 which is the crime charged, that there was a scheme or
15 artifice to defraud.

16 THE COURT: Yes.

17 MR. KESSLER: The defendant knowingly and willfully
18 participated.

19 THE COURT: Yes.

20 MR. KESSLER: And that the defendant did use the
21 wires, you know. So, in this case, sent the fax. Those are
22 the only elements the Government would be required to prove at
23 trial, and those are the only elements that the defendant
24 would be required to allocute to.

25 So there is no legal requirement that the defendant,

1 in allocuting, say that he worked with someone else or name
2 other people with whom he worked. So that's what I'm trying
3 to make it clear.

4 THE COURT: What you're saying is the Government has
5 no expectation that in his allocution that he would state that
6 he acted in concert with anyone.

7 MR. KESSLER: I certainly would deem the allocution
8 to be sufficient if he did not say that. Assuming that he
9 satisfies the elements of the wire fraud statute.

10 THE COURT: Mr. Kamdang, why don't you take a
11 moment, make sure that your client understands, and then I
12 will pick it up.

13 MR. KAMDANG: Yes.

14 THE DEFENDANT: I understand.

15 THE COURT: You get to --

16 THE DEFENDANT: Yeah.

17 THE COURT: I don't really want --

18 THE DEFENDANT: I understand.

19 THE COURT: You have a question?

20 THE DEFENDANT: I understand it's not a conspiracy
21 charge.

22 THE COURT: Okay. Mr. Kamdang, this is where we are
23 now in terms of this proceeding. I'm explaining to you what's
24 been charged in the information.

25 As we progress through this proceeding, there will

1 come a point where I will ask you the conduct that you engaged
2 in that makes you guilty of the charge, all right? What did
3 you do?

4 At that point, you're going to tell me what you did.
5 If, at that time, and I certainly don't know what exactly it
6 is that you're going to relay to me. But if, at that time,
7 you indicated to the Court that you engaged in certain
8 conduct, and you do not indicate that you engaged in that
9 conduct with others, but that you engaged in certain other
10 conduct that otherwise satisfies the legal requirements to
11 make out that crime, the Government has indicated that that
12 would be sufficient for its purposes, and it would not object
13 to the court accepting that is a sufficient factual basis for
14 me to accept your plea.

15 It seems to me like you're concerned, as I believe I
16 understand it, is the notion that you acted with others. You
17 were not going to be required to say anything, one, that is
18 untrue, all right? You've taken an oath and you are required
19 to only say what is true. No one in this room expects you to
20 say something that is untrue. And if you were able to
21 indicate what you did, and if that satisfies the elements of
22 this charge of wire fraud, that would be sufficient for us to
23 proceed.

24 Does that answer your questions? I have concerns,
25 Mr. Kamdang, right now.

1 THE DEFENDANT: And it's not an issue. It's not an
2 issue of medication.

3 THE COURT: No I understand. It's okay. That's not
4 my concern. My concern is that it doesn't seem that you fully
5 understand.

6 THE DEFENDANT: You said I could ask you a question
7 if I had some, one.

8 THE COURT: Yes, sir.

9 THE DEFENDANT: The statement "with others" at least
10 to me gives the impression that there were others and like a
11 boiler room environment. I was a one-man operation and it's
12 just -- it bothers me to say something like that. I just
13 don't -- I don't see the need to say "with others."

14 THE COURT: That, sir, is the way in which the
15 information is charged. You are not required, right, when we
16 say what actually happened, what did Mr. Schiro do, right?
17 That's where the rubber meets the road: When you stand before
18 me and you tell me what you did. At that point in time, when
19 you when we figure out, right, because my job here is to
20 determine whether the facts, the actual facts that happened in
21 this case, support that charge. You're going to tell me those
22 facts, sir. And when you tell me those facts, if you do not
23 include others, the record in this case, in terms of the facts
24 that support the charge, will not include others. This is a
25 recitation, what I read to you, is simply the way in which the

1 charge was drafted. Those are not the facts in the case. We
2 haven't gotten yet to the point in these proceedings when we
3 establish the facts. You, sir, are going to provide the Court
4 with the facts.

5 THE DEFENDANT: Okay. And I do understand. I
6 understand how that's separated. I just I know this is public
7 and on the record and I just didn't want to be seen as running
8 a boiler room.

9 THE COURT: Which is exactly why, sir, when I turn
10 to you and I say, Mr. Schiro, please inform the Court of the
11 conduct that you engaged in that makes you guilty of the wire
12 fraud for which you have been charged you will have an
13 opportunity, sir, to state specifically what that conduct was.

14 THE DEFENDANT: Thank you, your Honor.

15 THE COURT: All right.

16 THE DEFENDANT: Yes, excellent.

17 THE COURT: All right. Good.

18 So Mr. Schiro, having now consulted with your
19 attorney and having had the Court provide you with an answer
20 to your question, do you understand the charge as it's been
21 made?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: All right. And have you had sufficient
24 time to discuss with your attorney whether or not to plead
25 guilty, sir?

1 THE DEFENDANT: Yes.

2 THE COURT: All right. And are you fully satisfied,
3 Mr. Schiro, with the counsel and representation and advice
4 given to you in this case by your attorney?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Okay. Mr. Schiro, before we proceed, I
7 want to make sure that you are aware of your rights with
8 respect to trial.

9 Sir, you have the right to continue to plead not
10 guilty and no one can be forced to plead guilty.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: All right. And you would have the right
14 under the constitution and the laws of the United States, sir,
15 to a speedy and public trial by a jury on the charges
16 contained in the information to be filed with the Court.

17 Do you understand that, sir?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: And, at trial, you would be presumed
20 innocent and the Government would have to prove you guilty
21 beyond a reasonable doubt.

22 Do you understand that, sir?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: You would have the right to be the
25 assistance of counsel for your defense. Mr. Kamdang would

1 represent you at trial and at every other stage in the
2 proceeding.

3 Do you understand that, sir?

4 THE DEFENDANT: Yes.

5 THE COURT: You would have the right to see and hear
6 all witnesses and have them cross-examined in your defense.

7 Do you understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: You would have the right not to testify
10 unless you voluntarily elected to do so in your own defense.

11 Do you understand that, sir?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: You would have the right to compel the
14 attendance of witnesses to testify in your defense.

15 Do you understand that, sir?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Should you decide not to testify, or put
18 on any evidence at trial, these facts could not be used
19 against you.

20 Do you understand that, sir?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Now, by entering a plea of guilty, and
23 if I accept your plea, there will be no trial and you would
24 have waived or given your right to a trial as well as all the
25 other rights associated with the trial that I just described.

1 Do you understand that, sir?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: There will be no further trial of any
4 kind, no right of appeal from the judgment of guilty. I will
5 simply enter a judgment of guilty on the basis of your guilty
6 plea and the Government will be freed of any responsibility to
7 prove your guilt.

8 Do you understand that, sir?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: If you plead guilty, I will have you to
11 ask you questions about what you did in order to satisfy
12 myself that you are guilty of the charge to which you seek to
13 plead guilty and you will have to answer my questions and
14 acknowledge your guilt. Thus, you will be giving up your
15 right to incriminate yourself.

16 Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you understand, Mr. Schiro, each and
19 every one of rights that I've explained to you?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: And are you willing to give up the right
22 to a trial and all the of the other rights that I have
23 discussed with you?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Now, Mr. Schiro, you are pleading

1 pursuant to an agreement with the Government; correct?

2 THE DEFENDANT: Yes.

3 THE COURT: Have the parties already executed the
4 agreement?

5 MR. KAMDANG: Yes, your Honor.

6 MR. KESSLER: Yes, your Honor.

7 THE COURT: Can I have a copy of that, please.

8 You can had been this back.

9 Mr. Schiro, your attorney is handing to you the
10 agreement pursuant to which you are pleading guilty and to has
11 been marked as Government Exhibit 1.

12 Sir, did you sign this agreement?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: And is that your signature on Page 7?

15 THE DEFENDANT: Yes.

16 THE COURT: All right. Did you have an opportunity
17 to read and discuss the agreement with your attorney before
18 you signed it?

19 THE DEFENDANT: Yes, we discussed it earlier.

20 THE COURT: Okay. So you believe you had sufficient
21 time to review it with your attorney, sir?

22 THE DEFENDANT: Yes.

23 THE COURT: Did you understand the agreement, sir?

24 THE DEFENDANT: Yes.

25 THE COURT: Mr. Kamdang, did you have sufficient

1 time to review the agreement with Mr. Schiro?

2 MR. KAMDANG: Yes, your Honor.

3 THE COURT: Mr. Schiro, do you have any questions
4 about the agreement?

5 THE DEFENDANT: I'm sorry.

6 THE COURT: Don't apologize, sir.

7 (A brief pause in the proceedings was held.)

8 THE DEFENDANT: Yes, I have, your Honor.

9 MR. KAMDANG: Your Honor, so the confusion was that
10 we had received a plea offer earlier. We reviewed it. He
11 signed an original that was not the copy that he reviewed, and
12 so I just assured him that the copy that the prosecutor
13 brought in today was the plea offer that was extended
14 previously.

15 THE COURT: You read a copy of the plea agreement.
16 You didn't sign it at the time you reviewed it. You executed
17 an agreement today and you wanted to make sure that it was the
18 same agreement?

19 THE DEFENDANT: Yes. Yes, your Honor.

20 THE COURT: All right. Mr. Kamdang, you are
21 confident that the agreement that Mr. Schiro signed today is
22 one in the same in terms of the terms of the agreement as the
23 one he previously reviewed?

24 MR. KAMDANG: Yes, your Honor.

25 THE COURT: All right. Mr. Schiro, does the

1 agreement represent in its entirety any understanding you have
2 with the Government?

3 Do you want me to rephrase that question for you,
4 sir?

5 THE DEFENDANT: Please.

6 THE COURT: Has anyone made you any promises or
7 assurances that are not in the agreement?

8 Did the Government make you a promise that they
9 didn't put in that agreement?

10 THE DEFENDANT: No.

11 THE COURT: Did anyone make you a promise with
12 regard to your plea that's not reflected in that agreement?

13 THE DEFENDANT: No.

14 THE COURT: Okay. Has anyone threatened you in any
15 way to persuade to you accept the agreement?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: Okay.

18 MR. KESSLER: Your Honor, if I may, just make one
19 clarifying comment on the record just so the record is
20 completely clear.

21 It is possible that when Mr. Schiro reviewed the
22 version of the plea agreement he reviewed, the date before
23 which he was required to submit the financial affidavit that's
24 discussed in Paragraph 7 was earlier.

25 THE COURT: Yes. I was going to get to that.

1 Currently, I believe it still reads February 10,
2 2017.

3 MR. KESSLER: That's what I'm saying. The version
4 that we have executed the date says, "April 14th."

5 THE COURT: All right. So that version wasn't the
6 one that was supplied to my chambers, right?

7 MR. KESSLER: I believe not. We just updated the
8 date of this. This is a change that is beneficial for
9 Mr. Schiro.

10 THE COURT: No, I understand that.

11 MR. KAMDANG: Your Honor, we reviewed this this
12 morning and that term is something that we discussed. I think
13 also to bring out changes, I think the U.S. Attorney was
14 different on the plea agreement that we previously provided I
15 think was the two things that have been made.

16 THE COURT: Yes, there were two. My understanding,
17 then, is that there were changes with regard to the financial
18 statement requirement and the date in which that must be
19 submitted.

20 Has that been changed from February 10, 2017, to
21 April 1, 2017?

22 MR. KESSLER: April 14, 2017.

23 THE COURT: And is this an acceptance of
24 responsibility date that he was also changed?

25 MR. KESSLER: Yes.

1 THE COURT: Okay.

2 MR. KESSLER: Because the plea date has been moved
3 around.

4 THE COURT: So you changed the acceptance of
5 responsibility date to April 14th?

6 MR. KESSLER: No.

7 THE COURT: No.

8 MR. KESSLER: The plea agreement reads March 16,
9 2017, today because we moved the plea agreement about a day.
10 So, on the record, I will certainly acknowledge that the
11 defendant has satisfied that requirement. And if the Court
12 would like, I will change March 16th to March 17th and initial
13 the changes.

14 THE COURT: I would like that change to be made in
15 the agreement, please.

16 MR. KESSLER: So I have crossed out March 16th,
17 written March, 17th and then initialed it.

18 THE COURT: What paragraph are we on in the
19 agreement?

20 MR. KESSLER: Paragraph 2. It's toward the top of
21 Page 3.

22 THE COURT: Yes.

23 MR. KESSLER: I will show this change to defense
24 counsel.

25 THE COURT: He should initial it as well and as well

1 on Mr. Schiro's.

2 MR. KESSLER: Just to be clear, your Honor, it's
3 certainly the Government's view that all of these changes are
4 beneficial to Mr. Schiro, not in any way more restrictive or
5 of any of his rights.

6 THE COURT: Mr. Schiro, the Government has indicated
7 that there were two changes in the agreement. The first
8 change is reflected in Paragraph 2 on Page 3 of the agreement.
9 And that is the date on which you must plead guilty to qualify
10 for a one-level reduction for having accepted responsibility.

11 Previously, the date on which your guilty plea had
12 to have been entered was February 17, 2017.

13 By the change that was made today, which was
14 initialed by the Government and your counsel and yourself,
15 that date was changed so that your plea made on this day would
16 qualify as a plea within the time period prescribed for
17 acceptance of responsibility in Paragraph 2 of the agreement.

18 Do you understand that change, sir.

19 THE DEFENDANT: Yes.

20 THE COURT: All right. In addition, there was
21 another change made to the plea agreement. You previously
22 were required to submit a financial statement by February 10,
23 2017, by the change that was made today. The requirement that
24 you submit your financial statement, the deadline, rather, has
25 been moved to April 14, 2017.

1 Was that change also initialled by the Government
2 and counsel?

3 MR. KESSLER: That change is in the document itself.

4 THE COURT: It is already made in the document. All
5 right. Okay. Then we will proceed.

6 Mr. Kamdang, were all formal plea offers from the
7 Government conveyed to Mr. Schiro?

8 MR. KAMDANG: Yes, your Honor.

9 THE COURT: Mr. Schiro, I've already discussed the
10 charges against you. I'm now going to tell you about some of
11 the possible penalties for the crimes to which you will be
12 pleading guilty. All right, sir?

13 Now, under 18 U.S.C. Section 1343, the maximum term
14 of imprisonment for this crime is 20 years. There is,
15 however, no mandatory minimum term. Any term of imprisonment
16 could be followed by a term of supervised release of a maximum
17 of three years.

18 Now, supervised release Mr. Schiro refers to the
19 period of time when you'll be subject to supervision by the
20 probation department after completing any term of
21 imprisonment. You will have to follow rules of supervised
22 release, and if you violate those rules you could be sent back
23 to prison without a jury trial to serve an additional term of
24 up to two years without any credit for the time you previously
25 served in prison as a result of your sentence and without any

1 credit for the time you spent on post-release supervision.

2 Do you understand that, sir?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: All right. I'm going to put it another
5 way.

6 Mr. Schiro, you understand that if you violate the
7 conditions of your supervised release, you could be given
8 additional time in prison.

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. Mr. Schiro, you also face a
11 maximum possible fine that is the greater of \$250,000 or twice
12 the gross gain derived from the offense, or twice the gross
13 loss to persons other than yourself whichever is greater.

14 In addition, sir, I must order you to pay a
15 mandatory special assessment of \$100.

16 Sir, restitution in this case is mandatory and will
17 be ordered by the Court at sentencing. I cannot tell you now,
18 sir, how much any restitution would be.

19 Now, as I mentioned before, the information also
20 contains a criminal forfeiture allegation which is addressed
21 in Paragraph 6 through 11 of your plea agreement. Pursuant to
22 the plea agreement, sir, you have consented to disclose all of
23 your assets to the Government on a financial statement titled
24 "United States Department of Justice Financial Statement,"
25 which is a attached, sir, to the plea agreement as Exhibit 1

1 and you must provide this statement on or before April 14,
2 2017, and provide a copy of the financial statement to
3 Assistant U.S. Attorney David Kessler.

4 Mr. Schiro, failure to disclose all assets on the
5 financial statement constitutes a material breach of the
6 agreement. If such a breach is committed, the Government may
7 bring additional charges against you.

8 Now, if it is discovered that you own or have
9 interest in undisclosed assets that you had an obligation to
10 disclose, but failed to do so before sentencing, you have
11 knowingly and voluntarily waived your right to any required
12 notice concerning the forfeiture of said assets and you agree
13 that those assets will be forfeited to the Government pursuant
14 to 18 U.S.C. Section 981(a)(1)(c) and 28 U.S.C. Section 2461
15 as property real or personal constituting or derived from
16 proceeds obtained directly or indirectly as a result of the
17 charged offense and/or as a substitute asset.

18 Sir, you've already agreed to execute new documents
19 necessary to effectuate the forfeiture of said assets. You
20 have knowingly and voluntarily waived your right, if any, to a
21 jury trial on the forfeiture of said assets and waived all
22 constitutional, legal, and equitable defenses to the
23 forfeiture of said assets including, but not limited to, any
24 defense based on the principles of double jeopardy, the ex
25 post facto clause of the Constitution, any applicable statute

1 of limitation, or defense under the Eighth Amendment including
2 a claim of excessive fines.

3 You have agreed that the forfeiture of said assets
4 is not considered the payment of a fine penalty, restitution,
5 loss amount, or any income taxes that may be due and so
6 survive bankruptcy.

7 You have further agreed that restitution in this
8 case is mandatory and agreed to pay the amount to be
9 determined by the Court at sentencing.

10 Mr. Schiro, do you understand all of these possible
11 consequences?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Sir, I want to talk to you now about the
14 sentencing guidelines.

15 Now, under the Sentencing Reform Act of 1984, the
16 United States Sentencing Commission has issued guidelines for
17 judges to follow in determining the sentence in a criminal
18 case. These guidelines are advisory and I will consider them
19 along the particular facts and circumstances of your case and
20 all the sentencing factors set north in the relevant federal
21 statute, that is 18 U.S.C. Section 3553(a), in determining
22 your sentence.

23 Put another way, sir, the guidelines are a way to
24 help the Court determine where within a particular range your
25 sentence should fall and whether supervised release and/or a

1 fine should be imposed; and, if so, how much. The guidelines
2 are not mandatory, Mr. Schiro, but court is your required to
3 consider the guidelines.

4 Mr. Schiro, have you and your attorney have
5 discussed how advisory sentencing guidelines might apply in
6 your case?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay. Mr. Kamdang, have you discussed
9 with Mr. Schiro how the Court will use the statutory
10 penalties, the sentencing guidelines, and the §3553 factors to
11 arrive at an appropriate sentence.

12 MR. KAMDANG: Yes, your Honor.

13 THE COURT: Mr. Schiro, do you understand that your
14 sentence will be determined by a combination of the advisory
15 sentencing guidelines, possible authorized departures from the
16 guidelines, and other statutory factors?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Okay. The important thing that you must
19 understand, Mr. Schiro, is that until the time of sentencing,
20 no one can tell you exactly what guideline will apply to your
21 case or what your sentence will be. Your lawyer can't tell
22 you, the Government can't tell you, I can't even tell you.

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: Now, to help me calculate the guideline

1 applicable to your case, and evaluate the §3553 factors to
2 determine your sentence. I'm going to get a presentence
3 report from the probation department. That report,
4 Mr. Schiro, will be about you. It will be about your history
5 and your background and the charges and many other things.
6 And the probation department will do their own calculation and
7 will recommend a sentence that it believes is appropriate.
8 You and your lawyer as well as the Government will have an
9 opportunity to see the report, the guideline calculation, and
10 the recommendation before sentencing and you'll have an
11 opportunity to challenge them in any way.

12 Do you understand, though, Mr. Schiro that I will
13 not be able to determine the advisory guideline range for your
14 case until after the presentence report has been prepared and
15 you and the Government have had an opportunity to read it and
16 challenge the reported facts and the application of the
17 guidelines recommended by the probation officer.

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Now, Mr. Schiro I will hold a sentencing
20 hearing where I will hear from your lawyer and the Government.
21 If necessary, the lawyers can present witnesses and evidence
22 on any sentencing issue. Mr. Schiro, you may bring family and
23 friends to support you at Court on that day. You will also
24 have a chance to speak at sentencing and tell me anything you
25 want to tell me before I sentence you and I encourage you to

1 speak to me on that day.

2 Do you understand?

3 THE DEFENDANT: Yes.

4 THE COURT: All right. Now, at the sentencing
5 hearing, and using the presentence report from probation, and
6 all of the information recommendations and arguments I
7 receive, then and only then will I be in a position to
8 calculate and consider the applicable guideline range, weigh
9 the §3553 factors, and determine your sentence.

10 Do you understand?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand that the sentence I
13 impose may be different from any estimate that your attorney
14 may have given you?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand that after your
17 initial advisory range has been determined, I have the
18 authority in some circumstances to depart upward or downward
19 from the advisory guideline range and that could result in a
20 sentence that is either greater or lesser than the advisory
21 guidelines sentence.

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you understand, Mr. Schiro, that
24 there is no parole in the federal system, and that if you are
25 sentenced to prison you will not be released on parole.

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Has the Government estimated what the
3 guidelines range is likely to be?

4 MR. KESSLER: Yes, your Honor.

5 The calculation in the plea agreement is as follows:
6 A base offense level of seven, which reflects the normal base
7 offense level in 2B1.1 when the defendant has a prior
8 conviction for a similar offense.

9 THE COURT: Yes.

10 MR. KESSLER: And then a loss amount of more than
11 \$250,000 leading to an increase of 12 levels. So that would
12 lead to a total of 19. And that if we subtract three points
13 for acceptance of responsibility, that would leave us with a
14 Total Offense Level of 16 assuming the defendant falls in
15 Criminal History Category II. That would result in a range of
16 imprisonment of 24 to 30 months. If there were only two
17 points for responsibility, then the range would be 27 to
18 33 months. And it is that 33 months which is the subject of
19 the appellate waiver in Paragraph 4.

20 THE COURT: Yes, I see.

21 And, Mr. Kamdang, by the agreement you stipulated
22 to, the guidelines calculation set forth in the plea
23 agreement.

24 MR. KAMDANG: Yes, your Honor.

25 THE COURT: Mr. Schiro, in your plea agreement, in

1 Paragraph 2 on Page 3, the Government has set forth estimates
2 for the guideline range calculation. They've set forth two
3 ranges, one assuming a Criminal History Category of II and the
4 range is at 27 to 33 months. And then, assuming a criminal
5 history category, I'm sorry, I'm doing this backwards.

6 MR. KESSLER: It's two different offense levels for
7 the same criminal history category.

8 THE COURT: I'm sorry.

9 Criminal history offense level of 17 with a Criminal
10 History Category of II which puts you at 27 to 33 months. And
11 an offense level of 17 with a Criminal History Category of II
12 the Government has estimated a range of 24 to 30 months.

13 What's important for you to now, sir, is that there
14 is no guarantee as to a particular guideline range or
15 sentence.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. And ultimately, I have to
19 determine the range notwithstanding what is set out in the
20 plea agreement.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: All right. And do you understand that
24 I'm not required to sentence you to that range?

25 THE DEFENDANT: Yes.

1 THE COURT: And do you understand that as you stand
2 here today, there is no way to know what your ultimate
3 sentence will be.

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: And do you understand that if the
6 advisory guideline range in the presentence report is
7 different than the guideline range you expect, you cannot take
8 your plea back.

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: All right. And do you understand that
11 the ultimate sentence I impose is different than what you hope
12 or expect you cannot take your plea back?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: All right.

15 Now, do you understand that under some circumstances
16 you or the Government may have the right to appeal any
17 sentence that I impose?

18 THE DEFENDANT: Yes.

19 THE COURT: And you can appeal your conviction,
20 Mr. Schiro, if you believe that your guilty plea today was
21 somehow unlawful or involuntary, or there was some other
22 fundamental defect in these proceedings that was not waived by
23 your plea.

24 You also have a statutory right to appeal your
25 sentence under certain circumstances if you believe that your

1 sentence was contrary to law.

2 However, as Mr. Kessler raised, in your agreement
3 you have agreed that you will not file an appeal or otherwise
4 challenge your conviction or your sentence so long as the
5 Court imposes a term of imprisonment of 33 months or less.

6 Do you understand that by entering into this
7 agreement, which was marked at Government Exhibit 1, and
8 entering a plea of guilty, you will have waived with or given
9 up your right to appeal or collaterally attack any part of
10 your sentence so long as I sentence you to 33 months or less
11 in jail?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: All right. And, sir, I'd like to you
14 turn to Paragraph 4 of the agreement and I want you to
15 acknowledge that this is what you agreed to in Paragraph 4 of
16 the agreement.

17 Is that what you've agreed to in Paragraph 4 of the
18 agreement?

19 THE DEFENDANT: Yes.

20 THE COURT: Mr. Schiro, has anyone forced or
21 threatened you to waive your right to an appeal?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: Do you have any questions about the
24 rights you are giving up, the punishments you face, the
25 agreement, or the nature of the charges or anything else

1 related to this matter?

2 THE DEFENDANT: I just needed to hear that again.

3 THE COURT: The question?

4 THE DEFENDANT: Yes.

5 THE COURT: Okay.

6 Do you have any questions -- we've covered a lot --
7 I've talked about your rights, I've talked about the
8 penalties, the nature of the charges.

9 Having heard all of that, I want to know if you have
10 any questions remaining about the rights you're giving up, the
11 punishments that you would face, the plea agreement, the
12 nature of the charges or anything else?

13 THE DEFENDANT: No, your Honor.

14 THE COURT: Okay. Counsel, is there anything else
15 that I need to review in the agreement with Mr. Schiro?

16 MR. KESSLER: Not in the agreement, your Honor. I
17 had one other thing before Mr. Schiro enters his plea.

18 THE COURT: All right.

19 MR. KESSLER: But not about the agreement itself.

20 THE COURT: Not about the agreement, but before we
21 proceed to...

22 MR. KESSLER: Yes. It will be two seconds.

23 THE COURT: Why don't you go ahead.

24 MR. KESSLER: So I know the Court explained the
25 various rights the defendant would be waiving and I was

1 tracking along. I know the Court informed the defendant that
2 he did not have to testify at trial. I did not write down
3 that the defendant was informed he could testify at a trial
4 also, although I probably just missed that but I want to make
5 sure.

6 THE COURT: I may not have. I'm not certain.

7 Mr. Schiro, just to make sure that you do
8 understand, you would have a right to testify at trial should
9 you choose so in your own defense.

10 Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: All right. But do you understand that
13 you would not have to testify at trial?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: All right. And that if you didn't
16 testify at trial, that could not be used against you.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Thank you, Mr. Kessler.

20 Mr. Kamdang, do you believing that there was
21 anything I need to discuss with regard to the agreement?

22 MR. KAMDANG: No, your Honor.

23 THE COURT: Mr. Schiro, do you have any questions
24 that you'd like to ask me before we proceed?

25 THE DEFENDANT: No, your Honor.

1 THE COURT: All right. Do you need any additional
2 time to speak with your attorney?

3 THE DEFENDANT: No.

4 THE COURT: All right. Mr. Kamdang, do you know of
5 any reason why Mr. Schiro should not plead guilty?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Are you aware of any viable legal
8 defenses?

9 MR. KAMDANG: No, your Honor.

10 THE COURT: Do you have any concerns regarding
11 Mr. Schiro's competency to enter a plea at this time?

12 MR. KAMDANG: I don't.

13 THE COURT: Mr. Schiro, are you ready to plead
14 guilty?

15 THE DEFENDANT: Yes.

16 THE COURT: Mr. Schiro, what is your plea as to
17 Count One of the information?

18 THE DEFENDANT: Guilty.

19 THE COURT: Are you pleading guilty voluntarily and
20 of your own free will?

21 THE DEFENDANT: Yes.

22 THE COURT: Has anyone threatened or forced you to
23 plead guilty?

24 THE DEFENDANT: No.

25 THE COURT: Other than the agreement with the

1 Government, has anyone made any promise that caused you to
2 plead guilty?

3 THE DEFENDANT: No, your Honor.

4 THE COURT: All right. Has anyone made any promises
5 to you as to what your sentence will be?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Now, Mr. Schiro, at this point in time,
8 I would like to hear from you what it is that you did that
9 makes you guilty of wire fraud as charged in the information.

10 THE DEFENDANT: Between July 2014 and 2016, I
11 created a company, fund, Black Rock Morgan then with an office
12 in Long Island. In order to recruit clients, I created
13 certain in order to -- I created certain documents to recruit
14 clients that materially misrepresented the company in terms of
15 scope and size. And in addition to that, I doctored
16 confirmations, and as losses mounted up, I sent confirmations
17 that didn't reflect the account.

18 THE COURT: Okay.

19 And so, when you say, "You doctored up documents
20 that didn't reflect the account," I assume that you did so
21 when you say you did it knowingly and intentionally; is that
22 correct?

23 THE DEFENDANT: Yes, I did.

24 THE COURT: And you did so when you say you doctored
25 up documents, was that with the intent then to defraud the

1 investors?

2 THE DEFENDANT: Yeah. Yes, I changed the numbers on
3 the computer before I sent it to hide losses. And in one
4 instance, I sent materials that misrepresented the company to
5 a client in Garland, Texas containing the material
6 representations by fax.

7 THE COURT: All right. And did you falsely
8 represent to the client in Garland, Texas that you would
9 create or cause to be created an account on behalf of that
10 client?

11 THE DEFENDANT: One more time.

12 THE COURT: Did you represent, did you say to the
13 client in Garland, Texas that you were going to create an
14 account on behalf of that client in Texas?

15 THE DEFENDANT: Yes.

16 THE COURT: And did you tell them that you were
17 going to manage that account?

18 THE DEFENDANT: Yes.

19 THE COURT: And those were false representations?

20 THE DEFENDANT: I mean, what was false was the
21 confirms. He was unaware that the confirms that she was
22 receiving didn't reflect the actual losses and by a wide
23 amount and --

24 THE COURT: Okay.

25 THE DEFENDANT: -- at times. And he was unaware of

1 that.

2 THE COURT: And you were in Long Island at the time
3 that you sent the documents to the investor in [REDACTED];
4 is that correct?

5 THE DEFENDANT: [REDACTED].

6 THE COURT: What means did you use to send the
7 documents?

8 THE DEFENDANT: E-mail.

9 THE COURT: Okay.

10 THE DEFENDANT: Some fax, some e-mail.

11 THE COURT: Okay. Mr. Kessler.

12 THE DEFENDANT: I could give you more of a picture.

13 MR. KESSLER: If I could just have one second to
14 look at my notes?

15 THE COURT: Yes.

16 (A brief pause in the proceedings was held.)

17 MR. KESSLER: Perhaps the easiest way --

18 THE COURT: Go ahead.

19 MR. KESSLER: Perhaps the easiest way to do this. I
20 believe the allocution is essentially sufficient, but I just
21 want to put some facts on the record that I would be able to
22 prove at trial and I believe the defendant will agree with
23 them.

24 So the first is that there were, as described in the
25 information, five victims or five investors who provided some

1 money related to this e-mail that he described.

2 THE COURT: Mr. Schiro, were there five investors
3 with whom you sent information?

4 THE DEFENDANT: Yes.

5 THE COURT: Excuse me. To whom you sent
6 information?

7 THE DEFENDANT: Yes.

8 MR. KESSLER: The second thing would be that I think
9 the fax described in -- the August 2014 fax that we just
10 talked about. What the Government would prove at trial, and I
11 don't think this is inconsistent with what Mr. Schiro said.
12 Just so it's clear that the documents that were sent by fax
13 and the other documents that were sent by e-mail falsely
14 represented that there would be an account created and managed
15 on behalf of the defendant in the sense that this was a
16 legitimate money management business that would be managed in
17 the best interests of the investor not in some other way. For
18 instance, for the benefit of Mr. Schiro or something like
19 that.

20 So I just wanted to be clear that the facts itself
21 also contains representations and represented that there would
22 be an account created and managed in a way that at least
23 misrepresented the intent to the investors. That's all I'm
24 trying to say.

25 THE COURT: Mr. Schiro, you indicated that you sent

1 documents in August of 2014 to an investor in Garland, Texas,
2 and you say that you doctored those documents. Is it the case
3 that in doctoring the documents, you falsely represented that
4 the account was being created and managed for the benefit of
5 the investor as opposed to for your benefit?

6 MR. KAMDANG: One moment, your Honor.

7 (A brief pause in the proceedings was held.)

8 MR. KAMDANG: Your Honor, I think that would be
9 something that Mr. Schiro would dispute. I think his
10 intention was to create -- he's not disputing that he
11 fraudulently induced these investments, and that as the scheme
12 continued that he was sending false information about the
13 investments. I think something that is very important to him
14 is that when he started it, he intended to make money for the
15 five investors and he had the intention of creating a fund
16 that would benefit those clients that obviously didn't happen
17 here. And as the losses mounted up, he attempted to hide that
18 with more and more misrepresentations.

19 I think that what he says has made more than made
20 out wire fraud. But I think that it is very important to him
21 that it's on the record that when he started this company it
22 was his intention to make money for the investors.

23 THE COURT: The client to whom Mr. Schiro you sent
24 the documentation in August of 2014, the time that you sent
25 him that documentation were they a preexisting client, or were

1 they a new client that you were soliciting?

2 MR. KESSLER: Your Honor, I may be just because
3 Mr. --

4 THE DEFENDANT: I think I know. Well, all right.

5 So if they're receiving -- see, so if this these are
6 the initials documents with the overview. So the overview
7 severely misrepresented the scope of the business, one-man
8 operation. And as the losses mounted up, I doctored and I
9 sent money to Boston University for my daughter.

10 THE COURT: I understand that you said that the
11 overview severely misrepresented the scope of the enterprise
12 and it severely misrepresented the scope of the enterprise,
13 sir, so that it would benefit you; correct?

14 THE DEFENDANT: Yes.

15 THE COURT: All right. Those misrepresentations
16 were not made for the benefit of the investor; correct?

17 THE DEFENDANT: No.

18 THE COURT: Okay. Mr. Kessler.

19 MR. KESSLER: I believe that's sufficient, your
20 Honor.

21 THE COURT: Okay. Based on my observations of
22 Mr. Schiro and his demeanor in court, his answers to my
23 questions, and the representations of his counsel, I find that
24 Mr. Schiro is fully competent and capable of entering an
25 informed plea, away of the nature of the charges and the

1 consequences of his plea. And his plea of guilty is knowing
2 and voluntary and supported by an independent basis in fact
3 containing the essential elements of the offense.

4 Mr. Schiro I, therefore, accept your plea of guilty
5 as to Count One of the information. All right. You can have
6 a seat, sir.

7 Now, Mr. Schiro as I explained earlier a written
8 presentence report will be prepared by probation department to
9 assist the Court in sentencing and you will be asked to give
10 information for the report by your attorney, excuse me,
11 information for the report and your attorney may be represent
12 for the present interview if you wish.

13 Mr. Schiro, would you like for Mr. Kamdang to be
14 present for any interview?

15 MR. KAMDANG: Yes, your Honor.

16 THE COURT: All right. Mr. Schiro, you and your
17 counsel will have an opportunity to read the presentence
18 report as I explained earlier and file any objections to the
19 report before sentencing?

20 Ms. Valentin, may we have a date?

21 COURTROOM DEPUTY: Yes, your Honor. August 2nd at
22 2:00.

23 THE COURT: We're going to set a tentative date for
24 sentencing for August 2nd. That should give the parties
25 sufficient time after the presentence report to review the

1 report and make their submissions.

2 As a reminder, the Government goes first with
3 respect to my sentencing submissions.

4 Now, Mr. Schiro, you are out on bond, correct, with
5 certain conditions of release.

6 Is that correct, sir?

7 THE DEFENDANT: Yes.

8 THE COURT: All right. I'm just going to remind
9 you, sir, to continue to abide by the conditions of your
10 release because if you fail to do so, a warrant could be
11 issued for your arrest and you can be held in custody until
12 sentencing. That said, I trust that you're going to continue
13 to abide by those conditions. All right?

14 THE DEFENDANT: Yeah.

15 THE COURT: You have something you would like to
16 say?

17 MR. KAMDANG: Your Honor, there are two issues that
18 I've been discussing with the Government. I'm going to follow
19 up. I think we can resolve them without Court's assistance.

20 One is that he's been interviewing with a couple
21 nonprofits to work as a fundraiser. Speaking to the
22 Government, I think that we believe that would not violate the
23 terms, but I just want to confirm with his pretrial officer.
24 So I don't think we'll need to bring that the Court's
25 attention.

1 Second issue is that we probably will bring to the
2 Court's attention is that he is scheduling a surgery in the
3 next month with a lengthy recuperation period. I've asked him
4 to provide me with the medical records so I can share those
5 with the Government before making the request of the
6 Government to get the Government's position. So that request
7 will be forthcoming. I don't have the medical records yet.

8 THE COURT: I'm assuming that the request ultimately
9 is, I'm assuming that you're going to want to make sure that
10 whatever sentencing date somehow allows him to be fully
11 recuperate.

12 MR. KAMDANG: That's correct, your Honor.

13 THE COURT: Just make sure that whenever you make
14 any submission that there is adequate support for the
15 recuperation time and the Court will certainly...

16 THE DEFENDANT: Actually, I have that.

17 THE COURT: What your lawyer is going to do,
18 Mr. Schiro, so that it's properly before Court is he's going
19 to prepare a written submission and he'll give me a copy of
20 whatever it is that you have. So that way I can see it and
21 then I can make a determination as to what would be an
22 appropriate date for sentencing and whether or not I need to
23 make any adjustments to the current schedule, okay?

24 THE DEFENDANT: Yes, your Honor.

25 MR. KAMDANG: Your Honor, because I imagine it would

1 be attached to medical documents, can I make a request to have
2 permission to file that under seal. Certainly copies to the
3 Government.

4 THE COURT: You may do so.

5 MR. KAMDANG: Thank you, your Honor.

6 THE COURT: All right. Okay. Mr. Schiro, I wish
7 you well until I see you again. If you are going to have
8 surgery, I send you my blessings with regard to that. All
9 right?

10 THE DEFENDANT: Thank you.

11 THE COURT: Thank you.

12 MR. KESSLER: Thank you.

13 COURTROOM DEPUTY: All rise.

14 (WHEREUPON, this matter was adjourned to
15 above-referenced date and time.)

16

17 * * *

18

19 CERTIFICATE OF REPORTER

20

21 I certify that the foregoing is a correct transcript of the
22 record of proceedings in the above-entitled matter.

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Official Court Reporter

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X	
UNITED STATES OF AMERICA,	: 17-CR-130 (LDH)
	: :
Plaintiff,	: United States Courthouse
	: Brooklyn, New York
-against-	: :
	: :
PATRICK SCHIRO,	: Friday, April 13, 2018
	: 11:00 a.m.
Defendant.	: :
- - - - -X	

TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
BEFORE THE HONORABLE LASHANN DEARCY HALL
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Government:	RICHARD P. DONOGHUE, ESQ. United States Attorney Eastern District of New York 271 Cadman Plaza East Brooklyn, New York 11201 BY: DAVID KESSLER, ESQ. Assistant United States Attorney
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For the Defendant:	FEDERAL DEFENDERS OF NY, INC. One Pierrepont Plaza 16th Floor Brooklyn, New York 11201 BY: LEN KAMDANG, ESQ.
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Court Reporter:	DAVID R. ROY, RPR 225 Cadman Plaza East Brooklyn, New York 11201 drroyofcr@gmail.com
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Proceedings recorded by Stenographic machine shorthand,
transcript produced by Computer-Assisted Transcription.

1 (In open court.)

2 THE COURTROOM DEPUTY: Criminal cause for
3 sentencing Docket Number 17-CR-130 United States of America
4 versus Patrick Schiro.

5 Counsel, please state your name for the record.

6 MR. KESSLER: Good morning, Your Honor. David
7 Kessler for the United States and with the Court's
8 permission and defense counsel's permission I'm joined by an
9 intern in our office, Brandon Eng.

10 THE COURT: All right. Welcome, Mr. Eng.

11 MS. MURPHY: Good morning, Your Honor, Michelle
12 Murphy for the probation department.

13 THE COURT: Good morning.

14 MR. KAMDANG: Good morning, I'm Len Kamdang on
15 behalf of Patrick Schiro. I'd like to acknowledge he has a
16 number of family members here. Julie Schiro, his sister;
17 Ashley Schiro, his daughter, age four; Ally Schiro, his
18 wife; Brandon Schiro, his son; and Chris Schiro, his
19 brother, are all here in support of him.

20 THE COURT: All right. Good morning to you all.
21 You can be seated.

22 MR. KAMDANG: Thank you.

23 THE COURT: All right. I was just waiting in case
24 they wanted to have the young girl step out for the purposes
25 of the hearing.

1 All right. So we are here today for a sentencing
2 determination on Count 1 of the Information against
3 Mr. Patrick Morgan Schiro. Present today the Government has
4 indicated is Mr. Kessler, as well as defense counsel,
5 Mr. Kamdang, representations from the probation office as
6 well as Mr. Schiro and, of course, Mr. Eng now, our intern.

7 Now on March 17, 2017, Mr. Schiro pleaded guilty
8 to the sole count of the Information which alleged that in
9 or about and between July 14th -- excuse me, July 2014 and
10 June 2016, both dates being approximate and inclusive within
11 the Eastern District of New York and elsewhere, Mr. Schiro,
12 together with others, did knowingly and intentionally devise
13 a scheme and artifice to defraud Investors 1 through 5 and
14 to obtain money and property from them by means of
15 materially false and fraudulent pretenses, representations
16 and promises, and for the purpose of executing such scheme
17 and artifice, transmitted and caused to be transmitted by
18 means of wire communication and interstate and foreign
19 commerce, writing, signed, signaled, pictures and sounds, to
20 wit., in or about August 2014 Mr. Schiro sent or caused to
21 be sent by facsimile from the Eastern District of New York
22 to Investor 1 located in Garland, Texas, an account
23 application that falsely represented to Investor 1 that
24 Mr. Schiro could create or cause to be created and then
25 manage an account on behalf of Investor 1.

1 Now in advance of the hearing today, I received
2 first an August 23rd, 2017, presentence investigation report
3 which was filed as Docket Number 21; a December 20th, 2017
4 sentencing memorandum from the Government which was filed as
5 Docket Number 24; a December 28, 2017 sentencing memorandum
6 from defense counsel filed as Docket Number 25 attached to
7 which was Exhibit A, a letter from Rose Marie Perrone;
8 Mr. Schiro's sister; Exhibit B, a letter from José
9 Valladares, Mr. Schiro's friend; Exhibit C, a letter from
10 Ashley Schiro, Mr. Schiro's eldest daughter; and Exhibit D,
11 a letter from Brandon Schiro, Mr. Schiro's son. A
12 January 5, 2015, sentencing memorandum supplement filed by
13 defense counsel as Docket Number 26 attached to wit was
14 Exhibit A, a medical record; and finally, a February 6,
15 2018, sentencing memorandum supplement filed by the defense
16 attached, to wit, were Exhibits A and B, medical records and
17 Exhibit C, a letter from Ally Schiro, Mr. Schiro's wife.

18 All right. Counsel, do you have any other
19 documents, letters, that you would like to submit to the
20 Court at this time?

21 MR. KESSLER: No, Your Honor.

22 MR. KAMDANG: No, Your Honor.

23 THE COURT: All right. Counsel, do you anticipate
24 that the Court will need to hold any sort of evidentiary
25 hearing to resolve any disputed issues of fact?

1 MR. KESSLER: No, Your Honor.

2 MR. KAMDANG: No, Your Honor.

3 THE COURT: Now, I know that there are supporters
4 of Mr. Schiro in the courtroom today. Do the defense or
5 the Government anticipate presenting any witnesses to
6 provide testimony?

7 MR. KESSLER: The Government does not.

8 MR. KAMDANG: No, Your Honor. We submitted a
9 number of letters and obviously Your Honor's reviewed them.

10 THE COURT: All right.

11 All right. Mr. Kamdang, am I pronouncing you last
12 name properly first?

13 MR. KAMDANG: Yes.

14 THE COURT: Okay, good.

15 Have you or your client read and discussed the
16 presentence report?

17 MR. KAMDANG: Yes.

18 THE COURT: And have you discussed whether there
19 are any objections?

20 MR. KAMDANG: Yes.

21 THE COURT: Am I correct that you don't have any
22 objections to the presentence report?

23 MR. KAMDANG: That's correct, Your Honor.

24 THE COURT: All right.

25 Okay. Now 18 U.S.C. Section 1343 permits this

1 Court to sentence Mr. Schiro to a maximum term of 20 years.
2 There is no minimum term of imprisonment. The Court may
3 impose a term of supervised release of no more than three
4 years. Now the statutory maximum fine in this case is
5 \$250,000. I must also impose a mandatory special assessment
6 of \$100 pursuant to 18 U.S.C. Section 3013.

7 Now as set forth in Paragraphs 1 through E and 2
8 of Mr. Schiro's plea agreement, I must impose and Mr. Schiro
9 will be required to pay a restitution in an amount to be
10 determined today and that is pursuant to 18 U.S.C. Section
11 3663, 3663A, and 3664.

12 Now the Court's understanding is that based on
13 Mr. Schiro's representation as set out in Paragraph 6 to the
14 plea agreement, he doesn't have any monies and/or property
15 that is subject to forfeiture and the Government is not
16 seeking forfeiture; is that correct?

17 MR. KESSLER: It is correct that the Government is
18 not seeking forfeiture, yes.

19 THE COURT: And that's based on Mr. Schiro's
20 representation.

21 MR. KESSLER: Yes.

22 THE COURT: Okay. Now both parties state in their
23 respective sentencing submissions that the guideline ranges
24 set forth in the PSR is 30 to 37 months of imprisonment.

25 The defense has already indicated that they have

1 no objections to the presentence report. Am I correct that
2 the Government doesn't have any objections as well?

3 MR. KESSLER: That is correct, Your Honor.

4 THE COURT: All right. Now I adopt the
5 presentence report without objection.

6 All right. Now I calculate the following advisory
7 range as to Mr. Schiro's offense. Now the applicable
8 guideline for offenses under 18 U.S.C. Section 1343, the
9 sentencing guideline Section 2B1.1(a)(1), which provides a
10 base offense level of 7 as the defendant was convicted of an
11 offense referenced to in this guideline and the offense of
12 conviction has a statutory maximum term of 20 years.

13 Now because the instant offense involved a loss of
14 \$401,551.50, a 12-level enhancement applies. A two-level
15 increase applied because Mr. Schiro abused the position of
16 public or private trust or used a special skill in a manner
17 that significantly facilitated the commission or concealment
18 of the offense.

19 This brings the adjusted offense level to 21. The
20 adjusted offense level is decreased by two levels for
21 Mr. Schiro's clear acceptance of responsibility for the
22 offense. This brings Mr. Schiro's adjusted offense level
23 down to 19.

24 In addition the Court understands that
25 the Government intends to make a motion stating that it was

1 notified in a timely manner of Mr. Schiro's intention to
2 enter a plea of guilty.

3 Mr. Kessler, is that correct?

4 MR. KESSLER: That is correct, and I make such a
5 motion at this point.

6 THE COURT: All right.

7 The Government's motion is granted and accordingly
8 the offense level is decreased by one additional level.
9 This calculation results in a total offense level of 18.

10 Now as to Mr. Schiro's criminal history, the Court
11 notes that Mr. Schiro has a prior conviction for
12 fraud-related offenses.

13 Now based on Mr. Schiro's prior criminal history,
14 he has a total criminal history score of three. According
15 to the sentencing tables and the sentence guideline,
16 Chapter 5, Part A, a criminal history score of three
17 establishes a Criminal History Category of 2.

18 Now with the total offense level of 18 and a
19 Criminal History Category of 2, the Court calculates a
20 corresponding advisory guideline range of 30 to 37 months
21 imprisonment.

22 Now because the offense is a Class C felony, the
23 guideline term of supervised release is 1 to 3 years. That
24 is pursuant to guidelines Section 5B1.2(a)(2).

25 Now the guideline fine range for this offense is

1 10,000 to \$100,000. Now pursuant to a guideline
2 Section 5E1.1, restitution shall be ordered.

3 Are there any objections to the Court's
4 calculation of the guideline range?

5 MR. KAMDANG: No, Your Honor.

6 MR. KESSLER: No.

7 THE COURT: All right. Now I want to first
8 address any requests for departures and will put aside
9 variances for now.

10 Is there any bases that either the Government or
11 the defense would like to present to the Court regarding
12 departures?

13 MR. KAMDANG: No, Your Honor.

14 MR. KESSLER: No, Your Honor.

15 THE COURT: Okay. And the Court sees no basis in
16 this case for departure either upward or downward.

17 Now after calculating the guideline range and
18 assessing the appropriateness of any departure, I must now
19 consider the relevant factors as set out by Congress in
20 18 U.S.C. Section 3553(a) to ensure that I impose a sentence
21 that is sufficient but not greater than necessary to comply
22 with the purposes of sentencing.

23 Now these purposes include the need for the
24 sentence to reflect the seriousness of the crime, to promote
25 respect for the law, to provide just punishment for the

1 offense. The sentence should also deter criminal conduct,
2 protect the public from future crime by the defendant and
3 promote rehabilitation. In addition to the guidelines and
4 policy statements, I must consider the nature and
5 circumstances of the offense, the history and
6 characteristics of the defendant, the need to avoid
7 unwarranted sentence disparities amongst similarly situated
8 defendants and the types of sentences available.

9 Now I have the received a number of submissions
10 from the defense and from that I glean that you are arguing
11 for a variance, and if you would like to make an argument at
12 this time I would like to hear from you.

13 MR. KAMDANG: Thank you, Your Honor, and thank the
14 Court for reviewing our presubmissions carefully. It took
15 me awhile to understand Mr. Schiro and to understand how he
16 became involved in this fraud. And nothing that I say, I
17 hope, will be taken to diminish the seriousness of the
18 conduct and Mr. Schiro is here, he will address the Court
19 and acknowledge to the Court and express to the Court how
20 sorry he is and the reflection that he's had on his conduct.

21 But in terms of understanding Mr. Schiro, it
22 wasn't until a recent conversation that I really understood
23 what led him to this -- and he didn't commit this crime out
24 of selfishness or the desire to spite the law. The reality
25 is that Mr. Schiro at one point in his life was a very

1 successful trader. And one of the things that struck me in
2 the letters that I read was the amount of love that his
3 family has for him. He has a very, very supportive family
4 and his children in particular idolize him and continue to
5 love him and continue to idolize him.

6 He shared with me stories of Brandon being a child
7 and coming to visit his office and him being a very
8 successful trader and taking them to see the Rockettes and
9 being able to provide for his family. It was a really an
10 embarrassing and horrible event in his life when he was
11 convicted of fraud previously. And he's been struggling
12 with guilt about that since he committed that offense.

13 When he got out of jail, he was no longer that --
14 that powerful person. And worked hard to -- to put his life
15 back together. But every day I think that the -- it hurt
16 him to know that he disappointed his children, and as
17 somebody with two children I understand it's a mortal fear
18 that a father has, especially when the kids idolize the
19 father of looking like a failure to his children.

20 In this case his daughter was accepted at college.
21 His children have done well and they've -- a number of
22 opportunities have been presented to them, and Mr. Schiro
23 fell prey to the temptation of trying to -- to cover for
24 his -- to try and be that person that he felt like he had a
25 duty to be. It was something that killed him to have to

1 tell his children that, you know, I'm not able to afford
2 these opportunities that you have.

3 THE COURT: I'm curious about something.

4 MR. KAMDANG: Sure.

5 THE COURT: And this is just curiosity.

6 Did Mr. Schiro apply for financial aid?

7 THE DEFENDANT: Yes.

8 THE COURT: I'm just curious if you applied for
9 financial aid.

10 THE DEFENDANT: She wasn't able because she had
11 no --

12 THE COURT: My deputy is telling you that if you
13 want to address the Court you should do so by standing.

14 THE DEFENDANT: Oh, I'm sorry.

15 So Ash had no credit and I --

16 THE COURT: I just need to know did you apply.

17 THE DEFENDANT: Yes.

18 THE COURT: It's yes or a no question.

19 THE DEFENDANT: Yes.

20 THE COURT: Can you --

21 MR. KAMDANG: He -- he will address all of this in
22 support of any questions. He's certainly here to answer any
23 questions.

24 And look, I mean this doesn't justify committing a
25 financial crime.

1 THE COURT: I was just curious. It's certainly
2 not dispositive and determinative, but there are few people,
3 given the rising cost of education, that are not faced with
4 these dilemmas and I am -- and many people find various
5 legal ways to address --

6 MR. KAMDANG: That's --

7 THE COURT: -- tuition.

8 MR. KAMDANG: And, Your Honor, that's absolutely
9 the case and it's certainly something that I've addressed
10 also as a father in my own life.

11 What was hard here was the disparity between -- he
12 was fairly wealthy in his childhood and when his children --

13 THE COURT: When his children, because he wasn't.
14 He grew up with modest means.

15 MR. KAMDANG: Right. When his children were
16 younger they had an impression of their father as a
17 provider. And that -- that pressure, feeling like he was a
18 failure to his children is really what led him to commit
19 this crime. That does not justify this at all and I ask the
20 Court to consider what his motivations were and certainly he
21 recognizes that -- one of the good things that I would say
22 about this case is that he recognizes that he's disappointed
23 his children again, but I also think that he recognizes that
24 his children still love him and that's -- that's a source of
25 growth for him in terms of committing this offense.

1 In terms of what's sufficient or greater than
2 necessary, I know that the Government is asking for a
3 guidelines sentence and the probation department is asking
4 for 30 months. I don't believe that 30 months is -- is
5 what's necessary here. I think if the Court is considering
6 a sanction, we would ask the Court to consider that he has
7 been on pretrial release for a year and four months. He's
8 had no issue that indicates that he's -- he takes this case
9 very seriously and it also shows that he would do well on
10 probation.

11 The Supreme Court has recognized that although
12 it's qualitatively less severe than incarceration, that
13 probation is still a form of punishment.

14 THE COURT: Isn't the notion that Mr. Schiro has
15 been deterred by virtue of the fact that he has been
16 arrested, he suffered this embarrassment. That's a lie by
17 the fact that he previously committed a crime very similar
18 to this -- to this crime, indeed served time in prison and
19 yet, here we are.

20 MR. KAMDANG: It is. The other kind of moving
21 part is his health issues that have arisen since this case
22 began. He has been to the doctor. I've spoken to his
23 doctors to provide as many medicals records as I could.
24 This -- the difference here between now and the last case is
25 that he's cognitively diminished now and I'm not sure if

1 Your Honor remembers from when he took his guilty plea that
2 he had trouble understanding concepts but we're not seeking
3 to withdraw the plea.

4 THE COURT: Right. And I noted that part in your
5 letter and it gave me some pause and you have a footnote
6 that says you're not seeking to withdraw your guilty plead.

7 MR. KAMDANG: Your Honor, I'm completely confident
8 that he understood the plea was knowing and voluntary.

9 THE COURT: Okay. Let me finish.

10 MR. KAMDANG: Sure.

11 THE COURT: I just wanted to have you state also
12 expressly on the record to a certain day you informed each
13 other that you had no question as to Mr. Schiro's
14 competency. You said that you thought that there was a
15 sentence in your submission that indicated that because of
16 his health reasons, as I read it, you believe that he
17 misunderstood certain aspects of the plea process.

18 I just want you to state here in light of your
19 letter --

20 MR. KAMDANG: Absolutely.

21 THE COURT: -- that you have no question with
22 regard to his competency at the time of his plea.

23 MR. KAMDANG: I have absolutely no question about
24 his competency. We prepared for the plea extensively
25 before. I think the experience of pleading guilty in that

1 moment, I think that he became a little bit confused. But I
2 believe that he understood and had spoken to him afterwards
3 about what happened. And I think that he affirmed today
4 that he understands, that he understood what was happening.
5 So that's not an issue.

6 That being said, he does have significant health
7 issues. If the Court is considering a term of
8 incarceration, I've reached out to the Bureau of Prisons to
9 the designation unit. They've asked for some time. We will
10 send all the medical reports. The question is whether or
11 not he can be designated to a medical facility, probably
12 Devens. That process takes time.

13 THE COURT: Can you tell me what do you know about
14 the Devens facility? You mentioned it specifically.

15 MR. KAMDANG: So Devens is the closest sort of
16 full-scale medical facility in the Bureau of Prisons.

17 THE COURT: Okay.

18 MR. KAMDANG: And what happened is -- and the
19 reason why I know this, I just went through this with
20 another client with heart issues.

21 We give all of the medical information we have to
22 this designation unit. It's in Grand Prairie, Texas. There
23 are doctors there, they contact the doctors at Devens, the
24 doctors that -- and Devens will review to make sure that
25 they can accommodate those medical issues.

1 I've spoken to them about what I think the issues
2 are. They think that they will be able to treat his liver
3 and his epilepsy issues, but they just want -- we would want
4 time to review the medical records.

5 THE COURT: Understood.

6 MR. KAMDANG: If there's some sort of -- and what
7 happened in the last case was they asked for me to come back
8 in the Court and ask for additional time.

9 THE COURT: Okay. We can get to that. Let's talk
10 about the variances right now.

11 MR. KAMDANG: So I think what Mr. Schiro wants,
12 would be hopeful that he could do is to start paying back
13 this restitution. I think the real harm to society here is
14 there's this 400,000-plus restitution pending. He would
15 like to start repaying that. In fact, in reviewing the
16 presentence report, he asked me to inform the Court that he
17 believes that there was an additional victim. I know the
18 Government's looking into that and the Government will
19 address that. But he is eager to make amends and start
20 paying back the restitution. I think that a period of 30
21 months will delay any of the victims who are getting relief,
22 financial relief. And I don't know that a guideline
23 sentence here achieves the ends of justice. I think we
24 should think about the victims and getting them whole as
25 soon as possible.

1 Mr. Schiro is here --

2 THE COURT: Are you suggesting that the victims
3 have no interest in having Mr. Schiro deterred or punished
4 for his conduct?

5 MR. KAMDANG: I think they do have an interest in
6 that. I think that very strict conditions of probation
7 would be punishment and if the question is whether or not
8 there should be some sort of incarceration I think that a
9 full 30 months is unnecessary to meet the statutory
10 requirements for sentencing.

11 THE COURT: All right. Do you have anything else?

12 MR. KAMDANG: No, Your Honor.

13 THE COURT: All right. Thank you.

14 Mr. Kessler.

15 MR. KESSLER: Your Honor, I don't have anything to
16 add unless the Court has questions. To the letter we
17 submitted I'm happy to address that one point about
18 restitution now or --

19 THE COURT: I mean, I -- I would expect that you
20 would have something you want to say about his last point.

21 MR. KESSLER: Yes.

22 THE COURT: Okay.

23 MR. KESSLER: It is correct this Mr. Schiro,
24 through his lawyer, came to us and identified an additional
25 victim or an additional person that he described as a

1 potential victim of the charged scheme. We're were in the
2 process --

3 THE COURT: Does that increase the amount of to
4 loss here?

5 MR. KESSLER: Well, it -- there's two things.
6 First of all, we are in the process of trying to contact
7 this person. We haven't yet been able to do that. That's
8 not because Mr. Kamdang came to me at the last minute.

9 THE COURT: Fair enough.

10 MR. KESSLER: It's just it took some time, so
11 that's sort of Question 1.

12 Question 2, it's not clear to me that, you know,
13 let's call it Investor 6, who is not charged in the
14 Information, not charged as part of the Information.

15 THE COURT: As part of.

16 MR. KESSLER: I frankly don't know the answer as
17 to whether even if that person is a victim that would
18 increase the loss amount or change a restitution
19 calculation. I don't think it would necessarily increase
20 the loss amount.

21 THE COURT: But it certainly couldn't as of today
22 because you don't have any information.

23 MR. KESSLER: That is correct. I have no reason
24 to increase the loss amount as of today. So the only
25 request we have related to restitution is that the Court

1 leave the judgment open with respect to restitution, which
2 I've seen in other cases like this.

3 MR. KAMDANG: We are not opposed to that.

4 MR. KESSLER: Just to allow us to sort of run this
5 down. My suspicion is that based on the way the crime was
6 charged and Mr. Schiro pleaded guilty, that there will be no
7 restitution for that victim, but I just don't want that to
8 be resolved today in case what we've thought about so far is
9 not completely accurate.

10 THE COURT: Okay.

11 What say you to Mr. Kamdang's argument in this
12 case that a non-incarceratory period is warranted in part to
13 allow Mr. Schiro to begin paying back that restitution and
14 that indeed that that is effectively what the victims in
15 this case would argue in favor of versus having him go to
16 jail first.

17 MR. KESSLER: So a couple points. First of all,
18 that argument could be made in every case in which there are
19 victims who are out some money. I don't think that negates
20 or nullifies the 3553(a) factors that speak to incarceration
21 as a specific deterrence, general deterrence, just
22 punishment for the crimes. So it may be one factor the
23 Court can consider. But I think the argument that the
24 victims should get their money back so that Mr. Schiro
25 should not serve a prison sentence is sort of a nonstarter.

1 I think the Court, you know, without taking away
2 from Mr. Schiro's family circumstances or medical
3 circumstances, you know, I think the Court was exactly right
4 to point out that this is not a first-time offense and it's
5 particularly not a first-time offense with respect to
6 similar conduct. So we have -- we have evidence that, I
7 believe it was 18 months, but whatever the prison term was
8 that was imposed in approximately 2006 based on --

9 THE COURT: It was 18 months, if my memory serves
10 right, yes.

11 MR. KESSLER: So assuming Mr. Schiro served
12 approximately 18 months in prison. You know, that did not
13 deter him. And, you know, there may be reasons why he was
14 not deterred, but it's a fact that he was not deterred and
15 so it's, you know, hard to image that a sentence of less
16 than 18 months would suddenly deter conduct when it had
17 previously been in effect.

18 So that's my response. The point, you know,
19 Mr. Schiro has a restitution obligation but, you know, we're
20 not talking about 10 or 15 years from now him beginning to
21 repay that restitution one way or another and, you know, he
22 can begin to repay that restitution even while incarcerated.
23 That's noted in probation recommendation.

24 THE COURT: Yes.

25 MR. KESSLER: So that's my response on that point.

1 THE COURT: Okay.

2 All right. Mr. Kamdang, do you have anything you
3 wish to add?

4 MR. KAMDANG: No, Your Honor.

5 THE COURT: I'm sorry.

6 MR. KAMDANG: No, Your Honor.

7 THE COURT: All right. So does probation wish to
8 add anything?

9 MS. MURPHY: No, Your Honor, unless you have any
10 specific questions.

11 THE COURT: I do not.

12 I would like to at this time hear from Mr. Schiro,
13 if I could.

14 THE DEFENDANT: Your Honor, the first thing I
15 would like to discuss for prior conduct, prior conviction
16 and how, Well, maybe he hasn't learned his lesson. This
17 isn't the case because he's been arrested again. And it's
18 very similar, in fact, it's almost exactly the same case.
19 Well, it's -- you know what? That cursory review for five
20 minutes in jail is nothing like this case. That was a --
21 this is what? The conviction was a \$20,000 bribe at a time
22 when I was making over 100,000 a month, a \$20,000 bribe.

23 How serious did I take that conviction? One of
24 the clients, one of the clients here, Numbers 1 through 5,
25 the one who made money, was profitable, you'll see on the

1 list.

2 (Pause in proceedings.)

3 THE DEFENDANT: Okay. I'm sorry, but it -- okay.
4 So the one that was profitable, I closed his account. Now I
5 closed his account because BlackRock Morgan was an exempt
6 hedge fund, which means only accredited investors, you must
7 show an income of 300,000, you must have a net worth
8 excluding primary residence of \$1 million. You're fee
9 client up, 50,000 EUs, ten trades quarterly. He could not
10 prove his income. He could not prove that he was a credit
11 investor, so I closed the account because that jeopardized
12 the fund. It was an SEC violation. That's how careful I
13 was not to -- commit a crime to incur an SEC violation. I
14 had learned my lesson.

15 What happened here, I opened an exempt fund. The
16 fund was an incubator fund. What an incubator fund is, and
17 all the new accounts all say this, an incubator fund doesn't
18 intend to raise millions and millions of dollars. An
19 incubator fund is a small fund in case -- what it wants to
20 show is a track record.

21 Now I -- I had always wanted to get my license
22 back. The ten-year mark from the conviction, I was allowed
23 to apply for my license again. Okay? Under Dodd-Frank. So
24 I set out, there was a small fund, five, six clients and
25 establish a track record. Who are these clients? These are

1 clients that I've known, a lot of them since my rookie year,
2 1996. Larry Endline, Tuffy Baum, 20 years I've known
3 these -- these are friends. These are people I'm up at
4 1:00 in the morning talking to them about family. They know
5 my family and I know their family. They come to New York.
6 I have pictures of their family, they have pictures of mine.
7 These -- this wasn't a -- sit down and hand out a phone book
8 and some mass marketing and rip people off. These were
9 friends. They all knew about the prior conviction. They
10 wrote letters. You can -- their letters are a matter of
11 record. They were all aware of the prior conviction. They
12 were all aware that I'm waiting to get my license back and
13 then open a big hedge fund.

14 So again, I'm just trying to get you a picture of
15 what this was. And -- this is not -- I feel like I'm being
16 portrayed as a scamster or a boiler room broker. I never
17 was. No, I pride myself on integrity. I hated those guys
18 my whole career, everybody knows that about me, you know?

19 So what started out with good intentions, you
20 know, I can tell you -- the day my daughter got accepted to
21 BU and everybody celebrating killed me -- I remember going
22 back to the office and now what? I mean, another payment.
23 There's no commissions being generated yet, okay? There's
24 housing up there. My son is also going to Baroque. His
25 train tickets are 300 a month back and forth, lunches. I

1 just had an oil change. There's rent on where we live, the
2 office rent is 2,000, there's trading systems. It's all
3 debt. All I'm trying to do is stay above water. Now come
4 risky trades. The 140,000-dollar lost in the market -- see
5 the other service I provided to my client because this was
6 an incubator account, they had large accounts, immense
7 account, over \$1 million accounts away from the firm on the
8 other side. They use to have million-dollar accounts with
9 me years ago. Now every morning and every night I put out a
10 morning note and a closing note. Those are stat notes,
11 strategy notes. They would trade off this stuff. They were
12 supposed to mirror the accounts they had with me. Well,
13 what they had with me borne of resemblance to the strategy
14 of what they had on the other side because what I was doing
15 was take -- was just taking risks, most risky trades in the
16 world, options, leverage 20, 30 to 1 because I had to make
17 up what I was stealing from people I've known for so long.

18 A client told me why didn't you just ask me and I
19 felt ten times worse. You know?

20 It's terrible to do it to strangers, but it's
21 almost like that you -- it's so much worse to have done it
22 to people you've known for so long. A guy like Larry
23 Endline was with me through my mother with [REDACTED], you know,
24 when I wanted to shoot myself. This guy was -- you know
25 talk to me 1:00 in the morning, you know. So you know. I

1 know -- look, it's not an excuse and I'm not trying to make
2 excuses because I know there's guys who rob banks who come
3 in here who've done it for their family. And they go to
4 prison. That's the law. That's the law and it's not the
5 system to fall apart. I'm just trying to give you a picture
6 of who I am and why I did it. I'm not asking for anything
7 in particular, it's just that thing where he did this and he
8 continues to do this, there's no need. There's -- I know
9 why I'm here. I know the guys. You know, I just -- let's
10 talk about what happened. But we don't have to go further
11 than that. I'm not a fraudster.

12 THE COURT: But you are, sir.

13 Stop. But you are. Stop.

14 You pleaded guilty to fraud. You were previously
15 convicted of fraud. By definition, sir, you are a
16 fraudster. Let that be our starting point.

17 THE DEFENDANT: Yeah.

18 THE COURT: It may be a difficult definition to
19 assign to yourself, but it applies. It is apt.

20 Continue.

21 THE DEFENDANT: So yeah, I come in -- yeah.

22 THE COURT: I understand. It may be a difficult
23 definition, I do understand that. But you need to
24 understand it does apply to you. You may be other things as
25 well. You may be husband. You may be father. You may be

1 friend. You're not defined by one thing. You're not. None
2 of us are.

3 THE DEFENDANT: It's an act in time though.

4 THE COURT: I'm sorry?

5 THE DEFENDANT: It's an act in time.

6 THE COURT: It was. It was.

7 THE DEFENDANT: Of course, I accept full
8 responsibility and it kills me. These are the things I
9 think about at night and again, you know, look, clients, you
10 know, forgiven me. Clients have left me messages and that
11 means the world to me, you know. And tonight I'll be on the
12 phone with all of them, and, you know, it's something that's
13 between -- at the end of the day it's between me and my
14 people.

15 THE COURT: That's where you're wrong, sir. It's
16 not just between --

17 THE DEFENDANT: No, no, no. I know I'm paying --
18 I know I have to pay for it.

19 THE COURT: Right.

20 THE DEFENDANT: But I mean it's something I have
21 to deal with, with them.

22 THE COURT: You certainly do have to make amends
23 with them as well. But there is -- but you must pay the
24 consequences for your conduct as permissible and
25 appropriate.

1 THE DEFENDANT: Yes.

2 THE COURT: As a matter of law.

3 All right. Anything else?

4 THE DEFENDANT: Then at this point I apologize to
5 my family. I just -- I didn't know what to do.

6 THE COURT: All right.

7 Okay. Thank you, sir. I need to take a -- a
8 brief recess and then I'll come back.

9 THE COURTROOM DEPUTY: All rise.

10 (Recess taken.)

11 THE COURTROOM DEPUTY: All rise. Second call of
12 17-CR-130.

13 THE COURT: You all can be seated.

14 You know, as I indicated at the top of these
15 proceedings I certainly undertook to read the submissions in
16 this case. And when you receive submissions from the
17 attorneys and you receive letters, et cetera, in support of
18 defendants from family members and community members, a
19 picture is created for you of a defendant in any individual
20 case. However, I purposely encourage defendants to speak at
21 sentencing because I do believe that what they have to say
22 about themselves and the crimes that they committed
23 certainly help to add color to what is a picture that is in
24 black and white until that point.

25 But, Mr. Schiro, I will say that I believe that

1 you did add some color today to the picture, but I don't
2 believe that you helped yourself here today.

3 What I saw here today perhaps unintentionally, but
4 nonetheless it was, an utter lack of remorse. It's my turn.
5 I sat quietly. I wanted to hear from you. And I heard from
6 you. Perhaps it is denial in terms of the conduct that you
7 engaged in which led you to plead guilty before the Court.
8 I don't know. But I saw a lack of remorse, which gives the
9 Court some pause.

10 The Court believes that the Government in its
11 submission rightly notes that this conduct -- as probation
12 as well -- is similar to the conduct for which you were
13 previously convicted and served 18 months. And as I
14 indicated earlier, and yet, here we are.

15 You talked about the fact that these were friends
16 of yours, that you would breach the trust of any client, of
17 any client at all, but particularly those clients who you
18 said stood by you, sir, knew of your prior conviction, were
19 there for you in an effort to help you put your life back
20 together, and you did not reward them with the loyalty that
21 they displayed for you. Instead you violated their trust.
22 You breached their trust. You took advantage of them and
23 you took advantage of the fact that they trusted you.

24 Certainly I am sympathetic to any individual that
25 feels the grips of financial woes. Far too many people in

1 this country are burdened by similar financial woes.
2 Clearly your children had, notwithstanding the decision
3 that you made which led to your conviction in 2004, your
4 children made choices in life that led them to their
5 acceptance in college and I congratulate them for that.
6 However, it certainly, certainly does not provide a basis
7 for the Court to view your conduct with regard to this case
8 sympathetically. There were alternatives. Indeed, sir, you
9 indicated that those very friends whom you defrauded would
10 have been there for you. Very few people would have had
11 that as an option. But you did.

12 Instead you made a decision, a calculated,
13 deliberate decision to engage in fraudulent conduct, keenly
14 aware of the potential consequences having been in that
15 position before.

16 Before I took the bench today, I had some very
17 real concerns regarding a term of incarceration in light of
18 Mr. Schiro's medical condition. Some of those concerns have
19 been allayed in light of Mr. Kamdang's discussions already
20 with the Bureau of Prisons. That said, I will say that I
21 intend to impose a period of incarceration and I had
22 intended to do so when I came on the bench today. So it's
23 not that anything that Mr. Kamdang said today changed that.
24 I wanted to address how it would be addressed in light of
25 what I think Mr. Kamdang aptly set out are very real

1 concerns regarding your medical condition. I appreciated
2 not only what you set out with regard to his medical
3 conditions but also the concerns with regard to appropriate
4 facilities, and I think that Mr. Kamdang's advocacy in this
5 regard has been exceptional. I want you to know that.

6 All right. So I need to determine now what is a
7 sentence that is sufficient but not greater than necessary
8 to comport with the aims of sentencing. And in light of all
9 that the Court has heard today with regard to Mr. Schiro's
10 conduct in addition as well as in light of what the Court
11 understands -- let me just be clear before I finish that
12 sentence.

13 In terms of -- Mr. Schiro's medical condition is
14 more severe than it was in 2004. He is scheduled to have a
15 treatment on May 16, 2018; is that right?

16 MR. KAMDANG: (Nodding head affirmatively.) Yes,
17 Your Honor.

18 THE COURT: And that date was based on the
19 availability of beds, correct?

20 MR. KAMDANG: Yes.

21 THE COURT: And how long is that treatment
22 scheduled to last for?

23 THE DEFENDANT: Not -- I don't know. It -- I'm
24 sorry. They monitor two seizures and then the brain mapping
25 it -- I -- I guess it's something I'll do when I come home.

1 I don't see a possibility.

2 THE COURT: How long?

3 THE DEFENDANT: It could be a year, Your Honor.

4 MR. KAMDANG: One of the difficulties here.

5 THE DEFENDANT: Brain surgery at the end.

6 MR. KAMDANG: One of the difficulties when I spoke
7 to the doctor they're trying to map seizures as they occur
8 in the brain because they can't predict when the seizures
9 will occur. They repeatedly had him under observation for
10 different periods of time. It could be a week, two weeks.
11 As they hope to have him plugged in when an actual seizure
12 occurs. They haven't been able to get enough data and at
13 some point they're considering trying to trigger a seizure.
14 They determined that that probably wasn't, medically, the
15 best course of action. So they set these intermittent
16 periods of time for him to be under evaluation where he
17 remains at the hospital. But the doctor has not been able
18 to give us a timeline of -- of what that entails just
19 because they don't know if he's going to have a seizure.

20 THE COURT: And that's separate and apart from the
21 proposed brain surgery?

22 THE DEFENDANT: It's the prerequisite, I guess.
23 Three seizures and then so they will open up the top and do
24 the electrical stimulation -- the mapping part. So it takes
25 a very long time. It's something I planned on doing when I

1 came home. I don't take seizure medicine anymore because
2 it's been tracked, epileptic medication doesn't work. When
3 I come home I'm going to do it. It likely will take a year. I
4 wouldn't want to stay out a year to do that. I need to get
5 home and get this over with and get home and you know, I'm
6 at the age -- if I was 25, I would do it.

7 THE COURT: Okay.

8 THE DEFENDANT: You know, but.

9 THE COURT: So because you are aware that your
10 attorney had advocated for the Court, if it were to impose a
11 period of incarceration to allow you to self-surrender after
12 this process and what you're saying is that that is not what
13 you would prefer.

14 THE DEFENDANT: I would like to self-surrender
15 because I'm having interventional biopsy in a few weeks, and
16 also another procedure.

17 THE COURT: But not for the monitoring and
18 proposed brain surgery with regard to your diagnosed
19 epilepsy, correct?

20 THE DEFENDANT: Correct. I would go in for the
21 monitoring just to get that data on the record for them.

22 MR. KAMDANG: Your Honor --

23 THE COURT: Which requires three seizures, you're
24 having -- he's had 16 seizures in a one-year period of time.

25 So is the Court correct that that would be about a

1 three-month period of time; is that how it operates -- where
2 he would be at NYU undergoing observation.

3 MR. KAMDANG: So they have never -- I'm not aware
4 of him being there longer than two weeks.

5 THE COURT: I understand. Okay.

6 MR. KAMDANG: And I think because of the
7 uncertainty, I think that what we'd ask for is time for him
8 to go to his next scheduled medical appointment.

9 THE COURT: Okay.

10 MR. KAMDANG: But I don't think they'll ever be
11 able to give us a timetable and I think Mr. Schiro
12 recognizes that.

13 So if we could have, I think six weeks would allow
14 him to attend his -- or maybe eight weeks would allow him to
15 attend his medical appointments. Allow me to get all of his
16 medical documentation to the Bureau of Prisons. It's
17 possible the Bureau of Prisons might say we would like him
18 to play out this course with his doctors. That's what they
19 told me previously. And I can come back to the Court, but I
20 think what we'd ask for today is eight weeks. That will
21 give the Bureau of Prisons an opportunity to make their own
22 medical decision about when it's appropriate to bring him
23 in.

24 THE COURT: Is there anything the Government wants
25 to add before I impose a sentence?

1 MR. KESSLER: No, Your Honor.

2 THE COURT: All right.

3 Now, I have calculated the applicable guidelines,
4 I have considered the propriety of a departure from the
5 guidelines range, which I indicated previously did not
6 believe that there was a basis for, and I have heard
7 arguments regarding a variance from defense counsel.

8 Now after assessing the particular facts of this
9 case and in light of relevant 3553(a) factors as well as the
10 sentencing guidelines, I conclude that a sentence outside
11 the advisory guideline range is warranted and I hereby
12 sentence Mr. Schiro to 28 months in prison.

13 All right. Now, with respect to the defense
14 requests that Mr. Schiro be allowed to self-surrender, that
15 request is granted. Mr. Schiro -- let me take a step back.

16 Because what I would like to do in this regard is
17 fashion an order that allows Mr. Schiro to self-surrender
18 not -- no earlier than eight weeks from today. However,
19 should it take the Bureau of Prisons longer to find the
20 appropriate facility, Mr. Schiro will surrender on that
21 date, on the date in which they find an appropriate
22 facility. And the Court is going to recommend that
23 Mr. Schiro be -- I'm sorry -- be held in a facility that can
24 best accommodate his medical condition.

25 Defense counsel has indicated that he -- that

1 there is a belief that it is the Devens facility is that --
2 Mr. Kamdang; is that right?

3 MR. KAMDANG: That's correct.

4 THE COURT: Devens.

5 And so to the extent that the best suited facility
6 is Devens, the Court shall make a recommendation that he be
7 held at Devens. The priority in this assessment is that it
8 is a facility, again, that can best address Mr. Schiro's
9 medical condition, which includes, among other things,
10 [REDACTED] but is not limited to [REDACTED], as I understand it,
11 correct?

12 MR. KAMDANG: Correct, Your Honor.

13 THE COURT: All right. So Mr. Schiro will be
14 allowed to surrender on a date no less than eight weeks from
15 today. But should the Bureau of Prisons not find an
16 appropriate facility at the eight-week time frame,
17 Mr. Schiro shall surrender on the date that a facility has
18 been determined consistent with the requirement and as
19 appropriate in light of Mr. Schiro's medical conditions as
20 deemed by the Bureau of Prisons. Because, of course, the
21 Court cannot determine the facility itself.

22 All right.

23 MR. KAMDANG: Your Honor, could the order reflect
24 a target date of June 13th? That would be eight weeks from
25 today with the rest of the order, just because when I take

1 him downstairs to the marshals to get a voluntary surrender
2 they'll ask for a date certain and I'll explain what the
3 parameters are, but they would feel better if they have an
4 actual date.

5 THE COURT: So you want me to fashion the order so
6 that it says no earlier than June 13th?

7 MR. KAMDANG: Yes, Your Honor.

8 THE COURT: All right. Mr. Schiro shall surrender
9 on a date no earlier than June 13th. And to the extent that
10 the Bureau of Prisons is unable to find an appropriate
11 facility for him by June 13th, Mr. Schiro shall surrender on
12 the date that the facility has been designated. Is that
13 clear?

14 MR. KAMDANG: Yes, Your Honor.

15 THE COURT: All right. Now the Court must also
16 consider whether to impose a term of supervised release.
17 Pursuant to the applicable statutory provisions the Court
18 may impose a term of supervised release of not more than
19 three years.

20 Now in deciding a term of supervised release, the
21 Court is also required by statute to consider factors set
22 forth in section, 18 USC Section 3583(c). Those factors
23 include the nature and circumstances of the offense, the
24 history and characteristics of the defendant, the need to
25 afford adequate deterrence to criminal conduct, the need to

1 protect the public from further crimes of the defendant, the
2 need to provide the defendant with needed educational or
3 vocational training, medical care or other correctional
4 treatment in the most effective manner, the need to avoid
5 unwarranted sentence disparity among the defendants with
6 similar records who have been found guilty of similar
7 conduct, the need to provide restitution to any victims of
8 the offense, the kinds of sentences and the sentencing range
9 established for the offense, and any pertinent policy
10 statements.

11 Does the Government wish to present any arguments
12 concerning the application of these factors?

13 MR. KESSLER: No, Your Honor.

14 THE COURT: Mr. Kamdang.

15 MR. KAMDANG: No, Your Honor.

16 THE COURT: All right. The Court will sentence
17 Mr. Schiro to three years of supervised release.

18 Now, Mr. Schiro, as I informed you during your
19 plea hearing, if you violate any of the conditions of your
20 supervised release, I may sentence you to up to two years in
21 prison without credit for your previous time in prison or
22 the time previously served on post release supervision.

23 Now while on supervised release, Mr. Schiro is
24 subject to the following standards and special conditions:
25 The standard -- under the standard conditions Mr. Schiro

1 shall not commit another federal, state or local crime
2 during the term of supervision.

3 Mr. Schiro shall not leave the judicial district
4 or other specified geographic area without the permission of
5 the Court or the probation officer.

6 The defendant shall report to the probation
7 officer as directed by the Court or probation officer in a
8 manner and frequency directed by the Court or probation
9 officer.

10 Mr. Schiro shall answer truthfully all inquiries
11 by the probation officer and follow the instructions of the
12 probation officer.

13 Mr. Schiro shall support Mr. Schiro's dependents
14 and meet other family responsibilities.

15 Mr. Schiro shall work regularly at a lawful
16 occupation unless excused by the probation officer for
17 schooling, training or other acceptable reasons.

18 Mr. Schiro shall notify the probation officer at
19 least ten days prior to any change of residence or
20 employment.

21 Mr. Schiro shall restrain from excessive use of
22 alcohol and shall not purchase, possess, use, distribute or
23 administer any controlled substance or any paraphernalia
24 related to any controlled substance except as prescribed by
25 a physician.

1 The defendant shall not frequent places where
2 controlled substances are illegally sold, used, distributed
3 or administered or other places specified by the Court.

4 Mr. Schiro shall not associate with any persons
5 engaged in criminal activity and shall not associate with
6 any person convicted of a felony unless granted permission
7 to do so by the probation officer.

8 The defendant, Mr. Schiro, shall permit a
9 probation officer to visit Mr. Schiro at any time at home or
10 elsewhere and should permit confiscation of any contraband
11 observed in plain view by the probation officer.

12 Mr. Schiro shall notify the probation officer
13 within 72 hours of being arrested or questioned by law
14 enforcement officers.

15 Mr. Schiro shall not enter into any agreement to
16 act as an informer or special agent of the law enforcement
17 agency without the permission of the Court.

18 As directed by the probation officer, Mr. Schiro
19 shall notify third parties of risks that may be occasioned
20 by the defendant's criminal record or personal history or
21 characteristics and shall permit the probation officer to
22 make such notification and to confirm Mr. Schiro's
23 compliance with such notification requirements.

24 Mr. Schiro shall pay the special assessment
25 imposed or adhere to any court ordered installment schedule

1 for the payment of any special assessment.

2 Mr. Schiro shall notify the probation officer of
3 any material change in his economic circumstances that might
4 affect his ability to pay any unpaid amounts of restitution,
5 fines or special assessment.

6 With regard to special conditions, Mr. Schiro
7 shall comply with the restitution order. Now upon request,
8 Mr. Schiro shall provide the U.S. Probation Department with
9 full disclosure of his financial records including
10 commingled income, expenses, assets and liabilities to
11 include yearly income tax returns. With the exception of
12 the financial reported and noted within the presentence
13 report, Mr. Schiro is prohibited from maintaining and/or
14 opening any additional individual and/or joint checking,
15 savings or other financial accounts for either personal or
16 business purposes without the knowledge and approval of the
17 U.S. Probation Department.

18 Mr. Schiro shall cooperate with the probation
19 officer in the investigation of his financial dealings and
20 should provide truthfully monthly statements of his income
21 and expenses.

22 Mr. Schiro shall cooperate in the signing of any
23 necessary authorization to release information forms
24 permitting the U.S. Probation Department access to his
25 financial information and records.

1 Mr. Schiro shall participate in mental health
2 treatment program as approved by the Probation Department.
3 He shall contribute to the cost of such services rendered
4 and/or any psychotropic medications prescribed to the degree
5 he is reasonably able and shall cooperate in securing any
6 applicable third-party payment.

7 Mr. Schiro shall disclose all financial
8 information and documentation to the Probation Department as
9 necessary to assess his ability to pay.

10 Mr. Schiro shall participate in an outpatient drug
11 treatment program approved by the U.S. Probation Department.

12 Mr. Schiro shall contribute to the cost of such
13 treatment not to exceed an amount determined reasonable by
14 the Probation Department's sliding scale for substance abuse
15 treatment services and shall cooperate in securing any
16 applicable third-party payment such as insurance or
17 Medicaid.

18 Mr. Schiro shall disclose all financial
19 information and documents to the Probation Department to
20 assess his ability to pay.

21 Mr. Schiro shall not consume any alcohol or other
22 intoxicants during and after treatment unless granted as
23 prescription by a licensed physician and proof of the same
24 is provided to the Probation Department.

25 Mr. Schiro shall submit to testing during and

1 after treatment to ensure abstinence from drugs and alcohol.

2 Mr. Schiro shall abstain from the consumption of
3 nonprescribed use of medication classified as opiates,
4 benzodiazepines, excuse me, I know I mispronounced that,
5 stimulants, depressants, sedatives and hypnotics unless as
6 prescribing physician is fully aware of defendant's
7 substance abuse history.

8 The defendant shall immediately notify the
9 probation officer prior to filing of any of the above-listed
10 prescription medications to permit the probation officer to
11 contact my healthcare professional who prescribed that
12 medication to the offender.

13 Mr. Schiro shall not purchase any medication via
14 the Internet unless such medication is prescribed by a
15 healthcare professional who conducted an examination of the
16 defendant in person.

17 I need a moment.

18 (Pause in proceedings.)

19 THE COURT: All right. Mr. Schiro shall refrain
20 from engaging in any self-employment which involves access
21 to clients' assets, investments or money and is to assist
22 the probation department in verifying any employment he
23 secures while under supervision.

24 With regard to the special conditions,
25 Mr. Kamdang, is -- is there any special condition that the

1 Court has imposed the basis for which is not apparent on
2 their face?

3 MR. KAMDANG: No, Your Honor. We don't have any
4 objection to the conditions.

5 In light of the drug conditions --

6 THE COURT: Yes.

7 MR. KAMDANG: -- we would ask the Court to reflect
8 that the Bureau of Prisons should screen him for the RDAP
9 program while he's incarcerated. I think he might be able
10 to benefit from the drug treatment.

11 THE COURT: Any objection from the Government?

12 MR. KESSLER: No, Your Honor.

13 THE COURT: All right.

14 MR. KAMDANG: Thank you, Your Honor.

15 THE COURT: I think that that is a wise request
16 and that request is granted.

17 Your client, Mr. Kamdang, is trying -- can you
18 figure out what he --

19 MR. KAMDANG: One moment.

20 THE COURT: Yes.

21 (Pause in proceedings.)

22 THE COURT: Does Mr. Schiro have a question
23 regarding the condition regarding medication?

24 MR. KAMDANG: No, Your Honor. It's -- his
25 question is about potential employment afterwards and he's

1 asking whether or not he'll be forbidden from working in
2 finance. My understanding of the Court's order is any job
3 that he would get, he would have to get approval from the
4 Probation Department and seek approval.

5 THE COURT: The condition as is set out is that
6 he's -- he must refrain from engaging in any self-employment
7 which involves access to a client's assets, investments or
8 money. And you are required as well to assist the Probation
9 Department in verifying any employment you secure while
10 under supervision.

11 So there is a category which is self-employment
12 and any self-employment that you engage in, right, you
13 cannot engage in any that would involve act -- you have to
14 listen to me.

15 THE DEFENDANT: I am -- I am, Your Honor.

16 THE COURT: All right. But you cannot listen to
17 me and talk to Mr. Kamdang at the same time.

18 Clients' assets, investments or money. To the
19 extent that you get a job that is not self-employment, you
20 must assist the probation department in verifying your
21 employment while you are on supervision. Two different
22 types of employment.

23 MR. KAMDANG: One moment, Your Honor.

24 (Pause in proceedings.)

25 MR. KAMDANG: We understand, Your Honor.

1 THE COURT: All right. Okay. Turning to
2 restitution. Now pursuant to 18 U.S.C. Section 3663A and
3 Sentencing Guideline 5E1.1, and as Mr. Schiro agreed to in
4 his plea agreement, restitution in this case is mandatory.

5 Now as we've previously discussed, there is some
6 question as to the appropriate amount of restitution. The
7 loss amount was previously identified \$401,551.50. Based on
8 information voluntarily identified by the defense in this
9 case, there is some question as to whether that adequately
10 reflects the loss amount.

11 How long do you think it will take for the
12 Government to be able to run this issue down?

13 MR. KESSLER: I don't think very long. I mean I
14 would want to be very conservative and say two weeks.

15 THE COURT: All right.

16 MR. KESSLER: It could be that the legal answer is
17 it doesn't matter.

18 THE COURT: Fair enough.

19 MR. KESSLER: It could be very easy or it could
20 take a little bit longer.

21 THE COURT: All right. Then I'm going to order
22 that the Government make a submission to the Court
23 concerning the loss amount. Give me two weeks from now.

24 THE COURTROOM DEPUTY: April 27th, Your Honor.

25 THE COURT: All right. By April 27, 2018.

1 MR. KESSLER: That's fine, Your Honor, but to be
2 clear there's no world in which the loss amount will be less
3 than.

4 THE COURT: Oh, I'm clear.

5 The question is whether the amount that's
6 identifiable with regard to Investor 6 should be included,
7 which would increase the loss amount above the \$401,550.50
8 amount.

9 MR. KESSLER: Understood.

10 THE COURT: When you provide your submission on --
11 what did I just say, April --

12 MR. KESSLER: 27th.

13 THE COURT: -- 27th, should the loss -- the
14 Government believe that the loss amount has increased, the
15 Government should indicate whether there -- the defense has
16 a disagreement with that amount and objects so that I can
17 take that into consideration. And once I receive that
18 letter, assuming that there's an agreement, there are no
19 objections that the Court needs to resolve, I will enter a
20 judgment regarding restitution, but restitution will be
21 imposed.

22 MR. KESSLER: Thank you.

23 THE COURT: In an amount no less than \$401,550.50.

24 All right. The Government has represented it is
25 not seeking an order of forfeiture in this matter. It is

1 also ordered that Mr. Schiro must pay a mandatory special
2 assessment in the amount of \$100. Any fine owed by the
3 defendant in this case is waived due to the priority of
4 restitution over a fine.

5 All right. Mr. Schiro, sir, you have a statutory
6 right to appeal your sentence under certain circumstances,
7 particularly if you believe that the sentence that's been
8 imposed here today is contrary to law. Now any notice of
9 appeal, sir, must be filed within 14 days of the entry of
10 the judgment or within 14 days of the filing of a notice of
11 appeal by the Government.

12 If requested, sir, the clerk will prepare and file
13 a notice of appeal on your behalf. If you cannot pay the
14 cost of an appeal or for appellant counsel, sir, you have
15 the right to apply for leave to appeal *in forma pauperis*,
16 which means that you could apply to have the Court waive the
17 filing fee.

18 On appeal you may also apply for court-appointed
19 counsel. Now the Court notes, sir, that pursuant to
20 Paragraph 4 of your plea agreement you agreed not to appeal
21 or otherwise challenge your conviction or sentence so long
22 as the Court imposes a term of imprisonment of 33 months or
23 below, which the Court has done here today.

24 Now before I move to adjourn, Mr. Schiro, I just
25 want to say to you at the conclusion of your period of

1 incarceration you're going to be home. Certainly you'll be
2 on supervised release, as I ordered, but you're going to be
3 faced, sir, with many of the same demands that faced you
4 when you made the decision that led to your guilty plea and
5 conviction here today. They're not going away. You will
6 have the responsibility to be a father and to provide for
7 your children as fathers should. You have to find a way,
8 sir, notwithstanding those demands to make choices that are
9 lawful, to make choices that I believe are consistent with
10 the person that you want your children to see you as, to
11 view you as. If you don't want labels of fraudster, convict
12 attached to you, you have to make choices in light that are
13 different than the choices that you have now repeatedly
14 made. It's up to you. It is up to you.

15 The Court was somewhat generous here with you
16 today. Should you stand before me again, sir, understand
17 that that generosity will not exist.

18 THE DEFENDANT: That will never happen.

19 THE COURT: I hope so. I know your family hopes
20 so.

21 THE DEFENDANT: Nobody questions my integrity that
22 I know.

23 THE COURT: Okay. That's unfortunate that that's
24 how you view it. Your guilty conviction here today, sir, or
25 your guilty conviction which I don't know what date that the

1 plea came in, certainly suggests that in at least some
 2 aspect of your life, sir, you operate with a lack of
 3 integrity and a lack of regard for the law. My suggestion,
 4 sir, is that you not say anything else. Thank your
 5 attorney. Thank your family for supporting you. They've
 6 represented you far better than you've represented yourself.

7 All right. We're done.

8 THE COURTROOM DEPUTY: All rise.

9 (Matter concluded.)

10 --oo0oo--

11

12

13

14

15 *I (we) certify that the foregoing is a correct transcript*
 16 *from the record of proceedings in the above-entitled matter.*

17 */s/ David R. Roy*
 18 *DAVID R. ROY*

7th Day of May, 2018
 19 *Date*

20

21

22

23

24

25

UNITED STATES DISTRICT COURT

Eastern District of New York

UNITED STATES OF AMERICA

v.

PATRICK MORGAN SCHIRO

Date of Original Judgment: 4/13/2018
(Or Date of Last Amended Judgment)

Reason for Amendment:

- Correction of Sentence on Remand (18 U.S.C. 3742(f)(1) and (2))
- Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
- Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
- Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 17-CR-130-01(LDH)

USM Number: 56536-054

Len Kamdang, Esq

Defendant's Attorney

- Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
- Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- Direct Motion to District Court Pursuant 28 U.S.C. § 2255 or 18 U.S.C. § 3559(c)(7)
- Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

pleaded guilty to count(s) sole count of the Information.

pleaded nolo contendere to count(s) _____ which was accepted by the court.

was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1343	Wire Fraud	6/1/2016	1

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.

The defendant has been found not guilty on count(s) _____

Count(s) No open counts is are dismissed on the motion of the United States.

It is ordered that the defendant must 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. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

12/6/2018

Date of Imposition of Judgment

s/ LDH

Signature of Judge

LaShann DeArcy Hall

U.S.D.J.

Name and Title of Judge

12/6/2018

Date

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.

★ **DEC 12 2018** ★

BROOKLYN OFFICE

DEFENDANT: PATRICK MORGAN SCHIRO
CASE NUMBER: 17-CR-130-01(LDH)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of :

Twenty-eight (28) months

The court makes the following recommendations to the Bureau of Prisons:

The defendant should be evaluated for participation in the RDAP program. The Court further recommends that the defendant be held in a facility that can best accommodate his medical conditions. Should the BOP fail to designate an appropriate facility by June 30, 2018, Defendant shall surrender in such date that the BOP indicates facility has been designated.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at 12:00 a.m. p.m. on 6/13/2018

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

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 UNITED STATES MARSHAL

DEFENDANT: PATRICK MORGAN SCHIRO
CASE NUMBER: 17-CR-130-01(LDH)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

Three (3) years.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: PATRICK MORGAN SCHIRO
CASE NUMBER: 17-CR-130-01(LDH)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: PATRICK MORGAN SCHIRO
CASE NUMBER: 17-CR-130-01(LDH)

SPECIAL CONDITIONS OF SUPERVISION

- 1) The defendant shall comply with the restitution order when issued.
- 2) Upon request, the defendant shall provide the U.S. Probation Department with full disclosure of his financial records, including co-mingled income, expenses, assets and liabilities, to include yearly income tax returns. With the exception of the financial accounts reported and noted within the presentence report, the defendant is prohibited from maintaining and/or opening any additional individual and/or joint checking, savings, or other financial accounts, for either personal or business purposes, without the knowledge and approval of the U.S. Probation Department. The defendant shall cooperate with the probation officer in the investigation of his financial dealings and shall provide truthful monthly statements of his income and expenses. The defendant shall cooperate in the signing of any necessary authorization to release information forms permitting the U.S. Probation Department access to his financial information and records.
- 3) The defendant shall participate in a mental health treatment program as approved by the Probation Department. The defendant shall contribute to the cost of such services rendered and/or any psychotropic medications prescribed to the degree he is reasonably able, and shall cooperate in securing any applicable third party payment. The defendant shall disclose all financial information and documents to the Probation Department to assess his ability to pay.
- 4) The defendant shall participate in an outpatient drug treatment program approved by the U.S. Probation Department. The defendant shall contribute to the costs of such treatment not to exceed an amount determined reasonable by the Probation Department's Sliding Scale for Substance Abuse Treatment Services, and shall cooperate in securing any applicable third party payment, such as insurance or Medicaid. The defendant shall disclose all financial information and documents to the Probation Department to assess his ability to pay. The defendant shall not consume any alcohol or other intoxicants during and after treatment, unless granted a prescription by a licensed physician and proof of same is provided to the Probation Department. The defendant shall submit to testing during and after treatment to ensure abstinence from drugs and alcohol.
- 5) The defendant shall abstain from the consumption of non-prescribed medication classified as opiates, benzodiazepines, stimulants, depressants, sedatives or hypnotics unless the prescribing physician is fully aware of the defendant's substance abuse history. The defendant shall immediately notify the probation officer prior to filling any of the above listed prescription medications and permit the probation officer to contact any health care professional who prescribes any medication to the offender. The defendant shall not purchase any medication via the internet unless such medication is prescribed by a healthcare professional who conducts an examination of the defendant in person.
- 6) The defendant shall refrain from engaging in any self-employment which involves access to clients' assets, investments or money, and is to assist the Probation Department in verifying any employment he secures while under supervision.

DEFENDANT: PATRICK MORGAN SCHIRO
CASE NUMBER: 17-CR-130-01(LDH)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

- A Lump sum payment of \$ 100.00 due immediately, balance due
 - not later than _____, or
 - in accordance with C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:

Restitution is due immediately and payable at a rate of \$25 per quarter while in custody, and at a rate of 10% of Mr. Schiro's gross income per month while on supervised release. Payment shall be made payable to the Clerk of the Court.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVT A assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.