



U.S. Department of Justice

United States Attorney
Southern District of New York

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

September 8, 2008

By Facsimile and E-mail

Flora Edwards, Esq.
115 Broadway, Suite 1505
New York, N.Y. 10006-2750

Re: United States v. Raffaello Follieri
08 Cr. ____ ()

Dear Ms. Edwards:

On the understandings specified below, the Office of the United States Attorney for the Southern District of New York ("this Office") will accept a guilty plea from Raffaello Follieri ("the defendant") to the above-referenced fourteen-count Information (the "Information").

Count One charges the defendant with conspiracy to commit wire fraud by agreeing with other individuals to knowingly and willfully make false representations about the Vatican, the use of investor money, a non-existent Italy office, "engineering" studies, and non-existent consulting services through wire communications in interstate commerce, in violation of Title 18, United States Code, Sections 371 and 1343. Count One carries a maximum sentence of five years' imprisonment; a maximum fine, pursuant to Title 18, United States Code, Section 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense; a \$100 special assessment; and supervised release of three years. In addition to the foregoing, the Court must order restitution in accordance with Sections 3663, 3663A and 3664 of Title 18, United States Code.

Counts Two through Nine each charge the defendant with knowingly and willfully making false representations by means of wire communications in interstate commerce, in violation of Title 18, United States Code, Sections 1343 and 2. Counts Two through Nine each carry a maximum sentence of twenty years' imprisonment; a maximum fine, pursuant to Title 18, United States Code, Section 3571, of the greatest of \$250,000, twice the gross pecuniary gain derived from the offense, or twice the gross pecuniary loss to persons other than the defendant resulting from the offense; a \$100 special assessment; and supervised release of three years. In addition to the foregoing, the Court must order restitution in accordance with Sections 3663, 3663A and 3664 of Title 18, United States Code.

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Counts Ten through Fourteen each charge the defendant with money laundering by transmitting and transferring funds from a place in the United States to and through a place outside the United States knowing that the funds represented the proceeds of unlawful activity and knowing that such transmission and transfer were designed in whole and in part to conceal and disguise the nature, location, source, ownership, and control of the proceeds of unlawful activity, in violation of Title 18, United States Code, Sections 1956(a)(2)(B)(i) and 2. Counts Ten through Fourteen each carry a maximum sentence of twenty years' imprisonment; a maximum fine, pursuant to Title 18, United States Code, Section 1956(a), of not more than \$500,000 or twice the value of the property involved in the transaction; a \$100 special assessment; and supervised release of three years. In addition to the foregoing, the Court must order restitution in accordance with Sections 3663, 3663A and 3664 of Title 18, United States Code.

In consideration of the defendant's plea to the above offenses, the defendant will not be further prosecuted criminally by this Office (except for criminal tax violations as to which this Office cannot, and does not, make any agreement) for his participation in a conspiracy to commit wire fraud and wire fraud from in or about 2005 through in or about June 2007 and money laundering during the same period, as set forth in the Information. In addition, at the time of sentencing, the Government will move to dismiss any open Counts against the defendant. The defendant agrees that with respect to any and all dismissed charges he is not a "prevailing party" within the meaning of the "Hyde Amendment," Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

The defendant hereby admits the forfeiture allegations with respect to Counts One through Fourteen of the Information and agrees to forfeit to the United States, pursuant to Title 18, United States Code, Sections 981, 982, and 1956, and Title 28, United States Code, Section 2461, (i) a sum of money equal to \$2,440,000 in United States currency, representing the amount of proceeds obtained as a result of the offenses charged in Counts One through Nine, as well as the amount of property involved in the money laundering offenses charged in Counts Ten through Fourteen (the "Money Judgment"), and (ii) all right, title and interest of the defendant in the following specific property:

A. All precious metals, watches, and jewelry recovered on or about July 15, 2008 from the residence of the defendant located at 721 Fifth Avenue, Apartment 48H, New York, New York, which includes the following:

- (1) One Audemars Piguet watch with serial number F94698;
- (2) One Audemars Piguet watch with serial number F61030;
- (3) One Trussardi watch with model number 2763;
- (4) One Donald Trump watch with model number GP21;
- (5) One Harrods watch with serial number 667992;

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- (6) One Ebel watch with serial number 981909;
- (7) One Cartier watch with serial number 145365;
- (8) One Bucherer watch;
- (9) One Omega watch;
- (10) One Rolex watch with model number 501B;
- (11) One silver Omega watch with model number 7912;
- (12) One Omega watch with a black band and white face with Roman numerals; and
- (13) One Sekonda watch with serial number 780181.

B. All precious metals, watches, and jewelry recovered on or about July 15, 2008 from a storage area rented by the defendant located at 175 Walnut Street, Bronx, New York, which includes the following:

- (1) One Cartier figurine in a box; and
- (2) One Tiffany clock.

C. All jewelry, watches, and other items recovered in or about August 2008 from an individual who received them from the defendant, which includes the following:

- (1) One gold colored Rolex watch;
- (2) One silver colored Rolex watch
- (3) One gold colored ring with light blue-green stone;
- (4) One silver colored chain approximately sixteen inches long with a cross pendant and blue and clear stones;
- (5) One pair of colored silver earrings with silver clasps and blue and clear stones;
- (6) One gold colored ring with clear stones around the band;
- (7) One silver colored bracelet with floral design and light blue and clear stones;
- (8) One silver colored bracelet with clear stones;
- (9) One silver colored necklace approximately sixteen inches long with five flower shaped designs and clear stones;
- (10) One five-strand necklace approximately sixteen inches long with pearl beads;
- (11) One gold colored chain approximately thirty-two inches long with a gold colored pendant with a red-brown stone and a gold colored tassel; and
- (12) One Louis Vuitton box.

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(collectively the "Specific Property"). The defendant agrees that he will not file a claim or a petition for remission or mitigation in any forfeiture proceeding involving the Specific Property and will not cause or assist anyone else in doing so. The defendant also agrees to take all necessary steps to pass clear title to the Specific Property to the United States, including, but not limited to, the execution of all necessary documentation. It is further understood that any forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon him in addition to forfeiture. The United States agrees that the value of any Specific Property forfeited to the United States will be applied toward the Money Judgment, in partial satisfaction of the Money Judgment.

In consideration of the foregoing and pursuant to Sentencing Guidelines Section 6B1.4, the parties hereby stipulate to the following:

A. Offense Level

1. The Sentencing Guidelines applicable are those in effect as of November 1, 2007.

Group One

2. Counts One through Nine, which are the conspiracy to commit wire fraud and wire fraud counts, constitute Group One.
3. Pursuant to U.S.S.G. § 2B1.1(a), the base offense level is 7 because the wire fraud counts carry a statutory maximum of twenty years' imprisonment.
4. Pursuant to U.S.S.G. § 2B1.1(b)(1), because the loss was more than \$1,000,000, the defendant's base offense level is increased by 16 levels.
5. Pursuant to U.S.S.G. § 2B1.1(b)(8)(A), because the defendant's offenses involved misrepresentations that the defendant was acting on behalf of a religious organization, the defendant's base offense level is increased by an additional 2 levels.
6. The total offense level for Group One is 25.

Group Two

7. Counts Ten through Fourteen, which are the money laundering counts, constitute Group Two.

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8. Pursuant to U.S.S.G. § 2S1.1(a), the base offense level is 25, because it is the offense level for the underlying offense from which the laundered funds were derived.
9. Pursuant to U.S.S.G. § 2S1.1(b), because the defendant was convicted under Title 18, United States Code, Section 1956, the defendant's base offense level is increased by 2 levels.

Grouping Closely Related Counts

10. Pursuant to U.S.S.G. § 3D1.2(d), because the offense level is determined largely on the basis of the total amount of the harm and loss, Group One and Group Two are grouped together into a single group.
11. Pursuant to U.S.S.G. § 3D1.4, because Group One is from one to four levels less serious than Group Two, there is no increase in the defendant's offense level.
12. Accordingly, the defendant's adjusted offense level is 27.

Acceptance of Responsibility

13. Assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence, a 2-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a). Furthermore, assuming the defendant has accepted responsibility as described in the previous sentence, an additional 1-level reduction is warranted, pursuant to U.S.S.G. § 3E1.1(b), because the defendant gave timely notice of his intention to enter a plea of guilty, thereby permitting the Government to avoid preparing for trial and permitting the Court to allocate its resources efficiently.

In accordance with the above, the applicable Guidelines offense level is 24.

B. Criminal History Category

Based upon the information now available to this Office (including representations by the defense), the defendant has no criminal history points. Accordingly, the defendant's Criminal History Category is I.

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C. Sentencing Range

Based upon the calculations set forth above, the defendant's stipulated sentencing Guidelines range is 51 to 63 months (the "Stipulated Guidelines Range"). In addition, after determining the defendant's ability to pay, the Court may impose a fine pursuant to U.S.S.G. § 5E1.2. At Guidelines level 24, the applicable fine range is \$10,000 to \$500,000.

The parties agree that neither a downward nor an upward departure from the Stipulated Guidelines Range set forth above (51 to 63 months) is warranted. Accordingly, neither party will seek such a departure or seek any adjustment not set forth herein. Nor will either party suggest that the Probation Department consider such a departure or adjustment, or suggest that the Court *sua sponte* consider such a departure or adjustment.

The parties further agree that a sentence within the Stipulated Guidelines Range (51 to 63 months) would constitute a reasonable sentence in light of all of the factors set forth in Title 18, United States Code, Section 3553(a). However, the parties agree that either party may seek a sentence outside of the Stipulated Guidelines Range (51 to 63 months), suggest that the Probation Department consider a sentence outside of the Stipulated Guidelines Range (51 to 63 months), and suggest that the Court *sua sponte* consider a sentence outside of the Stipulated Guidelines Range (51 to 63 months), based upon the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a).

Except as provided in any written Proffer Agreement(s) that may have been entered into between this Office and the defendant, nothing in this agreement limits the right of the parties (i) to present to the Probation Department or the Court any facts relevant to sentencing; (ii) to make any arguments regarding where within the Stipulated Guidelines Range (51 to 63 months) (or such other range as the Court may determine) the defendant should be sentenced and regarding the factors to be considered in imposing a sentence pursuant to Title 18, United States Code, Section 3553(a); (iii) to seek an appropriately adjusted Sentencing range if it is determined based upon new information that the defendant's criminal history category is different from that set forth above. Nothing in this agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, *see* U.S.S.G. § 3E1.1, and/or imposition of an adjustment for obstruction of justice, *see* U.S.S.G. § 3C1.1, regardless of any stipulation set forth above, should the defendant move to withdraw his guilty plea once it is entered, or should it be determined that the defendant has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice or (ii) committed another crime after signing this agreement.

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It is understood that pursuant to Sentencing Guidelines § 6B1.4(d), neither the Probation Department nor the Court is bound by the above Guidelines stipulation, either as to questions of fact or as to the determination of the proper Guidelines to apply to the facts. In the event that the Probation Department or the Court contemplates any Guidelines adjustments, departures, or calculations different from those stipulated to above, or contemplates any sentence outside of the stipulated Guidelines range, the parties reserve the right to answer any inquiries and to make all appropriate arguments concerning the same.

It is understood that the sentence to be imposed upon the defendant is determined solely by the Court. It is understood that the Sentencing Guidelines are not binding on the Court. The defendant acknowledges that his entry of a guilty plea to the charged offenses authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence. This Office cannot, and does not, make any promise or representation as to what sentence the defendant will receive. Moreover, it is understood that the defendant will have no right to withdraw his plea of guilty should the sentence imposed by the Court be outside the Guidelines range set forth above (51 to 63 months).

It is agreed (i) that the defendant will not file a direct appeal, nor litigate under Title 28, United States Code, Section 2255 and/or Section 2241, any sentence within or below the Stipulated Guidelines Range set forth above (51 to 63 months) and (ii) that the Government will not appeal any sentence within or above the Stipulated Guidelines Range (51 to 63 months). It is further agreed that any sentence within the Stipulated Guidelines Range (51 to 63 months) is reasonable. This provision is binding on the parties even if the Court employs a Guidelines analysis different from that stipulated to herein. Furthermore, it is agreed that any appeal as to the defendant's sentence that is not foreclosed by this provision will be limited to that portion of the sentencing calculation that is inconsistent with (or not addressed by) the above stipulation.

The defendant hereby acknowledges that he has accepted this Agreement and decided to plead guilty because he is in fact guilty. By entering this plea of guilty, the defendant waives any and all right to withdraw his plea or to attack his conviction, either on direct appeal or collaterally, on the ground that the Government has failed to produce any discovery material, *Jencks* Act material, exculpatory material pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), other than information establishing the factual innocence of the defendant, and impeachment material pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), that has not already been produced as of the date of the signing of this Agreement.

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By entering this plea of guilty, the defendant also waives any and all right the defendant may have, pursuant to 18 U.S.C. § 3600, to require DNA testing of any physical evidence in the possession of the Government. The defendant fully understands that, as a result of this waiver, any physical evidence in this case will not be preserved by the Government and will therefore not be available for DNA testing in the future.

The defendant understands that he is bound by his guilty plea regardless of the immigration consequences of the plea and regardless of any advice the defendant has received from his counsel or others regarding those consequences. Accordingly, the defendant waives any and all challenges to his guilty plea and to his sentence based on those consequences, and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or any kind of collateral attack challenging his guilty plea, conviction or sentence, based on the immigration consequences of his guilty plea, conviction and sentence.

It is further agreed that should the convictions following defendant's plea of guilty pursuant to this Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this agreement (including any counts that the Government has agreed to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against defendant, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Agreement is signed.

It is further understood that this Agreement does not bind any federal, state, or local prosecuting authority other than this Office.

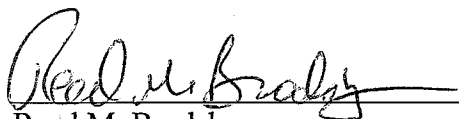
The defendant hereby agrees that he shall remain in the custody of the United States Marshal through his sentencing in the case.

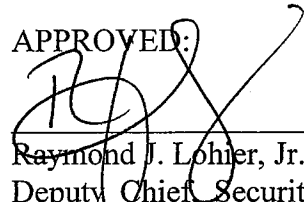
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Apart from any written Proffer Agreement(s) that may have been entered into between this Office and defendant, this Agreement supersedes any prior understandings, promises, or conditions between this Office and defendant. No additional understandings, promises, or conditions have been entered into other than those set forth in this Agreement, and none will be entered into unless in writing and signed by all parties.


Very truly yours,

LEV L. DASSIN
Acting United States Attorney

By: 
Reed M. Brodsky
Assistant United States Attorney
(212) 637-2492

APPROVED:

Raymond J. Lohler, Jr.
Deputy Chief, Securities and Commodities
Fraud Unit


AGREED AND CONSENTED TO: .


Raffaello Follieri

9/10/08

DATE

APPROVED:


Flora Edwards, Esq.
Attorney for Raffaello Follieri

9/10/08

DATE