



U.S. Department of Justice

*United States Attorney
Western District of Pennsylvania*

*Joseph F. Weis, Jr. U.S. Courthouse
700 Grant Street
Suite 4000
Pittsburgh, Pennsylvania 15219*

412/644-3500

April 24, 2024

Phillip P. DiLucente, Esquire
310 Grant Street, Suite 1801
Pittsburgh, PA 15219

Re: United States of America v.
Frank T. Poerio, Jr.
Criminal No. 24-

Dear Mr. DiLucente:

This letter sets forth the agreement by which your client, Frank T. Poerio, Jr., will enter a plea of guilty in the above-captioned case. The letter represents the full and complete agreement between Frank T. Poerio, Jr. and the United States Attorney for the Western District of Pennsylvania. The agreement does not apply to or bind any other federal, state, or local prosecuting authority.

Upon entering a plea of guilty, Frank T. Poerio, Jr. will be sentenced under the Sentencing Reform Act, 18 U.S.C. § 3551, et seq. and 28 U.S.C. § 991, et seq. The Sentencing Guidelines promulgated by the United States Sentencing Commission will be considered by the Court in imposing sentence. The facts relevant to sentencing shall be determined initially by the United States Probation Office and finally by the United States District Court by a preponderance of the evidence.

- A. The defendant, Frank T. Poerio, Jr., agrees to the following:
1. The defendant will waive prosecution by indictment and enter a plea of guilty to Counts One through Four of the Information (a draft copy of which is attached as Exhibit A) at Criminal No. 24-_____, charging the defendant with violating 15 U.S.C. §§ 78j(b) & 78ff, and 17 C.F.R. § 240.10b-5 respectively, pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

**LIMITED OFFICIAL
USE**

2. The defendant agrees that restitution and any other financial obligations imposed by the Court are due and payable immediately after the judgment is entered, and subject to immediate enforcement, in full, by the United States. If the Court imposes a schedule of payments, the defendant agrees that the schedule of payments is a schedule of the minimum payments due, and that the payment schedule does not prohibit or limit the methods by which the United States may immediately enforce the judgment in full.
3. If full criminal restitution is not made prior to sentencing, upon request of the United States, the defendant agrees to provide all information regarding the defendant's income, assets, and financial status, and that of the defendant's household. If requested, the defendant agrees to submit to an interview and/or deposition as to these matters and to undergo a polygraph examination. Upon request, the defendant agrees to complete a sworn financial statement and to provide all documents under the defendant's possession or control regarding the defendant's financial resources. The defendant authorizes the United States to obtain a credit report pertaining to the defendant.
4. The defendant will immediately notify the Court and the United States Attorney of any improvement in the defendant's economic circumstances that might increase the defendant's ability to pay restitution and that occurs from the date of this agreement until the completion of the defendant's sentence, including any term of supervised release.
5. If the Court imposes a fine or restitution as part of a sentence of incarceration, Frank T. Poerio, Jr. agrees to participate in the United States Bureau of Prisons' Inmate Financial Responsibility Program, through which 50% of the defendant's prison salary will be applied to pay the fine or restitution.
6. At the time Frank T. Poerio, Jr. enters the defendant's plea of guilty, the defendant will deposit a special assessment of \$400.00 in the form of cash, check, or money order payable to "Clerk, U.S. District Court." In the event that sentence is not ultimately imposed, the special assessment deposit will be returned.
7. The defendant agrees to pay restitution to the Securities and Exchange Commission, 100 F. St. NE, Washington, DC 20549, totaling \$823,367.00, plus interest, pursuant to 18 U.S.C. §§ 3663(a)(3), 3663A, and 3664. The defendant agrees that the total amount of restitution reflected in this agreement results from defendant's criminal conduct.
8. If Frank T. Poerio, Jr. makes a payment of the restitution agreed to in paragraph 10 prior to sentencing, the payment will be applied as a credit against the restitution ordered pursuant to said paragraph.

9. Frank T. Poerio, Jr. agrees to send all payments made pursuant to the Court's restitution order to the Clerk of Court at the following address:

Clerk of Court, U.S. Courthouse
700 Grant Street
Suite 3110, Pittsburgh, PA 15219

10. Frank T. Poerio, Jr. waives any former jeopardy or double jeopardy claims the defendant may have in or as a result of any related civil or administrative actions.

11. Frank T. Poerio, Jr. waives the right to take a direct appeal from the defendant's conviction or sentence under 28 U.S.C. § 1291 or 18 U.S.C. § 3742, subject to the following exceptions:

- (a) If the United States appeals from the sentence, Frank T. Poerio, Jr. may take a direct appeal from the sentence.
- (b) If (1) the sentence exceeds the applicable statutory limits set forth in the United States Code, or (2) the sentence unreasonably exceeds the guideline range determined by the Court under the Sentencing Guidelines, Frank T. Poerio, Jr. may take a direct appeal from the sentence.

Defendant further waives the right to file a motion to vacate sentence under 28 U.S.C. § 2255, attacking the defendant's conviction or sentence and the right to file any other collateral proceeding attacking the defendant's conviction or sentence.

Nothing in the foregoing waivers of rights shall preclude the defendant from raising a claim of ineffective assistance of counsel in an appropriate forum, if otherwise permitted by law. The defendant understands that the government retains its right to oppose any such claim on procedural or substantive grounds.

12. In the event the judgment of conviction and sentence entered as a result of this plea agreement does not remain in full force and effect for any reason, the government may reinstate any charges dismissed or reduced pursuant to this plea agreement. In the event of reinstatement, the defendant waives any claim of double jeopardy, statute of limitations, speedy trial, or similar objections to any count reinstated.

B. In consideration of and entirely contingent upon the provisions of Parts A and C of this agreement, the United States Attorney for the Western District of Pennsylvania agrees to the following:

1. The United States Attorney retains the right of allocution at the time of sentencing to advise the sentencing Court of the full nature and extent of the involvement of Frank T. Poerio, Jr. in the offenses charged in the Information and of any other matters relevant to the imposition of a fair and just sentence.
2. The United States agrees to recommend a two-level downward adjustment for acceptance of responsibility and, pursuant to USSG § 3E1.1(b), to move for an additional one-level adjustment. However, if at any time prior to imposition of the sentence, the defendant fails to fully satisfy the criteria set forth in USSG § 3E1.1, or acts in a manner inconsistent with acceptance of responsibility, the United States will not make or, if already made, will withdraw this recommendation and/or motion.
3. The United States Attorney will take any position he deems appropriate in the course of any appeals from the sentence or in response to any post-sentence motions.

C. Frank T. Poerio, Jr. and the United States Attorney further understand and agree to the following:

1. The maximum penalty that may be imposed upon Frank T. Poerio, Jr. as to each of Counts One through Four of the Information is:
 - (a) A term of imprisonment of not more than twenty years;
 - (b) A fine of not more than \$5,000,000.00 or an alternative fine in an amount not more than the greater of twice the gross pecuniary gain to any person or twice the pecuniary loss to any person other than the defendant, unless the imposition of this alternative fine would unduly complicate or prolong the sentencing process;
 - (c) A term of supervised release of not more than three years; and
 - (d) A special assessment under 18 U.S.C. § 3013 of \$ 100.00.
2. As to Counts One through Four, the parties stipulate and recommend to the Court that the guidelines shall be calculated pursuant to USSG §§ 2B1.4 (insider trading) and 2B1.1 (economic offenses) resulting in a base offense level of eight, and an additional fourteen levels added to the base offense level for an economic loss greater than \$550,000, but not greater than \$1,500,000.

3. The above stipulations represent the parties' best understanding based on the information available as of the date of this agreement. The stipulations are not binding on the Court and do not preclude the parties from bringing to the attention of the United States Probation Office or the Court any information not within their knowledge at the time this agreement is executed.
4. This agreement does not preclude the government from pursuing any civil or administrative remedies against Frank T. Poerio, Jr. or the defendant's property.
5. If, at any time after this plea agreement is signed and prior to sentencing, the defendant (i) commits any additional federal, state, or local offense; or (ii) breaches any term of this plea agreement, the United States may at its discretion be released from its obligations under this agreement and the defendant's guilty plea, if already entered, will stand. In that event, the United States will be entitled to seek a sentence other than agreed-upon, reinstate previously dismissed or reduced charges and/or pursue additional charges against the defendant. The defendant waives any claim of double jeopardy, statute of limitations, speedy trial, or similar objections to any count reinstated.

Any alleged breach of this plea agreement shall be determined by agreement of the parties or by the Court. A breach of this plea agreement shall be established by a preponderance of the evidence.

6. Pursuant to the Standing Order of the United States District Court dated May 31, 2017, all plea letters shall include a sealed Supplement. The sealed Supplement to this plea letter is part of the agreement between the parties hereto.

This letter sets forth the full and complete terms and conditions of the agreement between Frank T. Poerio, Jr. and the United States Attorney for the Western District of Pennsylvania, and there are no other agreements, promises, terms or conditions, express or implied.

Very truly yours,



ERIC G. OLSHAN
United States Attorney



GREGORY C. MELUCCI
Assistant United States Attorney

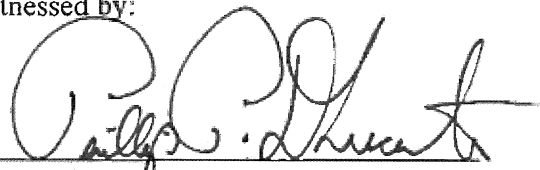
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I have received this letter from my attorney, Phillip P. DiLucente, Esquire, have read it and discussed it with him, and I understand the terms of the Agreement. I hereby voluntarily accept it and acknowledge that it fully sets forth my agreement with the Office of the United States Attorney for the Western District of Pennsylvania. I affirm that there have been no additional promises or representations made to me by any agents or officials of the United States in connection with this matter.


FRANK T. POERIO, JR.

5/9/24
Date

Witnessed by:

 5/9/24
PHILLIP P. DiLUCENTE, ESQUIRE
Counsel for Frank T. Poerio, Jr.