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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

LAWRENCE R. GOLDFARB, and
BAYSTAR CAPITAL MANAGEMENT,
LLC,

Defendants.

No. CR 11-0099 WHA

DEFERRED PROSECUTION
AGREEMENT

The defendants, Lawrence R. Goldfarb and Baystar Capital Management, LLC, and the United States Attorney's Office for the Northern District of California ("this Office"), enter into this Deferred Prosecution Agreement ("the Agreement").

Introduction

1. The United States has filed the captioned Information against Lawrence R. Goldfarb and Bay Star Capital Management, LLC, in the United States District Court for the Northern District of California charging each defendant with one count of wire fraud, in violation of Title 18, United States Code, Section 1343. A copy of the Information is attached as Exhibit A.

Deferred Prosecution Agreement
CR 11-0099 WHA

1 2. The defendants admit and accept responsibility for the conduct giving rise to the
2 Information. The defendants further admit that all the facts set forth in the Statement of Facts,
3 attached as Exhibit B, are true and accurate. The defendants further agree not to contest the
4 sufficiency of the Statement of Facts to support a conviction for the crime charged in the
5 Information.

6 3. This Office enters into this Agreement because it is persuaded that it is in the
7 public interest to do so and because the defendants have satisfied the criteria for such decisions.
8 The Defendants' Promises

9 4. The defendants promise to cooperate fully and in good faith with this Office, and
10 with any other agency designated by this Office, regarding all the facts and circumstances of this
11 case and any other matters arising out of the investigation that led to the instant Information. In
12 particular, the defendants agree that their cooperation shall include, but is not limited to, the
13 following:

- 14 a. Meeting with this Office when requested to do so and
15 providing complete and truthful information in response to
16 any question raised by this Office with respect to the facts
17 and circumstances of the wire fraud and any other matters
 within the scope of the investigation that led to the
 Information; and
- 18 b. Providing all documents, records, or other tangible evidence
19 in the defendant's possession, custody, or control concerning
 these subject matters when requested to do so by this Office.

20 5. The defendants have agreed to pay restitution of \$12,112,416 pursuant to the terms
21 of the Judgment in *Securities and Exchange Commission v. Lawrence R. Goldfarb and Baystar*
22 *Capital Management, LLC*, CV-11-0938 (N.D. Cal. Mar. 1, 2011) (DMR)

23 6. The defendants agree to be barred for three years, running from the day this
24 agreement is fully executed, from association with any broker, dealer, investment advisor,
25 municipal securities dealer, municipal adviser, transfer agent or nationally recognized statistical
26 organization.

27 7. Subject to Paragraph 8, the duration of this Agreement shall be for thirty-six
28 months running from the date this Agreement is fully executed. Notwithstanding, the defendants

1 agree that they shall not be released from the terms and conditions of this Agreement until they
 2 have made all the restitution payments required pursuant to Paragraph 5 and they further agree
 3 that any failure to make such payments according to the terms agreed to by this Office shall
 4 constitute a material breach of this Agreement.

5 8. The final termination of this Agreement shall occur upon delivery of a written
 6 notification from the Office to the defendants. Before any such notice shall be given, however,
 7 the defendants promise to submit to the Office a written certification, signed under penalty of
 8 perjury, that they have fully complied with the terms and conditions of this Agreement.

9 The Office's Promises

10 9. Based on the defendants' willingness to come forward and confess their
 11 wrongdoings, pay restitution, and agree to disbarment from association with any broker dealer
 12 *etc.*, following the successful completion of the 36 month period described above, the Office
 13 agrees:

- 14 a. To dismiss the Information against the defendants subject to
 15 the agreements and understandings set forth herein; and
- 16 b. Not to prosecute the defendants for any other conduct
 17 arising out of the investigation that led to the Information.

18 During the interim 36 month period, the Office agrees not to prosecute the defendants for any
 19 other conduct arising out of the investigation that led to the Information.

20 10. Other than those explicitly set forth in Paragraph 9, the Office does not make any
 21 other promises to the defendants.

22 Breach

23 11. The defendants understand and agree that if they commit a material and knowing
 24 breach of this Agreement, the Office may prosecute the defendants for conduct alleged in the
 25 Information and for any other conduct whether contained in the Information or not. If this Office
 26 re-files the attached the Information for any reason, the defendants hereby agree to proceed by
 27 Information and waive in open court prosecution by indictment, and otherwise to comply in all
 28 respects with Federal Rule of Criminal Procedure 7(b).

12. During the pendency of this Agreement, the defendants stipulate and agree:

- a. To waive all rights to a speedy trial pursuant to the Sixth Amendment of the United States Constitution, Title 18 United States Code, Section 3161, Federal Rule of Criminal Procedure 48(b), and any applicable Local Rules of the United States District Court; and
- b. To waive any rights under the applicable statute of limitations to any prosecution based on the charges contained in the Information and to any other federal criminal charges that could have been brought arising out of the investigation that led to the instant Information.

The defendants agree that their waivers of these rights are knowing and voluntary.

13. The defendants understand and agree that this Office alone, acting in its sole discretion, will determine whether the defendants knowingly breached this Agreement as to a material matter. If, after following the procedures outlined in Paragraph 15, the Office determines that the defendants have breached the terms and conditions of this Agreement, the Office will be released from all of its promises but the defendants will not be released from any of their promises herein.

14. In the event of a breach of this Agreement and any resulting prosecution for the charges in the Information and any other charges, the defendants agree, in the trial or adjudication of those charges:

- a. To stipulate to the admissibility into evidence of the Statement of Facts and agree not to offer any contradictory evidence or arguments;
- b. To stipulate to the admissibility of all statements made by the defendants (including all statements made during so-called proffers sessions and notwithstanding any other agreements made at the time of those proffer sessions and including this Agreement) and agree not to offer any contradictory evidence or arguments; and
- c. To waive any claim under the United States Constitution, Rule 410 of the Federal Rules of Evidence, or any other rule, that statements made by the defendants prior to or subsequent to this Agreement, or any leads derived therefrom, should be inadmissible or should be suppressed.

15. Should it determine that the defendants have breached any provision of this Agreement, the Office shall provide notice to the defendants of the alleged breach and provide the defendants with a two-week period in which to make a presentation to the Office to demonstrate

that no breach has occurred, or, to the extent applicable, that the breach was not a knowing or material breach, or that any breach has been cured. After hearing from the defendants, however, the decision whether a breach has occurred, and, if so, whether that breach was knowing and material, shall be within the sole discretion of the Office and not subject to judicial or other review.

Conclusion

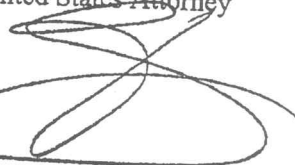
16. It is understood that this Agreement is binding on the defendants and this Office, but specifically does not bind any other federal agencies, or any state or local law enforcement or licensing authorities. If requested to do so, this Office will bring the cooperation of the defendants and their compliance with the obligations under this Agreement to the attention of other federal agencies and state and local law enforcement or licensing authorities. Furthermore, nothing in this agreement restricts in any way the ability of this Office to proceed against any individuals who are not parties to this Agreement.

17. This Agreement may not be modified except in writing signed by all the parties.

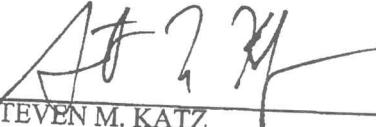
MELINDA HAAG
United States Attorney



JONATHAN SCHMIDT
Assistant United States Attorney



LAWRENCE R. GOLDFARB on behalf of himself
and BAYSTAR CAPITAL MANAGEMENT, LLC,



STEVEN M. KATZ
Counsel to Lawrence Goldfarb and
BayStar Capital Management, LLC,

Date: 3-1-11

Agreed and Accepted:

Date: 3/1/11

Date: 3/1/11

EXHIBIT A

STATEMENT OF FACTS

1. On September 24, 2001, I Lawrence R. Goldfarb, and others formed BayStar Capital II, L.P. ("BayStar") as a limited partnership under the laws of the State of Delaware. BayStar began operations on January 1, 2003. BayStar's principal place of business is in California. For the periods at issue in this matter, BayStar used a Second Amended and Restated Limited Partnership Agreement of BayStar Capital II, L.P. dated as of May 1, 2003 ("Agreement").
2. BayStar's general partner is BayStar Capital Management, LLC, a Delaware limited liability company ("BCM"). As of August 2005, I, Lawrence R. Goldfarb, was the sole active managing member of BCM.
3. According to the Partnership Agreement, BayStar's purpose is to serve as a fund through which the contributions made by its partners may be utilized in investing and trading in securities and to engage in all activities and transactions as the general partner deems necessary and advisable. To carry out these purposes, the general partner has the authority, in addition to investing in securities and other financial instruments, to open and maintain bank accounts, lend securities or other funds held by BayStar, organize other corporations or entities to hold title to BayStar securities or other funds as nominee for BayStar, and to make "Special Situation Investments," commonly called side pockets.
4. Some of the provisions in the Agreement regarding the "Special Situation Investment" include:
 - a. "[W]henever gains or losses are realized or deemed realized in a Special Situation Sub-Account, 100% of such gains or losses will be allocated to all Partners having an interest in such account *pro rata* . . ." (Par. 3.05 (b))
 - b. "If a portion of a withdrawing Partner's Capital Account has been allocated to a Special Situation Sub-Account, then the amount distributed to such withdrawing partner will not include any interest of such Partner in such Special Situation Sub-Account . . . [unless] there is a realization of the investment in the account or the General Partner determines that such investment should no longer be maintained in a Special Situation Sub Account." (Par 4.02(b))
5. In August 2003, BayStar invested \$8.4 million in Island Fund LLC ("Island Fund"), which primarily held investments in domestic and foreign real property. Pursuant to the Partnership Agreement, Island Fund was held as a "Special Situation Investment."
6. In August 2004, IF Capital Inc. ("IF Capital") was formed with BayStar as its sole shareholder. IF Capital was formed to hold the Island Fund Special Situation Investment. Effective January 2004, BayStar's interest in Island Fund was transferred to IF Capital.
7. In May 2005, I formed IFI Capital LLC ("IFI"), with me being the sole member. IFI was formed to hold distributions from Island Fund. In January 2005, IF Capital transferred its interest in the Island Fund to BayStar and then in May 2005 BayStar transferred its interest in Island Fund to IFI. IFI's only assets were distributions from Island Fund.

8. From 2004 to 2010, Island Fund made distributions to BayStar, IF Capital, or IFI as follows:

<u>Date</u>	<u>Amount</u>	<u>To</u>
February 2004	\$557,733	BayStar
July 2004	\$1,035,791	BayStar
January 2005	\$1,593,525	BayStar
April 2005	\$1,195,143	IF Capital (but deposited in IFI's bank account)
July 2005	\$1,941,906	IF Capital (but deposited in IFI's bank account)
January 2006	\$1,195,143	IF Capital (but deposited in IFI's bank account)
June 2006	\$3,505,755	IF Capital (but deposited in IFI's bank account)
August 2006	\$956,115	BayStar
January 2007	\$796,762	IFI
April 2007	\$1,593,525	IFI
August 2007	\$637,410	IFI
January 2008	\$637,410	IFI
October 2008	\$398,381	IFI
2010	\$294,802	IF Capital

As of March 2011, none of these distributions have been forwarded to BayStar's investors.

9. I dissolved IFI in October 2006. However, IFI's bank account remained active after this dissolution and distributions from Island Fund continued to be sent to IFI's bank account, as indicated above.

10. As of December 31, 2009, BayStar's investment in Island Fund yielded approximately \$16 million in distributions. Approximately \$12 million of these distributions were transferred to two entities:

- LRG Capital Group, LLC ("LRG") a single member California limited liability company formed in December 2005 and owned by me; and
- LRG Capital Real Estate Ventures LLC ("LRG REV") a California limited liability company formed in 2006 and owned 100% by LRG;

Some of these transfers of funds were later documented by promissory notes, which I signed.

11. LRG and LRG REV used the Island Fund money as follows:

- LRG used a portion of the IF Capital funds to make various investments. The investments made by LRG with the IF Capital funds include: BayStar Capital III Investment Fund, L.P., which is associated with me, Novastar International Fund, and Pyramid Interactive, Inc. (dba OM Records).
- LRG REV used IF Capital funds to purchase interests (through other entities formed with third parties) in various real properties in and near Marin County, California.


The remaining \$4 million of the \$16 million in distributions was spent on BayStar's or IF Capital's expenses, salaries, and taxes.

12. Starting in 2006, some of the Bay Star partners requested distributions. Those partners were incorrectly advised by BCM that they were not currently eligible for distributions. To date, BayStar's partners have not received any distributions related to the Island Fund Special Situation Investment.

13. From January 2005 through August 2010, I knowingly and intentionally failed, in my written and oral correspondence with investors, to disclose to most of the investors material facts, namely the extent of the distributions from Island Fund and that those distributions were used by me and reinvested as detailed above. I further admit, that to complete some of the transactions described above, I caused to be transmitted writings by interstate wires.

MELINDA HAAG
United States Attorney

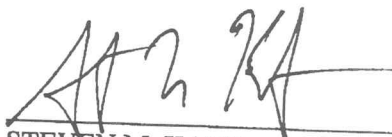
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