



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*

February 26, 2013

Lawrence B. Pedowitz, Esq.
David B. Anders, Esq.
Wachtell Lipton Rosen & Katz
51 West 52nd Street
New York, New York 10019

Re: Ernst & Young LLP

Dear Messrs. Pedowitz and Anders:

Pursuant to our discussions, the Office of the United States Attorney for the Southern District of New York ("this Office") and Ernst & Young LLP ("E&Y"), pursuant to the authority granted by its Board of Directors in the form of a Board of Directors Resolution (a copy of which is attached hereto as Exhibit A) and represented by its undersigned attorneys, hereby enter into this Agreement.

In accordance with the conditions, limitations and understandings specified below, this Office will not criminally prosecute E&Y for any crimes arising from the conduct of certain E&Y partners and employees from in or about 1999 through in or about 2004, in connection with the design, marketing, implementation, or defense of certain tax shelters commonly referred to as COBRA, CDS, CDS Add-On, and PICO, as described more fully in the Statement of Facts attached hereto as Exhibit B, which E&Y acknowledges and accepts as accurate and which is incorporated by reference herein. This Agreement does not provide any protection against prosecution for any crimes except as set forth above, and applies only to E&Y and not to any individuals.

E&Y acknowledges and understands that the cooperation it has provided since approximately 2004 with the criminal investigation of E&Y and others by this Office, and E&Y's pledge of continuing cooperation, are important and material factors underlying this Office's decision to enter into this Agreement, and, therefore, E&Y agrees to cooperate fully and actively with this Office, the IRS, and with any other agency of the government designated by this Office ("Designated Agencies") regarding any matter relating to this Office's investigations of tax shelters and tax shelter promoters (the "Investigations") about which E&Y has knowledge or information.

In addition, this Office recognizes that since approximately 2003, E&Y has taken extensive remedial measures relating to the matters under investigation, including the establishment of an internal Quality and Integrity Program ("QIP") that requires E&Y tax

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professionals to enter data regarding a wide array of tax engagements into a monitoring system in order to monitor reportable transactions. All tax partners, principals, executive directors, and senior managers at E&Y must certify annually that they have complied with QIP and the tax shelter registration and list maintenance requirements of the Internal Revenue Code. In addition, among other initiatives and reforms, E&Y has instituted a third-party periodic review of the quality of its tax practice. E&Y also has improved internal mechanisms designed to ensure that any concerns about business practices can be raised to appropriate levels. E&Y has also instituted a policy that all personnel must reaffirm their agreement and compliance with the firm's Code of Conduct, in writing, every year and has adopted policies and procedures that require personnel to comply with the ethics and independence rules concerning independence, tax services, and contingent fees as adopted by the Public Company Accounting Oversight Board. E&Y has provided to this Office a formal review and assessment of its ethics and compliance program.

In addition, E&Y has implemented and agrees to maintain throughout its U.S. operations and with respect to any E&Y operations affecting United States income taxes, the following permanent restrictions on its tax and accounting practices: (i) E&Y will not "plan, promote or recommend" any "listed transaction" as defined to include any transaction described in 26 C.F.R. § 1.6011-4(b)(2), and will comply with all disclosure requirements with respect to any "transactions of interest" as defined in 26 C.F.R. § 1.6011-(4)(b)(6); (ii) E&Y will not issue any "covered opinion" as defined in 31 C.F.R. § 10.35(b)(2) with respect to any "listed transaction" as defined in 31 C.F.R. § 10.35(b)(2)(i)(A) nor plan, promote or recommend a listed transaction that is the subject of any such "covered opinion"; (iii) E&Y will not defend on the merits any transaction that is or becomes a "listed transaction" prior to the date that E&Y is engaged to defend the transaction; (iv) E&Y will not provide any tax services under any conditions of confidentiality (as defined in 26 C.F.R. § 1.6011-4(b)(3)); and (v) E&Y will not charge or accept fees subject to contractual protection (as defined in 26 C.F.R. § 1.6011-4(b)(4)) other than as permitted by 31 C.F.R. § 10.27(b).

It is understood that E&Y (a) shall truthfully and completely disclose all non-privileged information with respect to the activities of E&Y, its officers and employees, and others concerning all such matters about which this Office or the IRS inquires related to the Investigations, which information can be used for any purpose, except as limited by this Agreement; (b) shall cooperate fully and actively with the Designated Agencies regarding any matter relating to the Investigations; (c) shall assemble, organize, and provide, in responsive and prompt fashion, all documents, records, information, and other evidence in E&Y's possession, custody, or control related to the Investigations as may be requested by this Office or the IRS; (d) shall, at this Office's request, use its reasonable best efforts to make available its present and former employees to provide information and/or testimony as requested by this Office and the IRS, including sworn testimony before a grand jury or in court proceedings, as well as interviews with law enforcement authorities, and to identify witnesses who, to E&Y's knowledge and

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information, may have material information concerning the Investigations, including but not limited to the conduct set forth in the Statement of Facts; and (e) shall commit no crimes whatsoever. In addition, other than those specific materials provided pursuant to Federal Rules of Evidence 408 and 410 in connection with settlement discussions, or designated "Exempt from FOIA – Confidential Treatment Requested," with respect to any information, testimony, documents, records, or physical evidence provided by E&Y to this Office or a grand jury, E&Y consents to any and all disclosures of such materials to the IRS and such Designated Agencies as this Office, in its sole discretion, deems appropriate.

With respect to any such materials that constitute "matters occurring before the grand jury" within the meaning of Rule 6(e) of the Federal Rules of Criminal Procedure, E&Y further consents to: (i) any order sought by this Office permitting such disclosures; and (ii) this Office's ex parte or in camera application for such orders. E&Y's obligations set forth in the prior two paragraphs will continue until all proceedings arising out of, or relating to, the Investigations are finally concluded.

As a result of the conduct described in this Agreement and in the attached Statement of Facts, E&Y agrees to pay \$123,000,000 to the United States, all of which will be forfeited to the United States pursuant to 18 U.S.C. § 981(a)(1)(C). E&Y agrees that it will satisfy its obligation to forfeit the \$123,000,000 within 30 days of the signing of this Agreement by making payment by wire transfer to the Department of the Treasury. E&Y agrees that it will not file a claim with the Court or otherwise contest this civil forfeiture action and will not assist a third party in asserting any claim. It is further understood that E&Y will not file or assist anyone in filing a petition for remission or mitigation with the Department of Justice or Treasury concerning this property. E&Y agrees that no portion of the \$123 million forfeiture that E&Y has agreed to pay to the United States under the terms of this Agreement is deductible on any Federal or State tax or information return.

It is further understood that should it be determined that E&Y (a) has committed any crime up to and including the date of the signing of this Agreement, (b) has given false, incomplete, or misleading testimony or information with respect to the Investigations, or (c) has otherwise violated any provision of this Agreement, then (i) E&Y shall thereafter be subject to prosecution for any federal offense of which this Office has knowledge; (ii) all statements made by or on behalf of E&Y to the Office and the IRS, including but not limited to the Statement of Facts, or any testimony given by E&Y or by any employee or agent of E&Y before a grand jury, or elsewhere, whether prior to or subsequent to the signing of this Agreement, and any leads therefrom, shall be admissible in evidence in any criminal proceeding hereinafter brought by this Office against E&Y; and (iii) E&Y shall not assert any claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, or any other federal rule that such statements or any leads therefrom should be suppressed or otherwise excluded from evidence. In addition, any such prosecution that is not time-barred by the applicable statute of

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limitations on the date of the execution of this Agreement may be commenced against E&Y, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement 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 when this Agreement is signed.

It is further understood that this Agreement does not bind any other federal, state, or local prosecuting authorities other than this Office. If requested by E&Y, this Office will, however, bring the cooperation of E&Y to the attention of such other prosecuting offices or regulatory agencies.

It is understood that this Agreement and the Statement of Facts appended hereto are public documents and may be provided to any person by this Office and E&Y.

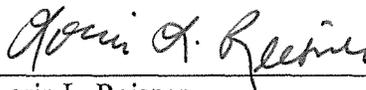
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This Agreement supersedes all prior understandings, promises and/or conditions between this Office and E&Y. No additional promises, agreements, and conditions have been entered into other than those set forth in this Agreement and none will be entered into unless in writing and signed by both parties.

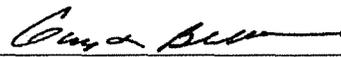
Very truly yours,
PREET BHARARA
United States Attorney

By: 
Richard C. Tarlowe
Assistant United States Attorney

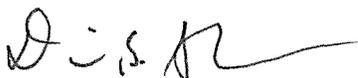
APPROVED:

 2/28/13
Lorin L. Reisner
Chief, Criminal Division

AGREED AND CONSENTED TO:
Ernst & Young LLP

By: 

APPROVED:


Lawrence B. Pedowitz, Esq.
David B. Anders, Esq.
Attorneys for Ernst & Young LLP

2/26/13
DATE

2/26/13
DATE

EXHIBIT A



Ernst & Young LLP
5 Times Square
New York, New York 10036-6530
Tel: +1 212 773 3000

RESOLUTION OF BOARD OF DIRECTORS OF ERNST & YOUNG LLP

Upon motion duly made, seconded, and unanimously carried by the affirmative vote of all the Directors present, the following resolutions were adopted at a meeting held on February 4, 2013:

WHEREAS, Ernst & Young, LLP (“EY”) has been engaged in discussions with the United States Attorney’s Office for the Southern District of New York (the “U.S. Attorney’s Office”) in connection with an investigation being conducted by the U.S. Attorney’s Office into activity of certain tax partners and employees of EY relating to the development, promotion, and implementation of tax shelters during the period from 1999 through 2004;

WHEREAS, the Board of Directors of EY has determined that it is in the best interests of EY to enter into the Non-Prosecution Agreement (the “NPA”), which resolves the U.S. Attorney’s Office investigation of EY, and which the Directors have reviewed with legal counsel representing EY;

NOW THEREFORE BE IT RESOLVED that the Board of Directors of EY consents to the resolution of the discussions with the U.S. Attorney’s Office by entering into the NPA in substantially the same form as reviewed by the Board of Directors on February 4, 2013; and

BE IT FURTHER RESOLVED THAT the Board of Directors of EY authorizes management and outside counsel representing EY from Wachtell, Lipton, Rosen & Katz to execute the NPA on behalf of EY and to take any and all other actions as may be necessary or appropriate, and to approve the forms, terms, or provisions of any agreements or other documents as may be necessary or appropriate to carry out and effectuate the purpose and intent of the foregoing.

Secretary

A handwritten signature in black ink that reads 'Michael P. McSherry'.

Michael P. McSherry

EXHIBIT B

Statement of Facts

Beginning in 1999 and ending in 2002, Ernst & Young LLP (“E&Y”), in conjunction with various law firms, banks and investment advisers, developed, marketed and implemented four tax shelter products called COBRA, CDS, CDS Add-On, and PICO. Earlier and at or about the same time, other accounting firms developed similar tax shelter products and marketed them to their clients. E&Y implemented these four tax shelter products for approximately 200 high net worth clients, intending to defer, reduce or eliminate tax liabilities for their clients of more than \$2 billion in the aggregate. E&Y prepared tax returns reflecting tax losses claimed to have been derived from those tax shelter products and subsequently defended certain of its clients in connection with audits of those transactions by the Internal Revenue Service (“IRS”). E&Y received gross fees of approximately \$123,000,000 with regard to these transactions.

A small group within E&Y known as the Strategic Individual Solutions Group (“SISG”) was primarily responsible for supervising and coordinating the marketing, implementation and defense of E&Y’s tax shelter products. Certain SISG tax shelter products were designed to appear to the IRS to be substantive investments that had favorable tax consequences when, in reality, the products were actually designed and marketed to clients as a series of preplanned steps that would defer, reduce or eliminate their tax liabilities, and the typical client participating in these shelters was primarily, if not exclusively, motivated to achieve a desired tax savings. In order to deceive the IRS as to the true nature of the tax strategies, and to bolster arguments that the transactions had economic substance, some SISG personnel agreed upon and directed other E&Y employees to participate in a concerted effort not to create, disseminate, or publicize documents reflecting the tax motivation behind the strategies, or the preplanned sequence of steps necessary to effect the strategies. These SISG personnel thereby sought to prevent the IRS from detecting their clients’ purposes in using these strategies. For example, in certain instances, members of SISG falsely portrayed the transactions under examination as purely investment driven transactions and falsely denied a tax motivation for the transactions in response to IRS Information Document Requests and in testimony to the IRS. Further, in implementing the sale of tax shelter products, certain members of SISG also prepared documents or correspondence that falsely and inaccurately reflected events or conversations, and that were designed to improperly influence the IRS’s view of the merits of the transactions in the event of an audit. These activities continued into 2003 and 2004.

The tax shelter products were implemented with opinion letters from law firms. These legal opinions were intended to provide “penalty protection” to individual clients in the event that the IRS audited their tax returns. The opinions were premised upon certain taxpayer representations that, in some instances, E&Y employees knew were false. E&Y did not issue opinions with regard to these transactions.

Unlike certain other accounting firms that marketed similar tax shelter products, the senior management of E&Y did not participate in the criminal wrongdoing of the SISG members. Indeed, certain members of SISG withheld important information from E&Y’s senior management. As to the CDS Add-On shelter, members of SISG were aware that the CDS Add-On transaction had significant similarities to the COBRA transaction, and that E&Y senior management had decided in January 2000 that COBRA should no longer be marketed by E&Y. Members of SISG thus created a false cover story to mislead senior management about the business purpose of CDS Add-

On to distinguish it from COBRA and to obtain approval to market the shelter to clients. In addition, the Government proved at the criminal trial of certain former E&Y partners from SISG that, as to two CDS Add-On transactions at issue at the trial, the taxpayer clients had no subjective business purpose, and that, by the time of the audits of the taxpayers, at least two former E&Y partners knew that there was no reasonable possibility of the transactions generating a profit.

E&Y disbanded SISG in early 2003. On July 2, 2003, E&Y settled the IRS's promoter penalty examination of the firm by making a \$15 million nondeductible payment to the IRS and establishing an enhanced internal quality monitoring system. In response to IRS summonses during the IRS investigation, E&Y turned over lists of persons who had engaged in the four tax shelter products and resisted taxpayer efforts to prevent such disclosure. E&Y's decision to comply with the legal requirement to turn over such names differed markedly from the approach taken by certain other accounting firms that resisted turning over names in response to similar IRS summonses.

After SISG was disbanded in 2003, in an effort to prevent such misconduct from occurring in the future, E&Y implemented extensive changes to its governance and compliance procedures, and also substantially increased the number of legal and tax quality and risk management personnel. E&Y established an internal Quality and Integrity Program ("QIP") that requires E&Y tax professionals to enter data regarding a wide array of tax engagements into a monitoring system in order to monitor reportable transactions. All tax partners, principals, executive directors, and senior managers at E&Y must certify annually that they have complied with QIP and the tax shelter registration and list maintenance requirements of the Internal Revenue Code. At the time of its implementation, QIP was praised by the IRS and recognized as a good working model for agreements with practitioners. The IRS subsequently reviewed QIP (without client identifying information) and approved it.

In addition, among other initiatives and reforms, E&Y has adopted procedures intended to ensure legal and ethical behavior in its tax practice, including a third-party periodic review of the quality of its tax practice. E&Y also has improved internal mechanisms designed to ensure that any concerns about business practices can be raised to appropriate levels. These changes included, among others, the creation of an Ethics Oversight Board that monitors compliance programs throughout the firm and addresses disciplinary action for violations of E&Y's Code of Conduct. E&Y created a firm-wide hotline to allow any employee to raise any issues or concerns anonymously, and posted links to that hotline on its external website. E&Y has also instituted a policy that all personnel must reaffirm their agreement and compliance with the firm's Code of Conduct, in writing, every year and has adopted policies and procedures that require personnel to comply with the ethics and independence rules concerning independence, tax services, and contingent fees as adopted by the Public Company Accounting Oversight Board.

E&Y also cooperated with an investigation by the United States Senate Permanent Subcommittee on Investigations ("PSI") into the marketing of tax shelters. The PSI found in 2005 that E&Y had "committed to a number of cultural, structural, and institutional changes to dismantle its tax shelter practice, including by eliminating the tax practice group that promoted its tax shelter sales, establishing a new tax product review and approval process, and strengthening its tax services oversight and regulatory compliance." E&Y also cooperated extensively with both the United States Attorney's Office for the Southern District of New York and the IRS in their investigations of tax shelter products and will continue to do so.

The wrongdoing in this case by a small group of professionals at E&Y represented a deviation from the more than 100-year history of ethical and professional conduct by E&Y and its partners.