

SEALED



U.S. Department of Justice

Criminal Division

Fraud Section

Washington, D.C. 20530

January 10, 2024

FILED BY KP D.C.
JAN 10 2024
ANGELA E. NOBLE
CLERK U.S. DIST. CT.
S. D. OF FLA. - MIAMI

FILED UNDER SEAL

The Honorable Kathleen M. Williams
United States District Judge
Southern District of Florida
Wilkie D. Ferguson, Jr. United States Courthouse
400 North Miami Avenue
Miami, Florida 33128

Re: United States of America’s Plea Agreement with Trafigura Beheer B.V.
23-CR-20467-WILLIAMS (SEALED)

Dear Judge Williams:

The United States of America (the “United States”), by and through the Department of Justice, Criminal Division, Fraud Section, and the United States Attorney’s Office for the Southern District of Florida, respectfully submits this letter brief in support of the plea agreement (the “Plea Agreement”) reached between the United States and Defendant Trafigura Beheer B.V. (“Trafigura”). As detailed below, the Plea Agreement merits the Court’s approval.

By filing the Information in this case and seeking a conviction through the Plea Agreement, the government has put before the Court for its review and approval the most critical aspects of this case: (i) the evidence of guilt, as set forth in the Information and the Statement of Facts, and (ii) the proposed sentence, which consists of (a) a criminal fine of \$80,488,040; (b) criminal forfeiture in the amount of \$46,510,257; and (c) the mandatory Special Assessment of \$400. Based on the Court’s comments during the recent status conference, the Court appears ready to find that the evidence is sufficient and the sentence appropriate.

The Plea Agreement also sets forth additional contractual obligations, in addition to the imposition of the sentence. These obligations, like the form of the resolution, reflect the government's assessment of the unique facts and circumstance of this case. *See* Plea Agreement ¶ 7. Such obligations, several of which are not unique to corporate resolutions, include Trafigura's obligations to: (i) cooperate with the United States, (ii) refrain from making any public statements that conflict with the Plea Agreement, including the Statement of Facts, (iii) improve the Company's compliance program, and (iv) report to the United States on compliance and remediation. The Court's retention of jurisdiction to ensure compliance with these obligations is not necessary. The government has ample means to enforce these obligations, most importantly, by charging the Company, in the event of a breach by the Company, with any violation of federal law based on the admissions contained in the Statement of Facts—a charging decision entrusted to the government. *See* Plea Agreement ¶ 26 (in the event of breach, “the Defendant shall thereafter be subject to prosecution for any federal criminal violation of which the Offices have knowledge, including, but not limited to, the charge in the Information”). Such charges could include, for example, substantive violations of the Foreign Corrupt Practices Act, in violation of 15 U.S.C. § 78dd-3; Money Laundering, in violation of 18 U.S.C. § 1956; and Conspiracy to Commit Money Laundering, in violation of 18 U.S.C. § 1956(h). And, pursuant to the Plea Agreement, the Company has already agreed that the admissions included in the Statement of Facts “shall be admissible in evidence in any and all criminal proceeding brought by the Offices against the defendant[.]” Plea Agreement ¶ 28.

As the Court is aware, plea agreements of this structure have been reviewed and approved by this Court and numerous others throughout the country for corporate pleas. *See, e.g.*, Judgment in a Criminal Case, *United States v. Teva LLC (Russia)*, No. 1:16-cr-20967-WILLIAMS (S.D.F.L.

July 13, 2017) (adjudicating corporate defendant guilty pursuant to a plea agreement with nearly identical structure to the Plea Agreement)¹; Judgment in a Criminal Case, *United States v. ABB Mgmt. Servs. Ltd.*, No. 1:22-CR-221 (E.D. Va. Dec. 2, 2022) (same)²; Judgment in a Criminal Case, *United States v. ABB South Africa (Pty) Ltd.*, No. 1:22-CR-222 (E.D. Va. Dec. 2, 2022) (same)³; Judgment in a Criminal Case, *United States v. J&F Investimentos SA*, No. 1:20-cr-00365-MKB (E.D.N.Y. Oct. 15, 2020) (same)⁴; Judgment in a Criminal Case, *United States v. Sargeant Marine Inc.*, No. 20-CR-363 (E.D.N.Y. Oct. 2, 2020) (same)⁵; Judgment in a Criminal Case, *United States v. Keppel Offshore & Marine USA Inc.*, No. 17-CR-698 (E.D.N.Y. Dec. 22, 2017) (same).⁶ Like the Plea Agreement now before the Court, each of these plea agreements imposed contractual obligations on the defendant, requiring, among other things, compliance program improvements, and did not provide for the Court's continuing jurisdiction.

The parties' extensive negotiations and the government's four-year investigation resulted in the Plea Agreement, which involves a parent-level guilty plea and the imposition of a substantial fine and forfeiture derived from an extensive profit analysis. The Court should not refrain from approving the Plea Agreement due to the additional contractual obligations contained in the Plea Agreement. The government has tools at its discretion to ensure compliance with the Plea Agreement, including the filing of additional charges. And this remedy has been sufficient for this

¹ See <https://www.justice.gov/media/870871/dl?inline> (plea agreement).

² See <https://www.justice.gov/media/1263866/dl?inline> (plea agreement).

³ See <https://www.justice.gov/media/1263861/dl?inline> (plea agreement).

⁴ See <https://www.justice.gov/media/1103326/dl?inline> (plea agreement).

⁵ See <https://www.justice.gov/media/1093741/dl?inline> (plea agreement).

⁶ See <https://www.justice.gov/media/927431/dl?inline> (plea agreement).


Court and numerous others that approved plea agreements with nearly identical structures.

Should the Court have additional questions concerning the Plea Agreement, the United States welcomes an additional status conference.

Respectfully submitted,

GLENN S. LEON
CHIEF, FRAUD SECTION
CRIMINAL DIVISION
U.S. DEPARTMENT OF JUSTICE

MARKENZY LAPOINTE
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF FLORIDA

By: 
Natalie R. Kanerva
Trial Attorney
Court ID No. A5503160
Jonathan P. Robell
Assistant Chief
Court ID No. A55502441
1400 New York Avenue NW
Washington, DC 20005
Tel. (202) 616-5136
Email: Jonathan.Robell@usdoj.gov

By: 
Eli Rubin
Assistant United States Attorney
Court ID No. A5503535
99 NE 4th Street
Miami, Florida 33132
Tel. (305) 961-9247
Email: Eli.Rubin@usdoj.gov