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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
10

11 UNITED STATES OF AMERICA) CR. NO. S-07-0135 GEB
12)
13 Plaintiff,)
14)
15 v.)
16)
17 JOEL NATHAN WARD,) Date: April 4, 2008
18) Time: 9:00 a.m.
19 Defendant.) Hon. Garland E. Burrell
20)
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GOVERNMENT'S SENTENCING MEMORANDUM

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16
17 **I. Introduction**

18 The Government respectfully submits this memorandum to
19 inform the Court of the Government's sentencing recommendation.
20 The defendant is scheduled to be sentenced on April 4, 2008.

21 This case involves a protracted fraud scheme of stunning
22 audacity and proportion. Joel Ward, who has no professional
23 training as a currency trader, holds no advanced degrees, and did
24 not graduate from junior college, convinced scores of people that
25 he was a guru in the sophisticated area of foreign exchange
26 trading. Ward created a foreign exchange investment fund and
27 marketed it to unsophisticated investors including family and
28 friends. From the beginning, his trading enterprise was a scam.

1 As noted below, rather than use the money for foreign exchange
2 trading as promised, about 85% of the money was diverted before
3 it ever hit a trading account - most of it used to promote Ward
4 himself and his various businesses. Over a period of about three
5 years, he took in over \$15 million from about 110 investors.
6 Presentence Report for Joel Nathan Ward, dated March 21, 2008
7 ("Ward PSR"), at ¶ 19. Nearly \$4 million was paid back to
8 investors in the form of Ponzi payments. Ward PSR ¶ 19. Other
9 investor funds were used to pay for Ward's marketing campaign, to
10 buy the Learn:Forex school in Sacramento, and for Ward's personal
11 benefit. Ward PSR at ¶¶ 11, 17. As described below in more
12 detail, of the approximately \$2 million that was actually used
13 for foreign exchange trading, Ward lost virtually all of it
14 through reckless day trading. As a trader he was a failure. The
15 only success Ward had was in convincing others that he was
16 successful.

17 The FBI and IRS commenced an investigation in August 2006,
18 based on information received concerning bank transactions that
19 appeared to be Ponzi payments. By late 2006, Ward's Ponzi scheme
20 had run out of money and he was desperately trying to lure in new
21 victims with false promises and representations. Several new
22 victims were persuaded to part with over a million dollars in the
23 last weeks of the Ponzi scheme. Ward PSR at ¶ 14. In order to
24 put off investors who had requested withdrawals, Ward concocted
25 elaborate stories about how payments were delayed due to
26 paperwork errors by bankers. He created fictitious Merrill Lynch
27 account statements to show to one investor, and that statement
28 falsely indicated that \$9.5 million was on deposit in an account

1 there. Ward PSR ¶ 13; Exhibit J hereto.

2 Even as his trading fund was failing, Ward embarked on a new
3 scheme to draw in funds. In early January 2006, Ward formed a
4 new Nevada entity, Westfork LLC, ostensibly to invest in a real
5 estate project in Mississippi. He solicited significant amounts
6 of money from investors, many of them the same people who had
7 invested in his fund. Although it soon became apparent that the
8 project would not materialize, Ward simply kept the money, lying
9 to investors about the status of the project and of their
10 investment. Ward PSR at ¶ 16-18.

11 In mid November, 2006, unable to keep his pyramid scheme
12 going any longer, Ward showed one of his administrators portions
13 of a written journal in which he confessed to the scheme. In
14 that journal, later seized by investigators, Ward wrote that he
15 was a "financial serial killer" who "always rationalized my wrong
16 actions (I'm talking about stealing or embezzelling [sic] money)
17 . . ." He also wrote:

18 I should have stopped myself from the temptation of
19 embezzlement. My problem has been my ego . . . [T]here
20 was the time in the early days when my trading profits
21 were not consistent, but I posted a profit anyway. That's
22 how we got more capital to be invested. So fictional
23 profits only compounded the problem.

24 See Complaint, filed March 30, 2007, at ¶ 18. The administrator
25 immediately contacted victim investors and disassociated himself
26 from Ward. Unmasked, Ward confessed to victim investors that the
27 money was gone. A search warrant soon followed, then later a
28 complaint and the indictment in this case.

The defendant pleaded guilty on August 20, 2007, without any
plea agreement or other assurance from the Government, to all

1 nine counts of the indictment. Counts One through Five are wire
2 fraud counts relating to the scheme to defraud investors in his
3 foreign exchange trading fund. Counts Six and Seven are mail
4 fraud counts relating to the scheme to defraud investors in the
5 Westfork LLC real estate scheme. Counts Eight and Nine are money
6 laundering counts under section 1957 of Title 18, relating to
7 Ward's use of the fraud proceeds to make payments on his interest
8 in the Learn:Forex school in Sacramento.

9 **II. The Presentence Report**

10 The Probation Officer conducted a thorough investigation and
11 drafted a thoughtful and accurate Presentence Report. Pursuant
12 to USSG § 2B1.1(a)(1), the base offense level for the seven fraud
13 counts is 7. Because the loss to investors exceeded \$7 million
14 but was less than \$20 million, a 20 level increase was imposed
15 under USSG §2B1.1(b)(1)(K). Because the offense involved more
16 than 50 victims, the offense level was increased a further 4
17 levels. USSG §2B1.1(b)(2)(B). Because the offense involved
18 sophisticated means, an additional 2 levels was imposed pursuant
19 to USSG §2B1.1(b)(9)(C). The total offense level for the fraud
20 counts, therefore, is 33. Ward PSR at ¶¶ 36-41.

21 Although Ward filed no formal objection to the two level
22 increase for sophisticated means, he suggested in his informal
23 objections some doubt about the Probation Officer's determination
24 on this issue. Under the advisory Sentencing Guidelines, an
25 enhancement for "sophisticated means" should be applied in a
26 situation where the defendant has engaged in

27 especially complex or especially intricate
28 offense conduct pertaining to the execution
or concealment of an offense. For example,

1 in a telemarketing scheme, locating the main
2 office of the scheme in one jurisdiction but
3 locating soliciting operations in another
4 jurisdiction ordinarily indicates sophisticated
5 means. Conduct such as hiding assets or trans-
actions, or both, through the use of fictitious
entities, corporate shells, or offshore
financial accounts also ordinarily indicates
sophisticated means.

6 U.S. Sentencing Guidelines Manual §2B1.1 comment. (n.8(B))
7 (2006). The defendant's investment fraud Ponzi scheme was
8 "sufficiently more complex" than a "routine" fraud, and for that
9 reason, the two-level increase should be imposed. United States
10 v. Ford, 989 F.2d 347, 351 (9th Cir. 1993).

11 The Ninth Circuit has affirmed lower courts' discretion to
12 impose the "sophisticated means" enhancement in a variety of
13 circumstances, including those where shell corporations and
14 fraudulent documents were used and those in which complicated
15 investment offerings were made to inexperienced investors.
16 United States v. Aragbaye, 234 F.3d 1101, 1108 (9th Cir. 2000)
17 (holding tax evasion scheme "significantly more complex" and
18 noting that it was "extensively planned and executed with careful
19 attention to detail"); Ford, 989 F.2d at 351 (holding that "the
20 use of a foreign corporation to generate corporate foreign tax
21 payments which are then claimed on a domestic personal income tax
22 return as foreign tax credits is sufficiently 'more complex' than
23 'routine tax evasion,' and justifies the district court's factual
24 determination of sophisticated means"); see also United States v.
25 Garro, ___ F.3d ___, 2008 WL 517084, *5 (9th Cir. Feb. 28, 2008)
26 (noting in dicta that the defendant "had 'used and incorporated
27 numerous shell corporations, many of which he incorporated during
28 this scheme,' that he had intentionally 'left behind numerous

1 confusing and misleading documents' regarding the investors'
2 funds, that he had forged signatures on real estate transactions,
3 and had made 'other associates sign for him for other real estate
4 purchases, to avoid having his name appear on the transaction or
5 assets.' [The defendant's] objection notwithstanding, his conduct
6 was precisely what the Sentencing Guidelines describe as
7 indicating 'sophisticated means': 'conduct such as hiding assets
8 or transactions, or both, through the use of ... corporate
9 shells'").

10 In this case, Ward implemented an extremely complex and
11 intricate fraud scheme, which made use of numerous bank accounts
12 and business entities, and highly sophisticated false documents.
13 He took in millions of dollars, using the money to promote
14 worldwide his business empire. The following facts illustrate
15 the sophistication of the scheme:

- 16 ■ Ward perfected a business plan involving trading in the
17 foreign exchange spot market, which he admits in his
18 prospectus is a sophisticated and largely unregulated
19 market.
- 20 ■ Ward marketed his fund through a slick prospectus that
21 mimicked those associated with real trading fund
22 ventures. He also had a website. Ward attracted
23 investors from multiple states in the United States,
24 and from Australia, New Zealand, and elsewhere.
- 25 ■ Ward operated through at least seven "interconnected
26 businesses involved in the forex trading business."
27 Ward PSR at ¶ 9. Agents have located at least a dozen
28 different bank accounts, at two different banks,

1 through which he conducted transactions related to the
2 charged fraud schemes.

3 ■ Ward conducted his trading through a New York company,
4 FXCM. Ward PSR at ¶ 11. As described in more detail
5 below and in the attached declaration of Michel Robe,
6 Ward controlled at least 24 different trading accounts
7 at FXCM, consisting of 18 accounts in the name of Joel
8 Nathan ForexFund, four accounts in the name of Sterling
9 Investments, another entity he controlled, and two
10 accounts in his own name. See Declaration of Michel
11 Robe, attached hereto as Exhibit A ("Robe
12 Declaration"), at ¶ 27.

13 ■ In order to carry out the Westfork LLC real estate
14 fraud scheme, Ward specifically incorporated a shell
15 company entity in Nevada. Ward PSR at ¶ 16.

16 ■ Each month Ward sent his investors detailed and
17 sophisticated account statements that were totally
18 fabricated. Each account statement included multiple
19 postings detailing profits and losses every few days,
20 and all of the information was false. See, e.g.,
21 monthly account statements sent to one investor, July
22 2003 to October 2006, attached here to as Exhibit I.

23 ■ Ward also created false documents that were sent to
24 investors in the Westfork LLC project. Ward PSR at ¶
25 18.

26 ■ In response to pressure from investors who wanted to
27 withdraw funds, Ward created elaborate counterfeit
28 documents, including two documents purporting to be

1 Merrill Lynch account statements. Ward PSR at ¶ 13;
2 attached hereto as Exhibit J.

3 Ward's offense conduct was particularly elaborate and
4 sophisticated; he built a web of deception by using a
5 constellation of business enterprises and accounts located in at
6 least three states, and by creating huge amounts of sophisticated
7 fraudulent documents to recruit, retain, and lull scores of
8 investors from around the country and overseas. The application
9 of a two level increase for use of sophisticated means under USSG
10 §2B1.1(b)(9)(C) is warranted in this case.

11 On the two money laundering counts, the base offense level
12 incorporates the offense level for the fraud counts. USSG
13 §2S1.1(a)(1). Because the defendant was convicted of offenses
14 charged under section 1957 of Title 18, one level is added,
15 pursuant to USSG §2S1.1(b)(2)(A). The total offense level for
16 the money laundering counts, therefore, is 34. Ward PSR at ¶¶
17 32-43. Because Ward was convicted of both money laundering and
18 of the fraud conduct that was the specified unlawful activity for
19 the money laundering, the two sets of offenses are grouped
20 together, for a single total offense level of 34. USSG §2S1.1,
21 comment, (n.6); Ward PSR at ¶ 45.

22 A four level increase was not recommended for offenses
23 involving a violation of securities law or commodities law under
24 USSG §2B1.1(b)(15). The Government consulted with experts at
25 both the SEC and the CFTC regarding this issue. It is clear that
26 Ward's conduct violated the anti-fraud provisions of the federal
27 securities laws, and likely the similar provisions of the federal
28 commodities laws. Through a narrow gap, however, it appears that

1 Ward may not fall within the statutory definition of an
2 "investment advisor" for securities laws purposes, or a
3 "commodity pool operator" for commodities laws purposes, which
4 would be required for the enhancement to apply. USSG
5 §2B1.1(b)(15)(A)(iii) and (B)(iii), comment, (n.14).

6 Ward also did not receive a two level increase for targeting
7 vulnerable victims. Although many of Ward's victims were
8 elderly, it is not clear based on the evidence gathered to date
9 by the Government that any of his victims were "unusually
10 vulnerable," or that Ward knew or should have known of such
11 victims' vulnerability. USSG §3A1.1(b), comment (n.2).

12 Additionally, an increase for an aggravating role in the
13 offense was not recommended as Ward kept his support staff and
14 recruiters in the dark regarding his criminal activities, and
15 thus, while he had others working for him in the course of the
16 scheme, they could not be categorized as "participants" in the
17 criminal activity for purposes of the guideline section. USSG
18 §3B1.1.

19 A two-level increase for abuse of a position of trust or use
20 of a special skill under USSG §3B1.3 also was not recommended.
21 The special skill enhancement applies to skills possessed by
22 professionals or skilled workers of the sort usually requiring
23 substantial education, training or licensing. USSG §3B1.3,
24 comment, (n.4). Although Ward held himself out as a gifted and
25 highly skilled foreign exchange trader, in fact he had no such
26 skills, and was not licensed, so the enhancement for special
27 skill does not apply.

28 The abuse of a position of trust prong of section 3B1.3 is a

1 closer call. It applies where a defendant "perpetrates a
2 financial fraud by leading an investor to believe the defendant
3 is a legitimate investment broker." USSG §3B1.3(n. 3). Ward
4 certainly held himself out to be a skilled and knowledgeable
5 foreign exchange trader, and he created an aura of legitimacy by
6 spending heavily on seminars, travel, marketing materials, and
7 the like. In an abundance of caution, however, the Government
8 defers to the Probation Officer's determination on this issue.

9 The Probation Officer recommends a three level reduction for
10 acceptance of responsibility pursuant to USSG § 3C1.1; Ward PSR
11 at ¶¶ 47-48. As noted below, although the Government believes
12 that the defendant continues to mischaracterize his conduct and
13 capabilities, and to mislead victims, it is true that he has
14 admitted his culpability for the charged offenses and pleaded
15 guilty in a timely manner. This 3-level reduction results in a
16 total offense level of 31.

17 Based on a total offense level of 31 and a criminal history
18 category of I, the advisory guideline range is 108 to 135 months.
19 Ward PSR at ¶ 77. The Probation Officer recommends a sentence at
20 the top of the range, 135 months, and provides ample
21 justification for her recommendation. Ward PSR at ¶¶ 84-94. The
22 Government has no objections to any factual findings, sentencing
23 guideline calculations or policy statements contained in, or
24 omitted from, the presentence report for defendant Ward. The
25 Government concurs in the recommendation of 135 months.

26 ///

27 ///

28 ///

1 **III. The "JNF Recovery Plan" Is a Fantasy**

2 A. The Plan Is Based on Flawed Assumptions

3 The defendant has offered a "recovery plan", in which he
4 suggests that he spend the next ten years earning profits in the
5 foreign exchange markets to repay the victims - the same people
6 he spent the last several years ripping off. Of course, the
7 defendant assumes he will be out of custody, and thereby avoid
8 any incarceration for his egregious crimes. See JNF Recovery
9 Plan, dated September 18, 2007, ("JNF Recovery Plan") attached
10 hereto as Exhibit B. Ward boldly recommends to the Court that a
11 reasonable sentence for his blatant malfeasance as a foreign
12 exchange trader should be: to let him keep trading.

13 The JNF Recovery Plan has several features that appear on
14 their face to be wildly unrealistic. First, the Plan is to be
15 initially funded with \$100,000 or more of capital supposedly
16 drawn from some unspecified asset, since the plan reports that
17 the money is "pending Court approval of asset liquidation." (See
18 JNF Recovery Plan, page 2, Table 1, first row, and page 2, third
19 bullet under "A Simplified Plan"). There has been no disclosure
20 of what or where this asset is, or how it has been valued, or by
21 what court it would be liquidated. If there are assets, these
22 assets should have been disclosed months ago.

23 Second, the Plan assumes "new investor capital" in the
24 amount of \$590,000 to be provided in steady increments over 10
25 years. (See JNF Recovery Plan, page 2, Table 1, row opposite "New
26 Investor Capital" and fn 7.) The likelihood that investors would
27 entrust this sum to Joel Ward, after his conviction in this case
28 of defrauding his trading fund investors of millions of dollars,

1 is slim.

2 Third, according to the attached analysis of the plan by
3 CFTC expert economist Michel Robe, a fundamental assumption of
4 the plan is flawed. The recovery plan was developed "using
5 conservative rates of return (3% per month) . . . ". (See JNF
6 Recovery Plan, p. 1.) Far from being conservative, this
7 projected rate of return, which is the equivalent of assuming "an
8 enormous 46.5% rate of return per year, year after year," is "far
9 from conservative for any trader." Robe Declaration at ¶ 12.
10 Indeed, the representation that the plan is based on a
11 conservative assumption of return is misleading at best. Id. at
12 29.

13 Fourth, the Plan contemplates that Ward would charge 30%
14 fees when trading outside investor funds, and such moneys would
15 go into the fund as additional trading capital. (See JNF
16 Recovery Plan, page 2, Table 1, row opposite "Trader Fee Revenue"
17 and fn 2.) There is no explanation as to why outside traders
18 would pay such a premium for Ward as a trader, particularly after
19 he has multiple felony convictions for defrauding investors in
20 this case.

21 Fifth, the Plan assumes growth at a steady rate over a ten
22 year period. (See JNF Recovery Plan, page 21.) As set forth in
23 the analysis by Professor Robe, the foreign exchange market is
24 highly volatile, particularly when it involves trading highly
25 leveraged currency positions as contemplated here. There is
26 substantial risk of loss. Robe Declaration at ¶¶ 13, 16-23.

27 Finally, and most importantly, the JNF Recovery Plan is
28 premised on the assumption that Ward is a capable trader who is

1 likely to have success in the foreign exchange market. His
2 skills, according to the Plan, are likely to generate both a
3 highly profitable return on trading and revenue of \$830,000 from
4 the sale of "trading signals" to other traders. (See JNF
5 Recovery Plan, page 2, Table 1, row opposite "3% Average Gain"
6 fns 5 and 9, and "Trading Signals Revenue" and fn 12.) As
7 Professor Robe concludes after examining Ward's actual trading
8 data, this assumption is completely undermined by the records
9 showing Ward's trading history. Robe Declaration at ¶¶ 24-30.

10 B. Ward Has No Record of Success as a Forex Trader

11 Professor Robe reviewed records for all 24 accounts opened
12 at FXCM under the names Joel Nathan ForexFund, Joel N. Ward, or
13 Sterling Investments Accounts. Robe Declaration at 27. Those
14 records show a consistent pattern of losses in the foreign
15 exchange market. Ward deposited slightly more than \$2 million
16 into the accounts (not counting intra-fund transfers). Id. at
17 26. Of that amount, he lost approximately \$1,842,469 through
18 trading. Id. at 27.

19 A more detailed review of the six accounts with the largest
20 deposits and most trading activity, consisting of the first six
21 listed Joel Nathan ForexFund accounts in the Robe Declaration at
22 page 8, shows the trading losses in more detail. Copies of
23 account activity summaries for those accounts as produced by FXCM
24 are attached hereto as Exhibits C through H. A summary of the
25 losses in each of these accounts is listed below.

26 Account number 00019708 was opened in September 2003 and
27 closed in January 2005. During that time, Ward deposited
28 \$1,355,000. He made approximately \$400,000 in withdrawals during

1 the lifetime of the account, but lost the remaining funds in the
2 account, about \$1.2 million, through trading losses. Exhibit C.
3 While the total balance fluctuated wildly, and though there were
4 times when Ward made some profitable trades, Ward primarily
5 generated huge losses. In a five-week trading period between
6 April 8 and May 14, 2004, Ward lost about \$460,000.

7 Account number 00022484 was opened in February 2004 with
8 \$50,000. Within days, Ward had lost almost half that amount. He
9 had total deposits, including the initial deposit, of just over
10 \$248,000, but each deposit was followed by more losses. Ward
11 ultimately withdrew about \$41,000, and lost all the rest, about
12 \$208,000, in ineffective trading activity. Exhibit D.

13 Account number 00024120 was opened in April 2004, with an
14 initial deposit of \$200,000. By early December 2004, Ward lost
15 nearly 75% of that balance in trading, and was down to a balance
16 of \$57,762. Ward ultimately suffered total losses of over
17 \$90,000 in the account by January 2005. Exhibit E.

18 Account number 00026385 was opened in August 2004 with a
19 \$50,000 deposit. There was only limited trading activity in this
20 account, but one year later Ward's balance was down to less than
21 \$42,000. He had net trading losses in the account of over
22 \$12,000. Exhibit F.

23 Account number 00026481 was opened in August 2004 with a
24 deposit of \$10,000. Another \$55,000 was deposited into the
25 account while it was open. During the lifetime of the account,
26 Ward was able to withdraw only about \$6,800, losing all the rest,
27 over \$58,000, in trading. Between early October and early
28 December 2004, the account balance was cut in half due to

1 egregious trading losses, from about \$32,500 to about \$16,700.
2 After replenishing the account with a deposit of \$25,000 on
3 December 8, 2004, Ward proceeded to lose virtually every penny of
4 that amount. The balance dropped from about \$35,200 after the
5 December 8 deposit to less than \$1,000 on July 13, 2005. Ward
6 replenished the account with another \$10,000 on January 31, 2006,
7 and lost a good portion of those funds before the account was
8 closed in early February 2006. Exhibit G.

9 Account number 00026484 was opened in August 2004 with a
10 \$10,000 deposit. The account was down to about \$3,000 by
11 November 2004, after a series of trading losses. Another \$10,000
12 was deposited, and after a few successful trades in December 2004
13 that raised the account balance from \$13,000 to \$22,000, Ward
14 gradually lost all of his gains and much more, dropping the
15 balance in the account to under \$4,700 in June 2005, when trading
16 activity ceased. Exhibit H.

17 The Probation Officer appropriately rejected Ward's proposed
18 "Recovery Plan" because he has "no verifiable history of success
19 that can be relied on." Ward PSR at ¶ 91. Indeed, Ward's record
20 as a trader is of abject failure and deceit, not success. Ward
21 PSR at ¶¶ 84-86, 89-92. The Probation Officer was appropriately
22 concerned that "victims may be settling themselves up for another
23 huge disappointment." Id. at ¶ 92.

24 The JNF Recovery Plan is a fantasy. It is one in which the
25 defrauded victims have every right to believe, and their support
26 for an idea that proposes a financial return to ameliorate the
27 grievous wounds they have sustained is understandable. Ward
28 himself knows the truth of his own pathetic trading record. By

1 pushing his "recovery" plan, Ward is promoting a further fraud on
2 his victims.

3 **IV. Ward Deserves a Sentence of No Less than 135 Months**

4 For several reasons, Ward deserves a sentence of *no less*
5 *than* 135 months in prison, the sentence recommended by the
6 Probation Officer. As set forth below, Ward constructed an
7 elaborate house of cards and those years of deceit caused
8 devastating financial harm - wrecking the lives of many of his
9 victims and their families. Importantly, even while purporting
10 to accept responsibility for his actions, Ward is continuing to
11 con his victim investors by promoting the JNF Recovery Plan, when
12 he knows it is just a scheme to minimize his own sentence. By
13 preying on their hopes for a financial recovery and continuing to
14 propagate the myth that he is a foreign exchange trading genius,
15 Ward is recasting history and cynically manipulating his victims.
16 As indicated above, the JNF Recovery Plan he is peddling is snake
17 oil. Finally, the sentencing guidelines - which, as calculated
18 in this case, understate the magnitude of Ward's criminal
19 culpability - and the section 3553(a) factors, warrant a sentence
20 of at least 135 months.

21 A. Ward's Scheme Lasted for Years, Involved Deception
22 on a Massive Scale, and Caused Irreparable Harm to
Approximately 100 People

23 Ward's Ponzi scheme was built on lies. Although Ward is
24 currently telling people that the fund failed because of some
25 losses he sustained in trading, the truth is that about 85% of
26 investors' funds were diverted before they ever reached a trading
27 account. Ward took in over \$15 million from victim investors
28 (Ward PSR at ¶ 19), but the analysis by Professor Robe, which is

1 consistent with findings by investigating agents, is that only
2 about \$2.1 million of those funds were ever deposited into the
3 FXCM trading accounts. The other funds - nearly \$13 million, or
4 about 85% of what Ward took in from victim investors - was
5 diverted before it ever hit a trading account or other investment
6 program.

7 The money was spent in a variety of ways. Ward, according
8 to his own statement, paid himself about \$15,000 per month. Ward
9 PSR at ¶ 71. He made a down payment about \$50,000 on a private
10 airplane. An associate who worked for Ward reported that he
11 enjoyed 5-star hotels, expensive cars and clothes for himself
12 and his family, and lavish vacations. Ward PSR at ¶ 27; letter
13 with victim impact statement by "Kellie". Another victim
14 described Ward's "lavish life style" in 2005 and 2006. See
15 letter with victim impact statement submitted by Dr. "G. Michael"
16 of Kentucky, dated January 12, 2008, at 3-4. That person, who
17 worked with Ward, also reported that there were many seminars at
18 expensive hotels, "retreats" and trade expositions in places like
19 Las Vegas, Ft. Lauderdale, New York, and London. Id. at 9. A
20 supporter of Ward's who helped organize his marketing events, who
21 argues that Ward was not engaged in a Ponzi scheme, reported to
22 the Court that by her calculations Ward spent about \$2 million
23 just on ten marketing shows that she organized. Letter of Denise
24 Brooks, filed 3/06/2008, C.R. 35, at 1. It is known that Ward
25 and his employees traveled the country, and to Australia and
26 Europe. Ward made about \$3.7 million in Ponzi payments to lull
27 victim investors. Ward PSR at ¶ 19.

28 Since Ward set aside only about \$2 million for actual

1 trading, he would have had to have made an astronomical return of
2 about 650% on that \$2 million just to pay back the principal
3 amount of the investments taken in from victim investors. A
4 highly improbable, if not impossible scenario. It was not a
5 trading loss that caused Ward's empire to collapse - he stole
6 most of the money before it was ever traded. Ward's foreign
7 exchange trading program thus was a Ponzi scheme from the
8 beginning, or very near the beginning, of its operation.

9 To keep his Ponzi scheme going for three and a half years,
10 Ward relied on a combination of lavish marketing to develop his
11 reputation as a trading genius, more recruiting of scores of
12 additional investors, and extraordinarily expansive lies to lull
13 and further defraud his existing investors. As noted above, he
14 sent detailed monthly statements to his investors showing that
15 they were reaping profits, when in fact their money was already
16 gone. Exhibit I. Ward sent emails and newsletters to them
17 celebrating the supposed success of the fund. He created phony
18 account statements. Even after it was clear that Ward could no
19 longer sustain his scheme, he desperately marketed to new
20 investors, taking in more than \$1 million shortly before the
21 public collapse in mid-November 2006. Ward PSR at ¶ 14. Ward's
22 elaborate and prolonged campaign of deceit claimed many victims,
23 and many of those men and women have been financially devastated.

24 In a letter accompanying her victim impact statement,
25 "Carla" of California, who lost over \$600,000, wrote:

26 This financial loss has taken most of my assets,
27 a major set-back at this point in my life. It is
28 thoroughly draining every bit of energy out of me
and it is a constant minute by minute fight to sleep,
live, stay well and try not to roll up and die. I
cannot afford to go to counseling and I am hanging

1 on to a health insurance policy at \$800 a month and
2 giving up every other little thing I can, because
3 my health is at terrible risk with all this stress
4 and depression. At this time I cannot imagine how I
5 will go on. To add to this, I stand to lose my house
6 with the real estate market going south and no way
7 to hold on to it, I will have to sell it to pay off
8 the loans, as I now have no income except a \$1100 social
9 security check. After a life with near perfect credit,
10 no outstanding bills, no misuse of credit cards, hardly
11 ever even a late payment . . . I now face each day
12 wondering how I am going to pay my bills. I have not
13 lived an extravagant life. I have a 20 yr old car,
14 have no new furniture. I worked two jobs for many years
15 and carefully lived, saved and did without a lot of
16 things to create this retirement money. . . . I cannot
17 continue even to write down all the financial, emotional
18 and physical pain this crime has caused me and my two
19 children who also have lost accounts I funded for them.

20 In his impact statement, victim "Murray" from California
21 wrote:

22 I suffered a huge loss financial + emotional. I had
23 total trust in Joel because he was what I thought was
24 a friend. I also knew Joel's Dad. Joel's dad had
25 told how well Joel was doing with his money that he
26 invested. I kept getting monthly statements that
27 looked like I was doing great. with Joel. He even
28 talked me into investing another \$50,000 one month
before the Bad news came out. My whole life has changed
because of Joel. The hope of retirement has vanished
and my trust in anyone has also vanished. Joel hurt
a lot of people and I hope he pays a good price for
what he has done.

29 In her impact statement, victim "Marissa" from Texas reports
30 that she and her husband had to close their business and that
31 they and their children have nothing to live on except their
32 savings. They were introduced to Joel Ward, and had discussions
33 with him about investing their savings with him. They told Ward
34 that the money was extremely important to them. Although by that
35 time the Ponzi scheme was on its last legs, Ward apparently
36 assured them that their money would be safe, because they
37 invested \$100,000 with him, according to the victim impact
38

1 statement. "Within 2 months of transferring our funds to JNF,"
2 she wrote, "we were notified that all the money was
3 'misappropriated.' Due to this significant loss in our savings
4 we were unable to continue paying on a mortgage and were
5 foreclosed on."

6 In another victim impact statement, "Shane" from Utah wrote
7 that Ward's actions had devastated his family financially and
8 emotionally. The \$90,000 they lost was money they had "scrimped
9 and saved for years," he wrote. He went on as follows:

10 He has stolen our financial future and our emotional
11 peace. We have 4 little boys. That money was intended
12 for our retirement and their education. In addition,
13 it was money set aside in case out little Charlie
14 (age 3 ½), who was born with a major heart defect in
15 his aorta vale, needs additional surgeries that insurance
16 won't cover. We cannot even describe the horror we
17 feel when we contemplate not being able to provide for
18 Charlie's medical care and for our other boys' future.
19 There is no other worse feeling than thinking of not
20 being able to educate our boys and give them adequate
21 opportunity. We're going through hell, frankly.

22 "Mazie" of Utah wrote in her victim impact statement that
23 the \$1 million she lost represented a lifetime of earnings from
24 three businesses built from scratch. The loss of all her assets
25 has left her "devastated and demoralized." Mazie writes that she
26 is "bankrupt of any will or desire to believe in myself or
27 others. Joel has left me with insurmountable problems - I have
28 no resources to rebuild - my health and well-being are lost.
29 Joel has taken away my opportunities to enjoy my retirement
30 money, my charitable gift giving and an inheritance for my
31 children."

32 "Robert" of New Zealand, who lost \$90,000, wrote that it was
33 "the bulk of my retirement savings. . . . I now face the prospect

1 of spending the rest of my life existing on a pension of \$130 a
2 week." "Mitchell" of California reported that the \$20,000 his
3 family lost represented all of his wife's inheritance, and they
4 now live paycheck to paycheck. "Elaine" of California, who had
5 invested \$65,000, reported in her victim impact statement that
6 the funds had been her retirement account, and that she is the
7 sole breadwinner for the family since her husband is retired due
8 to medical issues. "We planned for a decent retirement," she
9 wrote. "ALL of that hard work has been destroyed by Joel."
10 "Ian," an investor from Australia who lost over \$50,000, wrote in
11 his victim impact statement that the funds were "not only our
12 life savings, but the equity taken from our mortgage on our home
13 we are currently living in. Not only have we lost all, we are
14 also suffering from the continual interest charged from our bank
15 on the equity which we are finding it now extremely hard to
16 survive."

17 Among the nearly 100 victims who lost money to Joel Ward,
18 there are many other, equally compelling stories of trust
19 betrayed and hopes lost. Ward's callous manipulation of the
20 victims, which has destroyed so much, warrants a sentence of at
21 least the high end of the applicable Guideline range.

22 B. Ward Continues to Deceive Victim Investors and
23 Misleads This Court

24 Ward has continued to deceive his victim investors and to
25 mislead this Court in two fundamental ways. These deceptions
26 fuel his pitch to be spared a prison sentence so that he can work
27 on the JNF Recovery Plan, addressed above.

28 First, Ward misrepresents his conduct in the crimes to which

1 he has pleaded guilty. In his statement to the Probation
2 Officer, Ward portrayed the crime as something of a panicked
3 reaction caused by losses in the market. Ward PSR at ¶ 30. He
4 was afraid to report the losses, he says, so he reported false
5 earnings, believing he would make up the money in future trading.
6 Ward has described his conduct similarly to the Wall Street
7 Journal and the Modesto Bee. See Craig Karmin, "How a Money
8 Trader Went Bad," Wall Street Journal, Jan. 12, 2008; "Q & A with
9 Joel Nathan Ward", Modesto Bee, March 30, 2008. In their letters
10 to this Court and the Probation Officer, quite a few victims have
11 taken up this theme, describing Ward's conduct as a "mistake", or
12 bad judgment, or an example of a growing business simply getting
13 beyond his control.

14 The problem with Ward's depiction of the underlying events
15 in this case, is that it is utterly false. It was not a sudden
16 loss in the markets that precipitated the crime. From the
17 outset, Ward diverted investor funds and only about \$2 million of
18 the \$15 million which Ward took in from investors ever made it to
19 a trading account. Ward simply stole the rest. It wasn't losses
20 in the market that he should have been afraid to report to
21 investors (although he had plenty of losses) it was what he had
22 really done with his investors' money.

23 Second, Ward has continued to suggest that he is a gifted
24 foreign exchange trader. He recently told the Modesto Bee, when
25 asked about his proposed "recovery plan", that "[s]everal friends
26 who know my trading ability" are willing to put up seed money for
27 the trading fund. "Q & A with Joel Nathan Ward", Modesto Bee,
28 March 30, 2008. When asked why he thought he could make a profit

1 this time, Ward answered: "I could run with the best of them;
2 that's not what went wrong here. I just like to push the
3 envelope." Id. Again, many victims have mistakenly believed the
4 accuracy of Ward's self-portrayal. One victim, "James" from
5 California, wrote in his impact statement that, although he had
6 lost \$100,000, he supported the recovery plan because he believes
7 that Ward was "a brilliant trader." "Oren" from California - who
8 is Ward's father-in-law - wrote that Ward "has the ability to
9 recover everyone's losses." These victims have heard Ward's
10 hype, but have not had the benefit of analyzing the records of
11 Ward's actual foreign exchange trading.

12 Ward's description of his trading record and skills has no
13 basis in reality. While he has admitted that he is guilty of
14 multiple felonies, Ward refuses to admit that he is a failure as
15 a trader. As described above, an analysis by a CFTC expert of
16 all of the 24 trading accounts that Ward opened at FXCM shows
17 that of the \$2 million that was actually invested in the currency
18 markets, Ward lost more than \$1.8 million - a pathetic trading
19 record. Robe Declaration at ¶¶ 24-27. While Ward sometimes made
20 profits, the overall record shows a steady decline in capital,
21 and losing bets consistently outnumbered winners. Ward
22 regularly propped up his accounts with fresh injections of
23 investor funds, only to lose that money, too.

24 A few victims see Ward's manipulations clearly. "Lori" of
25 California wrote in a letter accompanying her victim impact
26 statement that "I don't believe Joel knows how to speak the truth
27 and he will try to convince you that he is a good guy and that he
28 simply made a mistake. Please do not fall for his plea. He has

1 hurt me, my family, and countless others." Another victim,
2 "Carolyn" of Kentucky, wrote in a three-page letter accompanying
3 the impact statement from her and her husband that "Joel Nathan
4 Ward always had a promise that bigger and better was on the way."
5 Circumstances have changed, but in many ways, Ward has not.

6 Ward has deliberately mislead investors about his trading
7 ability and how he lost their money, and he continues to do so in
8 hopes of rallying victim investors behind a plan that would keep
9 him out of prison. This cruel manipulation of his victims'
10 desperate hopes warrants a sentence of at least the high end of
11 the advisory Guideline range.

12 C. The Guideline Calculations Understate Ward's Culpability

13 As set forth above, the calculation of Ward's Guideline
14 range is extremely conservative, and might easily have been six
15 or even eight levels higher. An additional six levels would have
16 placed Ward in a range of 210-262 months. This information is
17 relevant in determining where in the range of 108 to 135 months
18 the defendant should be sentenced. 18 U.S.C. §3553(a)(4).
19 Because the range as a whole understates the nature and scope of
20 his criminal conduct, a sentence of at least the high end of the
21 range is appropriate.

22 D. The Factors in 3553(a) Support a Sentence of 135 Months

23 The nature and circumstances of the offense, and the
24 seriousness of the offense, are described above. The sentence
25 imposed in this case should reflect the intricacy and the massive
26 scope of the deception carried out by Ward of at least a hundred
27 victims over a period of years. It should also reflect the
28 extraordinary damage he has caused to so many people. 18 U.S.C. §

1 3553(a)(1).

2 The characteristics of the defendant are also discussed
3 above. Once again, this defendant continues to perpetrate a
4 fraud on the victims in this case, abusing their desperate hopes
5 to benefit himself. The sentence in this case should reflect
6 Ward's continuing deceit and manipulation. Considering the
7 defendant's characteristics, only a substantial sentence would
8 promote respect for the law, provide just punishment, and afford
9 adequate deterrence to others. 18 U.S.C. § 3553(a)(1), (2)(A),
10 (2)(B).

11 There is also a compelling need to protect the public from
12 any further crimes by this defendant. As the Probation Officer
13 noted, this defendant could victimize defendants a second time.
14 Ward PSR ¶ 92. Ward wants to continue operating a foreign
15 exchange fund, and continues deceiving others regarding his skill
16 as a trader and the money he stole from victim investors. When
17 asked by the Modesto Bee what he had been doing lately, he
18 mentioned a number of projects, and then defiantly proclaimed,
19 "I will keep trading. The court can't stop me from trading." "Q
20 & A with Joel Nathan Ward," Modesto Bee, March 30, 2008. Ward is
21 a con artist. Once he is released, he is likely to victimize
22 others again. A sentence at the top of the range is needed to
23 protect the public.

24 18 U.S.C. §3553(a)(2)(C).

25 A sentence of 135 months in prison should be imposed. Such
26 a sentence would be sufficient, but not greater than necessary,
27 to comply with the purposes of section 3553(a)(2).

28

1 possibly significant prison term, and as noted above, Ward has no
2 economic or familial responsibilities that would prevent his
3 flight. Ward has a history of travel to Australia, the
4 Caribbean, Europe and elsewhere, and he clearly has many
5 relatives and supporters who are in a position to assist him if
6 they so chose. There is no reasonable basis for the defendant to
7 remain at liberty pending designation by the Bureau of Prisons.

8
9 DATED: April 1, 2008

Respectfully submitted,

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10
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