

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
No. 08-CR-364 (RHK/AJB)

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THOMAS JOSEPH PETTERS,

Defendant.

**DEFENDANT'S MOTION
FOR DISCOVERY OF
EXCULPATORY MATERIAL**

Defendant Thomas Joseph Petters, by and through his undersigned attorneys, hereby moves the Court for an order requiring the Government to disclose all of the information described below, within the possession, custody or control of the Government, or the existence of which is known or by the exercise of due diligence could become known to the Government. The defense requests that the Government make its production at least sixty days prior to trial (with a continuing duty up to, during, and after trial). The undersigned brings this motion pursuant to Rule 16, Federal Rules of Criminal Procedure, the Fifth and Sixth Amendments to the United States Constitution, Brady v. Maryland, 373 U.S. 83 (1963) and its progeny.

The following are hereby requested:

1. Any information or evidence favorable to the accused which is material to either guilt or punishment.

2. With respect to any witnesses the Government may call at trial and with respect to any alleged co-conspirator or informant, whether indicted or unindicted, the following information:

- a. Names and addresses of all such persons;
- b. Any criminal arrests, charges, convictions, or criminal records of any kind;
- c. Any information of criminal conduct regardless of whether the person has been arrested, charged and/or convicted;
- d. Any information pertaining to whether any such person has any psychiatric or emotional disorders;
- e. Any information pertaining to whether any such person has been treated for alcoholism or drug abuse;
- f. Any information pertaining to whether the veracity of any such person has been submitted to polygraph or other veracity-probing examination;
- g. Any evidence tending to show that the reputation of any such person for truth-telling is diminished;
- h. Any information pertaining to whether any such persons have been witnesses at any other trial or civil proceeding related in any way to the subject matter of this case;
- i. Any inconsistent statements or communications of any such person or between them, statements of bias or prejudice against Mr. Petters by such persons, and/or admissions of poor memory or lack of knowledge of any such persons;
- j. Any evidence inculpatory of others in the offenses charged, or evidence indicating a witness's refusal to inculcate Mr. Petters; and/or
- k. Any plea bargain agreement entered into with the Government, including grants of any type of immunity or any other type of consideration.

3. Information or other evidence which shows or tends to show, directly or indirectly, that Mr. Petters knew or had reason to know, or believed or had reason to believe, that any representations or statements of fact which were made by his alleged co-conspirators, alleged victims, or their agents were true, correct and/or legal.

4. Any evidence indicating any alleged co-conspirator or alleged victim (such as any hedge fund) was aware of the alleged scheme and/or concealed same from Mr. Petters.

5. Any evidence indicating that the monies specified in the money laundering counts of the indictment constitute receipts rather than profits.

6. Any and all materials which evince the Government's knowledge of and study of potential fraud by hedge funds in general, but more particularly any hedge fund involved in this case.

7. The personnel files of each Government agent witness that would reflect on the credibility of the agent witness or otherwise would be favorable to the defense.

The undersigned submits a memorandum of law in support of this motion, and relies in part of the Declaration of C. Tom Fisher, filed separately.

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Dated: February 25, 2009

s/ Jon M. Hopeman

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