# EXHIBIT A

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certainly a point we need to address. But my recollection, and this we will get into more detail when we talk about acceptance of responsibility, is that your client testified as well as stating to the probation office that he recognized he was doing wrong when he conveyed whatever aspects of this he did convey to his now employer, yes.

MR. FISHER: No doubt about it.

THE COURT: So what is it that I am missing --

MR. FISHER: You are missing --

THE COURT: -- from that simple admission, that bears on the issue of intent.

MR. FISHER: Quite a bit, with all due respect, quite a bit. There is this very important distinction between that portion of the law that you accurately shared with the jury and the guidelines interpretation of that law which you did not. And that leaves us and you, I hope, with an openness to perhaps some helpful guidance from me, but that leaves you with the task of asking yourself what was he intending to do subjectively, not objectively, what was he attempting to do, and I want you to know what he was attempting to do was, one, absolutely nothing within shouting range.

THE COURT: Let's take the embezzlement analogy. Supposing someone who is given possession of a car by the owner of the car then decides that he could really benefit in his attempt to get a new job with a used car salesman by giving the

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used car salesman the car that he has embezzled now from his employer. So are you saying under my hypothetical he intended to take what he knew was the employer's car and give it to someone else who had no entitlement to it and he did so for the purpose of helping him himself to get a job with his potential new employer and are you saying that the loss in that situation would be zero --

MR. FISHER: No.

THE COURT: -- or would it be the value of the car.

MR. FISHER: It would be the value of the car, but you are leaving out something.

THE COURT: What am I leaving out.

MR. FISHER: You are leaving out the key part which is when he took that car and gave it to the new employer, was he subjectively intending to harm the person from whom he was taking it. Now, it may well be that's what he was up to, maybe not. The point is --

and without permission I give it to my prospective new employer and the jury has found under my hypothetical that I did so intentionally and with knowledge or intent to harm my employer as well as benefit myself that nonetheless there is something more that has to be shown before the value of that car can be calculated as the loss under the guidelines.

MR. FISHER: No.

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THE COURT: What's the difference here.

MR. FISHER: The difference is that my client didn't steal a car.

THE COURT: No, he stole something infinitely more valuable.

MR. FISHER: And considerably different in terms of what one could do with a car. In your hypothetical there is very little one can do with that car; you've just got to sell Now with regard to these programs, there is a lot of different things you can do with them. One of the things you can't do with them is compete with Soc Gen. That's the point. There is no way he --

THE COURT: I go back to my very simpleminded analogy because I am a simple fellow.

MR. FISHER: No, your Honor.

THE COURT: He takes this car and he gives it to his prospective new employer. His employer is a used car salesman and this prospective new employer is a used car salesman and they are in competition and the new used car salesman says thank you very much but, you know, I specialize in Hondas and Toyotas and this is a Ford and it won't be of much use to me. You are saying under that scenario you think the guidelines would place the value of the intended loss at zero.

No, I am not saying that. I am saying MR. FISHER: something that's very importantly different. The difference



has to do with the essence of very sophisticated complex trading programs and a car. Now the difference here is that program which was plopped into his hands and which he later improperly and beyond authority, as he very openly admitted to you, abused the authority he had, went beyond it, and misused it and committed a crime. However, the crime he committed had nothing whatsoever to do with any intention on his part to compete with Soc Gen for the very easiest of reasons; it was impossible.

THE COURT: You are saying that I should infer a lack of intent on his part, this goes to the arbitrage issue that you so kindly provided me with some materials on, because not only was it in your view impossible for Tower to compete, but he understood or more importantly he believed and understood that they could not compete.

MR. FISHER: Yes.

THE COURT: Do I have the entirety of the distinction now you want to make.

MR. FISHER: Not yet.

THE COURT: The suspense is killing me.

MR. FISHER: We made some considerable progress.

THE COURT: You know, progress is a wonderful thing. So go ahead.

MR. FISHER: So here he is at Tower with this program and the program with which he was familiar in terms of its

operation ate about \$3 billion of free capital just about every single day it operates which was its secret to success in terms of index arbitrage because it didn't have to pay much if anything for that 3 billion and it could get 3 billion from the Fed any time it wanted because it was a bank.

Now, let's just step aside from poor little Tower.

Tower doesn't have 3 billion. Tower doesn't have 300 million.

It has 25 million. With \$25 million as that quotation from that book whose name I constantly forget, forgive me, but we have correctly cited it, your Honor.

THE COURT: It is The Complete Arbitrage Deskbook.

MR. FISHER: Thank you, written by, this is neat, written by the person who was in charge of Soc Gen's index arbitrage trading in Tokyo and New York. This person knew what they were doing at Soc Gen. And reading what he says, I am sure you have, you know that that kind of trading operation simply can't work without that money.

THE COURT: The government says (A) that all those figures are out of date and that at the time of this crime, much less money was required and (B) that it does not follow from the fact, even if it were true, that Tower couldn't do exactly what Soc Gen was doing, that your client didn't intend and believe that they could still have economic benefit from receiving this information.

MR. FISHER: With regard, your Honor, to the staleness

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of the numbers, aside from that little bit of fun I had in drafting this by referring to a case with the printed version of a book next to a Kindle. Do you remember that. It occurred to me highly unlikely that that book would be converted into a Kindle if it was simply outdated and didn't matter. But even better was the footnote that we present on page 6 where professors of apparent renown are writing articles citing this antediluvian information in a book which no one but someone who wants to take a long nap should be reading. That's absurd.

The evidence the government claims it's positing, where, what. They have some testimony that there may be ways, depending on your relationship with your broker, you can take 25 million and on a clear day with the sun shining, you might get it up to 800 million. I very much, I will confess, would like to have the difference between 800 million and 3 billion; that would be fun.

So my point is he had a different intention. This is what I have been I think taking too long to get to. His intention was to develop the infrastructure that was a main, main element of these programs and design trading programs of his own on top of, superimposed upon the very important, there is no denying, very important, thanks to Android phones of which I recently heard, I don't know if you ever heard, the word platform is now a big deal. These were going to be platforms to programs he would design that did and would make









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money with a mere \$25 million. And that was his intention.

And he knew that that kind of trading could, would never compete with Soc Gen in any way at all to any degree at all and would cost Soc Gen nothing.

THE COURT: Your view of the guidelines in this regard is if I, forgive the term, steal, if I steal my employer's property, they are secret, so that I can design a better mousetrap, making use of their secret then adding on to it, and I know that my better mousetrap that's going to be used by my future employer won't be in competition with theirs, the intended loss is zero.

MR. FISHER: Yes.

THE COURT: How can that be. In other words, you take something that is to Soc Gen not only a valuable secret, but valuable because it is secret and because it is the fruit of their and their inventors' ingenuity.

MR. FISHER: Yes.

THE COURT: And you say, well, because I am just going to use it in a noncompetitive way, they were deprived of nothing of value. That runs totally contrary to common sense. Forgive me for putting it that way.

MR. FISHER: There are times when the guidelines run totally contrary to common sense with all due respect to these very wise promulgators of guidelines. But maybe this is one of them, but that's what it says here. That's what the courts

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that have construed that term have said, subjective intent, and if he in his head understood that he would be taking \$25 million in coming up with a program that would be superimposed on the extremely valuable helpfully important DQS and ADP, the evidence is very clear, he was very hesitant about that, but it makes no difference for this argument, and knew absolutely knew from the three years he was at Soc Gen that this wouldn't be even a blip, a nothing, zero, zero damage, zero pecuniary harm, zero impact. So, that's why the appropriate intended loss guidelines here is zero.

THE COURT: On this issue before we go to acceptance of responsibility, let me hear from the government.

MR. LEVY: Your Honor, I did want to comment on a couple things that were raised by your Honor's colloquy with defense counsel. That is first the notion that the defendant was going to use the stolen computer code to do something else, to somehow evolve in his own way or improve upon DQS once he brought his knowledge from Soc Gen to Tower. It's just not there. What I am mostly interested in is what happened at the trial and the evidence that was offered.

Here is from page 677 of the transcript; this is the testimony of Rakesh Kumar. Based on these conversations and what he had been talking about are the meetings with the defendant.

"Q. What was your understanding of the system that he was



going to build for you?

"A. It was going to be an index arbitrage system based on the index arbitrage system that he was working on at Soc Gen.

"Q. How similar or different from the index arbitrage system he worked on at Soc Gen?

"A. My understanding was that maps and the indicator, the logic part was going to be similar. There were going to be changes because of integrating it with Tower's infrastructure.

"Q. These changes, were they major changes or minor changes or where do they fall on that continuum?

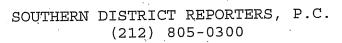
"A. Individually I think I would classify them as minor changes."

There is more on this. The government played a tape of a meeting that occurred on September 22.

THE COURT: Maybe you misunderstood what I said. I don't think it matters, either in law or in fact, whether the system he was going to build for them was exactly the same or just substantially the same; why would that matter at all.

MR. LEVY: I don't think it matters very much, but I think the notion that defense counsel has suggested he was going to make meaningful changes to the system once he got to Tower is just not reflected in the evidence.

THE COURT: I think you are right and I think that some of the other things defense counsel said are not consistent with my own recollection of the evidence but I don't





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think it matters. Even if it were as defense counsel is suggesting, something that he was going to build upon, so what. That's like saying, oh, I am stealing the Rolls Royce engine from my employer but I am going to build a different car from this Rolls Royce engine. So what.

MR. LEVY: Fair enough.

THE COURT: Go ahead.

MR. LEVY: I am happy to --

THE COURT: I think if you can with reasonable brevity we should of course get the record straight.

MR. LEVY: The government played a portion of a meeting that was recorded that the defendant was on, Government Exhibit 505, page 6, where he was talking about the system that he wanted to build. He said, so the way SG works, he was interrupted, then he said, is the way we will start it. One of the Tower people said, perfect. Then the defendant said, I don't want to, he was interrupted, change a lot. But it is not the best system. So the notion that he was going to evolve the system in any meaningful way is just not reflected in the testimony.

THE COURT: Also, I suspect you are getting to this, implicit in this is if, as defense counsel argues, Tower couldn't use the system and the defendant knew that they couldn't use the system, why are they both agreeing to build substantially the same system as part of his new employment.

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That makes no sense at all. That contemporaneous view is infinitely more direct evidence of what was intended or what was not intended than any hypothetical about the financial requirements for such a system.

MR. LEVY: As we set out in our sentencing submission, there was quite a bit of testimony that the amount of money that Tower did have available both cash that it had combined with borrowing would have been able to obtain was sufficient to effectively run the system, that is, make some money from the system. I think, notwithstanding Mr. Fisher's suggestion that somehow Soc Gen had access to billions of dollars in capital, there actually was not any testimony in the record reflecting what amount of capital it deployed in running DQS.

As a firm, it may have had access to billions of dollars. It could have been a facility run through the Federal Reserve. I have no idea. The point is in this case, in this record, there was nothing saying the amount of money that Soc Gen used to run this particular system, which gets to the relevance of this book. I looked quite a bit at the book. It doesn't talk about high-frequency trading. It doesn't talk about exchange-traded funds which began to be sort of available before the publication of this book but they were rather crucial to the running of Soc Gen's index arbitrage system, because as you will recall, it was trading futures on the index, stocks individually underlying the index, and the

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exchange-traded fund that represented the index, and it was taking advantage of the arbitrage opportunities among those three sets of instruments.

That this book does not talk about exchange-traded funds suggests perhaps that it might not be relevant so much to determining what is the appropriate amount of capital that would be necessary to running an index arbitrage system. That it does not talk about high-frequency trading suggests that it's completely irrelevant. The fact is that the evidence that we set out that was adduced at trial made clear that there was plenty of money for Tower to use to run this system profitably.

More importantly, I am not sure why the amount of money that Soc Gen would have had to run this system versus the amount of money that Tower had to run the system makes any difference whatsoever. The point is two competing firms running largely identical strategies would be going after, seeking to identify and taking advantage of the same arbitrage opportunities. Whoever gets there first is going to win.

There was some evidence that came out at trial that Tower's infrastructure would allow them to execute the same strategy faster meaning they are going to win more often than they are going to lose or at least more often than Soc Gen might win.

THE COURT: That's the whole heart of the ultimate economic benefit of this high-speed trading; it only works

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because you gets in faster than anyone else.

MR. LEVY: You identify the opportunities faster; you are able to trade on the opportunities faster.

THE COURT: Would the loss not be the same if what was clearly not the case here but if Tower had said to the defendant or if the defendant had otherwise believed, well, they can't use it right now because they are not yet equipped economically to make use of this but in five years they will be good enough to do it. It might be more difficult, you might have to put into the equation some discount factors, but it would still not be a zero calculation. The intent would be to put them in a position to cause that loss.

MR. LEVY: I think that's right, although the difference between what happened here and what happened, what would happen under that scenario actually underscores why there is economic loss in this case, because the whole point of bringing the defendant from Soc Gen to Tower was that his was a proven system, it was a money-making system, and it radically reduced the amount of time that they would have to wait to realize those profits as opposed to the five-year time horizon that your Honor just hypothesized.

THE COURT: All the points you are making are exactly right. My hypothesis was a proven system but just one that they were not economically ready to take advantage of, but once they grew they would be able to take advantage of it. They

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with counsel. If he wants to whisper in your ear something he wants you to raise, I will give you a minute to do that.

MR. FISHER: Before bending down to whisper, I just want to note, your Honor, that on my own score card of these proceedings, of the two critical issues in this case, I am O for 2.

THE COURT: Statistically, I suspect there were many, many times that Alex Rodriguez went O for 2 before the season was over yet he did all right. You have had many more trials, you have had many successful trials in the past. You will have many successful trials I am sure still to come. So I wouldn't be so bothered. Your client perhaps may be more bothered, but he shouldn't be; he has very good counsel in this case.

MR. FISHER: I will bend over, with the court's permission.

(Pause)

MR. FISHER: Thank you, your Honor.

THE COURT: Let's turn to acceptance of responsibility. Here, it's the government I need to hear from first, because the probation office concluded that 2-point credit should be given for acceptance of responsibility. The government makes much of the fact that the defendant went to trial and of course he therefore doesn't qualify for the third point which is given when you don't put the government to the expense and burden of preparing for trial, so forth.

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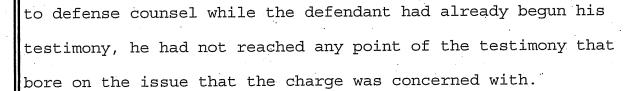


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But the guidelines do recognize there are unusual cases where someone who goes to trial still may have accepted responsibility and they give an example of someone who is preserving a legal issue. I think that is something akin to what happened here. The defense had a view of the indictment that they believe allowed them to argue that if at the moment he took the codes home, he had not yet formed an intent to give them to Tower, things to that effect, that not under the law generally but under the terms of the indictment, that he would be entitled to a judgment of acquittal if the jury at least credited his testimony.

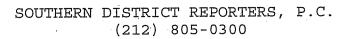
It was a view of the indictment that this court did not agree with. Counsel made a calculated decision, and these are always tough strategic calls, not to raise this pretrial. No pretrial request was made for a determination of this issue of law either before Judge Koeltl who originally had the case or before me. Defense counsel even went so far as to commit in his opening statement that his client would take the stand, not knowing yet whether the court would agree or disagree with his interpretation of the indictment.

The matter came to a head after the court issued the second version of its proposed charge but of course defense counsel could have brought it to a head at any previous time and chose not to. But I would note for the record that, first, at the time that the second version of the charge was delivered



Second, more fundamentally, I assume that the defendant's testimony would have been the same under any set of circumstances. When defense counsel committed with his client's full knowledge and consent that his client would take the stand at the very outset of the trial, clearly, this wasn't with the implicit suggestion, well, I will give kind of testimony if the charge is one way and I will give a different factual testimony if the charge went the other way. I would never believe that either Mr. Fisher or his client would do that.

as the court gave it and the testimony that Mr. Agrawal gave, it seemed to the court that he was essentially admitting all elements of the charge as the court interpreted the indictment. I was impressed with that. It's a shame the guidelines are always so rigid. It's wonderful at least that they are not binding on the court. I would have thought that this kind of unusual situation might in theory have called for a 1-point credit rather than a 2-point credit. It sort of doesn't quite fit perfectly, the 2-point credit situation. But the guidelines doesn't give me a choice; it's either zero points or two points. I am leaning towards the 2-point credit.





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now you are grown up enough to learn this level of physics so sit in my classes. He gave me what he gave everyone else and that's what I learned, equality.

Then I come to the bank and I see how, today I don't realize why they hired me if they had to treat me so different. I had put, my mother had put, my father had put 25, 27 years hard work making me what I am. I achieve something they will feel happy and with their happiness I will be motivated to achieve more then I will achieve something and they will be happy. It was a very nice positive spiral, upward spiral. Now it has been, now I think in future it's going to be a bit of a negative spiral that I have to face. I will find so many hurdles which will make her sad. Her sadness will make me sad which will increase the hurdles.

This negative spiral which I am about to enter into is something that is a challenge I have to face to again make this negative spiral a positive spiral again. But that glow she has lost, the crystal she had which has been shattered, broken, is irreplaceable. That I know for a fact now. I will try to make up to it again. It's an impossible task which is why I think I will be busy for my entire life now.

THE COURT: Thank you very much.

Well, it was interesting hearing Mr. Agrawal's articulate remarks. I have to say I was more taken with the portion of his remarks that came from the heart than from the

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head. The portions from the head were in the court's view rationalizations offered in mitigation, I don't doubt the sincerity of them, but they did not come to grips, as his later remarks did, with the fact that the serious mistake he made has as its perhaps most intensely injured victims, his own mother, his own family.

when one reflects on how the devotion a loving parent can give such promise and carry with it such foundation on which to build, as Mr. Agrawal was in the process of building, a laudable and successful career, the shame that he is feeling must indeed, as his counsel has also noted, be intense. That is a factor relevant to the court's determination because it is in fact part of the punishment he has suffered and will continue to suffer.

It is regretfully not unique to this case. More often than not, the primary victims real victims, crime after crime, are the people who have devoted their lives, their love, their energies to the upbringing of a person who then by betraying society also betrays them. I do not minimize in any of those cases, including this one, the self-inflicted punishment that arises therefrom.

But on the other hand, it is incumbent on any sentencing judge to always keep many different focuses. You have to look at the human being before you first and foremost, but you have to look at the crime, you have to look at society,



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you have to look at the future, you have to look at the implications for the rule of law. In balancing those, as Section 3553(a) recognizes so much more completely and so much more astutely than the sentence guidelines, it's a complicated and nuanced difficulty.

The guidelines in white-collar cases, as I have had occasion to elaborate on in other cases at much greater length than I will here, place in the court's view an inordinate emphasis on the loss calculation. The calculation that this very case illustrates is not without its own problems. While I am convinced that the calculation in this particular case was if anything on the low side, to build so much of the guidelines range on that one factor seems to me to be inherently unbalanced in all but very few cases.

The injury to society is of course relevant and is reflected perhaps to some degree by the loss, though even then there are so many difficulties both in calculating the loss and in determining what it really means. Here, for example, the heart of the injury suffered by Soc Gen was the loss of the product of its ingenuity and its creating a method of trading that gave it a competitive advantage. That's a different kind of loss than, for example, the kind of loss you might have in a more conventional securities fraud case where it might be a function of how much people invested in an overstated account, overstated financial report or something like that, or invested

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because of an overstated financial report.

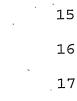
These are not things that can be quantified in a way that warrants the huge weight that the guidelines accord to the loss calculation. So I am not inclined to give a guidelines range here more than passing weight in my determination. I think I have already indicated the factors that I think do weigh heavily. One was the fact that any way you look at it, this was a theft of something big and valuable and important. I don't need to put a number on it to recognize that this was a significant misappropriation; second, that Mr. Agrawal was the prime mover; third, that this was, this conduct, that was inconsistent with the way he had otherwise conducted his life.

This was not conduct that represented the work of a professional thief or, short of that, someone who knew no difference between right or wrong or how to follow right or wrong. Mr. Agrawal knew the difference between right and wrong and conducted himself in most of his life on the right side of that line, but in this case, crossed that line. The rest of his life cannot be forgotten and is not forgotten by this court. It also bears, I must say, on one of the more particular factors set forth in 3553(a) which is specific deterrence. I tend to agree with defense counsel that there is no need for much punishment here in terms of specific deterrence because it's very unlikely Mr. Agrawal will engage in this conduct again.

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The last of the factors, and I don't mean to suggest that I have not considered all the factors under Section 3553(a), I have with some length in my mind, but the last one I want to emphasize because it is quite an important factor is general deterrence. For reasons that I think I have already alluded to, the need for general deterrence is substantial here. This is a sophisticated crime. It is a crime that others will undoubtedly be tempted to do because of both the nature of the valuableness of the secrets that are stolen and also the ability by persons more corrupt than Mr. Agrawal to conceal and obscure their theft.

But I do not believe that the guidelines range of five, six, almost seven years is what is sufficient but no more than necessary to carry out all the functions of Section 3553(a). It seems to me that a nonguidelines sentence considerably less than that can achieve full general deterrence as well as recognizing all the other factors I have alluded to.

So the sentence of the court is that the defendant is sentenced to three years imprisonment, 36 months, to run concurrently on each count, followed by two years supervised release, again concurrent on each of the two counts. No fine will be imposed because the court makes a finding that this defendant, despite his prior assets, is no longer in a position to pay any meaningful fine now or in the foreseeable future. There is, however, a special assessment of \$200 that is



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mandatory and must be paid.

The terms of supervised release are, first, the mandatory conditions that the defendant shall not commit any other federal, state, or local crime; the defendant shall not illegally possess a controlled substance; the defendant shall not possess a firearm or destructive device; and the defendant shall cooperate in the collection of DNA.

The fifth mandatory condition, the drug testing condition is suspended based on the court's determination that defendant poses a low risk of future substance abuse. There will also be imposed the standard conditions of supervision 1 through 13. They appear on the face of the judgment and will be gone over with the defendant by the probation officer when the defendant reports to begin his period of supervised release, which may or may not happen, given the possibility of deportation.

Finally, there are the special conditions; first, the defendant shall obey the immigration laws and comply with the directives of the immigration authorities; second, that the defendant within 72 hours of release from custody will report to the nearest probation office to begin his period of supervised release. He will be supervised by the district of his residence.

Before I advise the defendant with respect to appeal, is there anything else, first, from the government.

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MR. BROWN: No, your Honor.

THE COURT: Anything further from defense counsel.

MR. FISHER: No, your Honor.

THE COURT: So Mr. Agrawal you have the right to

appeal this sentence. Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: If you can't afford counsel for any such

appeal, the court will appoint one for you free of charge.

Do you understand that?

THE DEFENDANT: Yes, your Honor.

THE COURT: Very good.

That concludes this matter.

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