

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

UNITED STATES OF AMERICA                    )  
  )  
  )     No.  
  )     Judge  
  )  
  )  
v.    )  
  )  
JAMES COPE                                        )

PLEA AGREEMENT

The United States of America, through David Rivera, United States Attorney for the Middle District of Tennessee, and Assistant United States Attorney Henry Leventis, and defendant, James Cope, through defendant’s counsel, Aubrey Harwell, pursuant to Rule 11(c)(1)(A) and (C) of the Federal Rules of Criminal Procedure, have entered into an agreement, the terms and conditions of which are as follows:

Charges in This Case

1. Defendant acknowledges that he has been charged in the Information in this case with insider trading in violation of Title 15, United States Code, Section 78j(b) and Title 17, Code of Federal Regulations, Section 240.10b-5.
2. Defendant has read the charges against him contained in the Information, and those charges have been fully explained to him by his attorney. Defendant fully understands the nature and elements of the crime with which he has been charged.

Charges to Which Defendant is Pleading Guilty

3. By this Plea Agreement, defendant agrees to enter a voluntary plea of guilty to Count 1 of the Information, charging insider trading.

### Penalties

4. The parties understand and agree that the offense to which defendant will enter a plea of guilty carries the following maximum penalties: 20 years of imprisonment, 3 years of supervised release, a \$5,000,000 fine and a \$100 special assessment.

5. Defendant also understands that a defendant who is not a United States citizen may be removed from the United States, denied citizenship, and denied admission to the United States in the future, regardless of whether the defendant currently has lawful temporary or permanent resident status.

### Acknowledgements and Waivers Regarding Plea of Guilty

#### Nature of Plea Agreement

6. This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant regarding defendant's criminal liability in case

3:16-cr-00210

7. Defendant understands that by pleading guilty he surrenders certain trial rights, including the following:

a. If defendant persisted in a plea of not guilty to the charge against him, he would have the right to a public and speedy trial. Defendant has a right to a jury trial, and the trial would be by a judge rather than a jury only if defendant, the Government, and the Court all agreed to have no jury.

b. If the trial were a jury trial, the jury would be composed of twelve laypersons selected at random. Defendant and his attorney would have a say in who the jurors would be by removing prospective jurors for cause, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict

of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent; that the Government bears the burden of proving defendant guilty of the charge(s) beyond a reasonable doubt; and that it must consider each count of the indictment against defendant separately.

c. If the trial were held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

d. At a trial, whether by a jury or a judge, the Government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and his attorney would be able to cross-examine them. In turn, defendant could present witnesses and other evidence on his own behalf. If the witnesses for defendant would not appear voluntarily, he could require their attendance through the subpoena power of the Court.

e. At a trial, defendant would have a privilege against self-incrimination so that he could testify or decline to testify, and no inference of guilt could be drawn from his refusal to testify.

8. Defendant understands that by pleading guilty he is waiving all of the trial rights set forth in the prior paragraph. Defendant's attorney has explained those rights to him, and the consequences of his waiver of those rights.

#### Factual Basis

9. Defendant will plead guilty because he is in fact guilty of the charge contained in Count 1 of the Information. In pleading guilty, defendant admits the following facts and that those facts establish his guilt beyond a reasonable doubt:

Defendant James Cope was a resident of Murfreesboro, Tennessee and was a licensed attorney with more than 20 years of experience as a bank director. Pinnacle Financial Partners (“Pinnacle”) was a publicly-traded financial institution headquartered in Nashville, Tennessee. The defendant was a member of the Board of Directors of Pinnacle, served as Chair of the Pinnacle Board of Directors Compensation Committee, and had previously served as Lead Director for Pinnacle.

In connection with his responsibilities as a Pinnacle director, the defendant received confidential, non-public information concerning Pinnacle and certain other publicly-traded companies. The defendant had a fiduciary duty to maintain such information in confidence and to refrain from using this information for personal gain.

Pinnacle maintained and enforced a policy prohibiting insider trading by its employees and directors. Under Pinnacle’s “Statement of Policy on Prevention of Insider Trading,” utilization of inside information “to transact personal investment decisions is expressly forbidden.” Pinnacle’s policy expressly stated that “it is illegal to engage in ‘insider trading,’ which is purchasing or selling securities when one is in possession of material nonpublic information relating to those securities.”

On or about January 12, 2015, the defendant signed a certification acknowledging that he had reviewed Pinnacle’s Trading Policy and Insider Trading Statement and certified that he would comply with these policies.

In October 2015, the defendant attended a Pinnacle event at which there was a presentation of Pinnacle’s insider trading policy. During this event, attendees were reminded that directors have a duty to “[k]eep all inside information confidential” and that directors should “[n]ever buy

or sell stock while in possession of inside information.” Attendees were also reminded that inside information is “[m]aterial, nonpublic information you learn about Pinnacle... or another public company while serving as a director, officer or employee of Pinnacle.”

In 2015 and 2016, Avenue Bank (“Avenue”) was a publicly-traded financial institution whose shares were registered with the United States Securities and Exchange Commission pursuant to Section 12 of the Securities Exchange Act of 1934.

In December 2015, executives of Pinnacle and Avenue began discussions regarding a potential acquisition of Avenue by Pinnacle. On December 1, 2015, the Executive Committee of Pinnacle’s Board of Directors, including the defendant, was informed by Pinnacle CEO Michael Terry Turner that he (Turner) had reached out to executives at Avenue to express interest in a merger between Pinnacle and Avenue.

In late December 2015, the defendant and other Pinnacle directors were given access to certain information in advance of an upcoming Executive Committee meeting to be held on January 5, 2016. This material was non-public, and discussed a potential acquisition of an unnamed bank. This material also discussed a potential price per share of \$19.00 for the proposed acquisition. On January 3, 2016, the defendant accessed the aforementioned Pinnacle director materials via an online portal.

On January 5, 2016, Pinnacle executives briefed the Executive Committee of the Pinnacle Board of Directors on a potential acquisition of Avenue, using the aforementioned information. The defendant was present for and participated in this meeting. This meeting included discussion of the proposed Pinnacle/Avenue transaction, including discussion of financial specifics of the target acquisition price of \$19.00 per share of Avenue stock. On January 5, 2016,

during the Executive Committee meeting of Pinnacle's Board of Directors, all of the Executive Committee members, including the defendant, stated that they were in favor of Pinnacle acquiring Avenue.

On January 5, 2016, after learning the aforementioned information regarding Pinnacle's interest and efforts to acquire Avenue, the defendant purchased 6,179 shares of Avenue stock. The approximate price per share for these purchased shares was \$13.81. The defendant purchased this stock on the basis of material, non-public information that he had obtained in confidence no later than the Pinnacle Executive Committee meeting on January 5, 2016.

Defendant also acknowledges that for the purpose of determining the applicable advisory sentencing range under the United States Sentencing Guidelines (hereinafter "U.S.S.G."), the following conduct, to which he stipulates, constitutes relevant conduct under U.S.S.G. § 1B1.3: The defendant's purchase of 4,000 shares of Avenue Bank stock on January 11, 2016.

#### Sentencing Guidelines Calculations

10. The parties understand that the Court will take account of the United States Sentencing Guidelines (hereinafter "U.S.S.G."), together with the other sentencing factors set forth at 18 U.S.C. § 3553(a), and will consider the U.S.S.G. advisory sentencing range in imposing defendant's sentence.

11. For purposes of determining the U.S.S.G. advisory sentencing range, the United States and defendant agree, pursuant to Rule 11(c)(1)(C), to the following:

a. Offense Level Calculations.

i. The base offense level for Count 1 is 8, pursuant to U.S.S.G. § 2B1.4(a).

ii. Pursuant to U.S.S.G. §§ 2B1.4(b)(1) and 2B1.1(b)(1)(D), the base offense level should be increased by 6 because the loss amount exceeds \$40,000.

iii. Two levels should be added pursuant to U.S.S.G. § 3B1.3, because the defendant abused a position of trust.

iv. Assuming defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence, a 2-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(a) and a 1-level reduction will be warranted, pursuant to U.S.S.G. § 3E1.1(b).

b. Therefore, the parties agree to recommend to the Court a final offense level of 13 (the “Recommended Offense Level”). Defendant understands that the offense level as ultimately determined by the Court (the “court-determined offense level”) may be different from the Recommended Offense Level. Defendant likewise understands that the guidelines range as ultimately determined by the Court (the “court-determined guidelines range”) may be based on an offense level different from the Recommended Offense Level.

#### Agreements Relating to Sentencing

12. Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the United States and the defendant agree that the following sentence represents an appropriate disposition of the case:

- a. The defendant will serve a probationary sentence of twenty four (24) months.
- b. During the first nine (9) months of the defendant’s sentence, he will be subject to home confinement.
- c. The defendant will pay a fine of fifty-five thousand dollars (\$55,000).

13. Defendant agrees to pay the special assessment of \$100 for count one in the Information at or before the time of sentencing to the Clerk of the U.S. District Court.

Presentence Investigation Report/Post-Sentence Supervision

14. Defendant understands that the United States Attorney's Office, in its submission to the Probation Office as part of the Pre-Sentence Report and at sentencing, shall fully apprise the District Court and the United States Probation Office of the nature, scope, and extent of defendant's conduct regarding the charges against him, as well as any related matters. The Government will make known all matters in aggravation and mitigation relevant to the issue of sentencing.

15. Defendant agrees to execute truthfully and completely a Financial Statement (with supporting documentation) prior to sentencing, to be provided to and shared among the Court, the United States Probation Office, and the United States Attorney's Office regarding all details of his financial circumstances, including his recent income tax returns as specified by the Probation Officer. Defendant understands that providing false or incomplete information, or refusing to provide this information, may be used as a basis for denial of a reduction for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1, and may be prosecuted as a violation of Title 18, United States Code, Section 1001, or as a contempt of the Court.

16. This Plea Agreement concerns criminal liability only. Except as expressly set forth in this Plea Agreement, nothing herein shall constitute a limitation, waiver, or release by the United States or any of its agencies of any administrative or judicial civil claim, demand, or cause of action it may have against defendant or any other person or entity. The obligations of this Plea Agreement are limited to the United States Attorney's Office for the Middle District of Tennessee and cannot



bind any other federal, state, or local prosecuting, administrative, or regulatory authorities, except as expressly set forth in this Plea Agreement.

17. Defendant understands that nothing in this Plea Agreement shall limit the Internal Revenue Service (IRS) in its collection of any taxes, interest, or penalties from defendant and his spouse.

#### Entry of Guilty Plea

18. The parties jointly request that the Court accept the defendant's plea of guilty as set forth in this agreement and enter an order reflecting the acceptance of the plea; the parties understand the Court may wish to review the pre-sentence report.

#### Waiver of Appellate Rights

19. Regarding the issue of guilt, defendant hereby waives all (i) rights to appeal any issue bearing on the determination of whether he is guilty of the crime to which he is agreeing to plead guilty; and (ii) trial rights that might have been available if he exercised his right to go to trial. Regarding sentencing, defendant is aware that 18 U.S.C. § 3742 generally affords a defendant the right to appeal the sentence imposed. Acknowledging this, defendant knowingly waives the right to appeal any sentence within or below the Recommended Guidelines Range. Defendant also knowingly waives the right to challenge the sentence imposed in any collateral attack, including, but not limited to, a motion brought pursuant to 28 U.S.C. § 2255 and/or § 2241, and/or 18 U.S.C. § 3582(c). However, no waiver of the right to appeal, or to challenge the adjudication of guilt or the sentence imposed in any collateral attack, shall apply to a claim of involuntariness, prosecutorial misconduct, or ineffective assistance of counsel. Likewise, the Government waives the right to appeal any sentence within or above the Recommended Guidelines Range.

### Other Terms

20. Defendant agrees to cooperate with the United States Attorney's Office in collecting any unpaid fine and restitution for which defendant is liable, including providing financial statements and supporting records as requested by the United States Attorney's Office.

21. Defendant agrees to cooperate with the IRS in any tax examination or audit of defendant and his wife that directly or indirectly relates to or arises out of the course of conduct defendant has acknowledged in this Plea Agreement, by transmitting to the IRS original records or copies thereof, and any additional books and records that the IRS may request. Nothing in this paragraph precludes defendant from asserting any legal or factual defense to taxes, interest, and penalties that may be assessed by the IRS.

22. Should defendant engage in additional criminal activity after he has pled guilty but prior to sentencing, defendant shall be considered to have breached this Plea Agreement, and the Government at its option may void this Plea Agreement.

### Conclusion

23. Defendant understands that the Information and this Plea Agreement have been or will be filed with the Court, will become matters of public record, and may be disclosed to any person.

24. Defendant understands that his compliance with each part of this Plea Agreement extends until such time as he is sentenced, and failure to abide by any term of the Plea Agreement is a violation of the Plea Agreement. Defendant further understands that in the event he violates this Plea Agreement, the Government, at its option, may move to vacate the Plea Agreement, rendering

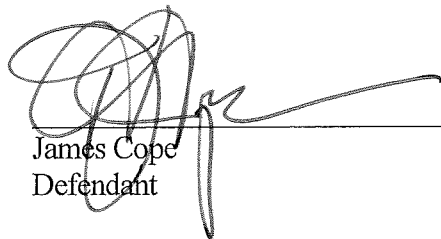
it null and void, and thereafter prosecute defendant not subject to any of the limits set forth in this Plea Agreement, or may require defendant's specific performance of this Plea Agreement.

25. Defendant and his attorney acknowledge that no threats have been made to cause defendant to plead guilty.

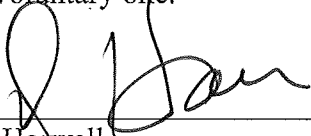
26. No promises, agreements, or conditions have been entered into other than those set forth in this Plea Agreement, and none will be entered into unless memorialized in writing and signed by all of the parties listed below.

27. Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending Information. Further, I fully understand all rights with respect to the provisions of the Sentencing Guidelines that may apply in my case. I have read this Plea Agreement and carefully reviewed every part of it with my attorney. I understand this Plea Agreement, and I voluntarily agree to it.

Date: 10/21/16

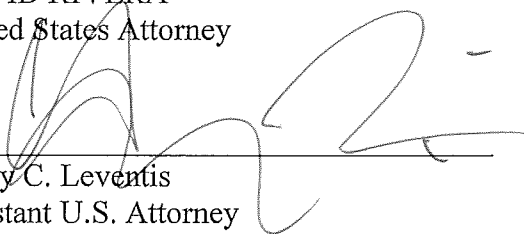
  
James Cope  
Defendant

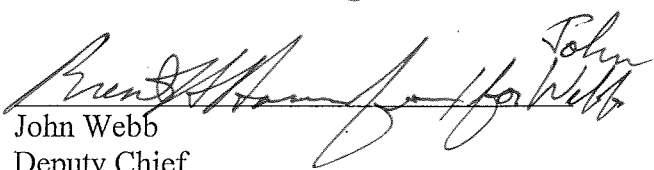
28. Defense Counsel Signature: I am counsel for defendant in this case. I have fully explained to defendant his rights with respect to the pending Information. Further, I have reviewed the provisions of the Sentencing Guidelines and Policy Statements, and I have fully explained to defendant the provisions of those guidelines that may apply in this case. I have reviewed carefully every part of this Plea Agreement with defendant. To my knowledge, defendant's decision to enter into this Plea Agreement is an informed and voluntary one.

Date: 00 21-2011   
Aubrey Harwell  
Attorney for Defendant

Respectfully submitted,

DAVID RIVERA  
United States Attorney

By:   
Henry C. Leventis  
Assistant U.S. Attorney

  
John Webb  
Deputy Chief