

WMP/JPL/LRT:JPM/JPL/DP
F. #2012R01716

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

DEFERRED PROSECUTION AGREEMENT

- against -

Cr. No. 16-516 (NGG)

OCH-ZIFF CAPITAL MANAGEMENT
GROUP LLC,

Defendant.

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Defendant Och-Ziff Capital Management Group LLC (“Och-Ziff” or the “Company”), pursuant to authority granted by the Company’s Board of Directors, and the United States Department of Justice, Criminal Division, Fraud Section, and the United States Attorney’s Office for the Eastern District of New York (collectively, the “Offices”), enter into this deferred prosecution agreement (the “Agreement”).

CRIMINAL INFORMATION AND ACCEPTANCE OF RESPONSIBILITY

1. The Company acknowledges and agrees that the Offices will file the attached four-count criminal Information in the United States District Court for the Eastern District of New York charging the Company with two counts of conspiracy to commit offenses against the United States in violation of Title 18, United States Code, Section 371, that is, to violate the anti-bribery provisions of the Foreign Corrupt Practices Act of 1977 (“FCPA”), as amended, Title 15, United States Code, Section 78dd-1, one count of violating the books and records provisions of the FCPA, in violation of Title 15, United States Code, Sections 78m(b)(2)(A), (b)(4), (b)(5), and 78ff(a), and one count of violating the internal controls provision of the FCPA, in violation of

Title 15, United States Code, Sections 78m(b)(2)(B), (b)(4), (b)(5) and 78ff(a). In so doing, the Company: (a) knowingly waives its right to indictment on these charges, as well as all rights to a speedy trial pursuant to the Sixth Amendment to the United States Constitution, Title 18, United States Code, Section 3161, and Federal Rule of Criminal Procedure 48(b); and (b) knowingly waives any objection with respect to venue to any charges by the United States arising out of the conduct described in the Statement of Facts, which is attached to this Agreement as Attachment A (“Statement of Facts”), and consents to the filing of the Information, as provided under the terms of this Agreement, in the United States District Court for the Eastern District of New York. The Offices agree to defer prosecution of the Company pursuant to the terms and conditions described below.

2. The Company admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, directors, employees, and agents as charged in the Information, and as set forth in the Statement of Facts, and that the allegations described in the Information and the facts described in the Statement of Facts are true and accurate. Should the Offices pursue the prosecution that is deferred by this Agreement, the Company stipulates to the admissibility of the Statement of Facts in any proceeding, including any trial, guilty plea, or sentencing proceeding, and will not contradict anything in the Statement of Facts at any such proceeding.

TERM OF THE AGREEMENT

3. This Agreement is effective for a period beginning on the date on which the Information is filed and ending three (3) years from the later of the date on which the Information is filed or the date on which the independent compliance monitor (the “Monitor”) is

retained by the Company, as described in Paragraphs 11 through 13 below (the "Term"). The Company agrees, however, that, in the event the Offices determine in their sole discretion, that the Company has knowingly violated any provision of this Agreement, an extension or extensions of the term of the Agreement may be imposed by the Offices, in their sole discretion, for up to a total additional time period of one year, without prejudice to the Offices' right to proceed as provided in Paragraphs 16 through 19 below. Any extension of the Agreement extends all terms of this Agreement, including the terms of the independent compliance monitorship set forth in Attachment D for an equivalent period. Conversely, in the event the Offices find, in their sole discretion, that there exists a change in circumstances sufficient to eliminate the need for the monitorship in Attachment D, and that the other provisions of this Agreement have been satisfied, the Term of the Agreement may be terminated early. If the Court rejects the Agreement, all the provisions of the Agreement shall be deemed null and void, and the Term shall be deemed to have not begun.

RELEVANT CONSIDERATIONS

4. The Offices enter into this Agreement based on the individual facts and circumstances presented by this case, including:
 - a. The Company did not voluntarily self-disclose the offense conduct to the Offices, and as a result the Company was not eligible for a more significant discount on the fine amount or the form of resolution;
 - b. The Company received credit, in addition to the two-point downward adjustment to the Sentencing Guidelines, of 20 percent off of the bottom of the Sentencing Guidelines range for its cooperation with the Offices' investigation, including its Audit

Committee's very thorough and comprehensive internal investigation through counsel which included regular reports to the Offices, Company counsel's collection and production of voluminous evidence located in foreign countries, and efforts to make current and former employees available for interviews. The Company did not receive additional credit because of issues that resulted in a delay to the early stages of the investigation, including failures to produce important, responsive documents on a timely basis, and in some instances producing documents only after the Offices flagged for the Company that the documents existed and should be produced, and providing documents to other defense counsel prior to their production to the government;

c. By the conclusion of the investigation, the Company had provided to the Offices all relevant facts known to it, including information about individuals involved in the offense conduct;

d. The Company engaged in significant remediation to improve its compliance program and internal controls, and the Company has committed to continue to enhance its compliance program and internal controls, including ensuring that they satisfy the minimum elements of the corporate compliance program set forth in Attachment C to this Agreement;

e. In addition to the Company's remedial efforts, the Company has agreed to the imposition of an independent compliance monitor to prevent the reoccurrence of the misconduct;

