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May 4, 2022

VIA EMAIL (redacted version filed via ECF)

Hon. John G. Koeltl  
United States District Judge  
United States District Court  
500 Pearl St., Room 14A  
New York, NY 10007-1312

Re: *United States v. Arthur Hayes*  
20 Cr. 500 (JGK)

Dear Judge Koeltl:

On behalf of our client, Arthur Hayes, we respectfully submit this letter in connection with sentencing, which is scheduled for May 18, 2022. As set forth below, we request that the Court sentence Mr. Hayes to a term of probation, with no home detention or community confinement, and that he be permitted to reside abroad and travel freely during the term of his probation.

Arthur Hayes is an exceptionally talented and accomplished 36-year old with a bright future ahead of him. Mr. Hayes has achieved amazing things in his adult life—he has revolutionized cryptocurrency derivatives trading and introduced cryptocurrency to countless people around the world. In doing so, he has achieved financial success. Yet Mr. Hayes's success has not changed his essential nature. He is brilliant, hardworking, tolerant, supportive, and kind. He is a loving son and husband, a devoted older brother, a steadfast friend, a trusted mentor, and a generous benefactor.

Mr. Hayes stands before this Court having accepted responsibility for his criminal conduct, which he deeply regrets. In this first-of-its-kind prosecution, the government has achieved a notable success by establishing the principle that cryptocurrency derivatives trading platforms must comply with the Bank Secrecy Act if they provide services to U.S. customers. Mr. Hayes understands and endorses the principle that compliance with the BSA is not only legally required, but also that it serves important societal and law enforcement objectives, especially as cryptocurrency continues to mature as an asset class and as a medium of exchange.

The parties have entered into a plea agreement with a stipulated Sentencing Guidelines range in Zone B. This Court is authorized to impose a probationary sentence under the

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Guidelines, *see* U.S.S.G. § 5B1.1(a), and we respectfully submit that the Court should dispense with home detention or community confinement in light of the sentencing factors set forth in 18 U.S.C. § 3553(a), which are discussed in detail below. The Court should also impose conditions of probation that permit Mr. Hayes to reside abroad and travel freely, so that he can [REDACTED] and return to his home in Asia.

## **FACTUAL BACKGROUND**

### **Upbringing and Education**

Mr. Hayes grew up in a loving, middle-class family in Buffalo and Detroit. Both of his parents worked for General Motors. Although his parents divorced when Mr. Hayes was twelve, he maintained close relationships with both of them until his father's passing in 2006. PSR ¶¶ 78, 86; Ex. 5; Ex. 10.<sup>1</sup>

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From an early age, Mr. Hayes was a standout in school. When he was in eighth grade, he earned a spot at the Nichols School, a top private school in Buffalo. This was made possible by generous financial aid, for which the Hayes family remains grateful. In recent years, as detailed below, Mr. Hayes has become an extraordinarily generous benefactor of scholarships for academically talented and financially needy African American high school students in Buffalo, Rochester, and Syracuse. *See* Ex. 2; Ex. 5; Ex. 10.

At Nichols, Mr. Hayes was nothing short of a superstar. He graduated second in his class with a rigorous curriculum that included Advanced Placement Calculus, Physics, Chemistry, Microeconomics, Macroeconomics, French IV, and English Literature, as well as Advanced British Literature and Russian Comparative Literature. Ex. 3; *see also* PSR ¶ 92. Outside the

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<sup>1</sup> “PSR” refers to the Initial Disclosure Presentence Report dated April 12, 2022; “Ex. \_\_\_” refers to letters of support that are attached hereto. For reasons of personal privacy and security, we have redacted certain private and personal information from the attached letters and from this sentencing submission.

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classroom, Mr. Hayes was deeply engaged in the life of the school and the surrounding community. His range of activities was vast:

A-grade trumpet player in the school orchestra; co-founder of the chess club; writer for the school newspaper; annual mock trial participant; weekly volunteer tutor in a disadvantaged neighborhood in Buffalo; Varsity tennis player; ski-racer; JV soccer player; letterer in Varsity bowling; Varsity cross country runner who held school records and earned college prospect status; and a volunteer who served meals at the City Mission.

Ex. 3 at 1; *see also* Ex. 5.

During his senior year, Mr. Hayes was selected to receive a \$30,000 college scholarship from the Jackie Robinson Foundation (“JRF”), which provides a four-year grant to highly motivated minority college students. Ex. 3 at 2. Della Britton, a distinguished attorney who serves as President and CEO of the Jackie Robinson Foundation, describes Mr. Hayes as “a standout among standouts.” *Id.* at 1; *see also id.* (“He was one of the most impressive, engaged students in our applicant pool and he continued to soar with us”). As described below, over the years Mr. Hayes has remained deeply engaged with the Jackie Robinson Foundation. He currently serves as a Board member, has guided and mentored countless JRF Scholars over many years, and has provided millions of dollars of financial support to the Foundation. *Id.*

After graduating from Nichols, Mr. Hayes went on to the Wharton School at the University of Pennsylvania, where he continued to excel. He “took the most challenging classes at Wharton,” Ex. 1 at 1, and, but for subpar grades in two Chinese-language courses, would have recorded a GPA in the range of A to A+, Ex. 3 at 2. In his spare time, Mr. Hayes dove into an array of extracurricular activities including the crew team, the sprint football team, ballroom dancing, the club squash team, Greek life, and bodybuilding. He also served as a tutor in Economics. *See* PSR ¶ 91; Ex. 5. Today, Mr. Hayes remains close to his college friends, who speak of him with affection and admiration. *See* Ex. 1; Ex. 7.

### **Move to Hong Kong and Career in Finance**

During his junior year at Penn, Mr. Hayes had the opportunity to study abroad in China. He was captivated by life in Asia and decided to move there after college.

In 2008, Mr. Hayes moved to Hong Kong to take a job as an entry-level equity trader at Deutsche Bank. PSR ¶ 95; Ex. 6. These were happy years for Mr. Hayes, as he immersed

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himself in the energizing day-to-day life of Hong Kong. Andrew Goodwin, Mr. Hayes's close friend and roommate in those years, offers an evocative description:

We were students of Chinese culture, politics, and development and spent our downtime reading. We thrived off the energy and opportunity pulsing through a teeming city like Hong Kong. As foreigners in a dynamic port city, we were pigeonholed into categories so broad they ceased to be relevant and so we could largely define ourselves and build community on our own terms. For a fiercely independent and iconoclastic thinker like Arthur, this was extremely important, and I think it accounts for why he has always felt most at home in Singapore or Hong Kong.

Ex. 4 at 1.

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] In 2019, Mr. Hayes bought an apartment in Singapore, and he [REDACTED] moved there from Hong Kong. [REDACTED] living happily in Singapore at the time of the indictment in October 2020. See PSR ¶¶ 80, 84; Ex. 4; Ex. 5; Ex. 8.<sup>2</sup>

From 2008-2011, Mr. Hayes worked at Deutsche Bank in Hong Kong. PSR ¶ 95; Ex. 6. The job was challenging and the hours were long, but Mr. Hayes loved his work as a trader. For him, the role presented an exciting combination of quantitative analysis, human psychology, macroeconomics and markets, risk management, and daily competition where the results were plain to see on the profit and loss report.

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<sup>2</sup> As outlined below, one of the most difficult aspects of the criminal case for Mr. Hayes is that he lost his immigration status in Singapore in 2021 [REDACTED]. See PSR ¶¶ 83-84. The separation was especially difficult because it coincided with a period of heavy stress for Mr. Hayes, as he grappled with the challenges of mounting a defense to the criminal case and the many uncertainties about what the future might hold. See Ex. 4; Ex. 5; Ex. 7; Ex. 8. It is our fervent hope that, following the sentencing, Mr. Hayes will be allowed to return to Singapore to [REDACTED] pursue long-term immigration status there.



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Mr. Hayes was part of a tight-knit group of young Deutsche Bank traders, and he became close to his supervisor, a senior trader named Neil Cameron Hosie. Mr. Hosie looks back on those days with fondness:

I first met Arthur in 2008 when I was working as a manager in the Equity Trading division at Deutsche Bank. He was part of the best graduate intake we had ever seen or have seen since. There was something genuinely special about the class that year, a small group of smart, creative, engaging young men and women with an immense sense of energy brimming with healthy ambition. . . . Of this little group of game changers, Arthur was always the smartest, always “the most likely to succeed.” He had the loudest laugh, the most sparkle and the truest out of the box attitude.

Ex. 6 at 1-2. In 2011, Mr. Hayes was recruited to join Citibank’s Hong Kong trading desk, where he continued to work as an equity derivatives trader. And then, in mid-2013, he was laid off as part of a broader downsizing effort at Citi. PSR ¶ 95; Ex. 4.

### **Cryptocurrency and BitMEX**

After he was let go from Citibank, Mr. Hayes became interested in Bitcoin, which was then in its infancy. The idea of cryptocurrency—a new way to conceptualize money in the digital era—appealed to Mr. Hayes. He began trading spot Bitcoin and looking for arbitrage opportunities based on differences between Bitcoin prices in Hong Kong and across the Chinese border in Shenzhen. For a period of time, Mr. Hayes rode a bus back and forth across the border, trading small amounts of Bitcoin for fiat currency and looking to take advantage of temporary pricing differences. *See* Ex. 4 at 2-3.

In the fall of 2013, Mr. Hayes began trading Bitcoin derivatives on ICBIT, an online platform where customers could purchase and sell Bitcoin futures contracts. This was a natural fit for Mr. Hayes given his prior experience trading financial derivatives at Deutsche Bank and Citi. Mr. Hayes traded small amounts from his own modest savings. He found the trading to be stimulating, but the ICBIT platform had flaws: a poor user interface, inconsistent liquidity, and limited product offerings.

In late 2013, Mr. Hayes had the idea to create a brand-new cryptocurrency derivatives trading platform. The objective—highly audacious back in 2013—was to build an exchange that would allow investors to trade cryptocurrency derivatives on a platform that was reliable, transparent, stable, fair, and liquid. Mr. Hayes came up with a name for the platform that

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reflected his ambitions: the “Bitcoin Mercantile Exchange,” or “BitMEX” for short. This was a nod to the market-leading commodity futures exchange, the Chicago Mercantile Exchange, but it was aspirational in the extreme. In 2013, cryptocurrency was obscure and marginal, existing at the outer fringes of global markets, and cryptocurrency derivatives were even more peripheral.

As an experienced derivatives trader and a devotee of cryptocurrency, Mr. Hayes had a good idea of the features that he wanted to incorporate into the BitMEX platform, but he lacked the programming skills to build the platform’s infrastructure. In early 2014, he had the good fortune to be introduced, separately, to Ben Delo and Sam Reed, both of whom were living in Hong Kong and both of whom agreed to join forces with Mr. Hayes and each other to create BitMEX. Mr. Delo, a brilliant computer scientist who graduated from Oxford University and was then working at JPMorgan, developed the trading engine that is at the core of BitMEX’s operations. Mr. Reed, an equally brilliant computer scientist who graduated from Washington & Lee and was working at a tech startup in Hong Kong, developed the front-end user interface for BitMEX that allowed customers to access the platform. The three men agreed to work together as equal partners, and in 2014 they threw themselves into the complicated task of designing, developing, and launching the BitMEX platform.

Arthur, Ben, and Sam worked well together. They became friends as well as business partners. In mid-2014, they formed a corporation, HDR Global Trading Limited, and chose the Seychelles as the place of incorporation because it was inexpensive and because no license was required. (HDR was an acronym for Hayes-Delo-Reed.) They agreed on a rough allocation of responsibility under which Mr. Hayes served as CEO, with responsibility for strategy, product development, and marketing/business development; Mr. Delo served as COO, with responsibility for designing and building the trading engine; and Mr. Reed served as CTO, with responsibility for developing the front-end website and application programming interface tools. *See* PSR ¶ 19.

In 2014, BitMEX was a startup in the truest sense of the word. There were no employees, no outside investors, no customers, no offices, and no revenue. Mr. Hayes lived off his modest savings and continued to trade Bitcoin for his own account. In November 2014, the platform launched to little fanfare. At the time, Mr. Hayes was 28 years old.

For the first year after the launch, the business did not perform well. Although Mr. Hayes and his co-founders worked long hours and devoted their intellectual and creative energies to the business, BitMEX attracted only a tiny handful of customers. Trading volumes were *de minimis*; there was little revenue and no profits; potential outside investors were skeptical; and prospects for the business were uncertain at best. Mr. Hayes’s friend Andrew Goodwin offers a colorful picture of Mr. Hayes’s life in those early years of BitMEX:

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You are most likely familiar with the almost mythic hero's tale that has circulated in crypto circles and occasionally in the popular press. The narrative typically focuses on the traditional finance derivatives trader who went "full crypto" and as "hak gwai" ("black ghost" in Cantonese) got his start riding the bus from Hong Kong to Shenzhen conducting physical cross-border crypto arbitrage via USB key to pay rent. As the ecosystem matured, he started an exchange, invented the perpetual swap product, an entirely new financial product that has traded trillions of USD, and became one of the first crypto billionaires. While these are all factual elements of the story, to those who love Arthur, the context is more compelling.

When the index trading desk that Arthur worked on at Citibank was shut down and he was fired, Arthur was a newly promoted Vice-President. He had recently paid off his student loans, but he was by no means wealthy and did not have much of a safety net at all. . . .

Arthur hit the road with his partners pitching BitMEX, raising small amounts of seed capital, preaching the gospel of Bitcoin and teaching whoever would listen about futures and swap pricing, perpetual swaps, and opportunities for arbitrage in the budding crypto markets. Unfortunately, they were too early as institutions were far from ready to embrace crypto and so nobody was trading on their exchange. Arthur's problem was amplified by the fact that he was also too early to the gold-inflation trade and so as the price of gold fell in USD terms and BitMEX ate up most of Arthur's dwindling savings, he was forced to move onto our friend Danny's couch in Hong Kong.

Ex. 4 at 2-3.

In the second half of 2015, Mr. Hayes and his co-founders made a business decision that was a turning point for the fortunes of BitMEX. They decided to change the platform's marketing focus away from institutional investors in developed markets, who had shown little interest in the platform, and instead to focus on retail traders in China. At the time, all of the top Bitcoin trading platforms were based in China, and the Chinese market was recognized as the key engine of growth for Bitcoin. In order to appeal to Chinese retail traders, Mr. Hayes and his co-founders decided to abandon the traditional self-clearing model that BitMEX had incorporated from the outset, under which the exchange guaranteed the settlement of all

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customer trades. Instead, they decided to switch to a novel system of “socialized loss” under which an investor could never lose more than he or she had invested, but under which there was no guarantee that a winning trade would be paid in full. With this new clearing model, BitMEX was able to offer significantly greater leverage, which was a key selling point for retail investors in China.

This was a major change in BitMEX’s strategy, and it required adjustments to the IT infrastructure as well as the company’s marketing strategy. In August 2015, Mr. Hayes and Mr. Delo moved to Shanghai for several months to focus full time on the redevelopment of BitMEX. They lived in a small apartment and worked at a tech incubator called “Chinaccelerator.”

In 2016 and the first half of 2017, the business began to gain some limited traction, but growth was slow and revenues remained modest. Although BitMEX hired a handful of employees, the founders remained immersed in day-to-day operations. During this period, BitMEX stuck to a strategy of building its customer base in China and, later, in other Asian markets such as South Korea and Japan.<sup>3</sup>

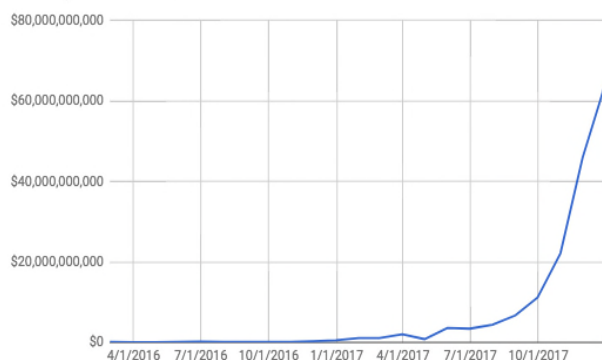
In the second half of 2017, after a long period of low volumes and modest revenues, BitMEX’s business suddenly exploded. Trading volumes skyrocketed, the company began to earn substantial revenues, and BitMEX became the most liquid cryptocurrency platform in the world. The following chart, excerpted from a monthly report that Mr. Hayes wrote for BitMEX’s employees in January 2018, shows the growth in trading volumes (“monthly turnover”) and revenues from 2016 through December 2017:

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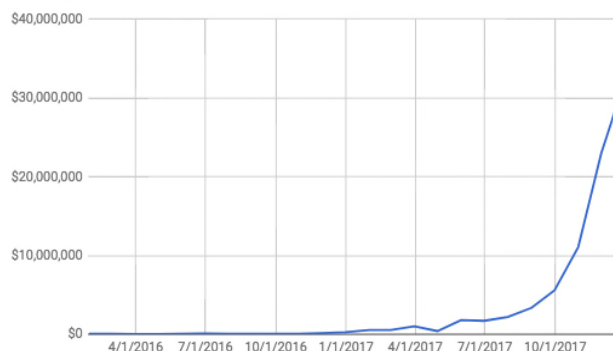
<sup>3</sup> For example, in 2016 BitMEX hired an entry-level employee in Hong Kong to translate the website into Chinese, spearhead marketing in China, and respond to Chinese-language customer support inquiries. In this period, Mr. Hayes regularly traveled to China to give seminars on Bitcoin trading and to meet with potential customers.

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**Monthly USD Turnover**



**Monthly USD Revenue**



US\_00041106. Looking back, Mr. Hayes attributes BitMEX's spectacular growth to several factors: growing interest in Bitcoin generally; the investor-friendly features of BitMEX's innovative perpetual swap contract; the platform's well-earned reputation for quality and reliability; increasing liquidity on the platform; and the success of the company's marketing efforts in high-growth markets in North Asia.

Between 2018 and late 2020, when the charges were filed in this case, BitMEX was the world's largest and most successful Bitcoin derivatives trading platform. For Mr. Hayes, this was naturally exciting and rewarding, but it also presented challenges. As the company experienced meteoric growth, Mr. Hayes and his co-founders had to figure out how to transform BitMEX from a tiny start-up operation to a full-fledged Fintech business, with a qualified management team and properly-staffed business functions such as finance, customer support, legal, compliance, and business development. This was a gradual, iterative process that began toward the end of 2017 and continued well into 2020. As one might expect, some hires worked out and others did not.

As the company's headcount grew in 2018, and as the number and variety of its business challenges multiplied, Mr. Hayes found that he did not enjoy the operational aspects of serving as a CEO of a large company on a day-to-day basis. And so, in October 2018, BitMEX hired Angelina Kwan to serve as the company's COO.<sup>4</sup> Ms. Kwan took over the day-to-day

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<sup>4</sup> Before joining BitMEX, Ms. Kwan had worked for three years as Managing Director and Head of Regulatory Compliance at Hong Kong Exchanges and Clearing Limited, the leading securities and derivatives exchange in Hong Kong. Earlier in her career, Ms. Kwan worked for eight years at Hong Kong's financial markets regulator, the Hong Kong Securities and Futures

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management of BitMEX, allowing Mr. Hayes to focus on matters such as strategy, marketing, product development, and thought leadership in the crypto space.

In October 2020, in the wake of the criminal charges, Mr. Hayes stepped down from his role in management. Vivien Khoo took over as Interim CEO until January 2021, at which point Alexander Hoeptner joined BitMEX as the new CEO. Since October 2020, the company has endured significant challenges. After the indictment was unsealed, some customers chose to leave the platform, trading volumes and revenues declined, and the company was forced to close offices and reduce its headcount. *See* Ex. 4. Today, BitMEX remains an operating business whose future prospects present both challenges and opportunities.

### **Criminal Conduct**

In Count One of the Indictment, the government charged Mr. Hayes with violating the Bank Secrecy Act by causing BitMEX to fail to implement a legally required anti-money-laundering (AML) program, including know-your-customer (KYC) procedures, in violation of 31 U.S.C. §§ 5318(h)(1) and (l) and 5322(a) and (c); 31 C.F.R. §§ 1026.210 and 1026.220; and 18 U.S.C. § 2. On February 24, 2022, Mr. Hayes pled guilty to Count One. He accepts full responsibility for his criminal conduct and deeply regrets the bad decisions that led to his violation of law. For Mr. Hayes, his criminal violation is embarrassing and painful.

The origins of the BSA violation can be traced back to 2014, when Mr. Hayes and his co-founders were figuring out how to design the BitMEX platform. At the time, cryptocurrency was in its infancy and there was no clear or comprehensive regulatory structure. Back then, and for many years thereafter, the industry practice was that cryptocurrency trading platforms would require KYC if a customer could deposit or receive fiat currency (*e.g.*, deposit USD and purchase Bitcoin, or vice versa), but not if the customer could transact only in Bitcoin. In designing the BitMEX platform, Mr. Hayes and his co-founders decided that BitMEX would accept only

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Commission. As described below, Ms. Kwan was instrumental in the company's decision, in May 2019, to implement a know-your-customer (KYC) program for customers. In 2019, BitMEX made two other key hires in the legal/regulatory area. In March 2019, Vivien Khoo, a 19-year compliance veteran from Goldman Sachs in Asia, joined the company as Deputy COO with a mandate to develop a Global Regulatory Affairs function. Six months later, in September 2019, Derek Gobel joined the company as General Counsel after serving for 22 years as Asia-Pacific General Counsel for BNP Paribas.



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Bitcoin, and not fiat currency, from customers. Consistent with industry practice at the time, Mr. Hayes concluded that BitMEX would therefore not be required to conduct KYC.<sup>5</sup>

In September 2015, the CFTC issued two settled orders in which the agency asserted, for the first time, that Bitcoin was a “commodity” within the meaning of the Commodity Exchange Act. *See In the Matter of Coinflip, Inc.*, CFTC No. 15-29, 2015 WL 5535736 (Sept. 17, 2015); *In the Matter of TeraExchange LLC*, CFTC No. 15-33, 2015 WL 5658082 (Sept. 24, 2015). Mr. Hayes reviewed these orders and concluded that, under the CFTC’s new approach to regulation of cryptocurrency, BitMEX could be subject to CFTC jurisdiction, including a requirement to conduct KYC, if the company served U.S. customers.<sup>6</sup> And so, in an attempt to avoid CFTC jurisdiction, Mr. Hayes and his co-founders adopted a corporate policy under which BitMEX

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<sup>5</sup> In 2014, Mr. Hayes’s understanding of the fiat vs. crypto distinction and its implications for an AML requirement was also informed by a FinCEN administrative ruling that was issued approximately one month before the launch of BitMEX. *See* FIN-2014-R011 (Oct. 27, 2014), [https://www.fincen.gov/sites/default/files/administrative\\_ruling/FIN-2014-R011.pdf](https://www.fincen.gov/sites/default/files/administrative_ruling/FIN-2014-R011.pdf). Mr. Hayes read the FinCEN ruling and interpreted it to mean that FinCEN would deem a cryptocurrency platform to be a “money services business,” and therefore subject to the AML requirements of the Bank Secrecy Act, only if the platform exchanged cryptocurrency for fiat currency or for another type of cryptocurrency. In this case, the government has not alleged that BitMEX was subject to the BSA as a “money services business,” but rather that the platform became subject to the BSA beginning in September 2015 on the ground that it operated as an unregistered “futures commission merchant” after that time. This is a separate basis for requiring an AML program. *Compare* 31 U.S.C. § 5312(c) (FCMs are subject to the BSA), *with* 31 U.S.C. § 5312(a)(2)(J) & (R) and 31 C.F.R. § 1010.100(ff) (money services business are subject to the BSA).

<sup>6</sup> Mr. Hayes determined that it was not practicable for BitMEX to attempt to comply with CFTC regulations because, *inter alia*, BitMEX remained a thinly-resourced startup company and it was far from clear that the CFTC would approve BitMEX’s business model, including its new approach of socialized loss clearing and leveraged trading for retail customers. In this regard, Mr. Hayes was prescient. Some three years later, in June 2018, he and BitMEX’s corporate counsel requested a meeting with the CFTC staff in Washington, D.C. to explore the possibility of BitMEX becoming registered in the United States as a derivatives exchange and clearing house (a “designated contract market” and “derivatives clearing organization” in the argot of the Commodity Exchange Act). At that meeting, Mr. Hayes walked through BitMEX’s socialized loss clearing model, retail customer base, and use of leverage. After hearing the presentation, the CFTC staff indicated that in light of BitMEX’s business model, which was very different from traditional self-clearing exchanges that were geared toward institutional customers, they were unlikely to approve any request for registration.



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would no longer allow U.S. residents to trade on the platform. BitMEX announced this policy to its customers and to the public, changed the Terms of Service to prohibit U.S. residents from trading on the platform, and adopted controls to block U.S. residents from setting up new accounts and depositing Bitcoin (which was a prerequisite to trading).

Beginning in October 2015, under the newly-adopted control procedures, BitMEX required any new customer to declare their country of residence in a drop down menu. If the person declared that they lived in the United States, they were blocked from depositing Bitcoin into their account. As part of this new process, BitMEX attempted to verify the user's location by checking the GeoIP address that the person used to log onto the BitMEX website to create a new account. If the GeoIP address showed "United States," then the customer would be blocked from depositing Bitcoin even if they had self-declared a different country of residence.

As Mr. Hayes was aware, however, these controls were not fully effective, and U.S. residents continued to gain access to the platform even after the company adopted a policy to prohibit them. Among the weaknesses in the controls were the following:

- BitMEX did not inquire into the residence of existing customers on the platform who had established an account and deposited Bitcoin before October 2015. Although the overall number of existing customers was small, it included some U.S. residents.
- BitMEX checked a customer's GeoIP address only at account inception. Accordingly, a person could set up an account from outside the United States but then trade on the account from within the United States without triggering any action by BitMEX.
- Customers could misrepresent their country of residence by using a virtual private network ("VPN") to log onto the BitMEX website via a GeoIP address from another country.<sup>7</sup>

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<sup>7</sup> VPNs, which are widely used for legitimate information security purposes, presented a thorny problem for BitMEX given the prevalence of Chinese users on the platform and the common use of VPNs in China to bypass the "Great Firewall of China" ("GFW"). The GFW is a Chinese government-operated technology program to control the information that is available to Chinese citizens. For some non-Chinese websites (*e.g.*, Google, Facebook, and the *New York Times*), the Chinese government blocks access altogether for anyone logging on from a Chinese

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- In certain instances, Mr. Hayes and others at BitMEX advised U.S. residents that they could gain access to the BitMEX platform if they established an offshore corporation (*e.g.*, a Cayman Islands corporation) to serve as the account holder.
- BitMEX operated an “affiliate program” under which it paid a referral fee (in Bitcoin) to members of the public who solicited friends or associates to open an account on the BitMEX platform. As Mr. Hayes was aware, some of the more active affiliates were U.S. residents.

These weaknesses were real, and a number of U.S. residents were able to gain access to the BitMEX platform after October 2015. As Mr. Hayes admitted during his plea allocution, he was aware of this fact, and that it meant that BitMEX would be subject to CFTC jurisdiction, including the requirement to establish an AML program. Mr. Hayes was likewise aware that BitMEX did not file any Suspicious Activity Reports with FinCEN (although the company did file some SARs in the Seychelles). Mr. Hayes sincerely regrets that he did not take more timely steps to address the weaknesses in BitMEX’s controls.

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GeoIP address. For others, the GFW can cause slowness and poor connectivity. People in China who wish to access websites outside of China, including BitMEX, routinely route their internet traffic through VPNs outside of the country to bypass the restrictions of the GFW. Mr. Hayes was very familiar with the GFW, having lived and traveled extensively in China. Accordingly, he understood that even if it were technologically possible to block customers using a VPN from gaining access to the BitMEX platform, such a step would have resulted in the unintended and unwanted blockage of BitMEX order flow from China.

The widespread use of VPNs by BitMEX’s Chinese customers created another issue that also deserves a brief mention. Mr. Hayes understood that residents of China seeking to evade the GFW commonly used VPNs with United States-based IP addresses. If such a person gained access to the BitMEX website, their web visit would be recorded as having originated from an IP address within the U.S. even though the person was actually in China. For this reason, Mr. Hayes did not give much credence to occasional data that was presented to him showing BitMEX web visitors from U.S. IP addresses. *Cf.* PSR ¶ 21 (describing two such reports prepared by Greg Dwyer). Because of the widespread use of U.S. VPNs in China, Mr. Hayes inferred that much of this web traffic was actually originating in China, although he did not take steps to test the accuracy of this inference.

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However, and without diminishing the criminal violation and Mr. Hayes's remorse and acceptance of responsibility, we want to make clear that we do not accept the government's rhetoric, in pretrial motion papers and press releases, that BitMEX's ban on U.S. residents was nothing more than a meaningless "sham." As outlined at length in the preceding section of this memorandum, BitMEX's marketing and business development strategy was aimed at markets in North Asia and elsewhere in the world, *not* the United States.<sup>8</sup> Moreover, as disclosed in pretrial expert witness reports, an analysis of BitMEX's internal records shows that the company turned away tens of thousands of potential customers in the years after October 2015 because they self-declared as U.S. residents or tried to set up an account from a U.S. GeoIP address. Using an average-revenue-per-user metric, this translates into tens of millions of dollars of foregone revenue. In addition, voluminous customer support tickets confirm that BitMEX shut down customer accounts, consistently and over many years, when the company learned that a particular customer was actually a resident of the United States.<sup>9</sup>

In late 2018, BitMEX undertook a project to substantially revise and strengthen the existing, flawed controls to block U.S. customers. Key improvements included: (a) checking GeoIP addresses at every customer login, not just when the customer initially set up the account; (b) meeting individually with corporate customers to clarify the company's policy against U.S. customers and requiring them to sign a written attestation that all trading decisions were made from a location outside the United States; and (c) banning U.S. persons from serving as

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<sup>8</sup> The record contains overwhelming evidence of BitMEX's efforts, after 2015, to focus its marketing and business development efforts on China and North Asia, not the United States. Nevertheless, the PSR can be read to suggest that BitMEX affirmatively sought to market to U.S. customers as an important part of the company's strategy. *See* PSR ¶ 34. For example, the PSR cites Mr. Hayes's appearances on CNBC in 2018, but it neglects to mention that Mr. Hayes and/or the CNBC host explicitly stated, in those appearances, that BitMEX was not available to U.S. customers. The PSR also elides the fact that CNBC was by no means limited to a U.S. audience; to the contrary, the CNBC clips are readily available, even today, to a worldwide audience on YouTube.

<sup>9</sup> This information came to BitMEX's attention most commonly if a customer reached out for BitMEX customer support and provided an address, a phone number, or identification documents that showed U.S. residence. In such instances, BitMEX consistently responded by closing down the customer account. However, we acknowledge that in these situations, BitMEX's controls did not prevent a customer from opening a new account by lying about his or her country of residence and then using a VPN to bypass BitMEX's GeoIP controls.

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affiliates.<sup>10</sup> These improvements, although still not airtight, were meaningful. They coincided with the arrival of Ms. Kwan and the efforts to establish a more professional management and compliance structure at the company. As the company's CEO, Mr. Hayes fully supported the efforts to improve BitMEX's controls.

More significantly, in May 2019 the BitMEX Executive Committee, of which Mr. Hayes was an active member, decided to change the company's policies and adopt a KYC requirement. Mr. Hayes and the other Executive Committee members made this decision at an offsite meeting in London, based on the recommendation of Ms. Kwan and Ms. Khoo. Mr. Hayes fully supported the decision to require KYC and the subsequent, arduous process to design and implement the KYC program. His actions in this regard demonstrate a good faith commitment to improve BitMEX's compliance practices and improve upon the mistakes of the past.

Over the eighteen months after the London offsite meeting, BitMEX devoted substantial time and resources to the process of designing, building, and implementing a comprehensive KYC program for all customers on the platform. Originally envisaged as a KYC requirement upon withdrawals above a certain level, BitMEX decided, in the fall of 2019, to require full, front-end KYC of all users. In January 2020, BitMEX informed the CFTC of the company's commitment to implement full KYC for its entire customer base. In August 2020, BitMEX publicly announced the KYC program and began to require KYC for new customers. By December 2020 the company had completed the rollout of KYC for the entire customer base.

Before closing our discussion of Mr. Hayes's offense conduct, we wish to respond to the government's accusation, in a press release that it issued on the date of Mr. Hayes's guilty plea, that BitMEX was "in effect a money laundering platform." See Press Release, Department of Justice, *Founders Of Cryptocurrency Exchange Plead Guilty To Bank Secrecy Act Violations* (Feb. 24, 2022), <https://www.justice.gov/usao-sdny/pr/founders-cryptocurrency-exchange-plead-guilty-bank-secrecy-act-violations>. See also Indictment ¶ 24 (alleging that "BitMEX made itself available as a vehicle for money laundering and sanctions violations"); PSR ¶ 18 ("BitMEX became a platform that allowed money laundering"). This language could easily create a

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<sup>10</sup> As noted in paragraph 25 of the PSR, one U.S.-based affiliate was permitted to continue receiving affiliate income until October 2019. This appears to have resulted from some sort of internal breakdown in BitMEX's process. Mr. Hayes did not know about this at the time, and he did not approve it. With Mr. Hayes's support, the other U.S.-based affiliate described in the PSR was kicked off the platform in November 2018, as part of the control improvements that were implemented at that time. See PSR ¶¶ 26-27.

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misimpression. In stark contrast to notorious “dark web” online platforms such as Silk Road, BitMEX *did not* solicit business from criminals, nor did it facilitate illegal conduct such as narcotics trafficking. To the contrary, BitMEX was a financial derivatives exchange that offered fully legitimate products and services to investors. And although certain customers, unbeknownst to Mr. Hayes, engaged in transaction activity on the BitMEX platform that later was determined to be suspicious, there is no evidence that Mr. Hayes participated in or condoned any illegal transaction activity on the platform.<sup>11</sup>

### **Criminal and Regulatory Proceedings**

In early October 2020, the government unsealed the indictment against Mr. Hayes. At the time, he was living in Singapore [REDACTED]. International travel was virtually non-existent due to the Covid-19 pandemic. Nevertheless, Mr. Hayes promptly informed the government of his willingness to waive extradition and voluntarily surrender. After a lengthy period of working out logistical details and an agreed-upon bail package, Mr. Hayes voluntarily flew to Hawaii in April 2021, at his own expense, and surrendered to the authorities. He was released on bail with permission to reside in Singapore. After completing a mandatory ten-day period of quarantine in

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<sup>11</sup> Paragraphs 41-51 of the PSR contain a discussion of three types of “uncharged conduct”: (1) “Failure to file SARs”; (2) “Sanctioned Jurisdictions”; and (3) “Other Misrepresentations.” With respect to the first category, we concede that BitMEX did not file SARs with FinCEN, but this conduct is encompassed in the guilty plea of failing to implement a BSA-compliant AML program. *See* 31 C.F.R. § 1026.210(b)(5) (requirements of BSA-compliant AML program for futures commission merchants include “[c]onducting ongoing monitoring to identify and report suspicious transactions”). With respect to the second category, Mr. Hayes first became aware that BitMEX was required to enforce U.S. sanctions in late 2017. Immediately thereafter, he caused BitMEX to adopt a corporate policy banning customers from sanctioned jurisdictions and to communicate this new policy. Over time, BitMEX improved the controls to block customers from sanctioned jurisdictions, and Mr. Hayes supported these control improvements. With respect to the third category, the matters contained in the PSR do not meet the definition of “relevant conduct” under the Sentencing Guidelines, *see* U.S.S.G. § 1B1.3, and at the time of the guilty plea, had not been developed sufficiently as a factual matter to permit the Court to rule on the government’s attempts to offer the evidence under Fed. R. Evid. 404(b). *See* 1/20/22 Tr. at 23-24. We respectfully submit that these matters should not factor into the sentence to be imposed.

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Hawaii, he returned to Singapore, where he was required to stay in isolation for two weeks pursuant to strict quarantine rules.

Shortly before Mr. Hayes's voluntary surrender, he learned that the Singapore immigration authorities had declined to renew his visa in light of the criminal charges against him. This was sorely disappointing news, and in August 2021, after his tourist visa ran out, Mr. Hayes was forced to relocate to the United States. That kicked off a lonely period, as Mr. Hayes had not lived in the United States for thirteen years [REDACTED]. See Ex. 4; Ex. 8. Mr. Hayes earnestly hopes to be able to return to Singapore after the sentencing, so that he can pursue long-term immigration status there.

On the same day that the indictment was filed, the CFTC filed a parallel civil enforcement case against Mr. Hayes, his two co-founders, and various BitMEX corporate entities. *CFTC v. HDR Global Trading Limited, et al.*, 20 Civ. 8132 (LTS) (S.D.N.Y.). On March 28, 2022, Mr. Hayes entered into an agreement-in-principle with the enforcement staff of the CFTC to settle the parallel civil action. This week, we anticipate that the CFTC settlement will be presented to Judge Swain. As part of the CFTC settlement, Mr. Hayes will pay an agreed \$10 million civil penalty to the CFTC and will be subject to an injunction that generally requires him to comply with the Commodity Exchange Act going forward. Pursuant to Mr. Hayes's plea agreement, the parties have agreed on a stipulated \$10 million fine that will be reduced by the amount paid to the CFTC as a civil penalty in *CFTC v. HDR Global Trading Limited, et al.*, 20 Civ. 8132 (LTS) (S.D.N.Y.).

Separately, as the Court is aware, in August 2021, BitMEX corporate entities settled the CFTC case, as well as a separate FinCEN civil enforcement action, for a total amount of \$80 million in cash plus extensive compliance undertakings and an agreement to pay an additional \$20 million in penalties if certain of the undertakings are not satisfied. Because of Mr. Hayes's one-third interest in BitMEX, he effectively funded one-third of the company's settlement payment to the U.S. authorities, or approximately \$25 million. Mr. Hayes's personal \$10 million fine is on top of the amount already paid to settle the civil regulatory actions against the company.<sup>12</sup>

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<sup>12</sup> In the future, it is possible that the government may seek additional amounts from the company in order to resolve any potential criminal exposure for the company as a result of the BSA violation. If so, Mr. Hayes will be required to effectively fund one-third of any settlement amount.



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### **Good Works and Positive Impact**

As detailed in this letter, Mr. Hayes has achieved success at every stage of his life, from Nichols to Wharton to Deutsche Bank, Citi, and BitMEX. This did not happen by accident; Mr. Hayes has worked extraordinarily hard. But unlike some overachievers, Mr. Hayes has not been focused on himself. Instead, at every stage of his journey Mr. Hayes has looked outward, seeking to help those around him and to make a positive impact on the community. In this section of our sentencing letter, we will address Mr. Hayes's good works and positive impact in three different areas: (a) cryptocurrency thought leadership; (b) philanthropy and community service; and (c) love and generosity to friends and family.

#### *Cryptocurrency Thought Leadership*

Mr. Hayes is a fluent and nimble writer. Going back to the early days of BitMEX, he has written hundreds of essays on topics relating to cryptocurrency and its role in the global markets. Collected on the BitMEX website under the heading "Crypto Trader Digest," Mr. Hayes's essays offer an entertaining, irreverent, and thought-provoking perspective on investing, finance, politics, and philosophy. See [https://blog.bitmex.com/category/crypto-trader-digest/?lang=en\\_us](https://blog.bitmex.com/category/crypto-trader-digest/?lang=en_us); see also <https://cryptohayes.medium.com>.<sup>13</sup> In addition, Mr. Hayes has spoken at industry conferences and media events. A natural teacher, he has provided insight and explanation into the background of cryptocurrency, trading ideas, and the role of cryptocurrency in global markets. Of note, Mr. Hayes has continued to research and write his essays, on a consistent basis, during the period that he has been facing criminal charges in this case. Ex. 4; Ex. 8.

Mr. Hayes's articles have been viewed millions of times.<sup>14</sup> Mike Novogratz, a former partner at Goldman Sachs and the Fortress Investment group who now serves as CEO of a

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<sup>13</sup> In his written and spoken commentary, Mr. Hayes has sometimes expressed libertarian viewpoints that are critical of government and regulation. Although these views are sincere and honestly held, Mr. Hayes has moderated his public commentary over time.

<sup>14</sup> Last month, one of Mr. Hayes's essays generated interest from Bloomberg News, Barron's, and CoinDesk. See Arthur Hayes, *The Q-Trap* (Apr. 10, 2022), <https://cryptohayes.medium.com/the-q-trap-fla38312f00f>; Joanna Ossinger, *Tech Rout Could Drag Bitcoin to \$30,000, BitMEX Founder Says*, Bloomberg News (Apr. 11, 2022), <https://www.bloomberg.com/news/articles/2022-04-11/tech-rout-could-drag-bitcoin-to-30-000-bitmex-co-founder-says>; Jack Denton, *Bitcoin Prices Keep Slipping With Cryptos Under*



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publicly listed crypto company with a \$5 billion market capitalization, explains why: “[Arthur] was not afraid to call out the good and bad of our industry. His writings have been followed by many in the community because Arthur always called it as he saw it.” Ex. 9. Mr. Hayes is rightly proud of the contributions that he has made to public discourse, and he looks forward to further opportunities to share his insights and views with a global audience.

*Philanthropy and Community Service*

In the years since he achieved financial success, Mr. Hayes has been extraordinarily generous in his efforts to give back to the community. In upstate New York, his philanthropic impact has been deep and meaningful. Donald Boswell, who recently retired as President and CEO of the Western New York Public Broadcasting Association, provides an overview of Mr. Hayes’s contributions to the community in which he was raised:

He currently supports many college students from Buffalo, Rochester, and Syracuse with scholarships. In Buffalo, he has donated significantly to Buffalo Prep which supports local African American high achievers from low income families to attend private schools. He has done this by providing full scholarships for students to be able to attend these schools. I love that he named one in honor of his brother, The Harry Hayes Scholarship at Nichols, one of our private schools.

Ex. 2 at 2; *see also* Ex. 5; Ex. 10.

Mr. Hayes’s philanthropy did not happen by accident; it was the product of deliberate outreach and effort by him personally. Some years ago he asked his mother for a list of the organizations that had helped provide financial aid to the Hayes family, and then he took the initiative to meet with local educators and set up scholarship programs to support deserving students. As described by Mr. Hayes’s mother:

Arthur at some point . . . said to me that he wanted to establish a scholarship where he donated to support high achieving African

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*Pressure. Why One Trader Is Eyeing a Tumble to \$30,000*, Barron’s (Apr. 11, 2022), <https://www.barrons.com/articles/bitcoin-prices-cryptos-under-pressure-51649674672>; Omkar Godbole, *First Mover Americas: Bitcoin Out of Bullish Trend, Would Fed Backstop Markets Again*, CoinDesk (Apr. 11, 2022), <https://www.coindesk.com/business/2022/04/11/first-mover-americas-bitcoin-put-bias-returns-wen-fed-easing/>.

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American students from low income families in the Buffalo area with full scholarships to private high schools. So he and I met with Nichols for starters and they just so happened to have a student that fit our requirements and that they had no financial aid available for. After our review Arthur provided a full scholarship for the student from eighth grade through high school. Arthur named the scholarship the Harry Hayes Scholarship in honor of his brother. The next year Arthur and I had a meeting with the Head of another private school where she shared a list of three students that met the requirements of The Harry Hayes Scholarship. After review of these students Arthur was asked which one did he want to support; he said all three. Currently there are many Harry Hayes Scholars at more than one private school, all of them will graduate in 2023. Arthur and I also met with the Director of Buffalo Prep[,], an organization that supports area minority students with their education. Arthur after hearing what they provide donated substantially to their organization that will support these students from 5th grade through high school.

Ex. 5 at 3.

Perhaps Mr. Hayes's most significant contributions have been to the Jackie Robinson Foundation, which played such an instrumental role in supporting his education at Wharton. He donated \$2.2 million to JRF to support 20 Scholars with four-year scholarships. Ex. 1. He joined the Foundation's Board and has worked closely with its dynamic CEO, Della Britton. Ex. 3. Beyond providing financial support and service as a Board member, Mr. Hayes has personally mentored dozens of Jackie Robinson Scholars over the years. Ms. Britton has written about Mr. Hayes's efforts in this regard:

I have witnessed countless times when a fellow JRF Scholar during Arthur's college days and, since then including now, when a current JRF Scholar, a fellow alumnus, a friend of the Scholar, or 'friend of a friend,' has reached out to Arthur for advice, a job, a reference, help with finding resources, or tips on how to get through school or excel professionally. He will always respond – generously and with an open heart – holding no punches and chocked full of his brand of compassion, which is to offer straightforward advice as well as tangible assistance.

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Ex. 3 at 3. Ms. Britton's letter goes on:

Arthur also gives of his time and resources freely when asked to speak to groups of young people, to appear at conferences, schools, and community centers to encourage young people, tell his story, to inspire those behind him to persevere and work hard. If he's called, he goes. He always responds to us, and requests that come through us, to speak with groups of young people, without fanfare or recognition of any kind. Through social media, perhaps largely unknowingly, he has inspired scores of people with messages and recitations that help to demystify what for many is an indecipherable, quickly evolving digital ecosystem, a topic of course that he is uniquely qualified to address. We hear feedback and know that he is a positive role model to many who aspire to be part of the technology boom that continues to overtake the workforce.

*Id.*

Mr. Hayes's friends are rightly proud of the way he has given back to the Jackie Robinson Foundation and other worthy organizations. *See* Ex. 1 at 2 ("As ambitious undergrads, Arthur and I would dream of the day when we could give back generously to the organizations that gave us so much, and all these years later, I was proud – but not surprised to see the fabric of Arthur's character had not faded despite his extraordinary success.") (Wharton classmate Justin Anderson); Ex. 7 at 2 ("All these actions, efforts, and aspirations are a testament to Arthur's compassionate character. In all my interactions with him, I can only attest to his integrity, generosity and kindness toward others.") (Wharton classmate Danny Li).

*Love and Generosity to Friends and Family*

Closer to home, Mr. Hayes has shown exceptional love, generosity, and support to his friends and family members. He made travel arrangements for one friend to travel across the country to visit a terminally ill parent. Ex. 7. He quietly made a generous financial contribution to support another friend who became paralyzed from the waist down following a stroke. Ex. 1. But Mr. Hayes's support has transcended mere financial generosity. He is a true friend who has repeatedly gone out of his way to make things better for others.

As explained by Mr. Hayes's mentor at Deutsche Bank, Neil Cameron Hosie, Mr. Hayes "had real humility and gratitude. We knew he was contributing to various charities to help

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minority kids from humble backgrounds get college educations having been to college on a scholarship himself. We knew how much he cared for his mother. We knew him as a thoughtful friend with a good moral compass.” Ex. 6 at 2. Mr. Hayes’s former roommate Andrew Goodwin offers an example from the summer of 2007, when he and Mr. Hayes were working as interns in a competitive program at Deutsche Bank in Hong Kong:

I was a political philosophy and Chinese language major from Middlebury College in Vermont, and I looked the part. As my last direct encounter with substantive mathematics was pre-calculus at Regis, our summer on the equity derivatives desk at a technical, trading-oriented firm like Deutsche, pushed me far outside my comfort zone. Our eccentric Managing Director often drew options structures on the windows of the trading floor and frequently pulled Arthur and me into the conference room for pricing pop quizzes on the options market, where I frequently received the dreaded two-word review, ‘not impressive.’ In this competitive and often aggressive pre-financial crisis environment, after working 14-hour days on the trading floor and returning to our shoebox hotel rooms in the Sheung Wan district of Hong Kong, Arthur made time to tutor me in options pricing theory. We had only met recently and were in direct competition for limited offers. As anyone who has interacted with Arthur can attest, he is a kind and generous spirit, and he is a teacher.

Ex. 4 at 1.

Mr. Hayes is especially devoted to his family. The letters from Mr. Hayes’s [REDACTED] mother provide inspiring testimony to his love, kindness, patience, and selflessness. *See* Ex. 5; Ex. 8; *see also* PSR ¶ 86.

### **Looking Ahead to the Future**

In light of his accomplishments and his character, there can be little doubt that Mr. Hayes is poised to do great things in the future. His friends and family are unanimous on this point.

- Kevin Wood, the family dentist who has known Mr. Hayes for more than 30 years: “Arthur has the desire and the ability to positively contribute so much more to our society.” Ex. 10 at 2.

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- Danny Li, Mr. Hayes's Wharton classmate and former roommate: "I believe Arthur will do something great in the future. Within him, I see a desire to give back to the community, to create something new, and dedicate all his unending energy to these pursuits." Ex. 7 at 2.
- Justin Anderson, Mr. Hayes's friend from Wharton: "The friend I know behind the hyperbole and bravado of his reputation is of pure and generous character who has worked earnestly to build his stake in the world. He serves as an inspiration to me and his peers as well as the next generation of leaders to come." Ex. 1 at 2.
- Andrew Goodwin, Mr. Hayes's friend and former roommate: "I believe strongly that Arthur still has much to contribute to the global community and we need his wisdom, kindness, discipline, innate optimism, and energy now more than ever." Ex. 4 at 4.
- Neil Cameron Hosie, Mr. Hayes's former boss and now a senior executive at Credit Suisse: "Sit in the same room as Arthur Hayes and see him laugh and smile and feel his energy and it is easy to understand why he should be allowed on his way with an understanding of how to ensure process comes alongside progress. The truest test for me is if I would consider, with all of the accountability and responsibility I have in my role, hiring Arthur, putting him in a position of authority and autonomy? Do I trust him and his integrity and know that he can operate inside a highly regulated business? The answer is absolutely yes I would." Ex. 6 at 3.
- Della Britton, the Jackie Robinson Foundation CEO: "I relish how powerful he can be by telling his story to young people who have faced setbacks and made mistakes in judgment – indeed who have made mistakes. I know Arthur would take up that mantle and continue not only to reach back into communities that need his example, that need[] him as a role model to teach, not only complex mathematical principles and lofty academic concepts but how to overcome and learn from one's mistakes." Ex. 3 at 4.
- Mike Novogratz, a public company CEO and former Goldman Sachs partner: "I write to you today to consider that this young man has the capacity, and I believe the heart, to make significant contributions to our society going forward. It should not be lost on anyone that Arthur is a young, successful black man in a

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country and industry that needs more of them. . . . I am positive that given the chance, Arthur will ‘pay it forward.’” Ex. 9.

- Mr. Hayes’s mother: “My hope and wishes for Arthur in the future is that he will continue to do amazing/great things in his career, and that he continues/increase[s] his philanthropy locally/globally.” Ex. 5 at 3.

## **ARGUMENT**

### **Mr. Hayes Should Be Sentenced to Probation, Without Home Confinement, and Should Be Permitted to Reside and Travel Outside the United States**

#### *A. Applicable Law*

“[A] district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range. As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.” *Peugh v. United States*, 569 U.S. 530, 536 (2013) (quoting *Gall v. United States*, 552 U.S. 38, 49 (2007)). However, a sentencing court may not “presume that a sentence within the applicable Guidelines range is reasonable.” *Nelson v. United States*, 555 U.S. 350, 352 (2009). Instead, consistent with the mandate of 18 U.S.C. § 3553(a), the court must consider “the nature and circumstances of the offense and the history and characteristics of the defendant,” 18 U.S.C. § 3553(a)(1), and must make an “individualized assessment,” *Gall*, 552 U.S. at 50, in imposing a sentence that is “sufficient, but not greater than necessary” to achieve the purposes set forth in 18 U.S.C. § 3553(a)(2). Pursuant to § 3553(a)(2), the sentence should be adequate: “(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.” “In conducting this review, a district court needs to be mindful of the fact that it is ‘emphatically clear’ that the ‘Guidelines are guidelines—that is, they are truly advisory.’” *United States v. Dorvee*, 616 F.3d 174, 182 (2d Cir. 2010) (quoting *United States v. Cavera*, 550 F.3d 180, 189 (2d Cir. 2008) (en banc)).

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*B. Discussion*

a. Application of the Sentencing Guidelines

In this case, the parties have entered into a plea agreement with a stipulated Sentencing Guidelines offense level of 10. Because Mr. Hayes has no prior criminal record, this results in an advisory sentencing range of 6-12 months (Zone B). *See* PSR ¶ 4. The parties have also agreed on a stipulated fine of \$10 million, which is well above the advisory range of \$4,000 to \$40,000. *Id.* Pursuant to the plea agreement, the fine will be reduced by the amount of the \$10 million civil penalty that Mr. Hayes will pay to the CFTC to settle *CFTC v. HDR Global Trading Limited, et al.*, 20 Civ. 8132 (LTS) (S.D.N.Y.). The Probation Office concurs with the Guidelines calculations in the plea agreement. *See* PSR ¶¶ 63-75.

Consistent with the Guidelines, this Court is authorized to impose a sentence of probation because the advisory sentencing range is within Zone B. *See* U.S.S.G. § 5B1.1(a)(2); PSR ¶ 112. Although the advisory Guidelines contemplate a period of home detention, community confinement, or intermittent detention as a condition of probation for a Zone B sentence, *see id.*, we respectfully submit that the Court should dispense with such a requirement in light of the § 3553(a) factors, and that the Court should impose conditions of probation that would permit Mr. Hayes to reside abroad and travel freely. As outlined below, in light of the “nature and circumstances of the offense,” Mr. Hayes’s individual “history and characteristics,” as well as the considerations set forth in § 3553(a)(2), a sentence of probation, without home confinement or required residency in the United States, would be adequate to achieve the purposes of sentencing. By contrast, conditions requiring home confinement or future residence in the United States would be unnecessary and disproportionate.

b. Nature and Circumstances of the Offense

Mr. Hayes stands before the Court having pleaded guilty to a single count of causing BitMEX, an unregistered futures commission merchant that served U.S. customers, to fail to adopt a legally-required anti-money-laundering program pursuant to the Bank Secrecy Act. Although this is a substantial offense, we wish to highlight several mitigating factors.

First, as the Court is aware from the extensive pretrial motion practice, this is a novel, first-of-its-kind prosecution that rests on the complex interplay between the Commodity Exchange Act and the Bank Secrecy Act in the context of a brand-new asset class: cryptocurrency. Mr. Hayes accepts full responsibility for the poor choices that led him to cross the line and engage in criminal conduct by failing to pursue a more rigorous and effective set of controls to block U.S. customers after the CFTC’s assertion of regulatory jurisdiction over



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Bitcoin in September 2015. However, it is also the case that during the relevant time period, the available regulatory guidance was ad hoc and not comprehensive. This case is the first time the government has invoked criminal provisions of the BSA against a cryptocurrency derivatives trading platform. During much if not all of the relevant time period, there was no clear precedent to serve as a guidepost for Mr. Hayes and his co-founders as they set out to design and operate the BitMEX platform.

Second, the decisions that underlie Mr. Hayes's criminal violation date back to the early years of BitMEX, when the company was a start-up operation, run by three founders in their late 20s, with a small customer base and limited financial resources. In those years, we respectfully submit that the magnitude of the BSA violation was correspondingly less severe in light of the platform's relative obscurity. That changed in late 2017, when the platform exploded in growth. But the overnight transformation of the business was unexpected, and Mr. Hayes struggled to adapt. During the first few quarters of 2018 in particular, BitMEX lacked the management personnel and expertise to ensure timely compliance with regulations such as the BSA. After some false starts, the recruitment of Angelina Kwan in the second half of 2018 was an important step in the right direction. Ms. Kwan helped professionalize the company's day-to-day operations and, in 2019, was instrumental in the decision to change the company's policies and adopt a KYC requirement.

Third, although we acknowledge that the company's controls to block U.S. customers were flawed and not fully effective—and that Mr. Hayes was aware of this shortcoming in real time—it is also true that, over time, BitMEX took proactive steps to improve the controls. For example, in late 2018 the company began checking customer GeoIP information at each login, required corporate customers to attest in writing that all trading decisions were made from outside the United States, and took steps to shut down the affiliate program within the United States. Even more significantly, in May 2019, the company voluntarily decided to adopt a KYC program, which was implemented the following year after a laborious, costly process of design and implementation.

Looking back, Mr. Hayes remains rightfully proud of the BitMEX platform, which has proven to be a fair, transparent, reliable, and liquid trading platform used by hundreds of thousands of market participants from around the world. Without minimizing the significance of the offense of conviction, we wish to emphasize that after an exhaustive investigation, neither the CFTC nor the U.S. Attorney's Office has ever alleged that BitMEX's business practices were unfair to customers or to other market participants, or that Mr. Hayes ever participated in or condoned any illegal transactions on the BitMEX platform (including money laundering, sanctions violations, or any other transaction-specific offense). This distinguishes the instant

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case from virtually all prior criminal cases involving cryptocurrency. *See, e.g., United States v. Faiella, et al.*, 14 Cr. 243 (S.D.N.Y.) (JSR) (defendant charged with participating in money laundering conspiracy to launder money on cryptocurrency platform, the “Silk Road”); *United States v. Tetley*, 17 Cr. 738 (C.D. Cal.) (MLR) (defendant charged with money laundering digital currency suspected to be the proceeds of drug trafficking); *United States v. Zaslavskiy*, 17 Cr. 647 (E.D.N.Y.) (RJD) (defendant pleaded guilty to securities fraud conspiracy in connection with bogus initial coin offerings purportedly backed by real estate and diamonds); *United States v. Sharma*, 18 Cr. 340 (S.D.N.Y.) (LGS) (defendant sentenced to eight years’ imprisonment for fraudulent initial coin offerings).

c. Mr. Hayes's History and Characteristics

In this case, Mr. Hayes has accepted responsibility for a criminal violation of the BSA. However, and without diminishing Mr. Hayes's sincere regret, it is also true that the BitMEX story is one of entrepreneurship, risk-taking, and sustained hard work. Together with his co-founders, Mr. Hayes developed a revolutionary and transformative trading platform. He helped create a valuable asset that has contributed greatly to the development of cryptocurrency derivatives trading. And through his extensive writings and extensive public appearances, he has introduced countless people around the world to cryptocurrency, offering penetrating insights into finance and global markets.

On top of that, Mr. Hayes has given back, freely and generously. Some years ago he proactively reached out for local schools and institutions in upstate New York, and he subsequently provided substantial funds to support the education of talented and financially needy African American students in that community. Separately, as described by Della Britton, Mr. Hayes's financial generosity to the Jackie Robinson Foundation has been matched only by his selfless contributions of time, wisdom, and encouragement to so many people in the JRF network. Closer to home, Mr. Hayes has been kind, compassionate, and generous to his friends and his family members.

On a personal level, over the last fourteen years Mr. Hayes has built a life for himself in Asia. He moved to Hong Kong in 2008, and has lived in Asia ever since. Mr. Hayes created and launched the BitMEX platform in Hong Kong, and the company remains headquartered there. ■

We respectfully submit that requiring Mr. Hayes to remain in the United States during a period of probation would result in personal hardship that is disproportionate to the offense of

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conviction and unnecessary to achieve the purposes set forth in 18 U.S.C. § 3553(a)(2). As outlined above, this case has already resulted in substantial disruption in Mr. Hayes's personal and family life. After the sentencing, Mr. Hayes is hopeful that he will be permitted to return home to Asia, so that he can [REDACTED] pursue long-term immigration status in Singapore.

d. Factors Set Forth in § 3553(a)(2)

We submit that a sentence of probation, with no requirement of home detention and permission for Mr. Hayes to reside abroad and travel freely, would be sufficient to achieve the objectives of just punishment, deterrence, and the other factors set forth in 18 U.S.C. § 3553(a)(2). With respect to specific deterrence, we respectfully submit that Mr. Hayes presents an extremely low risk of recidivism given his history and characteristics, as well as his lack of any prior criminal record. With respect to general deterrence, this is a landmark case that has already had an extraordinary and well-publicized impact on Mr. Hayes's personal life and on the BitMEX business that he co-founded.

Mr. Hayes has pleaded guilty to a federal felony offense in a key emerging area of finance and markets. His conviction in this first-of-its-kind case will be a landmark precedent for the government in its efforts to apply U.S. financial crimes legislation to cryptocurrency trading platforms around the world. As a result of the criminal case and the parallel civil enforcement proceedings, Mr. Hayes has already paid an enormous amount of money to the U.S. government: a stipulated \$10 million fine, which is vastly in excess of the advisory range prescribed by the Guidelines for offense level 10, plus another \$25 million that the company paid to settle the CFTC and FinCEN enforcement cases.<sup>15</sup> On top of that, Mr. Hayes has suffered severe reputational harm; significant diminution in the value of BitMEX that followed from the indictment and the company's attendant business challenges; and 18 months of stress, anxiety, and personal dislocation, including an extended period of separation [REDACTED] from his home in Asia.

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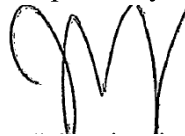
<sup>15</sup> These amounts do not include the tens of millions of dollars that BitMEX has spent in connection with remediation, compliance undertakings, and investigation expenses, nor do they include potential additional payments with respect to the criminal investigation against the company.

May 4, 2022  
Page 29

**CONCLUSION**

For the reasons stated herein, we respectfully request that the Court sentence Mr. Hayes to a term of probation, with no home detention or community confinement, and that he be permitted to live abroad and travel freely during the period of probation.

Respectfully submitted,

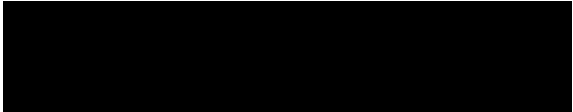
A handwritten signature in black ink, appearing to be 'JJB', written over a horizontal line.

James Joseph Benjamin, Jr.  
Katherine Goldstein  
Peter I. Altman

cc: AUSAs Jessica Greenwood, Samuel Raymond, and Nathan Rehn

# EXHIBIT 1

Justin C. Anderson



March 30, 2022

Hon. John G. Koeltl  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: Sentencing of Arthur Hayes

My name is Justin Anderson and I am a venture capitalist and Director for Solidea Capital and a resident of the City of New York. I'm writing this letter in support of my good friend Arthur Hayes whose character I've come to know well over our past 15 years of friendship.

Arthur and I first met as prospective college freshmen during the University of Pennsylvania's African American Studies Summer Institute Program designed to help connect the incoming black freshman by offering early exposure to the collegiate environment as well as to help create opportunities to build a sense of community among our peers. It was in this setting that I met Arthur as we both realized we had quite a bit in common. Prior to moving to Buffalo, NY, Arthur was originally from the Detroit area, and I too am from Detroit. Arthur was matriculating into The Wharton School and so was I. Especially then, Arthur's ambition, much like mine, was almost palpable. Over our college career, I began to see Arthur thrive as his appetite for excellence was unmatched. He took the most challenging classes at Wharton and to this day, I admire Arthur as one of the most brilliant people I know. One thing that became clearer to me over the years is that what drives Arthur is much more than a potent sense of ambition, but a true desire to make a positive impact on those around him.

I'd like to share a few meaningful examples of Arthur's thoughtful, hard-working, and generous, nature that serve as a testament to his character:

When I was living in San Francisco in 2013, I received a call from Arthur as he was coming to town to attend a conference on cryptocurrency and needed to crash on my couch for several days. Certainly, I obliged and over conversation that evening I learned more about the company he envisioned and the passion he had for the capital markets. At the time, I can't say I wholly understood everything about what he was building, but I remember being impressed by his near certainty that it was going to change the world. I admired his passion, humility, and work ethic as I watched him build his company relentlessly from the ground up.

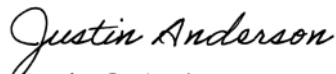
Not unlike many young black professionals, Arthur often relied on support from highly-selective organizations and programs like the Jackie Robinson Foundation Scholarship Program

whose mission is to support the education and professional development of African-Americans in high-powered careers. I was proud to learn of Arthur's generous \$2.24 million dollar donation to the Jackie Robinson Foundation directly sponsoring 20 Scholars who will receive, among other resources, a 4-year scholarship to the top universities in the country. As ambitious undergrads, Arthur and I would dream of the day when we could give back generously to the organizations that gave us so much, and all these years later, I was proud – but not surprised to see the fabric of Arthur's character had not faded despite his extraordinary success. Knowing that Arthur made this organization a priority for his giving truly is a testament that he knows how important it is to give back and support those who have helped him. To me and my peers, it was more than a generous gift – it was an acknowledgement of responsibility we share to give back to the proverbial village that helped us along the way.

When a mutual classmate and friend of ours who happened to be the best man in my wedding, suffered a sudden and unexpectedly debilitating stroke that left him paralyzed from the waist down in January of 2020, Arthur was among of the first of our friends to quietly commit a significant amount of money and resources to ensure that our friend was well-cared for, and to this day, many of our friends are unaware of his generosity. For me, this was another reminder that Arthur is not the type to give for publicity; he's driven by his desire to be positively impactful.

While these are a just a few examples, I have witnessed firsthand as Arthur invested in and mentored several companies led by under-represented minorities, lending his time and resources – sometimes on a moment's notice. I also know Arthur deeply loves his family, his wife, and his friends and is selflessly willing to do whatever he can to support those in their time of need. I strongly urge you to consider leniency in sentencing Arthur. Throughout this entire unfortunate affair, I've seen Arthur become more measured with his words, and I know he feels remorse for his unlawful actions. Arthur is committed to repairing the damage he caused his reputation and is looking forward to leading an inspired life as a transformative and visionary leader in global finance. The friend I know behind the hyperbole and bravado of his reputation is of pure and generous character who has worked earnestly to build his stake in the world. He serves as an inspiration to me and his peers as well as the next generation of leaders to come.

Respectfully,

  
Justin C. Anderson



# **EXHIBIT 2**

**Donald K. Boswell**  
President & CEO Emeritus

**Buffalo•Toronto**  
**Public Media**



March 29, 2022

Hon. John G. Koeltl  
United States District Judge  
Southern District Of New York  
500 Pearl Street  
New York, New York 10007

Dear Judge Koeltl,

My name is Donald Boswell and I have been in Public Broadcasting for over 50 years. I have been Chair of PBS (Public Broadcasting Service), which has been the most rewarding experience in my career. I have just retired as the President & CEO of Western New York Public Broadcasting Association. I am proud of my 5 National Emmys and seeing our public radio station WBFO named the best radio station in New York State by the Associated Press (AP) for the last 7 years.

Realizing the importance of education for children in television and radio, I have witnessed its success every time I hear Arthur Hayes' name.

I have known Arthur Hayes for the past 25 years. There is a passage I love when I think of Arthur:

I am not impressed  
by money,  
or job titles.

I am impressed by the way someone treats other human beings.

In my interactions, I have always found Arthur to be kind, smart, generous, publicly spirited man and most important a decent individual. He has made many important contributions to Western New York and the State of New York.

After graduating from college, he gave back to organizations that supported him financially with college. Organizations such as the Buffalo Urban League and various fraternal organizations.

He donated millions to support The Jackie Robinson Foundation which has an excellent program to support the very best college students in the nation. He currently supports many college students from Buffalo, Rochester, and Syracuse with scholarships. In Buffalo, he has donated significantly to Buffalo Prep which supports local African American high achievers from low income families to attend private schools. He has done this by providing full scholarships for the students to be able to attend these schools. I loved that he named one in honor of his brother, The Harry Hayes Scholarship at Nichols, one of our private schools.

George Bernard Shaw is one of my favorite writers and this passage is important to Arthur and hopefully to all of our young adults.

"I am of the opinion that my life belongs to the community, and as long as I live, it is my privilege to do for it whatever I can. I want to be thoroughly used up when I die. Life is no "brief candle" to me. It is a sort of splendid torch which I got hold of for a moment, and I want to make it burn as brightly as possible before handing it on to the future generations."

I believe Arthur's accomplishments throughout his young career surpass what most individuals could not accomplish in a lifetime. Arthur has impacted the lives of many and it should be recognized and respected. He is indeed a man of intellect and creative thinking on many important strategic fronts.

I pray that you will give heartfelt consideration in making a decision for probation, that will take into consideration all of the good that Arthur has accomplished in life, as well as all he can continue to give back to society.

Sincerely,

  
**Donald K. Boswell**

# EXHIBIT 3

# DELLA BRITTON

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April 1, 2022

The Honorable John G. Koeltl  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Dear Judge Koeltl,

I met Arthur Hayes in 2005 when he was a college freshman at the Wharton School of Business at the University of Pennsylvania. Arthur had been selected as a Jackie Robinson Foundation Scholar in 2004 in a highly competitive, national process. Time does not permit me, in my position as CEO of the Jackie Robinson Foundation, to get to know every one of our hundreds of impressive scholarship recipients while they are enrolled in our program. But I got to know Arthur. He was a standout among standouts.

Arthur had distinguished himself early on paper. His application to our program when he was a high school senior revealed an extraordinary 4.2 cumulative grade point average against a great number of Advanced Placement credits in a broad range of subjects, among them, AP Calculus, AP Physics, AP Chemistry, AP Microeconomics, AP Macroeconomics, AP French IV, AP English Literature, Advanced British Literature and Russian Comparative Literature (I suppose there was no AP Russian Comparative Literature course) – all acquired at the preparatory Nichols School in Buffalo, New York. Described by his Advanced British Literature teacher as “brilliant and smart, armed with a very quick mind,” he also received the coveted Keating Science Award for the strongest Chemistry student in 11<sup>th</sup> grade and graduated salutatorian from Nichols, while, according to another teacher, following “the most challenging course load a Nichols student can tackle.”

Arthur’s personal list of extracurricular activities on his application to JRF read like a catalog and included: an A-grade trumpet player in the school orchestra; co-founder of the chess club; writer for the school newspaper; annual mock trial participant; weekly volunteer tutor in a disadvantaged neighborhood in Buffalo; Varsity tennis player; ski-racer; JV soccer player; letterer in Varsity *bowling*; Varsity cross country runner who held school records and earned college prospect status; and a volunteer who served meals at the City Mission. Summer employment included interning for a Buffalo Court judge and working as a tennis instructor in the most competitive tennis program in the Buffalo area. Summer activities when he was not working included helping to organize and running a concession stand for the Western New York community’s annual Juneteenth celebration and attending the Buffalo-area Engineering Awareness for Minorities (B.E.A.M) program. And these lists are not exhaustive, nor do they include all of his endeavors during high school that we learned of by getting to know him over the years, such as his participation in the National Youth Leadership Forum on Law, the Buffalo Bills Student Leader program, and his Church Youth Group. The expansiveness of his extracurricular pursuits was confirmed by his high school guidance counselor who marveled at “how quickly he learns and adapts to any circumstance” with endless positive energy that “lights up any room he enters.” He was one of the most impressive, engaged students in our applicant pool and he continued to soar with us.

I wanted to capture in detail the Arthur Hayes whom we were fortunate enough to admit to the Jackie Robinson Foundation Scholars program to lay a foundation for what did not surprise us, as we got to know him in the program and in the years since.

Our scholarship program provides grants of \$30,000, disbursed over four years to highly motivated, minority collegians, in conjunction with a comprehensive set of services, which include career discernment strategies, internship and job placement, foreign travel opportunities, and a host of practical life skills training. As they matriculate through some 100 colleges and universities across the country, *JRF Scholars* convene several times annually in-person during the four-year program, and around a robust online program. They form life-long bonds with each other, having weathered the college experience either at a PWI (predominately white institution) or HBCU (currently 15% of our students) with the support of each other. Beyond college, the JRF Alumni Association is quite active with some 1800 members strong, Arthur Hayes among them.

As his high school record foretold, Arthur took full advantage of *every* aspect of JRF's program and established a high bar for the code of conduct of *JRF Scholars*. My firsthand observations and his record with our program reveal a young man who was doggedly serious about doing well in his studies at Wharton and about acquiring as much knowledge as possible in his field and about life. He was earnestly engaged in our program, with a great attendance record. He thoughtfully completed surveys we distributed, assisting substantially in our program evaluation efforts. And he demonstrated unwavering respect for the accomplished executives, government officials, and thought leaders that our program put in front of him. He often thanked the JRF staff members for all that the program provided him and vowed to "give back" when he achieved his professional goals (and he did – initially without our asking).

In short, Arthur's college record was as glowing as his high school record. He graduated as an economics major from the Wharton School with a B+ average, which but for C+ grades in two of four Chinese language classes, would have been an A to an A+ average. As in high school, he excelled academically, maintaining a rigorous course load and myriad extracurricular activities. He worked as an equity derivatives trader for both Deutsche Bank and Citigroup for five years before co-founding BitMEX.

Again, by reciting Arthur's extraordinary "resume" from secondary school through the founding of BitMEX, I wanted also to lay a foundation for what he has meant to untold numbers of young people who look up to him and have been inspired by his work ethic, academic and professional success, generosity, and positive attitude.

With all of his accomplishments, Arthur was and remains exceedingly popular and well-liked by his peers and by those of us who have interacted, and continue to interact, with him. One would be hard-pressed to encounter any peer, staff member or JRF constituent who does not admire, respect, and simply love Arthur. He is easy-going, which is hard to fathom with all that he accomplishes in a day, genuine, straightforward, not prone to waste words, and always upbeat, with some reservation for the difficult few years he has faced regarding the subject at hand. His characteristic, resonant, belly laugh has always been endearing to all of us who acknowledge that most often he is laughing at himself, or at a joke he has told himself, which is further endearing. It is a joy to hear, and it has never failed to put those in earshot at ease.

Most importantly from my standpoint is that Arthur is a truly generous soul, in a no-nonsense, no fanfare way. And, here, I don't mean financially. Of course he has generously donated funds over the years to many causes, even as a young executive -- to his high school, his community in Buffalo, to JRF,

recently to members of the public suffering from the effects of the pandemic, in part by funding an app to identify those who needed help, and to others.

Beyond philanthropy, I'd like to extol Arthur as possessing a genuinely kind and generous spirit who cares deeply about others, particularly those traditionally marginalized and underserved. He discussed in his essay included in his application in 2004 how he would like to own a company someday that would allow him to provide support and resources to his family and his community – and he has made good on that aspiration in profound ways since graduating from college. He is magnanimous with his time, his kindhearted, if unfettered, advice, and his painstakingly acquired knowledge and experience. He is non-judgmental in the purest way, which I have seen over and over provide solace to those around him who are suffering or struggling with life's challenges and roadblocks. I have witnessed countless times when a fellow JRF Scholar during Arthur's college days and, since then including now, when a current JRF Scholar, a fellow alumnus, a friend of a Scholar, or 'friend of a friend', has reached out to Arthur for advice, a job, a reference, help with finding resources, or tips on how to get through school or excel professionally. He will always find time. He will always call back. He will always respond – generously and with an open heart – holding no punches and chocked full of his brand of compassion, which is to offer straightforward advice as well as tangible assistance.

When he heard a report in the very early days of the pandemic about college students attributing their academic challenges to a lack of adequate technology, he proactively reached out to provide computers and Wi-Fi connectivity to hundreds of students, including JRF Scholars, and instructed them to get in touch with him if they continued to struggle academically and he would help them himself and connect them to his network of professionals to counsel and tutor them. These acts, in our experience, represent the help that goes much further than funding. And, in Arthur's case, he has offered both funding *and* hands-on support, particularly to communities that have been underserved – both financially and with less quantifiable assistance, such as exposure and access to strategies to succeed.

Arthur also gives of his time and resources freely when asked to speak to groups of young people, to appear at conferences, schools, and community centers to encourage young people, tell his story, to inspire those behind him to persevere and work hard. If he's called, he goes. He always responds to us, and requests that come through us, to speak to groups of young people, without fanfare or recognition of any kind. Through social media, perhaps largely unknowingly, he has inspired scores of people with messages and recitations that help to demystify what for many is an indecipherable, quickly evolving digital ecosystem, a topic of a course that he is uniquely qualified to address. We hear the feedback and know that he is a positive role model to many who aspire to be part of the technology boom that continues to overtake the workforce.

Touted nowhere but tremendously important has been the interest Arthur has taken in making job opportunities available to young people, including our very bright JRF Scholars, who typically do not have adequate access to the technology sector, something we have been working on for years.

Throughout the years, our office has received emails from Arthur identifying job openings, most often in the technology industry, to share with our JRF Scholars, alumni, or other qualified candidates, before and after he was in a position personally to provide such opportunities himself. More recently, I recall three from this past year and another during quarantine months of last year that produced jobs for our Scholars and alumni and our staff has fielded such entrées from Arthur since he graduated from Wharton. He also offers to provide recommendations, which has also been very helpful.



What I found further remarkable about Arthur speaks to the impact he has had, and can continue to have, especially on young people of color. He exudes and did so back in high school and college, tremendous self-confidence, particularly in throwing himself so intently and engagingly into an environment where he was usually, and during what are known to be difficult adolescent years, the only, or one of very few, African Americans. Excelling in every context with such ease and a sense of self is a phenomenal accomplishment for anyone. But to do so as a young, Black man, who indeed was conscious of the disparities in society at a young age, is extraordinary. He seemed to address this in his application to JRF. In describing what Jackie Robinson meant to him, he said “Jackie Robinson influenced me to not care about what other people think of me...[Jackie] faced intense racism and only focused on performing on the field and didn’t care that many people hated him being in an all-white league. He had the courage to come from the Negro leagues and play in the major leagues.”

I have shared this, and other statements made by Arthur about Jackie Robinson over the years, with Rachel Robinson. I remember the pride she expressed regarding Arthur and his accomplishments and her heartfelt responses around her beloved “Jack’s” continuing influence on the bright, young people in our fold, who are yet navigating the effects of institutionalized disparities. I have deliberately waited to explain to Rachel, who will turn 100 years old in July, Arthur’s current challenge with the legal system with hopes that I can deliver less tragic news about his sentence.

Insofar as Arthur is a JRF board member, we are now faced with the decision of his status in that regard, without a prescript but with ethical concerns. We believe that Arthur deserves a chance to stay connected in society. Those of us who know him for his humility and hard work and through his generosity in the community want to see him have an opportunity to demonstrate that he can and will learn from his mistakes without having to physically disconnect from the world. I believe fervently that Arthur Hayes whom I have come to know will learn this hard lesson. His entire life, those who know him have embraced the notion of his being a quick study, of arriving at the correct answer, of learning from history.

I, and all of us at the Jackie Robinson Foundation, hope with all we can muster that Arthur will be granted probation and allowed to continue to inspire the scores of people with whom he resonates. I relish how powerful he can be by telling his story to young people who have faced setbacks and made mistakes in judgment – indeed who have made mistakes. I know Arthur would take up that mantle and continue to reach back into communities that need his example, that needs him as a role model to teach, not only complex mathematical principles and lofty academic concepts but how to overcome and learn from one’s mistakes.


There is no doubt that the heartbreak in our community over Arthur’s situation would be greatly assuaged by a sentence of probation, and we will rally around him as he has done for so long for us.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Arthur Hayes", followed by a long, sweeping horizontal line.

# **EXHIBIT 4**

Andrew D. Goodwin



Hon. John G. Koeltl  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, NY 10007

Dear Judge Koeltl,

My name is Andrew Goodwin and I have known Arthur Hayes my entire adult life. I hope that these anecdotes and my perspective on Arthur's life can speak to the character of my extraordinary friend. Thank you for your time and consideration of this letter.

Arthur and I met in our junior year of college as interns in the 2007 Deutsche Bank summer program in Hong Kong. At first glance, we were an odd pair. Arthur was a polished, well-dressed, black guy from Wharton, a top US undergrad business program. He had an infectious laugh, routinely carried a large bucket of protein powder around the trading floor to sustain his rigorous bodybuilding routine, and had already read and digested Hull, an advanced textbook on options and futures pricing. I was a political philosophy and Chinese language major from Middlebury College in Vermont, and I looked the part. As my last direct encounter with substantive mathematics was pre-calculus at Regis, our summer on the equity derivatives desk at a technical, trading-oriented firm like Deutsche, pushed me far outside my comfort zone. Our eccentric Managing Director often drew options structures on the windows of the trading floor and frequently pulled Arthur and me into the conference room for pricing pop quizzes on the options market, where I frequently received the dreaded two-word review, "not impressive". In this competitive and aggressive pre-financial crisis environment, after working 14-hour days on the trading floor and returning to our shoebox hotel rooms in the Sheung Wan district of Hong Kong, Arthur made time to tutor me in options pricing theory. We had met only recently and were in direct competition for limited offers. As anyone who has interacted with Arthur can attest, he is a kind and generous spirit, and he is a teacher.

Despite some differences in technical proficiency, we had many things in common. We had both lost our fathers young and were raised by single mothers. We were students of Chinese culture, politics, and development and spent our downtime reading. We thrived off the energy and opportunity pulsing through a teeming city like Hong Kong. As foreigners in a dynamic port city, we were pigeonholed into categories so broad they ceased to be relevant and so we could largely define ourselves and build community on our own terms. For a fiercely independent and iconoclastic thinker like Arthur, this was extremely important, and I think accounts for why he has always felt most at home in Singapore or Hong Kong. I also believe the early crypto

community, which focused on merit and contribution not personal background or credentials, shared a similar ethos, one which Arthur embraced fully.

After a stressful summer competing for seats at the height of the financial crisis, Arthur and I received offers to join Deutsche and returned to Hong Kong in the fall of 2008. We moved into a small two-bedroom flat near Hong Kong University and began navigating that special post-adolescent / pre-proper-adult period together. We hosted holiday dinners, celebrated birthdays and milestones, and forged a special Hong Kong family of close friends, all of whom are still in daily contact today.

. Having lived with Arthur myself for many years, I know that he has a pathological inability to clean up after himself in the kitchen. Indeed, despite all his professional success, at 33 years old he still did not know how to close a kitchen drawer. This is problematic for someone that at times cooks and consumes between 5 and 7 meals per day and has seriously threatened our friendship on more than one occasion. And so, when Arthur and I finally spent some time together in the US this January after two years of covid-driven border controls, you can imagine my surprise when I woke up to find Arthur drinking coffee and his breakfast dishes washed and on the dishrack.

While every life I think has its unique flavor of grief and adversity, I know Arthur's path was not an easy one – though he will never acknowledge it. By the time Arthur and I met on the Deutsche Bank trading floor at 20 years old, he had already fought many battles and achieved victories large and small through his own discipline and intelligence. I don't know exactly what it was like growing up black in Detroit and Buffalo, seeking out and obtaining scholarships to prep school, Wharton, and an internship at JP Morgan in New York, all the while managing the grief of losing a parent and helping his mother care for an intellectually disabled brother, but I can imagine easier roads. Arthur, true to form, has never once acknowledged the unique challenges of his life to me, but they are reflected in his sensibilities. Arthur holds himself to an exceedingly high standard of personal excellence. At the same time his posture towards those around him is consistently open-hearted, supportive, and non-judgmental. As a natural teacher, Arthur has always made time to grab a coffee or jump on a call with young people in his network seeking advice or direction. In addition to his time, his public charitable endeavors are similarly focused on education, through his ongoing support of the Jackie Robinson Foundation, an organization of which he is also an alumnus.

Arthur's transition out of traditional finance and into crypto also reveals much about his character. You are most likely familiar with the almost mythic hero's tale that has circulated in crypto circles and occasionally in the popular press. The narrative typically focuses on the traditional finance derivatives trader who went "full-crypto" and as a "hak gwai" ("black ghost in Cantonese) got his start riding the bus from Hong Kong to Shenzhen conducting physical cross-border crypto arbitrage via USB key to pay rent. As the ecosystem matured, he started an exchange, invented the perpetual swap contract, an entirely new financial product that has

traded trillions of USD, and became one of the first crypto billionaires. While these are all factual elements of the story, to those who love Arthur, the context is more compelling.

When the index trading desk that Arthur worked on at Citibank was shut down and he was fired, Arthur was a newly promoted Vice-President. He had recently paid off his student loans, but he was by no means wealthy and did not have much of a safety net at all. Indeed, our first full day of work as analysts at Deutsche Bank was the Monday after Lehman failed – we missed the boom times. In one of Arthur’s widely read newsletters he once quipped, as far as traders go, show me your portfolio and we’ll see what you actually believe. In other words, traders might say all kinds of things, but their portfolio gives you a pretty good idea of where they really stand. During the post-financial crisis period when the Federal Reserve’s bailout of the US banking system evolved into open-ended quantitative easing, Arthur, like many others including Bitcoin’s anonymous founder Satoshi Nakamoto, feared that the USD was being debased. In response, every few months Arthur would wait in line at the Bank of China branch in Hong Kong to exchange the excess savings from his fiat paycheck into 1oz Canadian Maple Leaf gold coins. Bitcoin is often described as digital gold, which I think is largely accurate and also illustrates why Arthur initially found Satoshi’s whitepaper and subsequent postings so compelling.

Characteristically, Arthur didn’t blame individuals in the banking system or the government for responding to the incentives provided, but I know he thought the system needed changing. Therefore, instead of seeking another cushy trading job at a different bank, Arthur started BitMEX. When assessing Arthur’s early ambitions for the exchange, the name is instructive. “BitMEX” is short for “Bitcoin Mercantile Exchange” which unlike say “Robinhood” or “Draft Kings” was a nod to the Chicago Mercantile Exchange and was geared towards institutional investors. Arthur hit the road with his partners pitching BitMEX, raising small amounts of seed capital, preaching the gospel of Bitcoin and teaching whoever would listen about futures and swap pricing, perpetual swaps, and opportunities for arbitrage in the budding crypto markets. Unfortunately, they were too early as institutions were far from ready to embrace crypto and so nobody was trading on their exchange. Arthur’s problem was amplified by the fact that he was also too early to the gold-inflation trade and so as the gold price fell in USD terms and BitMEX ate up most of Arthur’s dwindling savings, he was forced to move onto our friend Danny’s couch in Hong Kong. I was transferred from Hong Kong to Taipei during this period and I recall visiting one weekend and noticed that Hayes had lost weight. He had stopped weightlifting and took up yoga full-time. While he said it was for the health and stress benefits, we joked that BitMEX was consuming too much of Arthur’s grocery budget, which sadly was close to the truth. Arthur was not some rich kid with family money that was early to crypto and he was not a wealthy banker that saw the opportunity in crypto and pivoted from a comfortable perch to hawk the next hot financial product. Arthur helped invent the plumbing of the current crypto trading infrastructure and, without a safety net, he risked everything he had to earn his stake in the ecosystem. What he did took foresight, discipline, and an enormous amount of courage.

The last time I saw Arthur before Covid and the subsequent criminal indictments, he was explaining how BitMEX had started borrowing money from nascent crypto lenders at various

tenors, 3months, 6months, 1year etc. BitMEX at the time was perhaps the most profitable company in crypto and really had no need to borrow, but Arthur was looking ahead and reasoned that as the preeminent cash generating entity in the ecosystem it made sense for BitMEX to be the benchmark corporate lending rate off which other loans could be priced. He was sketching out the possibilities of a crypto-native fixed income market and what that would mean for the mission. That unmistakable Hayes passion and focus and excitement were all there. The criminal charges came as a huge shock, especially to those of us with context around the government's treatment of major investment banks. Within a few months of that last meeting, Arthur handed over his company to professional managers and turned his considerable energy and discipline to this case. During this time, much of what Arthur had predicted and positioned for came to pass. Institutions, sovereigns, even the CEO of Apple entered the crypto ecosystem. Trading volumes exploded and Arthur's erstwhile competitors like Sam at FTX, who made his first fortune at Alameda Research trading the product Arthur invented on Arthur's exchange, set-up a similar exchange to BitMEX and became a darling of mainstream financial media, sponsoring tier-1 sports franchises and stadiums. The bulge bracket investment banks that had self-interestedly scoffed at crypto now rush to collect fees on crypto products while their strategists push the narrative that crypto is a hedge for the current surge in inflation – the very seeds of which were planted in response to their own irresponsible risk-taking. On a personal level, Singapore failed to renew Arthur's visa and he was forced to leave [REDACTED] his home behind and relocate to the US until the border reopened for tourists. More important to Arthur, however, was the stress the case caused his mother.

I spoke to Arthur regularly during this period and perhaps the most remarkable thing I can say about him is that not once during our conversations did he complain or express the slightest tinge of frustration or self-pity. Instead, he channeled his energy and time into researching and writing his widely read and respected fortnightly newsletter. Through his essays he continued thinking, teaching, exploring new ideas, and contributing positively to the community he cares so much about. Whenever we spoke, he was always much more interested in me and my life than the case or his own concerns. He has remained the same generous and joyful friend I met many years ago in Hong Kong. I believe strongly that Arthur still has much to contribute to the global community and we need his wisdom, kindness, discipline, innate optimism, and energy now more than ever.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrew Goodwin', with a stylized, cursive script.

Andrew Goodwin



The Hayes and Hong Kong Families in Hong Kong



Interns in Hong Kong



# EXHIBIT 5

March 29, 2022

Hon. John G. Koeltl  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York. 10007

Dear Honorable Judge Koeltl,

My name is Barbara Y. Hayes and I am the mother of Arthur Hayes a defendant who will be before you for sentencing on May 18, 2022. I am writing this letter as a character witness for Arthur in support of my request to you for leniency in regards to your sentencing of Arthur.

Arthur was my and my husband at the time first born he was born in Buffalo, NY on December 3, 1985 into a home full of love, respect, and support, which in addition to what Arthur was born with helped shaped Arthur's character.

[REDACTED]

When Arthur was five years old due to my job transfer we relocated to Bloomfield Hills MI a suburb north of Detroit Michigan in 1991. Arthur settled into our new environment starting at kindergarten he quickly made neighborhood and school friends. Arthur excelled at school and participated in many sports; soccer, skiing, archery, after school baseball/track, Boys-scouts, and many other creative activities after school. Arthur was always well liked by the neighborhood kids, classmates as well as his teachers and other staff at his schools, and he always made good choices in friends he was easy going and fun to be around. Arthur grew vegetables and herbs in an outside garden and on our visits back to Buffalo he would always take back some mint and make tea for his grandmother which she loved. As a family we took trips together, Arthur was read to every night until about the age of ten he is an avid reader.

Unfortunately, my marriage to his father did not last and we divorced in Feb. 1997.

[REDACTED]

[REDACTED] About two years after my divorce I in essence ended my career [REDACTED] y [REDACTED], their father had moved back to Buffalo, and my having no support system, so I asked my employer to relocate me back to Buffalo. My employer was very supportive and sympathetic to my situation and relocated me back to Buffalo. This allowed Arthur [REDACTED] more access to their father, and provided me with some support. Shortly after relocating I retired. While Arthur expressed he would have preferred to stay in Michigan due to his friendships he had made in and out of school he said he understood my situation and didn't resist. To ease the transition for Arthur and support his need to be challenged I enrolled him into the best private school in Buffalo Nichols. Arthur quickly acclimated to the Nichols environment making new friends working hard and excelling academically and taking part in tennis, soccer, skiing, bowling, track, and squash. Arthur and a friend organized and started a chess club for Nichols. Arthur never had any behavior issues I never had any problems with him, he was easy to raise and it was an absolute joy raising Arthur. While in high school Arthur provided tutoring to African refugees at our church in math and he gave tennis lessons to young children in the neighborhood. My mom passed in 2001 I was so happy Arthur was able to spend time with her during the last 2 years of her life.



Arthur graduated from Nichols as a Student/Athlete Scholar. Arthur was accepted at his college of choice the University of Pennsylvania (Penn) and was awarded several academic scholarships and grants by many organizations which was a big help with his college tuition.

One scholarship being from the Buffalo Urban League where the Director asked Arthur to speak at the reception honoring all their Scholarship recipients. Arthur spoke where he said in part they should work hard, and select a major that they liked so they would enjoy their career, and of course have fun in college, etc. as I recall it was a great inspiring speech. At Penn he again acclimated very well educationally and played sports, making good choices with new friends, and he participated in ballroom dancing/bodybuilding competitions, touch football, and crew. Arthur also tutored students in economics while in college.

While a junior in college sadly Arthurs' father became terminally ill and passed. Arthur again was ever the compassionate son/brother. [REDACTED]

Upon graduating from college Arthur moved to Hong Kong and worked in the field of finance at a couple of banks until he and two friends founded their own business.

[REDACTED] We also met his friends again great choices they were all so nice some letting me know how close they all are and that they looked out for each other. [REDACTED]

[REDACTED]

After graduating from college Arthur began to develop more and more compassion to provide help to his fellow man and be a positive influence on his community locally and worldwide as follows; (I can speak in detail of only the local donations but know there's more globally)

[REDACTED]

-At some point in his career Arthur asked me for a list of the organizations that gave him scholarships, which I provided. He then donated back to them with The Jackie Robinson Foundation being one of them at one of their annual Gala's Arthur was recognized for his large financial donations to the foundation, and he spoke at this event and spoke of his gratitude for



them supporting him financially with his college tuition it was a very complimentary speech. Arthur continued to support them even committing to and provide college scholarships to at least twenty students in the Buffalo NY, Rochester NY, and Syracuse NY areas. He also supported them with a financial donation to support their new museum built in New York City. Arthur is also a board member of The Jackie Robinson Foundation and is mentor/inspiration to many students.

-Arthur at some point also said to me that he wanted to establish a scholarship where he donated to support high achieving African American students from low income families in the Buffalo area with full scholarships to private high schools. So he and I met with Nichols for starters and they just so happen to have a student that fit our requirements that they had no financial aide available for. After our review Arthur provided a full scholarship for the student from eight grade through high school. Arthur named the the scholarship The Harry Hayes Scholarship in honor of his brother. The next year Arthur and I had a meeting with the Head of another private school where she shared a list of three students that met the requirements of The Harry Hayes Scholarship after review of these students Arthur was asked which one did he want to support he said all three. Currently there are many Harry Hayes Scholars at more than one private school, all of them will graduate in 2023. Arthur and I also met with the Director of Buffalo Prep an organization that supports area minority students with their education. Arthur after hearing what they provide donated substantially to their organization that will support these students from 5th grade through high school.

-Arthur and I began discussing how to increase the Harry Hayes Scholars and expand his assistance to the community which have slowed to a halt in the past couple of years.

The past couple of years has been extremely stressful for Arthur (which I sensed through his voice from time to time). My solace is due to his strong character and the support he gets from [REDACTED], family, and friends, he has not engaged in any destructive behaviors. Arthur has instead continued to engage in positive activities such as his daily exercises; bicycling, yoga, and weights, many sports; tennis, water sports, skiing and spending time with friends to name a few to help him deal with his situation. [REDACTED]

[REDACTED] His trips home has been very beneficial most recent dinner which included aunts, uncles, and cousins was just wonderful.

My hope and wishes for Arthur in the future is that he will continue to do amazing/great things in his career, that he continues/increase his philanthropy locally/globally. [REDACTED]

[REDACTED]

Arthur I know has acknowledged the facts of his actions and is extremely remorseful.

Honorable Judge Koeltl after considering all I have provided on Arthur's character, the fact that he provides so much support and inspiration to communities locally/globally, and that Arthur has no prior record, I am asking that you have mercy on Arthur and sentence him to probation. I thank you in advance for your just consideration of my request.

Respectfully submitted,

  
Barbara V. Hayes  
[REDACTED]

# EXHIBIT 6

# NEIL CAMERON HOSIE

19 March 2022

Hon John G Koeltl,  
United States District Court of Southern District  
New York

Dear Hon. John G. Koeltl,

I am writing in response to hearing that my good friend, Arthur Hayes is to be sentenced so that you can have some perspective around the exceptional young man that he is and can take his character into kind consideration.

I am the Head of Equities for Asia Pacific and Europe, Middle East and Africa for Credit Suisse. I have lived in Hong Kong for twenty years and am moving back to the UK this summer. I am a UK Senior Manager meaning I am directly accountable to the Financial Conduct Authority and Prudential Regulation Authority for all activity Credit Suisse undertakes in my areas. I also have Overall Management Oversight under the SFC regime in Hong Kong. I am a board member of the CS HK entities also our onshore China Joint Venture and Chair the CS UK Diversity and Inclusion Forum. The relevance of all this is that I am under a level of scrutiny and oversight for our activity, that I take regulations and compliance extremely seriously. I have been brought in to take over EMEA responsibilities following the issues CS has had around the Archegos incident, as part of the solution in enhancing of controls and oversight. I have to ensure exceptional judgement in character of the traders that work for me as I am accountable for all of their activity.

I first met Arthur in 2008 when I was working as a manager in the Equity Trading division at Deutsche Bank. He was part of the best graduate intake we had ever seen or have seen since. There was something genuinely special about the class that year, a small group of smart, creative, engaging young men and women with an immense sense of energy brimming with healthy ambition.

Each one of them has excelled in their field, I have hired some of them in my professional role but also in my private business efforts, some are competitors and some are clients. They now mostly work across different parts of the finance industry including Morgan Stanley, Goldman Sachs and Bank of America and many have their own creative personal side businesses from baby care to personal hygiene - this is a truly entrepreneurial bunch. I remain in touch with all of them as friends and as something of a mentor figure. I have always appreciated their positivity, sense of humour and also their camaraderie and loyalty to each other.

Of this little group of game changers, Arthur was always the smartest, always “the most likely to succeed”. He had the loudest laugh, the most sparkle and the truest out of the box attitude.

Arthur always showed good character, was hard working and has integrity. When he left Deutsche Bank to go to a competitor I was disappointed but understood he needed to continue to make progress and forge his own path. He was respectful, grateful and burned no bridges, we knew he was going to do great things.

Behind the bravado and character he portrayed at the height of the Bitmex boom was a genuine, caring young man. He had real humility and gratitude. We knew he was contributing to various charities to help minority kids from humble backgrounds get college educations having been to college on a scholarship himself. We knew how much he cared for his mother. We knew him as a thoughtful friend with a good moral compass. We also knew that he was just as surprised as anyone else how quickly his business had grown and was enjoying the wave it was taking him on.

I remember going to visit him in his HK HQ and enjoying how excited he was to show me some of the cooler features of the office - he was in his element as we were in tears of laughter together at how ridiculous some of it was. I was equally proud of him as a guy with no pretension that has taken a chance, built something amazing and done so well. There are so few black entrepreneurs and here was a friend innovating at the bleeding edge of fintech.

Living in the heavily regulated world of finance myself I had conversations in later stages with Arthur suggesting that over time the crypto industry would need to evolve and ensure control. Arthur was thoughtful and appreciative of my input and was intent on ensuring to hire the right people to keep the business safe from harm, he hired senior talent from a regulatory background.

The reality to me was that Arthur was a true pioneer. A true innovator and the business moved so quickly it was impossible for him to keep up and think of every eventuality. Looking back, he was riding a wild horse and trying not to fall off. There were no regulations in this field as it started, it was a gold rush which favoured the brave and Arthur was at the centre of trying to change the world.

To see Arthur harshly treated when he has done so much to develop and enhance the crypto industry, to be punished for being a pioneer, a black entrepreneur who was ahead of his time, would be wrong. There are lessons to be learned, rules to be followed, lines not to be crossed. Arthur was a brilliant young man trying to best manage a business exploding to the upside faster than he could fathom. It is regrettable that he fell short in some respects.

At the same time, progress is not made by those who sit on the sidelines and follow the well trodden paths, progress is made by entrepreneurs and dreamers breaking the mould.



The fear and stress that Arthur has had to deal with worrying about the outcome and impact of this situation along with damage to his reputation and BitMEX's business have served as punishment enough for his having not slowed things down and been more conservative on his journey.

Sit in the same room as Arthur Hayes and see him laugh and smile and feel his energy and it is easy to understand why he should be allowed on his way with an understanding of how to ensure process comes alongside progress.

The true test for me is if I would consider, with all of the accountability and responsibility I have in my role, hiring Arthur, putting him in a position of authority and autonomy? Do I trust him and his integrity and know that he can operate inside a highly regulated business? The answer is absolutely yes I would.

But Arthur and I both know he has better and more important things to do.

I really look forward to seeing him continue to do them.

Yours sincerely,

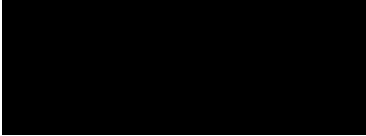
A handwritten signature in black ink, appearing to read 'Neil Hosie', with a stylized, cursive script.

Neil Cameron Hosie

# **EXHIBIT 7**

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**Daniel Li**



30th March 2022

**Hon. John G Koeltl**

United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Dear Judge Koeltl,

I am writing to you on behalf of one of my closest and best friends, Arthur Hayes. I have known Arthur since we were in college, well over a decade ago now, lived together for several years, shared many happy, sad, and important life moments together. He is someone who is kind, generous; someone with a huge heart.

For me, Arthur has always been a person who has gone out of his way to be there for me during life's most challenging moments. [REDACTED]

[REDACTED]

Throughout this period, Arthur would always check in and make a special effort to ask how my father and family were doing back East. My wife and I really wanted to travel back to visit my family. We were always hesitating, delaying to go at the time because of related travel costs and safety concerns around the pandemic. Arthur messaged me, out of the blue, shortly after one of these conversations, saying that he had booked a flight for us to go see my father and encouraged us to go as soon as possible.

[REDACTED]

[REDACTED] Much of this would not have happened without Arthur's kindness.

Over the past two years, I have been witness to the stress, self-doubt, and search for purpose Arthur has endured while he has waited to go to trial. I

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have tried to be there for him during this time, messages and calls, but seeing each other just once given the challenges of the pandemic.

We often talk about what he hopes to do after the trial is behind him, what he wants to dedicate his energy to. [REDACTED]

[REDACTED]

[REDACTED] His mother is approaching 70 and I know he cherishes his time with her.

I believe Arthur will do something great in the future. Within him, I see a desire to give back to the community, to create something new, and dedicate all his unending energy to these pursuits. He has a relentless, entrepreneurial spirit that can be channeled into mentoring other startups and growing the charities he is passionate about.

Arthur believes in the importance of education, the opportunities it gave him coming from a middle class family in Buffalo that set him on a path to UPenn. I believe he wants to share those opportunities with others. This led him to invest in educational opportunities for other people, sponsoring a host of scholarships at his high school and to serve on the board of the Jackie Robinson Foundation (a scholarship and leadership development programs for minority college students). He is also involved in the Bail Project to try to help combat racial and economic disparities in the justice system.

All these actions, efforts, and aspirations are testament to Arthur's compassionate character. In all my interactions with him, I can only attest to his integrity, generosity and kindness towards others.

I hope that you will sentence Arthur to probation as you review his case. I believe he has reflected on and accepted responsibility for his actions. I hope that he has the opportunity to dedicate himself to his charity work, entrepreneurial ventures, and his family.

Thank you for your consideration.

Sincerely,



Daniel Li

# EXHIBIT 8

20 April 2022

Hon. John G. Koeltl  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Dear Honorable Judge Koeltl,

[REDACTED]

[REDACTED]

Arthur acknowledges the impact his educational opportunities have had on his career, and as such, has championed this cause. He has supported the Jackie Robinson Foundation, where he earned a scholarship, for a number of years and currently sits on their board. Social justice and equality are also issues close to him and he has donated to the Justice Centre Hong Kong, a non-profit human rights organisation dedicated to supporting refugees obtain gainful employment.

Last year, circumstances forced him to leave Asia and spend considerable time in the United States—a place that is no longer familiar to him—meaning that he was culturally dislocated from what he identifies as home. Since I have known him, Arthur has always regarded Hong Kong—where he has spent most of his adulthood—with a particular fondness. [REDACTED]

[REDACTED] It is also where he has built his career and formed enduring relationships, as a respected member of the business community and an endearing friend. The impact of not being able to return home to Hong Kong in the last two years has meant that he is distanced from his support network, when he has needed them the most.

With his entrepreneurial spirit and positive outlook, Arthur is someone that will always strive for excellence in all aspects of his life. He is never one to be idle and following his departure from BitMex, he has turned his attention to writing, with a keen interest in bringing awareness to financial literacy. His voice is erudite, engaging, and he is unafraid to be authentic, and these are a few of reasons that he is viewed as a thought leader in his field.

[Redacted]

Sincerely,

[Redacted]



# EXHIBIT 9

Hon. John G. Koeltl  
United States District Judge  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Michael Novogratz

Dear Honorable Judge Koeltl,

I am writing to you today from what I believe is a unique perch. I am the CEO of Galaxy Digital, a publicly listed cryptocurrency firm with a \$5bn market cap. I was formerly a partner at Goldman Sachs and the Fortress investment group. Hence, over 35 years I have seen the good, the bad, and the ugly of our financial system, how it operates, and how it is regulated. I also have spent a significant amount of time and resources engaged with reforming our criminal justice system. Galaxy has 5 formerly incarcerated employees with 4 of them having spent between 13-23 years locked up. And one who spent 2 years. She is a Korean Immigrant who went to Harvard. The other four are black men who grew up in bad neighborhoods. Every judge says race is not an issue. I firmly disagree.

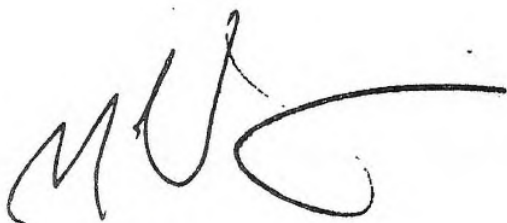
I met Arthur Hayes in 2015 in my office in Soho. I had asked for the meeting to learn about his business and, to be frank, to try to get a refund on a mistake some of my traders had made in dealing with his platform. By the end of the two hours, not only had he told me no refund would be coming – I actually asked to invest in his company. He also politely refused. I wanted to invest because Arthur was smart, focused, clear headed, fair, and confident. He is one of the most capable leaders I have met in this industry.

Over the years I watched Arthur grow. He was not afraid to call out the good and bad of our industry. His writings have been followed by many in the community because Arthur always called it as he saw it. Crypto has an ethos of being 'permissionless' – i.e. granting access to a system without qualification. The noble side of this is that it extends financial services to underserved communities globally. I mention this because it is important to know that that belief was – and in many cases still is – deeply imbedded in the DNA of people who join this crypto movement. I won't comment on Arthur's case or intentions. Just that as a 57-year-old guy who has seen a lot, I am not surprised that the question of who gets to participate is at the center of many early crypto mistakes.

So, I write to you today to consider that this young man has the capacity, and I believe the heart, to make significant contributions to our society going forward. It should not be lost on anyone that Arthur is a young, successful black man in a country and industry that needs more of them. He was already reaching into communities to help underprivileged kids with scholarships. He helped me when I asked him on bail reform. I am positive that given the chance, Arthur will 'pay it forward'. Weighing a sentence is a tough duty. I am asking that you consider that, while Arthur made mistakes, he was a young, idealistic entrepreneur whose mistake shouldn't define his life. We are a country that believes in second chances. Arthur deserves one.

Thanks for your time,

Mike Novogratz

A handwritten signature in black ink, appearing to be 'MN' followed by a long horizontal stroke.

# **EXHIBIT 10**

Kevin C. Wood, D.D.S.



Honorable John G. Koeltl  
United States District Judge  
Southern District of New York  
500 Pearl St.  
New York, New York 10007

Dear Judge Koeltl,

My name is Kevin Wood, and I am writing this as a personal reference in support of Arthur Hayes. I have known Arthur Hayes for well over 30 years as I have had the pleasure to serve as the Hayes family dentist. In this time, Arthur has proven to be of a high moral and responsible character.

I recall that in his teenage years, he tutored African refugees at his church, he tutored neighborhood kids in tennis, and later tutored students in Economics. As an adult, his philanthropy has been a great support to the community. He has given back significantly to those who have supported him financially in college. He has significantly supported the Buffalo Urban League, Sigma Pi Phi fraternity, and the Jackie Robinson Foundation, where he has donated millions of dollars. He currently supports many college students from Western New York, in addition to students in Rochester and Syracuse.

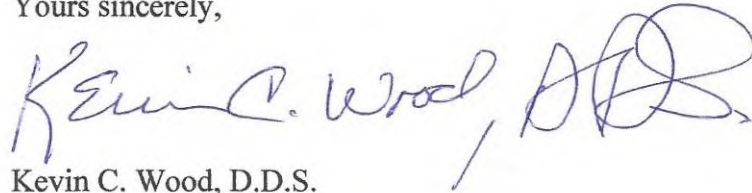
Locally, he has donated significantly to Buffalo Prep, which is a dedicated organization that works with private, public, and charter high schools to help underrepresented youth take advantage of a first-rate college preparatory education. As Buffalo Prep does not charge tuition cost or receive government support, Arthur's support has been critical for the success of the program. He has also established a scholarship for local high school students to attend private schools in full scholarship for those high achieving students from low income families in honor of his brother, called the Harry Hayes Scholarship. There are many students today that are benefiting from his extraordinary support.

It is my hope that this letter helps you understand Arthur's strong sense of duty, compassion, and integrity. He was raised by a hard working, principled and loving mother. These past couple of years as been extremely stressful on Arthur and his family, because they, more than anyone else,

know the principled person he is. Arthur has the desire and ability to positively contribute so much more to our society. I pray that this letter helps you understand the true nature of his character and that you have compassion on his future

Thank You.

Yours sincerely,

A handwritten signature in blue ink that reads "Kevin C. Wood, D.D.S.". The signature is written in a cursive style with a large, stylized "K" and "W".

Kevin C. Wood, D.D.S.