

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SECURITIES AND EXCHANGE
COMMISSION

Plaintiff,

v.

DAVID R. HUMPHREY

Defendant.

Civil Action No.

CONSENT OF DEFENDANT DAVID R. HUMPHREY

1. Defendant David R. Humphrey ("Defendant") waives service of a summons and the Complaint in this action ("Complaint"), enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Defendant has entered into a written agreement to plead guilty to criminal conduct relating to certain matters alleged in the Complaint. Specifically, in *United States v. David R. Humphrey*, Crim. No. 17-CR-82 (RMC) (D.D.C. 2017), Defendant agreed to plead guilty to a violation of Section 1001 of the United States Criminal Code [18 U.S.C. § 1001]. In connection with that plea, Defendant admitted the facts set out in the written Statement of Facts that is attached as Exhibit A to this Consent. This Consent shall remain in full force and effect regardless of the existence or outcome of any proceedings in *United States v. David R. Humphrey* (D.D.C. 2017).

3. Defendant hereby consents to the entry of the final Judgment in the form attached hereto ("Final Judgment") and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Defendant from violations Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] and Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)];
- (b) orders Defendant to pay disgorgement in the amount of \$51,917 and prejudgment interest in the amount of \$4,674, for a total of \$56,591; and
- (c) orders Defendant to pay a civil penalty in the amount of \$51,917 under Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

4. Defendant agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendant further agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

5. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

6. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

7. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

8. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

9. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

10. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

11. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and

other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the Complaint.

12. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant acknowledges the guilty plea for related conduct described in paragraph 2 above, and: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the Complaint or creating the impression that the Complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the Complaint, or that this Consent contains no admission of the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the Complaint; and (iv) stipulates for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code [11 U.S.C. § 523], that the allegations in the Complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under the Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding,

is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code [11 U.S.C. § 523(a)(19)]. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

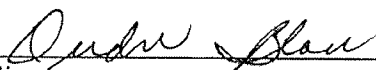
13. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

14. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

15. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

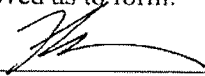
Dated: April 18, 2017 David R. Humphrey
David R. Humphrey

On Apr. 18, 2017, David R. Humphrey, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

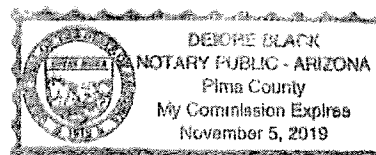


Notary Public
Commission expires: *Nov. 5 2019*

Approved as to form:



Kenneth R. Lench
Tiffany A. Rowe
Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 879-5270



Attorneys for Defendant David R. Humphrey

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff	:	
	:	
v.	:	No.
	:	
DAVID HUMPHREY,	:	
	:	
Defendant.	:	

STATEMENT OF THE OFFENSE

The Department of Justice, Criminal Division, Fraud Section (the “Government”), and the defendant, David Humphrey, represent and agree that if this matter were to proceed to trial the Government would be able to prove the following beyond a reasonable doubt:

1. At various times from 2002 through 2014, Humphrey signed and submitted, to his employer the Securities and Exchange Commission (“SEC”), documents that failed to disclose: (i) assets held for investment with a value greater than \$1,000 at the end of the prior calendar year; or (ii) assets held for investment which produced more than \$200 in income during the prior calendar year. Humphrey failed to disclose information despite a duty to disclose it, thereby rendering his disclosures materially false. Humphrey also submitted to the SEC false certifications that he was in compliance with all applicable SEC rules relating to prohibited holdings. At all times, Humphrey acted knowingly and willfully, that is, intentionally, on purpose, and with knowledge that his disclosures were false and that his conduct violated SEC ethics regulations. Further, at all times, the documents that Humphrey submitted to the SEC were received and relied upon by the SEC.

2. From 1998 to August 2014, David Humphrey ("Humphrey") was an employee in the SEC's Division of Corporation Finance ("CF"), at the SEC headquarters in Washington, within the District of Columbia. He was a branch chief from September 2004 to August 2014.

3. Beginning in or about 2001, Humphrey devised an "options trading strategy" in which he sought to earn profits by trading options (*i.e.*, the right to purchase or sell equities at some time in the future). Humphrey traded options pursuant to his strategy at various times between 2001 and August 2014, using brokerage accounts opened in the name of his ex-wife during their marriage, and, later, jointly with his wife after he remarried.

4. More than one hundred times between 2001 and August 2014, Humphrey engaged in options trading from his SEC computer, during the business day, while performing his official duties at the SEC.

5. Humphrey knew or should have known, at all relevant times from 2000 through August 2014, that applicable SEC ethics regulations prohibited him, as an SEC employee, from trading options where the underlying interest is a security or group of securities. Humphrey also knew or should have known, between August 2010 and August 2014, that new SEC ethics regulations prohibited SEC employees from purchasing or holding securities the SEC directly regulates, such as financial institutions, and further required SEC employees to pre-clear any securities transactions, to report and certify that all securities holdings were in compliance with the holding requirements, and to supply copies of year-end account statements for such holdings.

6. Beginning with calendar year 2012 certifications, the SEC required employees to submit the annual certification through an online Personal Trading Compliance System ("PTCS"). When doing so, employees certified that they were in compliance with all SEC regulations relating to pre-clearance, reporting, and holding requirements, and the rules relating

to prohibited holdings.

7. Despite knowing the restrictions on SEC employees' holdings, Humphrey, while an employee of the SEC, traded options where the underlying interest was a security or group of securities.

8. Humphrey also knew that in his position at the SEC, he was required, on an annual basis, to submit a Office of Government Ethics Confidential Financial Disclosure Report ("Form 450"). An individual submitting a Form 450 was required to disclose assets held for investment with a value greater than \$1,000 at the end of the reporting period or assets held for investment which produced more than \$200 in income during the reporting period. As described on the Form 450 itself, reportable assets included, but were not limited to, assets such as stocks, bonds and sector mutual funds. The reporting period was the calendar year.

9. At various times from 2002 through 2014, Humphrey signed and submitted Form 450s that failed to disclose assets held for investment with a value greater than \$1,000 at the end of the prior calendar year, or assets held for investment which produced more than \$200 in income during the prior calendar year.

10. Between on or about November 21, 2012, and December 31, 2012, Humphrey made multiple sales of put options in an exchange-traded fund through his brokerage account, realizing total gains on those sales of approximately \$5,539.

11. On or about January 7, 2013, Humphrey submitted his annual certification for calendar year 2012 through PTCS. In doing so, Humphrey falsely certified that he was in compliance with all applicable SEC rules relating to prohibited holdings.

12. On or about January 15, 2013, Humphrey submitted his Form 450 for calendar year 2012. The Form 450 disclosed only Humphrey's ownership of a life insurance policy,

despite the fact that Humphrey had sold options in 2012 that produced more than \$200 in income.

13. On or about January 17, 2013, Humphrey sold additional put options in an exchange-traded fund through his brokerage account, realizing gains on the sale of approximately \$2,500.

14. On or about March 28, 2013, Humphrey sold put options on securities of Citigroup, Inc., an institution directly regulated by the SEC whose securities Humphrey was precluded from trading in, through his brokerage account, realizing gains on the sale of approximately \$5,244.

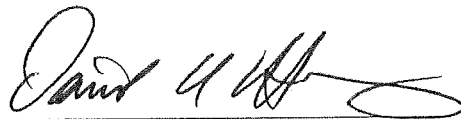
15. On or about July 19, 2013, Humphrey began to purchase shares of IBM through his brokerage account. Humphrey made additional purchases and sales of IBM shares throughout 2013, ending the year with a position with a value greater than \$1,000.

16. On or about January 28, 2014, Humphrey submitted his Form 450 for calendar year 2013. The Form 450 disclosed only Humphrey's ownership of a life insurance policy, despite the fact that Humphrey had sold options in 2013 that produced more than \$200 in income, and that Humphrey held IBM stock at year-end 2013 with a value greater than \$1,000.

17. On or about March 11, 2014, Humphrey submitted his annual certification for calendar year 2013 through PTCS. In doing so, Humphrey falsely certified that he was in compliance with all applicable SEC rules relating to prohibited holdings.

18. On May 8, 2014, during a voluntary interview with agents of the SEC Office of Inspector General, Humphrey stated falsely that he had traded options but not during the time he had worked at the SEC.

Date: 4/4/2017



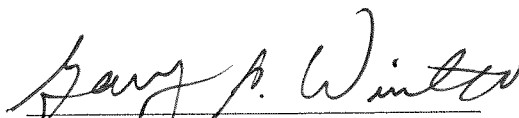
DAVID HUMPHREY
Defendant

Date: 4/4/17



ANDREW M. GENSER
KENNETH LENCH
Attorneys for the Defendant

Date: 4/6/17



GARY A. WINTERS
Trial Attorney
Fraud Section, Criminal Division
United States Department of Justice