



U.S. Department of Justice

Criminal Division

Fraud Section

Washington, D.C. 20530

March 30, 2017

**FILED**

**MAY - 9 2017**

Clerk, U.S. District and  
Bankruptcy Courts

**17-CR-82 (RMC)**

Andrew M. Genser, Esq.  
Kenneth R. Lench, Esq.  
Kirkland & Ellis LLP  
655 15th St., N.W.  
Washington, DC 20005

Re: United States v. David Humphrey

Dear Messrs. Genser and Lench:

This letter sets forth the full and complete plea offer to your client, David Humphrey (hereinafter referred to as "your client" or "defendant"), from the Department of Justice, Criminal Division, Fraud Section (hereinafter referred to as "the Government" or "this Office"). This plea offer expires on **April 6, 2017**. If your client accepts the terms and conditions of this offer, please have your client execute this document in the space provided below. Upon receipt of the executed document, this letter will become the Plea Agreement (hereinafter referred to as "this Agreement"). The terms of the offer are as follows:

**1. Charges and Statutory Penalties**

Your client agrees to plead guilty to a criminal Information, a copy of which is attached, charging your client with false statements in violation of 18 U.S.C. § 1001(a)(1). Your client understands that a violation of 18 U.S.C. § 1001(a)(1) carries a maximum sentence of 5 years of imprisonment; a fine of \$250,000; a term of supervised release of not more than 3 years, pursuant to 18 U.S.C. § 3583(b)(2); and an obligation to pay any applicable interest or penalties on fines and restitution not timely made.

In addition, your client agrees to pay a special assessment of \$100 per felony conviction to the Clerk of the United States District Court for the District of Columbia. Your client also understands that, pursuant to 18 U.S.C. § 3572 and § 5E1.2 of the United States Sentencing Commission, *Guidelines Manual* (2016) (hereinafter "Sentencing Guidelines," "Guidelines," or "U.S.S.G."), the Court may also impose a fine that is sufficient to pay the federal government the costs of any imprisonment, term of supervised release, and period of probation.

**2. Factual Stipulations**

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Your client agrees that the attached "Statement of Offense" fairly and accurately describes your client's actions and involvement in the offense to which your client is pleading guilty. Please have your client sign and return the Statement of Offense as a written proffer of evidence, along with this Agreement.

**3. Additional Charges**

In consideration of your client's guilty plea to the above offense, your client will not be further prosecuted criminally by this Office for the conduct set forth in the attached Statement of Offense or known to the Office as of the date of the plea agreement.

**4. Sentencing Guidelines Analysis**

Your client understands that the sentence in this case will be determined by the Court, pursuant to the factors set forth in 18 U.S.C. § 3553(a), including a consideration of the applicable guidelines and policies promulgated by the United States Sentencing Commission, *Guidelines Manual* (hereinafter "Sentencing Guidelines" or "U.S.S.G."). Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), and to assist the Court in determining the appropriate sentence, the parties agree to the following:

**A. Estimated Offense Level Under the Guidelines**

The parties agree that the following Sentencing Guidelines sections apply:

U.S.S.G. § 2B1.1(a)(2)	Base Offense Level	6
U.S.S.G. § 3C1.1	Obstruction of Justice	2

**Sentencing Adjustments**

The parties have not reached agreement with respect to the applicability of U.S.S.G. § 3B1.3 (Abuse of Position of Trust or Use of Special Skill). The Government reserves the right to argue the applicability of this adjustment at sentencing, and your client reserves the right to oppose it.

**Acceptance of Responsibility**

The Government agrees that a 2-level reduction will be appropriate, pursuant to U.S.S.G. § 3E1.1, provided that your client clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through your client's allocution, adherence to every provision of this Agreement, and conduct between entry of the plea and imposition of sentence.

Nothing in this Agreement limits the right of the Government to seek denial of the adjustment for acceptance of responsibility, pursuant to U.S.S.G. § 3E1.1, and/or imposition of

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an adjustment for obstruction of justice, pursuant to U.S.S.G. § 3C1.1, regardless of any agreement set forth above, should your client move to withdraw your client's guilty plea after it is entered, or should it be determined by the Government that your client has either (a) engaged in conduct, unknown to the Government at the time of the signing of this Agreement, that constitutes obstruction of justice, or (b) engaged in additional criminal conduct after signing this Agreement.

In accordance with the above, the applicable Guidelines Offense Level will be at least 6.

**B. Estimated Criminal History Category**

Based upon the information now available to this Office, your client has no criminal convictions.

Accordingly, your client is estimated to have 0 criminal history points and your client's Criminal History Category is estimated to be I. Your client acknowledges that if additional convictions are discovered during the pre-sentence investigation by the United States Probation Office, your client's criminal history points may increase. Similarly, if the United States Probation Office determines that your client has fewer convictions than estimated herein, your client's criminal history points may decrease.

**C. Estimated Applicable Guidelines Range**

Based upon the agreed total offense level and the estimated criminal history category set forth above, your client's estimated Sentencing Guidelines range is 0 months to 6 months (the "Estimated Guidelines Range"). In addition, the parties agree that, pursuant to U.S.S.G. § 5E1.2, should the Court impose a fine, at Guidelines level 6, the estimated applicable fine range is \$1,000 to \$9,500. Your client reserves the right to ask the Court not to impose any applicable fine.

The parties agree that, solely for the purposes of calculating the applicable range under the Sentencing Guidelines, neither a downward nor upward departure from the Estimated Guidelines Range set forth above is warranted. Accordingly, neither party will seek any departure or adjustment to the Estimated Guidelines Range, nor will either party suggest that the Court consider such a departure or adjustment, except as provided above. Moreover, your client understands and acknowledges that the Estimated Guidelines Range agreed to by the parties is not binding on the Probation Office or the Court. Should the Court determine that a different guidelines range is applicable, your client will not be permitted to withdraw your client's guilty plea on that basis, and the Government and your client will still be bound by this Agreement.

Your client understands and acknowledges that the terms of this section apply only to conduct that occurred before the execution of this Agreement. Should your client commit any conduct after the execution of this Agreement that would form the basis for an increase in your

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client's base offense level or justify an upward departure (examples of which include, but are not limited to, obstruction of justice, failure to appear for a court proceeding, criminal conduct while pending sentencing, and false statements to law enforcement agents, the probation officer, or the Court), the Government is free under this Agreement to seek an increase in the base offense level based on that post-agreement conduct.

**5. Agreement as to Sentencing Allocation**

The parties further agree that a sentence within the Estimated Guidelines Range would constitute a reasonable sentence in light of all of the factors set forth in 18 U.S.C. § 3553(a), should such a sentence be subject to appellate review notwithstanding the appeal waiver provided below. Nevertheless, your client reserves the right to seek a sentence below the Estimated Guidelines Range based upon factors to be considered in imposing a sentence pursuant to 18 U.S.C. § 3553(a), and the Government reserves the right to seek a sentence above the Estimated Guidelines Range based on § 3553(a) factors.

**6. Reservation of Allocation**

The Government and your client reserve the right to describe fully, both orally and in writing, to the sentencing judge, the nature and seriousness of your client's misconduct, including any misconduct not described in the charges to which your client is pleading guilty. The parties also reserve the right to inform the presentence report writer and the Court of any relevant facts, to dispute any factual inaccuracies in the presentence report, and to contest any matters not provided for in this Agreement. In the event that the Court considers any Sentencing Guidelines adjustments, departures, or calculations different from any agreements contained in this Agreement, or contemplates a sentence outside the Guidelines range based upon the general sentencing factors listed in 18 U.S.C. § 3553(a), the parties reserve the right to answer any related inquiries from the Court. In addition, if in this Agreement the parties have agreed to recommend or refrain from recommending to the Court a particular resolution of any sentencing issue, the parties reserve the right to full allocation in any post-sentence litigation. The parties retain the full right of allocation in connection with any post-sentence motion which may be filed in this matter and/or any proceeding(s) before the Bureau of Prisons. In addition, your client acknowledges that the Government is not obligated and does not intend to file any post-sentence downward departure motion in this case pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure.

**7. Court Not Bound by this Agreement or the Sentencing Guidelines**

Your client understands that the sentence in this case will be imposed in accordance with 18 U.S.C. § 3553(a), upon consideration of the Sentencing Guidelines. Your client further understands that the sentence to be imposed is a matter solely within the discretion of the Court. Your client acknowledges that the Court is not obligated to follow any recommendation of the

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Government at the time of sentencing. Your client understands that neither the Government's recommendation nor the Sentencing Guidelines are binding on the Court.

Your client acknowledges that your client's entry of a guilty plea to the charged offense(s) authorizes the Court to impose any sentence, up to and including the statutory maximum sentence, which may be greater than the applicable Guidelines range. The Government cannot, and does not, make any promise or representation as to what sentence your client will receive. Moreover, it is understood that your client will have no right to withdraw your client's plea of guilty should the Court impose a sentence that is outside the Guidelines range or if the Court does not follow the Government's sentencing recommendation. The Government and your client will be bound by this Agreement, regardless of the sentence imposed by the Court. Any effort by your client to withdraw the guilty plea because of the length of the sentence shall constitute a breach of this Agreement.

**8. Conditions of Release**

Your client acknowledges that, although the Government will not seek a change in your client's release conditions pending sentencing, the final decision regarding your client's bond status or detention will be made by the Court at the time of your client's plea of guilty. The Government may move to change your client's conditions of release, including requesting that your client be detained pending sentencing, if your client engages in further criminal conduct prior to sentencing or if the Government obtains information that it did not possess at the time of your client's plea of guilty and that is relevant to whether your client is likely to flee or pose a danger to any person or the community. Your client also agrees that any violation of your client's release conditions or any misconduct by your client may result in the Government filing an ex parte motion with the Court requesting that a bench warrant be issued for your client's arrest and that your client be detained without bond while pending sentencing in your client's case.

**9. Waivers**

**A. Statute of Limitations**

Your client agrees that, should the conviction following your client's plea of guilty pursuant to this Agreement be vacated for any reason, any prosecution, based on the conduct set forth in the attached Statement of Offense, that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement (including any counts that the Government has agreed not to prosecute or to dismiss at sentencing pursuant to this Agreement) may be commenced or reinstated against your client, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement or reinstatement of such prosecution. It is the intent of this Agreement to waive all defenses based on the statute of limitations with respect to any prosecution of conduct set forth in the attached Statement of Offense that is not time-barred on the date that this Agreement is signed.



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### **B. Trial Rights**

Your client understands that by pleading guilty in this case your client agrees to waive certain rights afforded by the Constitution of the United States and/or by statute or rule. Your client agrees to forego the right to any further discovery or disclosures of information not already provided at the time of the entry of your client's guilty plea. Your client also agrees to waive, among other rights, the right to be indicted by a Grand Jury, the right to plead not guilty, and the right to a jury trial. If there were a jury trial, your client would have the right to be represented by counsel, to confront and cross-examine witnesses against your client, to challenge the admissibility of evidence offered against your client, to compel witnesses to appear for the purpose of testifying and presenting other evidence on your client's behalf, and to choose whether to testify. If there were a jury trial and your client chose not to testify at that trial, your client would have the right to have the jury instructed that your client's failure to testify could not be held against your client. Your client would further have the right to have the jury instructed that your client is presumed innocent until proven guilty, and that the burden would be on the United States to prove your client's guilt beyond a reasonable doubt. If your client were found guilty after a trial, your client would have the right to appeal your client's conviction. Your client understands that the Fifth Amendment to the Constitution of the United States protects your client from the use of self-incriminating statements in a criminal prosecution. By entering a plea of guilty, your client knowingly and voluntarily waives or gives up your client's right against self-incrimination.

Your client acknowledges discussing with you Rule 11(f) of the Federal Rules of Criminal Procedure and Rule 410 of the Federal Rules of Evidence, which ordinarily limit the admissibility of statements made by a defendant in the course of plea discussions or plea proceedings if a guilty plea is later withdrawn. Your client knowingly and voluntarily waives the rights that arise under these rules in the event your client withdraws your client's guilty plea or withdraws from this Agreement after signing it.

Your client also agrees to waive all constitutional and statutory rights to a speedy sentence and agrees that the plea of guilty pursuant to this Agreement will be entered at a time decided upon by the parties with the concurrence of the Court. Your client understands that the date for sentencing will be set by the Court.

### **C. Appeal Rights**

Your client understands that federal law, specifically 18 U.S.C. § 3742, affords defendants the right to appeal their sentences in certain circumstances. Your client agrees to waive the right to appeal the sentence in this case, including any term of imprisonment, fine, forfeiture, award of restitution, term of supervised release, authority of the Court to set

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conditions of release, and the manner in which the sentence was determined, except to the extent the Court sentences your client above the statutory maximum or guidelines range determined by the Court or your client claims that your client received ineffective assistance of counsel, in which case your client would have the right to appeal the illegal sentence or above-guidelines sentence or raise on appeal a claim of ineffective assistance of counsel, but not to raise on appeal other issues regarding the sentencing. In agreeing to this waiver, your client is aware that your client's sentence has yet to be determined by the Court. Realizing the uncertainty in estimating what sentence the Court ultimately will impose, your client knowingly and willingly waives your client's right to appeal the sentence, to the extent noted above, in exchange for the concessions made by the Government in this Agreement.

**D. Collateral Attack**

Your client also waives any right to challenge the conviction entered or sentence imposed under this Agreement or otherwise attempt to modify or change the sentence or the manner in which it was determined in any collateral attack, including, but not limited to, a motion brought under 28 U.S.C. § 2255 or Federal Rule of Civil Procedure 60(b), except to the extent such a motion is based on newly discovered evidence or on a claim that your client received ineffective assistance of counsel. Your client reserves the right to file a motion brought under 18 U.S.C. § 3582(c)(2), but agrees to waive the right to appeal the denial of such a motion.

**E. Privacy Act and FOIA Rights**

Your client also agrees to waive all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including and without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

**F. Witness Fees**

Your client further agrees to waive all rights, claims, or interest in any witness fee that your client may be eligible to receive pursuant to 28 U.S.C. § 1821 for your client's appearance at any grand jury, witness conference, or court proceeding, during the course of your client's cooperation pursuant to this Agreement or any term of your client's incarceration.

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**10. Restitution**

The parties agree that the provisions of 18 U.S.C. § 3663A do not apply in this matter, and that no order of restitution is otherwise warranted.

**11. Breach of Agreement**

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Your client understands and agrees that, if after entering this Agreement, your client fails specifically to perform or to fulfill completely each and every one of your client's obligations under this Agreement, including payment of restitution as provided in Paragraph 10, or engages in any criminal activity prior to sentencing, your client will have breached this Agreement. In the event of such a breach: (a) the Government will be free from its obligations under this Agreement; (b) your client will not have the right to withdraw the guilty plea; (c) your client will be fully subject to criminal prosecution for any other crimes, including perjury and obstruction of justice; and (d) the Government will be free to use against your client, directly and indirectly, in any criminal or civil proceeding, all statements made by your client and any of the information or materials provided by your client, including such statements, information and materials provided pursuant to this Agreement or during the course of any debriefings conducted in anticipation of, or after entry of, this Agreement, whether or not the debriefings were previously characterized as "off-the-record" debriefings, and including your client's statements made during proceedings before the Court pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

Your client understands and agrees that the Government shall be required to prove a breach of this Agreement only by a preponderance of the evidence, except where such breach is based on a violation of federal, state, or local criminal law, which the Government need prove only by probable cause in order to establish a breach of this Agreement.

Nothing in this Agreement shall be construed to permit your client to commit perjury, to make false statements or declarations, to obstruct justice, or to protect your client from prosecution for any crimes not included within this Agreement or committed by your client after the execution of this Agreement. Your client understands and agrees that the Government reserves the right to prosecute your client for any such offenses. Your client further understands that any perjury, false statements or declarations, or obstruction of justice relating to your client's obligations under this Agreement shall constitute a breach of this Agreement. In the event of such a breach, your client will not be allowed to withdraw your client's guilty plea.

## **12. Complete Agreement**

No agreements, promises, understandings, or representations have been made by the parties or their counsel other than those contained in writing herein, nor will any such agreements, promises, understandings, or representations be made unless committed to writing and signed by your client, defense counsel, and an Assistant United States Attorney for the District of Columbia.

Your client further understands that this Agreement is binding only upon the Criminal and Superior Court Divisions of the United States Attorney's Office for the District of Columbia. This Agreement does not bind the Civil Division of this Office or any other United States Attorney's Office, nor does it bind any other state, local, or federal prosecutor. It also does not bar or compromise any civil, tax, or administrative claim pending or that may be made against your client.




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Kenneth R. Lench, Esq.  
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If the foregoing terms and conditions are satisfactory, your client may so indicate by signing this Agreement and the Statement of Offense, and returning both to me no later than **April 6, 2017**.

Sincerely yours,

ANDREW WEISSMANN  
Chief, Fraud Section  
Criminal Division  
United States Department of Justice

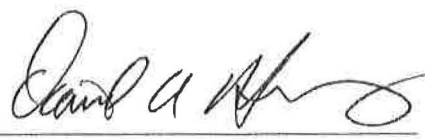

By: /s/ Gary A. Winters   
GARY A. WINTERS  
Trial Attorney  
Fraud Section, Criminal Division  
United States Department of Justice

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DEFENDANT'S ACCEPTANCE



I have read every page of this Agreement and have discussed it with my attorneys, Andrew M. Genser and Kenneth R. Lench. I fully understand this Agreement and agree to it without reservation. I do this voluntarily and of my own free will, intending to be legally bound. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Agreement fully. I am pleading guilty because I am in fact guilty of the offense identified in this Agreement.

I reaffirm that absolutely no promises, agreements, understandings, or conditions have been made or entered into in connection with my decision to plead guilty except those set forth in this Agreement. I am satisfied with the legal services provided by my attorney in connection with this Agreement and matters related to it.

Date: 4/4/2017   
David Humphrey  
Defendant 

ATTORNEY'S ACKNOWLEDGMENT

I have read every page of this Agreement, reviewed this Agreement with my client, David Humphrey, and fully discussed the provisions of this Agreement with my client. These pages accurately and completely set forth the entire Agreement. I concur in my client's desire to plead guilty as set forth in this Agreement.

Date: 4/4/17   
Andrew M. Genser  
Kenneth R. Lench  
Attorneys for Defendant 

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff

v.

DAVID HUMPHREY,

Defendant.

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No. 17-82 (RMC)

**FILED**  
MAY - 9 2017

Clerk, U.S. District and  
Bankruptcy Courts

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.

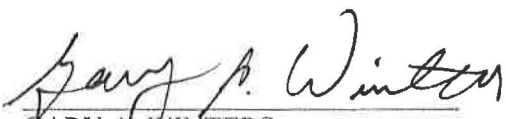
Date: 4/4/2017

  
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