

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Criminal No. H-03-93
)
 REX SHELBY,)
)
 Defendant.)

PLEA AGREEMENT

The United States of America, by and through the Fraud Section, Criminal Division, United States Department of Justice, and the Defendant, Rex Shelby, and Defendant's counsel pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, state that they have entered into an agreement, the terms and conditions of which are as follows:

The Defendant's Agreement

1. The Defendant agrees to plead guilty to Count 7 of the Seventh Superseding Indictment charging him with insider trading, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5; Title 15, United States Code, Sections 78j(b) and 78ff; and Title 18, United States Code, Section 2. The Defendant, by entering this plea, agrees that he is waiving any right to have the facts that the law makes essential to the punishment charged in the Seventh Superseding Indictment proven to a jury or proven beyond a reasonable doubt.

2. The Defendant agrees not to accept remuneration or compensation of any sort, directly or indirectly, for the dissemination through books, articles, speeches, interviews, or any

other means, of information regarding his work at Enron or the investigation or prosecution of any civil or criminal cases against him.

3. Defendant agrees that this Plea Agreement binds only the Criminal Division of the U.S. Department of Justice and the Defendant; it does not bind any United States Attorney or any other Division of the Department of Justice.

Punishment Range

4. The statutory maximum penalty for a violation of insider trading is imprisonment for a term of not more than ten years and a fine of not more than \$1,000,000, or twice the gross pecuniary gain to the Defendant or loss to the victim(s), whichever is greater. Title 15, United States Code, Section 78ff and Title 18, United States Code, Sections 3571(b)(1) and (d). Additionally, the Defendant may receive a term of supervised release after imprisonment of up to three years. Title 18, United States Code, Section 3583(b). The Defendant acknowledges and understands that should he violate conditions of supervised release which may be imposed as part of his sentence, then the Defendant may be imprisoned for an additional term of up to two years, without credit for time already served on the term of supervised release prior to such violation. Title 18, United States Code, Section 3583(e)(3). The Defendant understands that he cannot have the imposition or execution of the sentence suspended, nor is he eligible for parole.

Mandatory Special Assessment

5. Pursuant to Title 18, United States Code, Section 3013(a)(2)(A), immediately after sentencing, the Defendant will pay to the Clerk of the United States District Court a special assessment in the amount of one hundred dollars (\$100.00). The payment will be by cashier's check or money order payable to the Clerk of the United States District Court, c/o District

Clerk's Office, P.O. Box 61010, Houston, Texas 77208, Attention: Finance.

Restitution, Forfeiture, and Fines

6. The Defendant agrees to a forfeiture money judgment in the amount of \$2,568,750, representing the proceeds of the offenses to which he is pleading guilty. The Defendant agrees that this forfeiture judgment will be satisfied from funds, currently seized by the Government and contained in the Paine Webber HM E0109 account which contains sufficient funds for this purpose. The Defendant acknowledges that the funds to be forfeited pursuant to this agreement are subject to forfeiture as proceeds of the offense to which defendant will plead guilty pursuant to this Plea Agreement and/or as substitute assets for property otherwise subject to forfeiture. The Defendant warrants that he is the sole owner of the funds to be forfeited pursuant to this agreement, and he agrees to hold the United States, its agents, and employees harmless from any claims whatsoever in connection with the seizure, forfeiture, and release of any previously seized funds covered by this Plea Agreement. The \$2,568,750 in assets referenced above is hereinafter referred to as the "Forfeited Assets."

7. The Defendant agrees to consent to the entry of orders of forfeiture for all Forfeited Assets to the United States, or any other entity deemed appropriate by the United States, for the benefit of the Securities and Exchange Commission's Enron Fair Fund. Transfers of the Forfeited Assets should be made to the U.S. Marshal's Service, as provided for in the orders of forfeiture. The Defendant acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the Court to advise him of this, pursuant to Rule 11(b)(1)(J), at the time his guilty plea is accepted. The Defendant further agrees to waive all constitutional and statutory challenges in any manner

(including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The Defendant agrees to take all steps as requested by the United States to pass clear title to the Forfeited Assets to the United States, and to testify truthfully in any related judicial proceeding. The Defendant agrees not to seek a refund from the United States Treasury of the amount that he paid in taxes in connection with any proceeds representing the Forfeited Assets, and waives his right, title, and interest to the taxes paid on that amount.

8. The Defendant agrees to relinquish any other claim he may have to deferred compensation, severance, or any other form of payment related to his employment by Enron or any related entity.

9. The Defendant understands that under the United States Sentencing Guidelines, the Court may order the Defendant to pay a fine to reimburse the government for the costs of any imprisonment or term of supervised release. To the extent that the Court orders forfeiture consistent with paragraph 6, the United States agrees to recommend that the Court not impose a fine.

10. The United States agrees that, provided the Defendant fulfills the financial and other obligations imposed by this Plea Agreement, it will recommend that no additional fine, forfeiture or restitution be ordered by the Court against the Defendant at the time the Defendant is sentenced. The United States agrees that this amount is appropriate and fully satisfies the fine, forfeiture, and restitution provisions of the law.

Waiver of Appeal

11. The Defendant is aware that Title 18, United States Code, Section 3742 affords a Defendant the right to appeal the sentence imposed. Additionally, the Defendant is aware that Title 28, United States Code, Section 2255 affords the right to contest or “collaterally attack” a conviction or sentence after the conviction or sentence has become final. If the Court accepts the Plea Agreement and sentences the Defendant within the agreed-upon sentencing range as set forth in paragraph 17, the Defendant agrees to waive the right to appeal the sentence imposed or the manner in which it was determined, and the Defendant waives the right to contest his conviction or sentence by means of any post-conviction proceeding.

12. In agreeing to these waivers, the Defendant is aware that a sentence has not yet been determined by the Court. The Defendant is also aware that any promise, representation, or estimate of the possible sentencing range under the United States Sentencing Guidelines that he may have received from his counsel, the United States, or the Probation Office is a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court, other than as provided in paragraph 17. The Defendant further understands and agrees that the United States Sentencing Guidelines are “effectively advisory” to the Court. *United States v. Booker*, 125 S. Ct. 738 (2005). Accordingly, the Defendant understands that, although the Court must consult the United States Sentencing Guidelines and must take them into account when sentencing the Defendant, the Court is not bound to follow the United States Sentencing Guidelines and is not required to sentence the Defendant within the calculated guideline range. However, if the Court accepts this Plea Agreement, the Court is bound by the sentencing provision in paragraph 17.

13. The Defendant understands and agrees that all waivers contained in the agreement are made in exchange for the concessions made by the United States in this Plea Agreement. If the Defendant instructs his attorney to file a notice of appeal of his sentence or of his conviction, or if the Defendant instructs his attorney to file any other post-conviction proceeding attacking his conviction or sentence, the Defendant understands that the United States will seek specific performance of the Defendant's waivers in this Plea Agreement of the Defendant's right to appeal his conviction or sentence and of the Defendant's right to file any post-conviction proceedings attacking his conviction or sentence.

The United States' Agreements

14. If the Defendant complies fully with all of his obligations under this Plea Agreement, the United States agrees to dismiss the remaining counts of the Seventh Superseding Indictment and any underlying indictments at the time of sentencing and to recommend that the Defendant be sentenced within the agreed upon sentencing range set forth in paragraph 17.

United States' Non-Waiver of Appeal

15. The United States reserves the right to carry out its responsibilities under guidelines sentencing. Specifically, the United States reserves the right:
- (a) to bring its version of the facts of this case, including its evidence file and any investigative files, to the attention of the Probation Office in connection with that office's preparation of a presentence report;
 - (b) to set forth or dispute sentencing factors or facts material to sentencing;
 - (c) to seek resolution of such factors or facts in conference with the Defendant's counsel and the Probation Office;
 - (d) to file a pleading relating to these issues, in accordance with U.S.S.G. Section 6A1.2 and Title 18, United States Code, Section 3553(a); and

- (e) to appeal the sentence imposed or the manner in which it was determined.

Sentence Determination

16. The Defendant is aware that the sentence will be imposed after consideration of the United States Sentencing Guidelines and Policy Statements, which are only advisory, as well as the provisions of Title 18, United States Code, Section 3553(a). The United States and the Defendant agree that the applicable Sentencing Guidelines range exceeds the agreed-upon sentencing range contained in paragraph 17.

17. Pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure, the United States and the Defendant agree that a sentence within the range of 6-12 months of community confinement, home confinement, or some combination thereof, provided that any term of community confinement shall not exceed 6 months, is the appropriate disposition of the case. The Court may also impose such other non-custodial conditions it deems appropriate. The Defendant understands that, if the Court rejects the Plea Agreement, the Court must (i) inform the parties that the Court rejects the Plea Agreement, (ii) advise the Defendant personally that the Court is not required to follow the Plea Agreement and give the Defendant the opportunity to withdraw the plea, and (iii) advise the Defendant personally that if the plea is not withdrawn, the Court may dispose of the case less favorably toward the Defendant than the Plea Agreement contemplated.

Rights at Trial

18. The Defendant represents to the Court that he is satisfied that his attorneys have rendered effective assistance. The Defendant understands that by entering into this Plea Agreement, he surrenders certain rights as provided in this Plea Agreement. The Defendant

understands that the rights of a defendant include the following:

- (a) If the Defendant persisted in a plea of not guilty to the charges, the Defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if the Defendant, the United States, and the court all agree.
- (b) At a trial, the United States would be required to present witnesses and other evidence against the Defendant. The Defendant would have the opportunity to confront those witnesses and his attorney would be allowed to cross-examine them. In turn, the Defendant could, but would not be required to, present witnesses and other evidence on his own behalf. If the witnesses for the Defendant would not appear voluntarily, he could require their attendance through the subpoena power of the court.
- (c) At a trial, the Defendant could rely on a privilege against self-incrimination and decline to testify, and no inference of guilt could be drawn from such refusal to testify. However, if the Defendant desired to do so, he could testify on his own behalf.

Factual Basis for Guilty Plea

19. The Defendant is pleading guilty because he is guilty of the charge contained in Count 7 of the Seventh Superseding Indictment. If this case were to proceed to trial, the United States would prove each element of that offense beyond a reasonable doubt. The Defendant understands that the United States would submit testimony and physical and documentary evidence that would establish the following facts:

- (a) As set forth more fully below, on or about January 21, 2000, within the Southern District of Texas and elsewhere, the defendant REX SHELBY knowingly and willfully used and employed manipulative and deceptive devices and contrivances, by use of means and instrumentalities of interstate commerce, in violation of Rule 10b-5 of the Rules and Regulations of the United States Securities and Exchange Commission (Title 17, Code of Federal Regulations, Section 240.10b-5), in that he engaged in acts, practices, and courses of business which would operate as a fraud and deceit upon members of the investing public in connection with the purchase or sale of securities, in violation of Title 15, United States Code, Section 78j(b) and 78ff. Specifically, while in possession of material non-public information regarding the technological capabilities, value, revenue and business performance of Enron Broadband Services, SHELBY

exercised options on shares of Enron stock which generated total gross proceeds of \$10,668,750.00.

- (b) Enron Corp. ("Enron") was a publicly-traded Oregon corporation with its headquarters in Houston, Texas. Among other businesses, Enron was engaged in the (a) purchase and sale of natural gas, (b) construction and ownership of pipelines and power facilities, (c) provision of telecommunication services, and (d) trading in contracts to buy and sell various commodities.
- (c) In or about July 1, 1997, Enron acquired a public utility, Portland General Corporation, based in Portland, Oregon. As part of that acquisition, Enron acquired Portland General's telecommunications division, FirstPoint Communications, Inc. Enron re-named the telecommunications business Enron Communications, Inc., otherwise known as "ECI". ECI was later renamed Enron Broadband Services, or "EBS."
- (d) SHELBY entered EBS as the Senior Vice President of Engineering and Operations in December 1998, held various technical management positions until late January 2000, and was an employee of EBS until August 2000.
- (e) EBS's vision was to find ways to differentiate itself from its competitors in the broadband market. One of these ways was to create an "intelligent network." Throughout 1999 and 2000, EBS hired numerous engineers, programmers, and other staff as part of its effort to develop this "intelligent network" and related software.
- (f) On or about January 20, 2000, Enron held its annual analyst conference in Houston, Texas. At this conference, Jeffrey Skilling, the then-Chief Executive Officer of Enron, introduced EBS as one of Enron's "core" units and touted EBS's network as the "superior network." A videotaped recording of SHELBY's description of the network was displayed at the analyst conference. At the conference SHELBY and others associated with SHELBY, affirmed the existence of EBS's "intelligent network."
- (g) In addition to touting the network itself, Skilling also announced the development of a Broadband Operating System or "BOS." The BOS was meant to be an intelligent operating system and was described as, among other things, a standard protocol for accessing real time bandwidth. At the conference, a clear impression was made to the public that the intelligent network and the BOS were complete.
- (h) As SHELBY and others within EBS knew, however, the BOS was not complete; rather, parts of the BOS remained in development stage throughout SHELBY's employment at Enron. This was not conveyed at the analyst conference.

- (i) Based in part on the false and incomplete information about the BOS provided by Enron and EBS employees at the analyst conference, as described in paragraph (h), Enron's stock price rose from \$54 on January 20, 2000 to approximately \$72 on January 21, 2000.
- (j) Within 24 hours of the analyst conference, on January 21, 2000, with material, non-public information (as detailed in subparagraphs f-h, above), SHELBY sold 150,000 shares of Enron stock.
- (k) SHELBY undertook these actions in violation of Title 17, Code of Federal Regulations, Section 240.10b-5; Title 15, United States Code, Sections 78j(b) and 78ff; and Title 18, United States Code, Section 2.

Breach of Plea Agreement

18. If the Defendant should fail in any way to fulfill completely all of the obligations under this Plea Agreement, the United States will be released from its obligations under the Plea Agreement, and the Defendant's plea and sentence will stand. If at any time the Defendant retains, conceals, or disposes of assets in violation of this Plea Agreement, or if the Defendant knowingly withholds evidence or is otherwise not completely truthful with the United States, then the United States may move the Court to set aside the guilty plea and reinstate prosecution. Any information and documents that have been disclosed by the Defendant, whether prior or subsequent to this Plea Agreement, and all leads derived therefrom, will be used against the Defendant in any prosecution.

19. Whether the Defendant has breached any provision of this Plea Agreement shall be determined solely by the United States through the Fraud Section of the Criminal Division of the United States Department of Justice, whose judgment in that regard is final.

Hyde Amendment Waiver

20. The Defendant agrees that with respect to all charges contained in the Seventh Superseding Indictment in the above-captioned action, as well as all prior indictments in this

matter, he is not a "prevailing party" within the meaning of the Hyde Amendment, Section 617, PL 105-119 (Nov. 26, 1997), and will not file any claim under that law.

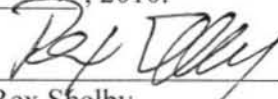
Complete Agreement

21. This written Plea Agreement, including the attached addendum of the Defendant and his attorney, constitutes the complete Plea Agreement between the United States, the Defendant, and his counsel. No promises or representations have been made by the United States except as set forth in writing in this Plea Agreement. The Defendant acknowledges that no threats have been made against him and that he is pleading guilty freely and voluntarily because he is guilty.

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22. Any modification of this Plea Agreement must be in writing and signed by all parties.

Filed at Houston, Texas, on Nov. 22, 2010.


Rex Shelby
Defendant

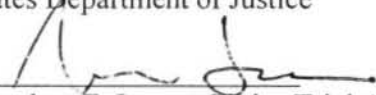
Subscribed and sworn to before me on Nov. 22, 2010.

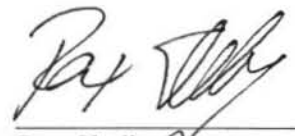
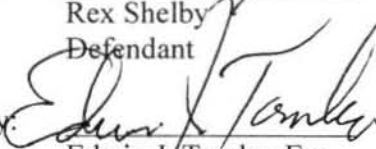
MICHAEL N. MILBY
UNITED STATES DISTRICT CLERK

By: 
Deputy United States District Clerk

APPROVED:

PAUL E. PELLETIER
Principal Deputy Chief, Criminal Division, Fraud Section
United States Department of Justice

By: 
Jonathan E. Lopez, Senior Trial Attorney
Peter Katz, Assistant United States Attorney
Liam Brennan, Trial Attorney
Attorneys for the United States

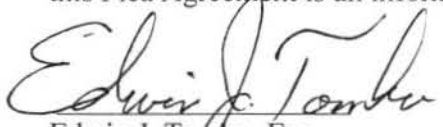
By: 
Rex Shelby
Defendant
By: 
Edwin J. Tomko, Esq.
Jason M. Ross, Esq.
Lea F. Courington, Esq.
Attorneys for the Defendant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
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UNITED STATES OF AMERICA,)
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REX SHELBY,)
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 Defendant.)


PLEA AGREEMENT - ADDENDUM

I have fully explained to the Defendant his rights with respect to the Seventh Superseding Indictment, including Count 7. I have reviewed the provisions of the United States Sentencing Guidelines and I have fully and carefully explained to the Defendant the provisions of those Guidelines which may apply in this case. I have also explained to the Defendant that the Sentencing Guidelines are only advisory. Further, I have carefully reviewed every part of this Plea Agreement with the Defendant. To my knowledge, the Defendant's decision to enter into this Plea Agreement is an informed and voluntary one.


Edwin J. Tomko, Esq.
Attorney for the Defendant

11/22/10
Date

I have consulted with my attorney and fully understand all my rights with respect to the Seventh Superseding Indictment, including Count 7, against me. My attorney has fully explained and I understand all my rights with respect to the provisions of the United States Sentencing Guidelines which may apply in my case. I have read and carefully reviewed every part of this Plea Agreement with my attorney. I understand this Plea Agreement and I voluntarily agree to its terms.



Rex Shelby
Defendant

11-22-2010
Date