UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA v. JERRY A. SHANAHAN, ROBERT J. GAGALIS, BRUCE D. KAY, ROBERT G. BARBER, and HOR CHONG BOEY, a/k/a, DAVID BOEY, Defendants.	:	Criminal No.: 04-126-B

SUPERSEDING INDICTMENT

The Grand Jury charges:

COUNT 1
Conspiracy to Commit Securities and Wire Fraud
18 U.S.C. § 371

A. BACKGROUND

At all times relevant to this Indictment:

The Companies

1. Enterasys Network Systems, Inc. ("Enterasys") was a Delaware corporation headquartered in Rochester, New Hampshire. The primary business of Enterasys and its affiliated companies was designing and selling hardware and software systems for computer networks and providing related support services.

2. Enterasys was a subsidiary of Cabletron Systems, Inc. ("Cabletron") until August 6, 2001, when the two companies merged. As a result of the merger Enterasys became the parent of Cabletron. The merger of Enterasys and Cabletron was part of a plan by Cabletron, then a

publicly traded, Fortune 500 company, to establish Enterasys and Cabletron's other operating subsidiaries as independent companies.

3. Enterasys stock was publicly traded under the ticker symbol "ETS" on the New York Stock Exchange, a national securities exchange. The owners of Enterasys stock resided throughout the United States, including in the District of New Hampshire.

The Defendants

4. Defendant JERRY A. SHANAHAN ("SHANAHAN") was the Chief Operating Officer of Enterasys, and previously had been the Executive Vice President in charge of Cabletron's manufacturing plant in Ireland. He was employed at Cabletron and Enterasys from on or about September 1, 2000, to on or about April 1, 2002.

5. Defendant ROBERT J. GAGALIS ("GAGALIS"), a certified public accountant, was the Executive Vice President and Chief Financial Officer of Enterasys. He was employed by Enterasys from on or about June 26, 2001, to on or about November 15, 2002.

6. Defendant BRUCE D. KAY ("KAY"), a certified public accountant, was the Senior Vice President of Finance at Enterasys from on or about June 26, 2001, to on or about April 30, 2002, and previously had been Enterasys' Chief Financial Officer. KAY was employed by Enterasys and Cabletron from on or about February 18, 1999, to on or about April 30, 2002.

7. Defendant ROBERT G. BARBER ("BARBER") , trained as a certified public accountant, was employed at Enterasys and Cabletron from in or about October 1990 through in or about September 2001. From approximately September 2001 through approximately

November 2001, defendant BARBER worked for Cabletron and Enterasys as a consultant and independent contractor.

8. Defendant HOR CHONG BOEY, a/k/a, DAVID BOEY ("BOEY"), a certified public accountant, was the Senior Director of Financial Operations for Enterasys' Asia Pacific ("APAC") division from on or about January 2, 2001, to on or about February 20, 2002. The APAC division was responsible for marketing and selling Enterasys products in Asia, Australia and other countries in the Far East and the Pacific Rim.

Additional Conspirators

9. Enrique "Henry" P. Fiallo ("Fiallo") was the Chairman, President and Chief Executive Officer of Enterasys. Fiallo was employed at Cabletron and Enterasys from in or about November 1998 until in or about April 2002.

10. Gayle Spence Luacaw ("Spence") was Vice President and Director of Internal Sales at Enterasys, and also served as an assistant to Fiallo when he was Chairman, President and Chief Executive Officer. She was employed at Cabletron and Enterasys from on or about October 5, 1992, to on or about April 7, 2002.

11. Gary W. Workman ("Workman") was the president of Enterasys' APAC region from on or about January 4, 1999, to on or about February 20, 2002.

12. Anthony L. Hurley ("Hurley"), a certified public accountant, was the Assistant Controller of Enterasys from on or about October 19, 1998, to on or about November 22, 2002.

The Federal Securities Laws and Regulations

13. Enterasys and its directors, officers and employees were required to comply with the federal securities laws and regulations relating to publicly traded companies. Those laws and

regulations were designed to ensure that the financial information of publicly traded companies is accurately recorded and disclosed to the investing public.

14. Under the federal securities laws and regulations, Enterasys was required, among other things: (a) to make and keep books, records, and accounts that accurately and fairly reflected the company's business transactions; (b) to devise and maintain a system of internal accounting controls that provided reasonable assurances that the company's financial transactions were recorded in a manner that would permit the preparation of financial statements in conformity with Generally Accepted Accounting Principles ("GAAP"); and (c) to file with the Securities and Exchange Commission ("SEC") and disseminate to the investing public quarterly reports (known as SEC Forms 10-Q) and other periodic reports that included accurate and reliable financial statements prepared in accordance with GAAP. In addition, Enterasys developed, and purported to follow, its own revenue recognition policy that mirrored the requirements of GAAP in all pertinent respects.

15. Enterasys also was required to, and did, retain outside auditors to review, audit and test its financial statements for compliance with appropriate accounting rules. During quarterly reviews, Enterasys' outside auditors routinely tested select transactions to determine whether Enterasys properly recognized revenue in accordance with GAAP. The auditors' testwork included confirming, for each selected transaction, that there was evidence of an arrangement during the period under review; that delivery had occurred; that the sales price was fixed and determinable; and that Enterasys was reasonably assured of being able to collect the sales price from the customer. As part of that analysis, if any transaction constituted an exchange of Enterasys product for an equity investment, the outside auditors would determine the value of

the equity received by Enterasys as measured against the value of the product provided by Enterasys.

Revenue Projections and Wall Street Expectations

16. On at least a quarterly basis, Enterasys management established and announced revenue projections to the public, including Wall Street analysts. Wall Street analysts also published expectations for the company's quarterly performance, often mirroring management's projections. Senior management at Enterasys reminded employees that a failure to meet revenue projections and Wall Street expectations would likely decrease the company's stock price.

17. Enterasys' senior management tracked actual revenue results against projections during each fiscal quarter. When actual results lagged behind internal projections and Wall Street expectations, Enterasys management pressured employees to aggressively book revenue before the end of the quarter. This pressure was particularly strong during the quarter ending September 1, 2001, because it was Enterasys' first reporting quarter as an independent company.

18. On multiple occasions in or about June and July 2001, Enterasys management publicly stated that the company's projected revenue for the quarter ending September 1, 2001, was between $238 million and $242 million.

19. On or about September 26, 2001, and on or about October 16, 2001, Enterasys reported that its actual revenue for the quarter ended September 1, 2001, was approximately $240.1 million.

Enterasys Restates Its Financial Results

20. In or about late January 2002, during the course of Enterasys' annual audit, the company's outside auditors notified Enterasys' management that they had discovered irregularities relating to a $4 million sales contract with a customer in the APAC region pursuant

to which Enterasys had recognized approximately $3.5 million in net revenue for the quarter ended September 1, 2001.

21. After the close of the market on February 1, 2002, Enterasys publicly announced: (i) that it was investigating certain issues relating to that $4 million sales contract; (ii) that the SEC was investigating the company; and (iii) that the company was delaying the reporting of its fiscal year results.

22. The next trading day, Enterasys' stock price plummeted from $10.80 per share to $4.20 per share, or more than 60%. The stock price drop represented a decrease of more than $1.3 billion in the market value of Enterasys' outstanding stock.

23. As the result of an internal investigation that took place over the next several months, Enterasys determined that it had improperly recorded revenue for certain transactions in 2001.

24. On or about November 26, 2002, Enterasys restated its previously reported financial results for its fiscal quarter ending September 1, 2001, and other periods.

25. For the quarter ending September 1, 2001, Enterasys reduced its reported revenue from $240,181,000 to $156,936,000, reflecting that Enterasys had overstated its revenue by approximately 53% for that quarter.

B. THE CONSPIRACY

26. From in or about June 2001 to in or about at least February 2002, defendants SHANAHAN, GAGALIS, KAY, BARBER and BOEY, together with others, known and unknown to the Grand Jury, conspired to, and did, devise and execute a scheme to defraud Enterasys shareholders, the investing public, and others, and to deprive Enterasys of its right of honest services.

PURPOSES OF THE CONSPIRACY

27. Among the purposes of the conspiracy were: (a) to ensure that Enterasys would publicly report that it had met or exceeded public revenue projections and the published expectations of Wall Street analysts, regardless of the company's actual financial results; (b) to artificially maintain and increase the market price of Enterasys stock; and (c) to maintain the conspirators' status and positions within the company.

MANNER AND MEANS

28. It was part of the conspiracy that defendants SHANAHAN, GAGALIS, KAY, BARBER, and BOEY, and others, would and did cause Enterasys to record revenue fraudulently on its books and records, and to recognize and publicly report that fraudulent revenue, through a variety of false, deceptive and misleading devices.

29. It was further part of the conspiracy that defendants SHANAHAN, GAGALIS, KAY, BARBER, and BOEY, and others, devised and executed fraudulent transactions, including:

a. what came to be known as "three corner" investment transactions in which Enterasys secretly used its own funds to generate revenue by "investing" cash in "investee" companies in return for equity or debt interests in those companies with the understanding that the "investee" would use the "investment" proceeds to immediately purchase Enterasys product from distributors or channel partners which in turn would place purchase orders with Enterasys, thereby enabling Enterasys to conceal the link between the "investment" component and the sales component of the transactions from Enterasys' outside financial auditors to prevent the proper application of revenue recognition criteria;

b. transactions involving secret and undisclosed side letters containing material terms of the transactions which were hidden from Enterasys' outside auditors to prevent the proper application of revenue recognition criteria; and

c. a transaction involving falsifying, backdating and altering documents to prevent the proper application of revenue recognition criteria;

30. It was further part of the conspiracy that defendants SHANAHAN, GAGALIS, KAY, BARBER, and BOEY, and others, made, and caused others to falsify, and to make fraudulent entries in, Enterasys' books and records.

31. It was further part of the conspiracy that defendants SHANAHAN, GAGALIS, KAY, BARBER, and BOEY, and others, made, and caused others to make, false statements to Enterasys' outside auditors.

32. It was further part of the conspiracy that defendants SHANAHAN, GAGALIS, KAY, BARBER, and BOEY, and others, made, and caused others to make, materially false and misleading public statements about Enterasys' financial performance.

33. It was further part of the conspiracy that defendants SHANAHAN, GAGALIS, KAY, BARBER, and BOEY, and others, prepared and filed, and caused others to prepare and file, materially false and misleading financial statements with the SEC.

THE CONSPIRACY CHARGE

34. From in or about June 2001 to in or about at least February 2002, in the District of New Hampshire and elsewhere, defendants

JERRY A. SHANAHAN,
ROBERT J. GAGALIS,
BRUCE D. KAY,
ROBERT G. BARBER, and
HOR CHONG BOEY, a/k/a, DAVID BOEY,

did knowingly and unlawfully combine, conspire, confederate and agree with others, both known and unknown to the Grand Jury, to commit certain offenses against the United States, namely (a) employing a device, scheme and artifice to defraud in connection with the offer and sale, and the purchase and sale, of Enterasys securities using the means and instrumentalities of interstate commerce, in violation of Title 15, United States Code, Sections 78j(b) and 78ff and Title 17, Code of Federal Regulations, Section 240.10b-5; (b) making untrue, false and misleading statements of material fact in reports and documents required to be filed under the Securities Exchange Act of 1934 and the rules and regulations thereunder, in violation of Title 15, United States Code, Sections 78j(b) and 78ff; (c) falsifying books, records and accounts of Enterasys, in violation of Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5) and 78ff, and Title 17, Code of Federal Regulations, Section 240.13b2-1; (d) making materially false and misleading statements and omitting to state material facts to Enterasys' outside auditors in connection with the preparation and filing of a document and report required to be filed with the SEC, in violation of Title 15, United States Code, Sections 78m(b)(5) and 78ff, and Title 17, Code of Federal Regulations, Section 240.13b2-2; and (e) wire fraud in violation of Title 18, United States Code, Sections 1343 and 1346.

OVERT ACTS

In furtherance of the conspiracy, and to achieve and to attempt to achieve the objects thereof, the following overt acts were committed in the District of New Hampshire and elsewhere:

Revenue Projections and the Pressure to Meet Them

35. On or about June 27, 2001, Fiallo announced in a telephone conference call with financial analysts that Enterasys' revenue guidance for its second quarter, which was ending September 1, 2001, was between $238 million and $242 million.

36. On or about July 1, 2001, Fiallo sent an email to all Enterasys employees informing them that Enterasys would become an independent publicly held company in August, and reminding them that Enterasys had met Wall Street expectations the previous five quarters and that the business world would be watching them closely. Fiallo reiterated in the email the need to "drive the company's stock price as high as we can," and to "keep showing 'the Street' just how well we can perform on the revenue, expense and profitability fronts;" while exhorting employees to "[l]eave no stone unturned; don't take no for an answer; don't take anything for granted; do not assume anything is sacred."

37. On or about July 10, 2001, in a conference call with investment analysts, defendant GAGALIS expressed confidence that Enterasys would report revenue of between $238 million and $242 million for the quarter ending September 1, 2001.

38. On or about July 19, 2001, defendant SHANAHAN warned defendant KAY, Fiallo, Spence, and others in an email titled "Revenue Drive" that there was a "serious disconnect" between the then anticipated actual revenue and "where we absolutely have to be;" that it was necessary to find an additional $20 million of revenue "opportunity;" that "any activity that supports revenue take[s] number 1 priority over anything else;" and that the recipients of the email "[t]ake absolute ownership for meeting the target no matter what."

39. On or about July 20, 2001, defendant SHANAHAN sent an email to Workman and other senior sales managers titled "Time to step up the pace!," stressing that the second

quarter was "THE most important quarter" in Enterasys' brief history; that the anticipated revenue "does NOT meet expectations;" that the focus should be on nothing else but generating revenue; that they should get "innovative and aggressive;" that the company should not accept "anything less than expectations;" and exhorting, "LET'S MAKE IT HAPPEN."

"Investment" Transactions

40. On or about June 12, 2001, defendant SHANAHAN advised an Enterasys employee working on investment deals that Enterasys would need approximately $20 million in revenue from the investment program for the second quarter.

41. In or about July 2001, defendants SHANAHAN, GAGALIS, KAY and BARBER, and others, began utilizing a committee that was tasked with identifying and executing "investment" transactions to eliminate shortfalls between actual revenue results and previously announced revenue projections and analyst expectations.

42. During July and August 2001, defendant SHANAHAN periodically updated the investment committee about the size of the anticipated shortfall between Enterasys' actual revenue results and previously announced revenue projections for the second quarter.

43. During July and August 2001, defendant SHANAHAN directed the investment committee to identify and execute "investment" transactions to eliminate the anticipated revenue shortfall for the second quarter, and directed Spence to lead the committee.

44. Between July 2001 and through September 2001, defendant SHANAHAN, Spence, and others, circulated, or caused to be circulated, tracking updates to monitor the status of revenue being generated by "investment" transactions.

45. On or about August 8, 2001, defendant GAGALIS emailed Fiallo that, "due to [their] sensitive nature," defendant GAGALIS wanted to approve all "investment" deals.

46. On or about August 8, 2001, defendant SHANAHAN advised defendants GAGALIS and KAY, and Fiallo, that he had directed Spence and the investment committee to find an additional $10 million in revenue through "investment" transactions to eliminate anticipated revenue shortfall.

47. On or about August 8, 2001, defendant GAGALIS informed defendant SHANAHAN that Enterasys needed to complete $16 million in "investment" transactions during the week of August 24, 2001, to eliminate the anticipated revenue shortfall.

48. On or about August 8, 2001, defendant SHANAHAN expressed his agreement with defendant GAGALIS' assessment that Enterasys needed to complete $16 million more in "investment" transactions.

49. On or about August 21, 2001, defendant SHANAHAN provided a list of pending "investment" deals to a senior Cabletron executive, advising him that the list "needs to yield" $20 million in revenue.

50. On or about September 1, 2001, Spence emailed defendants SHANAHAN GAGALIS, KAY, and BARBER, and others, the names and the amounts of revenue associated with each "investment" deal that closed during the last few days of the quarter; thanked those who made it possible; and challenged them to close $5 million in revenue generating investment deals in September.

Three Corner Transactions

51. In or around late July and August 2001, defendants SHANAHAN, GAGALIS, KAY, and BARBER, and others, discussed how Enterasys could structure "investment" transactions as three corner deals that would conceal the true substance of the transactions from the company's outside auditors, thus preventing the company's outside auditors from properly

applying revenue recognition criteria and thereby allowing Enterasys to fully and immediately recognize revenue it otherwise could not have recognized.

52. On or about August 28, 2001, defendant KAY advised Hurley that defendant GAGALIS would be the only Enterasys person to speak to the outside auditors about the company's "investment" transactions and to be sure that others did not give any information about those transactions to the outside auditors.

53. On or about September 4, 2001, defendant GAGALIS assured a senior Cabletron executive that Enterasys' outside auditors would not be provided with documents showing the link between "investments" and sales through channel partners in three corner deals.

Specific Transactions for the Quarter Ended September 1, 2001

Gateway Electronic Medical Management Systems, LLC ("GEMMS")

54. In or about July and August 2001, defendants GAGALIS and BARBER, and others, discussed how structuring a transaction with GEMMS, an Enterasys customer, as a three corner deal would conceal from the company's outside auditors the true substance of the transaction and thereby avoid the proper application of revenue recognition criteria.

55. On or about August 8, 2001, defendant BARBER informed a senior representative of GEMMS that Enterasys was prepared to make an investment in GEMMS, in which, upon GEMMS' placement of an order with its distributor, Enterasys would wire funds "through" GEMMS' account to the distributor as payment for GEMMS' order.

56. On or about August 22, 2001, defendant BARBER advised an Enterasys salesperson that GEMMS would purchase Enterasys product from a particular third-party distributor.

57. On or about August 31, 2001, defendant BARBER provided the wiring instructions for GEMMS to an Enterasys employee.

58. On or about August 31, 2001, defendant GAGALIS, on behalf of Enterasys, signed a Stock Purchase Agreement for a $1 million investment in GEMMS.

59. On or about August 31, 2001, defendants GAGALIS and BARBER, and others, caused Enterasys to improperly record approximately $1 million in revenue from the three corner transaction with GEMMS whereby Enterasys used $1 million of its own money to enable GEMMS to purchase $1 million of Enterasys product.

Para-protect Services, Inc. ("Para-protect")

60. In or about July and August 2001, defendant GAGALIS, and others, structured a transaction with Para-protect, an Enterasys customer, as a three corner deal that would conceal from the company's outside auditors the true substance of the transaction and thereby avoid the proper application of revenue recognition criteria.

61. On or about August 31, 2001, defendant GAGALIS approved an Enterasys check request in the amount of approximately $1.2 million for an investment in Para-protect.

62. On or about August 31, 2001, defendant GAGALIS, on behalf of Enterasys, signed a Stock Purchase Agreement for a $1 million investment in Para-protect.

63. On or about August 31, 2001, defendant GAGALIS, and others, caused Para-protect to issue a purchase order to a third party distributor for approximately $697,000 of Enterasys product.

64. On or about August 31, 2001, defendant GAGALIS, and others, caused Para-protect to issue a check payable to the third party distributor in the amount of approximately $697,000.

65. On or about August 31, 2001, defendant GAGALIS and others caused Enterasys to improperly record approximately $697,000 in revenue from a three corner transaction with Para-protect whereby Enterasys used its own money to enable Para-protect to purchase approximately $697,000 of Enterasys product.

Worldlink Technologies, Inc. ("Worldlink")

66. In or about July and August 2001, defendants GAGALIS and BARBER, and others, structured a transaction with Worldlink, an Enterasys customer, as a three corner deal that would conceal from the company's outside auditors the true substance of the transaction and thereby avoid the proper application of revenue recognition criteria.

67. On or about August 30, 2001, defendant BARBER signed an Enterasys check request in the amount of $6,312,353 for an "investment" in Worldlink.

68. On or about August 30, 2001, defendant GAGALIS approved an Enterasys check request in the amount of $6,312,353 for an "investment" in Worldlink.

69. On or about August 30, 2001, defendant GAGALIS, on behalf of Enterasys, signed a Note Purchase Agreement for a Convertible Promissory Note from Worldlink in the amount of $6,818,975.

70. On or about August 31, 2001, defendants GAGALIS and Barber and others, caused Enterasys to improperly record approximately $4.6 million in net revenue from a three corner transaction with Worldlink whereby Enterasys used its own money to enable Worldlink to purchase approximately $5.3 million of Enterasys product.

Ariel International Technology Company, Ltd., a/k/a, Artel and Arcon ("Ariel")

71. On or about August 31, 2001, Workman, on behalf of Enterasys, entered into a Letter of Agreement with Ariel, an Enterasys customer, in which Enterasys agreed to retain

primary responsibility for finding purchasers of approximately $4 million in Enterasys product being sold to Ariel and to allow Ariel up to 150 days to pay.

72. On or about September 19, 2001, Hurley emailed the Letter of Agreement to defendants GAGALIS and KAY and another Enterasys employee, and stated, in part, that: "The wording in this Agreement places $3.5M of revenue at high risk." [emphasis in original]

73. On or about September 19, 2001, defendant KAY told defendant GAGALIS that the language in the Letter of Agreement would create "major problems" with Enterasys' outside auditors in that the language "screams out" that Enterasys was responsible for selling the product – "meaning [ETS had not] really sold it yet;" that the 150 day payment terms were not acceptable; and that changes were needed overnight to remove the problematic terms because "obviously" Enterasys could not afford to lose $3.9 million in revenue.

74. On or about September 19, 2001, defendant BOEY directed another APAC employee to assist in getting the changes made to the Letter of Agreement, specifically, removing the language relating to Enterasys' responsibility for reselling the product and the 150 day payment terms.

75. On or about September 19 or 20, 2001, defendant GAGALIS directed Spence to ensure that the two problematic terms were removed from the Letter of Agreement and that it was backdated so that Enterasys could recognize revenue as of September 1, 2001.

76. On or about September 20, 2001, in response to defendant GAGALIS' instructions, Spence sent an email to Workman, with a copy to defendant GAGALIS, that directed Workman to make the changes ordered by defendant GAGALIS.

77. On or about September 20, 2001, defendant BOEY advised an APAC salesman that Enterasys was "having problems with the language in the agreement," and directed that the salesman contact Ariel regarding what changes needed to be made to the original agreement.

78. On or about September 20, 2001, defendant BOEY told an APAC salesman that "we will cover this first order [with Ariel] by a side letter instead of putting in the main agreement."

79. On or about September 20, 2001, defendant BOEY transmitted the proposed altered language for the Letter of Agreement to defendants GAGALIS and KAY for their review.

80. On or about September 20, 2001, defendant BOEY sent an email to Ariel setting forth the 150 day payment terms and stating that the primary responsibility for selling the products would remain with Enterasys.

81. On or about September 20, 2001, defendant BOEY informed Ariel that the provision making Enterasys primarily responsible for selling the products would be put in a separate side letter.

82. On or about September 20, 2001, defendant BOEY provided Workman the format of the side letter that needed to be signed by Workman.

83. On or about September 20, 2001, defendant BOEY sent an email to Workman and others with the Ariel side letter attached and a message that stated, in part: "I have advised Bruce [Kay] that we have moved this 2 troublesome clauses to a side letter."

84. On or about September 20, 2001, defendant BOEY transmitted to defendants GAGALIS and KAY, and others, the altered and backdated first page of the Letter of Agreement and stated "finally we manage to get [Ariel] to get this cumbersome language off the main agreement."

85. On or about September 20, 2001, defendant KAY forwarded defendant BOEY's email, with the altered and backdated first page of the Letter of Agreement, to Hurley.

86. On or about September 21, 2001, Hurley sent an email to defendant KAY, and others, advising them that he had provided Enterasys' outside auditor with the altered and backdated Letter of Agreement and that "it looks good to us."

Tech Data Canada, Inc. ("Tech Data")

87. On or about August 29, 2001, an unindicted coconspirator, an Enterasys employee, advised defendant SHANAHAN that: (a) in connection with a sale to Tech Data of approximately $3 million of Enterasys product, certain terms in a letter agreement previously sent to Tech Data would jeopardize full and immediate revenue recognition; (b) a revised letter agreement without those terms was being given to Tech Data; (c) Enterasys was not retracting the intent of the original agreement with Tech Data, but that the original letter agreement had to be amended, and certain terms moved to a side letter, because of "a requirement to facilitate our ability to recognize revenue this quarter;" and (d) defendant SHANAHAN should reconfirm, in an email to Tech Data, Enterasys' commitment to the intent of the original agreement.

88. On or about August 29, 2001, the unindicted coconspirator sent the "revised" letter agreement to Tech Data.

89. On or about August 29, 2001, defendant SHANAHAN sent a secret side email to Tech Data confirming the intent of the original letter agreement, specifically including the terms that had been removed from the original letter agreement.

90. On or about August 30, 2001, defendant SHANAHAN, and others, caused Enterasys to improperly and fraudulently record approximately $2.9 million in revenue on its books and records for the quarter ending September 1, 2001, from the Tech Data transaction.

False Statements to Auditors

91. On or about September 4, 2001, defendant KAY advised Gagalis, Spence, and others that he agreed with sending a one page document to the company's outside auditors containing false and misleading information that concealed the true substance of several three corner deals.

92. On or about September 12, 2001, defendant BARBER, in response to a question from the company's outside auditors regarding whether there was any revenue associated with the transaction through a channel partner, characterized the GEMMS transaction as a research and development investment.

93. On or about September 24, 2001, defendants SHANAHAN, GAGALIS, KAY, BARBER, and BOEY, and others, falsely represented, or caused others to falsely to represent, to Enterasys' outside auditors that, with respect to the quarter ending September 1, 2001: (i) the company had made available to the auditors all relevant records, including side letters; (ii) there had been no instances of fraud by any member of management or by employees who have significant roles in internal control; (iii) there had been no instances of fraud by others at Enterasys that could have a material effect on the company's financial information; (iv) there had been no violations or possible violations of laws or regulations the effects of which should be considered for disclosure in financial information; and (v) revenue recognized had been modified to the extent appropriate when a right of return or other significant future obligation existed.

False Public Statements and Filings

94. On or about September 7, 2001, defendants SHANAHAN, GAGALIS, KAY, BARBER, and BOEY, and others, caused Enterasys to issue a press release falsely stating that Enterasys remained "highly confident" that its second quarter results would meet the $238

million to $242 million guidance provided by Fiallo on or about June 27, 2001 and by defendant GAGALIS on or about July 10, 2001.

95. On or about September 26, 2001, defendants SHANAHAN, GAGALIS, KAY, BARBER, and BOEY, and others, caused Enterasys to issue a press release falsely announcing that it had generated approximately $240 million in sales revenue for the quarter ended September 1, 2001, and falsely claiming that it was the sixth consecutive quarter in which Enterasys had met or exceeded Wall Street's expectations.

96. On or about October 16, 2001, defendants SHANAHAN, GAGALIS, KAY, BARBER, and BOEY, and others, caused Enterasys to file with the SEC a Form 10-Q with financial statements for the quarter ended September 1, 2001, which overstated Enterasys' revenue.

All in violation of Title 18, United States Code, Section 371.

COUNT 2
Securities Fraud: Issuing False Press Release; Aiding and Abetting
15 U.S.C. § 78j(b), 78ff; 17 C.F.R. § 240.10b-5; 18 U.S.C. § 2

97. The allegations of paragraphs 1 through 33 and 35 through 96 are realleged as if fully set forth here.

98. On or about September 26, 2001, within the District of New Hampshire and elsewhere, the defendants,

JERRY A. SHANAHAN,
ROBERT J. GAGALIS,
BRUCE D. KAY,
ROBERT G. BARBER, and
HOR CHONG BOEY, a/k/a, DAVID BOEY,

and others, did knowingly and willfully, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges: (a) employ devices, schemes and artifices to defraud; (b) make untrue statements of material fact, and omit to state facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engage in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon purchasers of Enterasys securities, to wit, causing Enterasys to issue a false and misleading press release announcing the financial results for its fiscal quarter ending September 1, 2001. Specifically, in the press release, the defendants caused Enterasys to: (i) overstate its revenue; (ii) falsely claim that Enterasys had met or exceeded Wall Street's revenue expectations for the sixth consecutive quarter; and (iii) omit to state that Enterasys recorded revenue using fraudulent devices.

All in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5 and Title 18, United States Code, Section 2.

COUNT 3
Securities Fraud: Filing False SEC Form 10-Q; Aiding and Abetting
15 U.S.C. § 78j(b), 78ff; 17 C.F.R. § 240.10b-5; 18 U.S.C. § 2

99. The allegations of paragraphs 1 through 33 and 35 through 96 are realleged as if fully set forth here.

100. On or about October 16, 2001, within the District of New Hampshire and elsewhere, the defendants,

JERRY A. SHANAHAN,
ROBERT J. GAGALIS,
BRUCE D. KAY,
ROBERT G. BARBER, and
HOR CHONG BOEY, a/k/a, DAVID BOEY,

and others, did knowingly and willfully, directly and indirectly, by the use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges: (a) employ devices, schemes and artifices to defraud; (b) make untrue statements of material fact, and omit to state facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, in reports and documents required to be filed with the SEC under the Securities Exchange Act of 1934 and rules and regulations promulgated thereunder; and (c) engage in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon purchasers of Enterasys securities, to wit, causing Enterasys to prepare and file with the SEC an SEC Form 10-Q which reported false financial results for the quarter ending September 1, 2001. Specifically, the defendants caused Enterasys to file a 10-Q that: (i) overstated its revenue; and (ii) omitted to state that Enterasys recorded revenue using fraudulent devices.

All in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2.

COUNT 4
Securities Fraud: False Books and Records; Aiding and Abetting
15 U.S.C. § 78m(b)(2)(A), 78m(b)(5) and 78ff, and 17 C.F.R. § 240.13b2-1; 18 U.S.C. § 2

101. The allegations of paragraphs 1 through 33 and 35 through 96 are realleged as if fully set forth here.

102. From in or about August 2001 to in or about September 2001, within the District of New Hampshire and elsewhere, the defendants,

JERRY A. SHANAHAN
ROBERT J. GAGALIS,
BRUCE D. KAY,
ROBERT G. BARBER, and
HOR CHONG BOEY, a/k/a, DAVID BOEY,

and others, knowingly and willfully, directly and indirectly, falsified and caused to be falsified, books, records, and accounts of Enterasys. Specifically, the defendants: (i) improperly recorded, and caused others to improperly record, revenue in Enterasys' books; and (ii) altered and backdated, and caused others to alter and backdate, sales documents associated with the Ariel and Tech Data transactions.

All in violation of Title 15, United States Code, Sections 78m(b)(2)(A), 78m(b)(5) and 78ff, Title 17, Code of Federal Regulations, Section 240.13b2-1, and Title 18, United States Code, Section 2.

COUNT 5
Securities Fraud: False Statements to Auditors; Aiding and Abetting
15 U.S.C. § 78ff, and 17 C.F.R. § 240.13b2-2; 18 U.S.C. § 2

103. The allegations of paragraphs 1 through 33 and 35 through 96 are realleged as if fully set forth here.

104. In or about September 2001, within the District of New Hampshire and elsewhere, the defendants,

JERRY A. SHANAHAN
ROBERT J. GAGALIS,
BRUCE D. KAY,
ROBERT G. BARBER, and
HOR CHONG BOEY, a/k/a, DAVID BOEY,

knowingly and willfully made, and caused to be made, materially false and misleading statements, and omitted to state or caused others to omit to state material facts, necessary to make the statements made not misleading, to Enterasys' outside auditors, in connection with an examination of the financial statements, quarterly review, and the preparation and filing of a document and report required to be filed with the SEC. Specifically, the defendants: (a) concealed, and caused other to conceal, from Enterasys' outside auditors, revenue associated with the GEMMS, Paraprotect and Worldlink transactions so as to hide the true substance of those transactions; (b) stated and caused others to state that the altered Letter of Agreement in the Ariel transaction was executed on or about August 31, 2001, when, in fact, they knew it was not executed until on or about September 20, 2001; (c) concealed and caused others to conceal the secret side letters in the Ariel and Tech Data transactions; and (d) falsely stated, and caused others to falsely state, in a management representation letter that: (i) the company had made available to its outside auditors all relevant records, including side letters; (ii) there had been no instances of fraud by any member of management and by employees who have significant roles

in internal control; (iii) there had been no instances of fraud by others at Enterasys that could have a material effect on the company's financial information; (iv) there had been no violations and no possible violations of laws or regulations the effects of which should be considered for disclosure in financial information; and (v) revenue recognized had been modified to the extent appropriate when a right of return or other significant future obligation existed.

All in violation of Title 15, United States Code, Sections 78ff, Title 17, Code of Federal Regulations, Section 240.13b2-2, and Title 18, United States Code, Section 2.

COUNTS 6 AND 7
Wire Fraud – GEMMS Transaction Fraud Scheme: Quarter Ended September 1, 2001
18 U.S.C. §§ 1343, 1346 and 2

105. The allegations of Paragraphs 1 through 33 and 35 through 96 are realleged as if fully set forth here.

106. From in or about August 2001 to in or about October 2001, in the District of New Hampshire, and elsewhere, the defendants,

ROBERT J. GAGALIS, and
ROBERT G. BARBER,

and others, did knowingly and willfully devise and intend to devise a scheme and artifice to defraud, and to deprive Enterasys of its intangible right of honest services, and to obtain money and property from others by means of materially false and fraudulent pretenses, representations and promises.

Scheme and Artifice

107. The allegations in paragraphs 1 through 33, 35 through 59 and 91 through 96 of this Superseding Indictment are re-alleged and incorporated by reference herein as a description of the scheme and artifice.

Use of the Wires

108. On or about the dates specified below as to each count, in the District of New Hampshire and elsewhere, the defendants and others, for the purpose of executing the aforesaid scheme and artifice to defraud, and to deprive Enterasys of its intangible right of honest services, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly transmit, and caused others to transmit, by means of wire communication in interstate and foreign commerce, certain writings, signs, signals, pictures

and sounds, as more particularly described in each count below:

Count	Date	Wire Communication	Between
6	August 31, 2001	Wire transfer of funds from Enterasys to GEMMS	New Hampshire and Indiana
7	August 31, 2001	Wire transfer of funds from third party distributor to Enterasys	New Hampshire and Ohio

All in violation of Title 18, United States Code, Sections 1343, 1346 and 2.

COUNTS 8 THROUGH 10
Wire Fraud – Para-protect Transaction Fraud Scheme: Quarter Ended September 1, 2001
18 U.S.C. §§ 1343, 1346 and 2

109. The allegations of Paragraphs 1 through 33 and 35 through 96 are realleged as if fully set forth here.

110. From in or about August 2001 to in or about October 2001, in the District of New Hampshire, and elsewhere, the defendant,

ROBERT J. GAGALIS,

and others, did knowingly and willfully devise and intend to devise a scheme and artifice to defraud, and to deprive Enterasys of its intangible right of honest services, and to obtain money and property from others by means of materially false and fraudulent pretenses, representations and promises.

Scheme and Artifice

111. The allegations in paragraphs 1 through 33, 35 through 53, 60 through 65 and 91 through 96 of this Superseding Indictment are re-alleged and incorporated by reference herein as a description of the scheme and artifice.

Use of the Wires

112. On or about the dates specified below as to each count, in the District of New Hampshire and elsewhere, the defendant,

ROBERT J. GAGALIS,

and others, for the purpose of executing the aforesaid scheme and artifice to defraud, and to deprive Enterasys of its intangible right of honest services, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly transmit, and caused others to transmit, by means of wire communication in interstate and foreign

commerce, certain writings, signs, signals, pictures and sounds, as more particularly described in each count below:

Count	Date	Wire Communication	Between
8	August 31, 2001	Purchase Order from Para-protect to Enterasys	Virginia and New Hampshire
9	August 31, 2001	Wire transfer of funds from Enterasys to Para-protect	New Hampshire and Virginia
10	August 31, 2001	Wire transfer of funds from third party distributor to Enterasys	Florida and New Hampshire

All in violation of Title 18, United States Code, Sections 1343, 1346 and 2.

COUNT 11
Wire Fraud – Worldlink Transaction Fraud Scheme: Quarter Ended September 1, 2001
18 U.S.C. §§ 1343, 1346 and 2

113. The allegations of Paragraphs 1 through 33 and 35 through 96 are realleged as if fully set forth here.

114. From in or about August 2001 to in or about October 2001, in the District of New Hampshire, and elsewhere, the defendant,

ROBERT J. GAGALIS,

and others, did knowingly and willfully devise and intend to devise a scheme and artifice to defraud, and to deprive Enterasys of its intangible right of honest services, and to obtain money and property from others by means of materially false and fraudulent pretenses, representations and promises.

Scheme and Artifice

115. The allegations in paragraphs 1 through 33, 35 through 53, 66 through 70 and 91 through 96 of this Superseding Indictment are re-alleged and incorporated by reference herein as a description of the scheme and artifice.

Use of the Wires

116. On or about August 30, 2001, in the District of New Hampshire and elsewhere, the defendant,

ROBERT J. GAGALIS,

and others, for the purpose of executing the aforesaid scheme and artifice to defraud, and to deprive Enterasys of its intangible right of honest services, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly transmit, and caused others to transmit, by means of wire communication in interstate and

foreign commerce, certain writings, signs, signals, pictures and sounds, to wit, defendant GAGALIS caused a wire transfer of funds to be sent from New Hampshire to Worldlink in Florida.

All in violation of Title 18, United States Code, Sections 1343, 1346 and 2.

COUNTS 12 THROUGH 15
Wire Fraud – Ariel Transaction Fraud Scheme: Quarter Ended September 1, 2001
18 U.S.C. §§ 1343, 1346 and 2

117. The allegations of Paragraphs 1 through 33 and 35 through 96 are realleged as if fully set forth here.

118. From in or about September 2001 to in or about October 2001, in the District of New Hampshire, and elsewhere, the defendants,

ROBERT J. GAGALIS,
BRUCE D. KAY, and
HOR CHONG BOEY, a/k/a, DAVID BOEY,

and others, did knowingly and willfully devise and intend to devise a scheme and artifice to defraud, and to deprive Enterasys of its intangible right of honest services, and to obtain money and property from others by means of materially false and fraudulent pretenses, representations and promises.

Scheme and Artifice

119. The allegations in paragraphs 1 through 33, 35 through 53, 71 through 86 and 91 through 96 of this Superseding Indictment are re-alleged and incorporated by reference herein as a description of the scheme and artifice.

Use of the Wires

120. On or about the dates specified below as to each count, in the District of New Hampshire and elsewhere, the defendants and others, for the purpose of executing the aforesaid scheme and artifice to defraud, and to deprive Enterasys of its intangible right of honest services, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly transmit, and caused others to transmit, by means of wire communication in interstate and foreign commerce, certain writings, signs, signals, pictures

and sounds, as more particularly described in each count below:

Count	Date	Wire Communication	Between
12	September 19, 2001	Email in which defendant KAY directs changes to Letter of Agreement	New Hampshire and Singapore
13	September 20, 2001	Email in which conspirator Spence, at defendant GAGALIS' direction, directs changes to Letter of Agreement	New Hampshire and Singapore
14	September 20, 2001	Email from defendant BOEY to defendants GAGALIS and KAY with proposed altered language to the Letter of Agreement	New Hampshire and Singapore
15	September 20, 2001	Email from defendant BOEY to defendants GAGALIS and KAY with altered and backdated Letter of Agreement	Singapore and New Hampshire

All in violation of Title 18, United States Code, Sections 1343, 1346 and 2.

COUNT 16
Wire Fraud – Tech Data Transaction Fraud Scheme: Quarter Ended September 1, 2001
18 U.S.C. §§ 1343, 1346 and 2

121. The allegations of Paragraphs 1 through 33 and 35 through 96 are realleged as if fully set forth here.

122. From in or about August 2001 to in or about October 2001, in the District of New Hampshire, and elsewhere, the defendant,

JERRY A. SHANAHAN,

and others, did knowingly and willfully devise and intend to devise a scheme and artifice to defraud, and to deprive Enterasys of its intangible right of honest services, and to obtain money and property from others by means of materially false and fraudulent pretenses, representations and promises.

Scheme and Artifice

123. The allegations in paragraphs 1 through 33, 35 through 53, 87 through 96 of this Superseding Indictment are re-alleged and incorporated by reference herein as a description of the scheme and artifice.

Use of the Wires

124. On or about August 29, 2001, in the District of New Hampshire and elsewhere, the defendant,

JERRY A. SHANAHAN,

and others, for the purpose of executing the aforesaid scheme and artifice to defraud, and to deprive Enterasys of its intangible right of honest services, and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, did knowingly transmit, and caused others to transmit, by means of wire communication in interstate and

foreign commerce, certain writings, signs, signals, pictures and sounds, to wit, defendant SHANAHAN sent an email from New Hampshire to Tech Data in Canada.

All in violation of Title 18, United States Code, Sections 1343, 1346 and 2.

A TRUE BILL

Dated: March 23, 2005

Foreperson

PETER E. PAPPS
Acting United States Attorney

By:

Thomas A. Hanusik
Assistant Chief
Fraud Section, Department of Justice

Michael L. Koenig
Trial Attorney
Fraud Section, Department of Justice

By :

William E. Morse
Assistant United States Attorney
District of New Hampshire