



**U.S. Department of Justice**

*United States Attorney  
District of New Jersey*

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SUE/PL AGR  
2013R00531

January 24, 2018

Daniel T. Brown, Esq.  
Lionel André, Esq.  
Murphy & McGonigle, P.C.  
1001 G Street, NW  
Seventh Floor  
Washington, DC 20001

Re: Plea Agreement with Steven Fishoff

Dear Messrs. Brown and André:

This letter sets forth the plea agreement between your client, Steven Fishoff, and the United States Attorney for the District of New Jersey ("this Office"). The government's offer to enter into this plea agreement will expire on February 5, 2018 if it is not accepted in writing by that date.

Charge

Conditioned on the understandings specified below, this Office will accept a guilty plea from Steven Fishoff to Count 4 of the Indictment, Criminal No. 15-586 (MAS), which charges that Steven Fishoff committed securities fraud in violation of 15 U.S.C. §§ 78j(b) and 78ff, 17 C.F.R. § 240.10b-5, and 18 U.S.C. § 2. If Steven Fishoff enters a guilty plea and is sentenced on this charge, and otherwise fully complies with all of the terms of this agreement, this Office will not initiate any further criminal charges against Steven Fishoff for committing securities fraud by engaging in an insider trading scheme that obtained and traded on material nonpublic information between in or about May 2010 through in or about January 2014. In addition, if Steven Fishoff fully complies with all of the terms of this agreement, at the time of sentencing in this matter, this Office will move to dismiss Counts 1, 2, 3, and 5 of the Indictment, Criminal No. 15-586 (MAS), against Steven Fishoff. However, in the event that a guilty plea in this matter is not entered for any reason or the judgment of conviction entered as a result of this guilty plea does not remain in full force and effect, Steven Fishoff agrees that any dismissed charges and any

other charges that are not time-barred by the applicable statute of limitations on the date this agreement is signed by Steven Fishoff may be commenced against him, notwithstanding the expiration of the limitations period after Steven Fishoff signs the agreement.

Sentencing

The violation of 15 U.S.C. §§ 78j(b) and 78ff, and 17 C.F.R. § 240.10b-5, to which Steven Fishoff agrees to plead guilty carries a statutory maximum prison sentence of 20 years and a statutory maximum fine of \$5,000,000. Fines imposed by the sentencing judge may be subject to the payment of interest.

The sentence to be imposed upon Steven Fishoff is within the sole discretion of the sentencing judge, subject to the provisions of the Sentencing Reform Act, 18 U.S.C. §§ 3551-3742, and the sentencing judge's consideration of the United States Sentencing Guidelines. The United States Sentencing Guidelines are advisory, not mandatory. The sentencing judge may impose any reasonable sentence up to and including the statutory maximum term of imprisonment and the maximum statutory fine. This Office cannot and does not make any representation or promise as to what Guidelines range may be found by the sentencing judge, or as to what sentence Steven Fishoff ultimately will receive.

Further, in addition to imposing any other penalty on Steven Fishoff, the sentencing judge: (1) will order Steven Fishoff to pay an assessment of \$100 pursuant to 18 U.S.C. § 3013, which assessment must be paid by the date of sentencing; (2) may order Steven Fishoff to pay restitution pursuant to 18 U.S.C. § 3663A; (3) may order Steven Fishoff, pursuant to 18 U.S.C. § 3555, to give notice to any victims of his offense; (4) must order forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461; and (5) pursuant to 18 U.S.C. § 3583, may require Steven Fishoff to serve a term of supervised release of not more than 3 years, which will begin at the expiration of any term of imprisonment imposed. Should Steven Fishoff be placed on a term of supervised release and subsequently violate any of the conditions of supervised release before the expiration of its term, Steven Fishoff may be sentenced to not more than 2 years' imprisonment in addition to any prison term previously imposed, regardless of the statutory maximum term of imprisonment set forth above and without credit for time previously served on post-release supervision, and may be sentenced to an additional term of supervised release.

### Rights of This Office Regarding Sentencing

Except as otherwise provided in this agreement, this Office reserves its right to take any position with respect to the appropriate sentence to be imposed on Steven Fishoff by the sentencing judge, to correct any misstatements relating to the sentencing proceedings, and to provide the sentencing judge and the United States Probation Office all law and information relevant to sentencing, favorable or otherwise. In addition, this Office may inform the sentencing judge and the United States Probation Office of: (1) this agreement; and (2) the full nature and extent of Steven Fishoff's activities and relevant conduct with respect to this case.

### Stipulations

This Office and Steven Fishoff agree to stipulate at sentencing to the statements set forth in the attached Schedule A, which hereby is made a part of this plea agreement. This agreement to stipulate, however, cannot and does not bind the sentencing judge, who may make independent factual findings and may reject any or all of the stipulations entered into by the parties. To the extent that the parties do not stipulate to a particular fact or legal conclusion, each reserves the right to argue the existence of and the effect of any such fact or conclusion upon the sentence. Moreover, this agreement to stipulate on the part of this Office is based on the information and evidence that this Office possesses as of the date of this agreement. Thus, if this Office obtains or receives additional evidence or information prior to sentencing that it determines to be credible and to be materially in conflict with any stipulation in the attached Schedule A, this Office shall not be bound by any such stipulation. A determination that any stipulation is not binding shall not release either this Office or Steven Fishoff from any other portion of this agreement, including any other stipulation. If the sentencing court rejects a stipulation, both parties reserve the right to argue on appeal or at post-sentencing proceedings that the sentencing court was within its discretion and authority to do so. These stipulations do not restrict this Office's right to respond to questions from the Court and to correct misinformation that has been provided to the Court.

### Waiver of Appeal and Post-Sentencing Rights

As set forth in Schedule A, this Office and Steven Fishoff waive certain rights to file an appeal, collateral attack, writ, or motion after sentencing, including but not limited to an appeal under 18 U.S.C. § 3742 or a motion under 28 U.S.C. § 2255.

## Forfeiture

To effect a global resolution of the above-captioned case and the parallel civil forfeiture action, *United States of America v. The Contents of Wedbush Securities Account Number 8318 et al.*, Civil Action No. 17-cv-5334 (MAS) (the “Parallel Civil Forfeiture Action”), Fishoff, individually and on behalf of Featherwood Capital Inc., which Fishoff represents is wholly owned and controlled by him (“Featherwood”), consents to the forfeiture of the defendants in rem named in the Verified Complaint filed in the Parallel Civil Forfeiture Action (hereinafter referred to collectively as the “Forfeitable Property”), and waives and abandons all right, title, and interest in the Forfeitable Property. On or before the date of the guilty plea proceeding, Fishoff, individually and on behalf of Featherwood, will execute a Stipulation and Order of Settlement in the Parallel Civil Forfeiture Action which will include the withdrawal of any claims Fishoff filed individually or on behalf of Featherwood and his consent to the forfeiture of the Forfeitable Property pursuant to 18 U.S.C. §§ 981(a)(1)(C) and 981(a)(1)(A). Fishoff further agrees that he, individually and in any capacity, will not file a claim or a petition for remission or mitigation in any proceeding involving the Forfeitable Property and will not cause or assist anyone else in doing so. Failing to withdraw the claim to the Forfeitable Property or failing to execute any documents necessary to pass clear title to the Forfeitable Property to the United States will be considered a material breach of this plea agreement. Fishoff expressly waives all constitutional and statutory challenges in any manner to any forfeiture carried out in accordance with this plea agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. Fishoff further agrees that the forfeiture of his assets in the Parallel Civil Forfeiture case will not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon him in this case.

Steven Fishoff further agrees that not later than the date he enters his plea of guilty he will provide a complete and accurate Financial Disclosure Statement on the form provided by this Office. If Steven Fishoff fails to provide a complete and accurate Financial Disclosure Statement by the date he enters his plea of guilty, or if this Office determines that Steven Fishoff has intentionally failed to disclose assets on his Financial Disclosure Statement, Steven Fishoff agrees that that failure constitutes a material breach of this plea agreement, and this Office reserves the right, regardless of any agreement or stipulation that might otherwise apply, to oppose any downward adjustment for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1 and to seek leave of the Court to withdraw from this agreement or seek other relief. In addition, Steven Fishoff consents to the administrative, civil, and/or criminal forfeiture of his interests in any assets that he failed to disclose on the Financial Disclosure Statement. Should undisclosed assets that the defendant owns or in which the defendant has an interest be discovered, Steven Fishoff knowingly and voluntarily waives his right to any required notice concerning the forfeiture

of those assets and agrees to execute any documents necessary to effectuate the forfeiture of those assets.

#### Immigration Consequences

Steven Fishoff understands that, if he is not a citizen of the United States, his guilty plea to the charged offense may result in his being subject to immigration proceedings and removed from the United States by making him deportable, excludable, or inadmissible, or ending his naturalization. Steven Fishoff understands that the immigration consequences of this plea will be imposed in a separate proceeding before the immigration authorities. Steven Fishoff wants and agrees to plead guilty to the charged offense regardless of any immigration consequences of this plea, even if this plea will cause his removal from the United States. Steven Fishoff understands that he is bound by his guilty plea regardless of any immigration consequences of the plea. Accordingly, Steven Fishoff waives any and all challenges to his guilty plea and to his sentence based on any immigration consequences, and agrees not to seek to withdraw his guilty plea, or to file a direct appeal or any kind of collateral attack challenging his guilty plea, conviction, or sentence, based on any immigration consequences of his guilty plea.

#### Other Provisions

This agreement is limited to the United States Attorney's Office for the District of New Jersey and cannot bind other federal, state, or local authorities. However, this Office will bring this agreement to the attention of other prosecuting offices, if requested to do so.

This agreement was reached without regard to any civil or administrative matters that may be pending or commenced in the future against Steven Fishoff. This agreement does not prohibit the United States, any agency thereof (including the Internal Revenue Service and the SEC) or any third party from initiating or prosecuting any civil or administrative proceeding against Steven Fishoff.

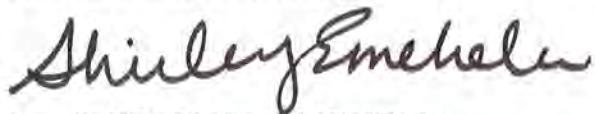
No provision of this agreement shall preclude Steven Fishoff from pursuing in an appropriate forum, when permitted by law, an appeal, collateral attack, writ, or motion claiming that Steven Fishoff received constitutionally ineffective assistance of counsel.

No Other Promises

This agreement constitutes the plea agreement between Steven Fishoff and this Office and supersedes any previous agreements between them. No additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties.

Very truly yours,

CRAIG CARPENITO  
United States Attorney



By: SHIRLEY U. EMEHELU  
NICHOLAS P. GRIPPO  
Assistant U.S. Attorneys

APPROVED:

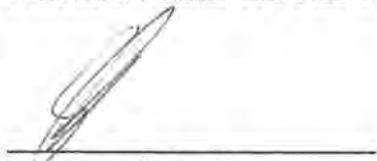


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PAUL MURPHY  
Chief, Economic Crimes Unit

I have received this letter from my attorneys, Daniel T. Brown, Esq. and Lionel André, Esq. I have read it. My attorneys and I have discussed it and all of its provisions, including those addressing the charge, sentencing, stipulations, waiver, forfeiture, and immigration consequences. I understand this letter fully. I hereby accept its terms and conditions and acknowledge that it constitutes the plea agreement between the parties. I understand that no additional promises, agreements, or conditions have been made or will be made unless set forth in writing and signed by the parties. I want to plead guilty pursuant to this plea agreement.

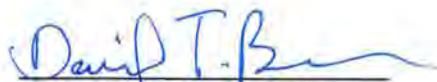
AGREED AND ACCEPTED:



Steven Fishoff

Date: 1/29/18

We have discussed with our client this plea agreement and all of its provisions, including those addressing the charge, sentencing, stipulations, waiver, forfeiture, and immigration consequences. Our client understands this plea agreement fully and wants to plead guilty pursuant to it.



Daniel T. Brown, Esq.  
Lionel André, Esq.

Date: 2/2/2018

Plea Agreement With Steven Fishoff

Schedule A

1. This Office and Steven Fishoff agree to stipulate to the following facts:

- a. Between on or about April 30, 2012, and on or about May 3, 2012, prior to the public announcement of the Synergy Pharmaceuticals, Inc. secondary stock offering (the "Synergy Offering"), Steven Fishoff executed and caused others to execute trades in the securities of Synergy, based upon material nonpublic information that Steven Fishoff obtained through his solicitation to participate in the confidentially marketed Synergy Offering. By trading in the securities of Synergy and causing others to do so, Steven Fishoff breached a duty of confidentiality and trust that he owed to the source of the material nonpublic information.
- b. The gain realized through trading in securities by defendant Steven Fishoff and persons acting in concert with the defendant or to whom the defendant provided inside information was more than \$1,500,000 but not more than \$3,500,000.
- c. As of the date of this letter, Steven Fishoff has clearly demonstrated a recognition and affirmative acceptance of personal responsibility for the securities fraud offense charged in Count Four of the Indictment.

2. If the sentencing court accepts a factual stipulation set forth above, both parties waive the right to file an appeal, collateral attack, writ, or motion claiming that the sentencing court erred in doing so. Otherwise, both parties reserve the right to file, oppose, or take any position in any appeal, collateral attack, or proceeding involving postsentencing motions or writs.