U.S. Department of Justice
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March 18, 2011

Mr. Christopher Schatz
Assistant Public Defender
101 SW Main Street, Suite 1700
Portland, OR 97204

Re: ***United States v. Brian D. Stevens***
Plea Agreement Letter

Dear Counsel:

1. **Parties/Scope**: This plea agreement is between this United States Attorney's Office (USAO or government) and defendant Brian Stevens. Except as set forth in paragraph 13 below relating to criminal tax offenses, this plea agreement does not bind any other federal, state, or local prosecuting, administrative, or regulatory authority.

2. **Charges**: Defendant agrees to plead guilty to both charges in a two-count Information. Count 1 of the Information charges the defendant with conspiracy to commit wire fraud, in violation of Title 18, United States Code, Section 1349. Count 2 of the Information charges the defendant with conspiracy to engage in monetary transactions with property derived from specified unlawful activity, in violation of Title 18, United States Code, Section 1956(h).

3. **Elements**: In order for the defendant to be found guilty, the government must prove the following elements beyond a reasonable doubt:

Count 1 (Conspiracy To Commit Wire Fraud, 18 U.S.C. § 1349):

(1) During the time period alleged in the Information, there was an agreement between two or more persons to commit the crime of wire fraud;

(2) the defendant became a member of the conspiracy knowing its object and intending to help accomplish it;

(3) one of the members of the conspiracy performed at least one overt act for the purpose of carrying out the conspiracy.

Count 2 (Conspiracy To Commit § 1957 Money Laundering, 18 U.S.C. § 1957(h)):

(1) During the time period alleged in the Information, there was an agreement between two or more persons to commit the crime of engaging in monetary transactions with property derived from specified unlawful activity;

(2) the defendant became a member of the conspiracy knowing its object and intending to help accomplish it.

4. **Penalties**:

Count 1: The maximum sentence is twenty (20) years imprisonment, a fine of $250,000 and three (3) years of supervised release. Conviction requires payment of a $100 fee assessment.

Count 2: The maximum sentence is ten (10) years imprisonment, a fine of the greater of $250,000 or twice the amount of funds involved in the prohibited financial transactions, and three (3) years of supervised release. Conviction requires payment of a $100 fee assessment.

Defendant agrees to pay the $200 fee assessment by the time of entry of guilty plea or explain to the Court why this cannot be done.

5. **Factual Admissions**:

Count 1:

Defendant admits that the following is an accurate, though non-exhaustive, statement of the offense conduct with respect to Count 1 of the Information:

Summit Accomodators/Summit 1031, Generally

At all relevant times, defendant BRIAN D. STEVENS was licensed by the State of Oregon as a Certified Public Accountant. The defendant was an original shareholder in Summit Accomodators, Inc. ("Summit"), also known as Summit 1031. The defendant held the title of Director/Shareholder of Summit.

The defendant and a coconspirator incorporated Summit in Oregon in 1991. Summit had its principal place of business in Bend, Oregon.

Summit operated as a Qualified Intermediary company. As such, Summit assisted its customers, called Exchangers, in tax deferral transactions commonly known as "like-kind exchanges" or "1031 exchanges" after the provision of the Internal Revenue Code on which these transactions were based.

Section 1031 of the Internal Revenue Code permitted owners of income-producing or investment property, the Exchangers, to defer the capital gains tax that would otherwise be due and owing on the sale of the property if the Exchanger timely used the sale proceeds to purchase a replacement income-producing or investment property.

In a typical 1031 exchange, an Exchanger sold his or her business or investment real estate. The Exchanger then had 45 days to identify a like-kind replacement property and 180 days to close on the purchase of the replacement property. To preserve the tax deferral, the Exchanger had to deposit the sale proceeds (hereinafter "Exchange Funds") with a Qualified Intermediary like Summit until the Exchanger closed on the replacement property.

Summit had its own customers in Bend, Oregon. Summit eventually established affiliates in Texas, Washington, Oregon, Utah, Montana, Wyoming, and Nevada. The Summit affiliates entered into Exchange Agreements with Exchangers on behalf of Summit. The Summit affiliates wire transferred all Exchange Funds to Summit. Summit then controlled the funds until the Exchanger closed on his or her replacement property.

From 2004 through 2008, Summit and its affiliates had average monthly balances of Exchange Funds of $49,285,774, $82,330,877, $109,967,871, $100,319,078, and $63,516,674 respectively. From 2004 through 2008, Summit and its affiliates had gross revenues of $2,215,530, $4,546,022, $7,104,334, $5,252,755, and $1,899,702 respectively.

The defendant and a coconspirator incorporated Inland Capital Corp. ("Inland") in Oregon in 1993. Inland had its principal place of business in Bend, Oregon. The defendant held the title of Director/Shareholder of Inland.

From 1993 through 1998, the defendant, a coconspirator, and a third party owned and operated Summit and Inland. From 1999 through 2005, the defendant and a coconspirator owned and operated Summit and Inland. In January 2006, two additional coconspirators became owner-operators of Summit and Inland. From January 2006 forward, the four coconspirators each owned 25% of Summit and 25% of Inland. The four coconspirators were responsible for the operation of both companies, although all four coconspirators were not always involved in day-to-day decision-making or the day-to-day operations of Summit.

The Scheme To Defraud

Summit's employees and affiliates represented to prospective customers that if they used Summit for a Section 1031 exchange, Summit would deposit the Exchange Funds in a financial institution deposit account, where the funds would remain available to complete the exchange process. Summit's print and website advertising made similar representations.

Summit's employees and affiliates also represented to prospective customers that Summit would deposit the Exchange Funds into a financial institution deposit account, also known as the "Exchange Account,"and that said funds would be subject to reduction for payment of (1) Summit's fees and costs, (2) all amounts expended by Summit in connection with the acquisition and replacement of property, and (3) other payments made for costs or expenses incurred by Summit for which an Exchanger might be obligated according to the terms of his or her specific exchange agreement.

Summit required each Exchanger to execute a standard contract, which the defendant and his coconspirators created (hereinafter the "Exchange Agreement"). Through the Exchange Agreement, Summit represented to prospective Exchangers that if they used Summit for a Section 1031 exchange, Summit would deposit the Exchange funds in an account at a financial institution, and all funds so deposited would be deemed to be held in the Exchange Account. Summit's print and website advertising made similar representations.

The Exchange Agreement further represented that Summit would place the Exchange Funds in a segregated account if directed to do so by the Exchanger, and that otherwise all Exchange Funds would be pooled in the Exchange Account. The Exchange Agreement further represented that the money in the Exchange Account would be used by Summit to fulfill its obligations pursuant to the Exchange Agreement. Moreover, as of and after 2005, the Exchange Agreeement also provided that the Exchanger Funds would not be deemed a part of Summit's general assets or subject to the claims of the creditors of Summit.

The representations described above induced Summit's customers to wire transfer their Exchange Funds from their own bank accounts to Summit's bank account.

Summit agreed to pay interest to the Exchangers at a rate equal to the interest earned on a passbook savings account. Summit earned money by charging its customers a $750 fee for handling a basic exchange, higher fees for handling more complex exchanges, and by earning bank-paid interest on the Exchange Funds higher than the passbook savings rate Summit paid the Exchangers.

The defendant and his coconspirators affirmatively misrepresented to Summit's prospective and established customers that Summit would maintain its customers' Exchange Funds in a financial institution, that the funds would only be used to carry out the exchanges of its customers, and that each customer's funds would remain available to complete each customer's exchange. Further, the defendant and his conspirators intentionally did not disclose to Summit's customers that their Exchange Funds could be transferred to Inland and that their Exchange Funds might not remain available to complete their exchanges, but might instead be invested in real estate projects, loaned to individuals or businesses, or loaned to the defendant and his coconspirators for their direct personal benefit.

It was further part of the conspiracy that the defendant and his conspirators did not disclose to most of Summit's employees, or to most of the owner-operators of Summit's affiliates, but instead actively concealed, that they were using Exchange Funds to finance real estate investment projects in which they had direct personal interests, for loans to individuals and businesses, or for their personal benefit. Nor did the defendant and his coconspirators disclose to most of these individuals, but instead actively concealed, that they used Inland as the Exchange Fund conduit.

Beginning in early 2006, the defendant and his coconspirators became aware that because of problems in the banking industry and the real estate investment market, the Exchange Funds they used to fund real estate investments were becoming increasingly at risk of loss. However, the defendant and his coconspirators did not disclose this additional risk of loss to Summit's present or potential customers.

From early 2006 to December 2008, some of Summit's Exchangers and some of the owner-operators of Summit's affiliates requested that Summit generally, or the conspirators specifically, provide information about the safety and liquidity of Summit Exchange Funds. In response, the conspirators used statements in e-mails and other media to convey the false impression that all Summit's Exchange Funds were deposited and maintained in financial institutions, were available to complete the exchange process, and were not at risk. During this period, the conspirators did not disclose to Summit's Exchangers that they were attempting to sell Summit to a financial institution with sufficient funds to cover the Exchange Funds at risk from the undisclosed real estate investments. Near the end of this time period the conspirators did not disclose to Summit's Exchangers that they intended to place Summit in bankruptcy.

The defendant and his coconspirators caused Summit to file for bankruptcy protection on December 19, 2008 and ceased participating in like-kind exchanges for its customers. On that date, 91of Summit's customers had like-kind exchanges that could not be completed. As of that date, these 91 customers collectively experienced a financial loss of $13.7 million.

Count Two:

Defendant admits that the following is an accurate, though non-exhaustive, statement of the offense conduct with respect to Count 2 of the Information:

The defendant and his coconspirators agreed to loan, and did loan, Summit Exchange Funds from Summit to Inland. They also agreed to loan, and did loan, these funds from Inland to limited liability corporations they created as vehicles for real estate investments that benefitted themselves, family members, and others. The defendant and his coconspirators also loaned Exchange funds directly to individuals or businesses. The defendant and his coconspirators also used Exchange Funds for their personal benefit, though in amounts much smaller than the amounts they used to finance real estate investments. This use of Exchange Funds typically took the form of loans from Inland to the defendant and his coconspirators.

The ExchangeFunds Summit loaned Inland, which Inland then loaned to the limited liability corporations, were proceeds from the successful scheme to defraud Summit's customers. Each transfer of funds identified as overt acts in the Information were monetary transactions involving a financial institution and affected interstate commerce.

6. **Sentencing Factors**: The parties agree that the Court must first determine the applicable advisory guideline range, then determine a reasonable sentence considering that range and the factors listed in 18 U.S.C. § 3553(a). Where the parties agree that sentencing factors apply, such agreement constitutes sufficient proof to satisfy the applicable evidentiary standard.

7. **Advisory Guideline Calculation**: The parties agree that as of the date this agreement is executed, and in the absence of evidence to the contrary, the following advisory guideline calculation applies to Count 1 and Count 2:

Count 1:

Base offense level [U.S.S.G. § 2B1.1(a)(1)]	7
Loss [U.S.S.G. § 2B1.1(b)(1)(K)] (loss of $13.7 million)	+20
Multiple Victims [U.S.S.G. § 2B1.1(b)(2)(B) (91 victims)	+ 4
Organizer/Leader [U.S.S.G. § 3B1.1(a)]	+ 4
Abuse of Position of Trust [U.S.S.G. § 3B1.3]	+2
Offense level	37

Count 2:

Base offense level [U.S.S.G. § 2S1.1(a)(1)]	33
(Incorporating only the base offense level and specific offense characteristics from Count 1)	
Specific Offense Characteristic [U.S.S.G. § 2S1.1(b)(2)(A)]	1
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The government agrees that if the defendant identifies evidence indicating one or more of the sentencing enhancements identified above does not apply, the defendant may submit this evidence to the Court and request that the Court not include the enhancement(s) in its guideline calculation. The government may oppose this request.

8. **Loss and Number of Victims**: Subject to the provisions of paragraph 7 above, the parties agree that for purposes of the advisory Sentencing Guidelines the loss resulting from the criminal conduct described in Count 1 of the Information is $13.7 million, and that there are 91 victims.

9. **Acceptance of Responsibility**: Defendant must demonstrate to the Court he fully admits and accepts responsibility under U.S.S.G. § 3E1.1 for his unlawful conduct in this case. If defendant does so, the USAO will recommend a three-level reduction in defendant's offense level (two levels if defendant's offense level is less than 16). The USAO reserves the right to change this recommendation if defendant, between plea and sentencing, commits any criminal offense, obstructs or attempts to obstruct justice as explained in U.S.S.G. § 3C1.1, or acts inconsistently with acceptance of responsibility as explained in U.S.S.G. § 3E1.1.

10. **Proposed Sentence:** The defendant and the government agree the Court should sentence the defendant to a term of imprisonment within the range of 48 months to 96 months, inclusive. The defendant will request a sentence of 48 months imprisonment and may offer any relevant evidence in support of a 48 month term of imprisonment. The government will request a sentence of 96 months imprisonment and may offer any relevant evidence in support of a 96 month term of imprisonment.

11. **Court Bound Under Fed.R.Crim. P. 11(c)(1)(C)**:

(a) The agreed sentencing range of 48 months imprisonment to 96 months imprisonment, inclusive, is entered into pursuant to Fed.R.Crim.P. Rule 11(c)(1)(C). The defendant understands the Court may accept this agreement, reject it, or defer its decision and request a Presentence Report be prepared. If the Court accepts this agreement, the Court will be bound to impose a term of imprisonment in the range of 48 months to 96 months, inclusive.

(b) Except with respect to a term of imprisonment, the defendant and the government agree that all other sentencing issues, including the amount of restitution, the applicability of a criminal fine, the term of supervised release, and the terms and conditions of supervised release, are governed by the provisions of Fed.R.CrimP. Rule 11(c)(1)(B) and that the Court is not bound by the recommendations of the defendant or the government with respect to any other aspect of the defendant's sentence.

(c) If the Court rejects this agreement, the defendant will have the right to withdraw his guilty pleas to Count 1 and Count 2 of the Information, and the defendant and the government will be free to proceed as if this agreement did not exist.

(d) The defendant understands and agrees he can not withdraw his guilty pleas to Count 1 and Count 2 of the Information if the Court accepts this agreement and imposes a term of imprisonment longer than 48 months, including a term of imprisonment of 96 months. The defendant further understands and agrees he can not withdraw his guilty pleas or rescind this plea agreement if the Court does not follow the agreements of the parties, or the recommendation of either party, with respect to sentencing issues other than the term of imprisonment.

12. **Restitution**: The defendant understands and agrees that pursuant to 18 U.S.C. § 3663A, the Mandatory Victim Restitution Act, the Court must order him to pay restitution to the victims of the offense. The defendant and the government do not agree to an amount of restitution. Instead, the defendant and the government agree to submit to the Probation Office and the Court all relevant victim loss information and victim financial recovery information in their possession and agree the Court will determine the amount of restitution, if any, the defendant will be ordered to pay. Either party may recommend a specific amount of restitution and may oppose the recommendation of the other party. The defendant understands the government may recommend the amount of restitution include, among other amounts: 1) the amount of income tax individual customers of Summit 1031 had to pay the Internal Revenue Service because the defendant's criminal conduct prevented the completion of an IRC Section 1031 exchange, the completion of which would have reduced or eliminated income taxes the Exchanger owed the Internal Revenue Service on the Section 1031 exchange transaction; and 2) attorney fees and other expenses the Exchangers of Summit 1031 incurred to contest the payment of these additional income taxes.

13. **No Other Charges**: It is the intention of the parties that the charges in the Information will resolve all potential criminal charges against the defendant arising out of the operation and eventual collapse of Summit. Therefore, in return for the defendant's complete performance under this plea agreement, except for the charges in the Information the USAO agrees not to charge the defendant with any criminal offenses, including criminal tax offenses, relating to the defendant's ownership, operation, or financial interest in Summit, Inland, or any related entity.

14. **Waiver of Appeal/Post-Conviction Relief**: Defendant knowingly and voluntarily waives the right to appeal from any aspect of the conviction and sentence on any grounds, except for a claim that: (1) the sentence imposed exceeds the statutory maximum, or (2) the Court arrives at an advisory sentencing guideline range by applying an upward departure under the provisions of Guidelines Chapters 4 or 5K, or (3) the Court exercises its discretion under 18 U.S.C. § 3553(a) to impose a sentence which exceeds the advisory guideline sentencing range, or (4) the Court does not follow the provisions of paragraph 11 of this agreement and imposes a sentence exceeding 96 months imprisonment and does not permit the Defendant to withdraw his guilty plea. Should defendant seek an appeal despite this waiver, the USAO may take any position on any issue on appeal. Defendant also waives the right to file any collateral attack, including a motion under 28 U.S.C. § 2255, challenging any aspect of the conviction or sentence on any grounds, except on grounds of ineffective assistance of counsel, and except as provided in Fed. R. Crim. P. 33 and 18 U.S.C. § 3582(c)(2).

15. **Full Disclosure/Reservation of Rights**: The USAO will fully inform the PSR writer and the Court of the facts and law related to defendant's case. Except as set forth in this agreement, the parties reserve all other rights to make sentencing recommendations and to respond to motions and arguments by the opposition.

16. **Breach of Plea Agreement**: If defendant breaches the terms of this agreement, or commits any new criminal offenses between signing this agreement and sentencing, the USAO is relieved of its obligations under this agreement, but defendant may not withdraw any guilty plea.

17. **Memorialization of Agreement**: No promises, agreements or conditions other than those set forth in this agreement will be effective unless memorialized in writing and signed by all parties listed below or confirmed on the record before the Court. If defendant accepts this offer, please sign and attach the original of this letter to the Petition to Enter Plea.

18. **Deadline**: This plea offer expires if not accepted by March 15, 2011.

Sincerely,

DWIGHT C. HOLTON
United States Attorney

Seth D. Uram

SETH D. URAM
Assistant United States Attorney

Helen L. Cooper

HELEN L. COOPER
Assistant United States Attorney

Justin Goodyear (SDU)

JUSTIN GOODYEAR
Trial Attorney
Fraud Section
Criminal Division

I have carefully reviewed every part of this agreement with my attorney. I understand and voluntarily agree to its terms. I expressly waive my rights to appeal as outlined in this agreement. I wish to plead guilty because, in fact, I am guilty.

4/7/2011
Date

Brian D. Stevens
Defendant

I represent the defendant as legal counsel. I have carefully reviewed every part of this agreement with defendant. To my knowledge, defendant's decisions to make this agreement and to plead guilty are informed and voluntary ones.

4/7/2011
Date

Christopher Schatz
Attorney for Defendant

Date

Nell Brown
Attorney for Defendant