

BINDING ESTIMATED IMPRISONMENT RANGE 168-210 months

* Pursuant to 2S1.1, *Application Note, 2(C)*, referencing U.S.S.G. § 1B1.5(c), Chapter Three adjustments for Role/Position of Trust are not applied to the underlying offense from which the laundered funds were derived.

SUPERVISED RELEASE RANGE THREE YEARS

FINE RANGE \$25,000 - \$250,000

E. Additional consequences of a felony conviction

I understand that any person convicted of a federal felony offense may lose or be denied federal benefits including any grants, loans, licenses, food stamps, and welfare, as well as the right to own or possess any firearms, the right to vote, the right to hold public office, and the right to sit on a jury.

F. Elements of the offense(s)

My attorney has explained the charge(s) to which I am pleading guilty and the elements necessary to establish my guilty plea(s). The district court will further advise me of the necessary elements.

I understand that in order to sustain a conviction for Wire Fraud, in violation of 18 U.S.C. §§ 1343 and 1346, as charged in this case, the United States would have to prove beyond a reasonable doubt the following elements:

First, the defendant made up a scheme or plan to defraud the *May Smith Trust* of its right to his honest services,

Second, that the defendant acted with the intent to deprive the *May Smith Trust* of its right to honest services as trustee;

Third: the defendant caused a wiring(s) to occur in furtherance of the scheme or plan in interstate commerce.

I understand that in order to sustain a conviction for Money Laundering, in violation of 18 U.S.C. § 1957(a), the United States would have to prove beyond a reasonable doubt the following elements:

First: That the defendant knowingly engaged in a “monetary transaction”.

Second: That the defendant knew the transaction constituted criminally derived property;

Third: That the property’s value exceeded \$10,000,

Fourth: The property was derived from a specified unlawful activity, that is, breach of fiduciary duty and denial of honest services.

Fifth: That the offense took place in the United States or in a special or maritime or territorial jurisdiction of the United States.

G. Factual basis for the plea(s)

I admit that the allegations against me in Counts 1-15 of the Information are true and stipulate the following minimum factual basis for my plea(s) is true and supports my guilty plea(s) in this case:

Defendant Mark J. Avery, was a trustee and lawyer to the May Smith Trust. As trustee to the *May Smith Trust* Mark J. Avery was a fiduciary obligated to exercise the highest degree of care for and act in the best interests of the *May Smith Trust* and May Wong Smith.

From at least April 1, 2005, and until August 16, 2006, Mark J. Avery did engage in a fraudulent financing scheme in which he abused his fiduciary obligations and his position of trust to acquire over \$52 million dollars through an ambiguous loan arrangement which used the assets of the *May Smith Trust* as collateral. The loan arrangement had undefined repayment terms and conditions which put at risk the assets of the *May Smith Trust*. The loan arrangement did not provide any reasonable business protections or monetary return to the trust. By engaging in this fraudulent financing scheme Mark J. Avery placed his personal financial interests before that of the *May Smith Trust* and May Wong Smith and placed himself in direct conflict of interest with the *May Smith Trust*, breached his fiduciary duties and deprived the trust of his honest services as trustee.

The funds from the scheme were then used for the benefit of Mark J. Avery and never repaid. A fraudulent justification for acquiring the funds was to provide free jet service to Mark J. Avery, the other trustees of the *May Smith Trust* and the *May and Stanley Smith Charitable Trust*, their friends and families.

Mark J. Avery, as lawyer and trustee to the May Smith Trust owed a duty to preserve and protect the assets of the trust before loan arrangements were entered into and loan disbursements occurred. However, prior to the first disbursement of \$15 million on June 7, 2005, Mark J. Avery intentionally failed to secure and provide for the following documents and protections required by reasonable business practices. This intentional failure directly harmed the financial interests of May Wong Smith and the *May Smith Trust* and was a violation of Mark J. Avery's fiduciary duty. The absence of the following documents and protections are evidence of the foregoing. For example:

- a) There were no documents detailing how the funds were to be spent; no provisions detailing the terms and rate of interest or other compensation for use of the funds; no joint venture contracts; no documentation on the collateralization of the funds or encumbrances; no documentation of penalty

provisions for late payments or failure to repay; no legal opinions or business analysis regarding the risk or effect of the venture on trust assets; no requirements for insurance provision on aircraft purchased; no documented plan on titling of assets acquired and no defined business plan.

- b) There was no documentation explaining the possible benefit to the *May Smith Trust* for providing financing in exchange for free or deeply discounted jet service to the *May and Stanley Smith Charitable Trust*, which was a separate entity created for a separate purpose governed under Internal Revenue Code § 501(c)(3).
- c) There was no documented plan on how to determine return of profits from loan recipient. There was no documented plan on how to control profits or losses, income or expenses to the loan recipient; or a plan explaining the purpose of providing free jet service to the trustees.
- (d) There was no documented plan for the transfer process of millions of dollars in loan proceeds from Mark J. Avery, Avery

and Associates, L.L.C., or Regional Protective Services, L.L.C., to vendors receiving loan proceeds. There was no documented plan for preservation and disposition of trust funds not expended by Mark J. Avery, Avery and Associates, L.L.C., or Regional Protective Services, L.L.C. There was no documented plan on auditing the recipient of the loan funds.

- (e) There were no documented plans on how income made within the United States was going to effect the tax structure of Avenco, Ltd., or the *May Smith Trust*.

Mark J. Avery directly benefitted from the loan and directly harmed the *May Smith Trust* by using electronic mail communications to cause the wiring of \$52 million dollars in funds as listed in Counts 1 through 5 of the information, and then using those funds, obtained in interstate commerce, to purchase the assets listed in Counts 6 through 15 of the Information.

Mark J. Avery directly benefitted from the loan and directly harmed the *May Smith Trust* by titling those assets in his name and obtaining an interest in the assets purchased with loan proceeds, to wit; by purchasing jet aircraft, historic World War II fighter aircraft, other antique aircraft, and recreational vehicles; by

establishing and buying businesses; by paying off personal mortgages, and other personal debts; by not being liable for repayment of the loan; and by paying the margin interest rate charged by RBC Dain Rauscher to Avenco, Ltd., with the loan proceeds from Avenco, Ltd.

Mark J. Avery knew that neither May Wong Smith, had she had her full mental capacities, nor any legitimate guardian of May Wong Smith, would have consented to the aircraft financing scheme in that it was a scheme and artifice to defraud May Wong Smith, it bore no benefit to her, and it put the core principal of the May Smith Trust at risk of loss with no determinable return.

Mark J. Avery knew that the self-dealing provisions in the *May Smith Trust* did not authorize him to place the *May Smith Trust* secondary to his own interests and benefits as described herein.

Finally, Mark J. Avery breached his fiduciary duty as trustee as he knew that May Wong Smith, while still a trustee of the *May Smith Trust*, suffered from dementia since at least the early 1980's and knew she could not act in her own best interests.

Mark J. Avery deprived May Wong Smith and the May Smith Trust of the right to his honest services by concealing the fact that since the early 1980's May

Wong Smith suffered from dementia.

H. Waiver of trial, appellate, and collateral attack rights

I understand I have the following rights:

- The right to have the charges against me presented to the grand jury prior to entering my plea of guilty;
- The right to plead not guilty or to persist in that plea if it has already been made;
- The right to a speedy and public trial by jury on the factual issues establishing my guilt or my sentence, and any issue affecting my interest in any forfeitable assets;
- The right to object to the compositions of the grand jury and the petit jury;
- The right to be presumed innocent and not to suffer any criminal penalty unless and until my guilt is established beyond a reasonable doubt;
- The right to be represented by a lawyer at trial and if necessary to have a lawyer appointed to represent me at trial -- I understand I am not waiving my right to have counsel continue

- to represent me during the sentencing phase of my case;
- The right to confront and cross examine witnesses against me, and the right to subpoena witnesses to appear in my behalf;
 - The right to remain silent at trial, with such silence not to be used against me, and the right to testify in my own behalf;
 - The right to contest the validity of any searches conducted on my property or person; and
 - The right to appeal my conviction and sentence.

By pleading guilty pursuant to this agreement, I understand and agree I am waiving all of these applicable rights including my right to appeal my conviction(s). I further agree that if the district court imposes a sentence in accordance with this agreement, I am waiving without exception my right to appeal on all grounds contained in 18 U.S.C. § 3742 the sentence the district court imposes upon me – including forfeiture (if applicable), terms and conditions of probation (if applicable), supervised release, any fines and restitution.

Additionally, I also knowingly and voluntarily agree to waive all right to collaterally attack my conviction(s) and/or sentence – including forfeiture (if applicable) or terms or conditions of probation (if applicable) or supervised

release, and any fines or restitution— the district court imposes. The only exceptions to this collateral attack waiver are as follows: 1) any challenge to the conviction or sentence alleging ineffective assistance of counsel based on information not now known to me and which, in the exercise of reasonable diligence, could not be known by me at the time the court imposes sentence; and 2) a challenge to the voluntariness of my guilty plea(s). I understand a collateral attack is an additional means separate from an appeal by which I could challenge my conviction or sentence. I also agree that if my guilty pleas are rejected, withdrawn, vacated, reversed, or set aside, or if my sentence is vacated, reversed, set aside, or modified, at any time, in any proceeding, for any reason, the United States will be free to prosecute me on all charges arising out of the investigation of this case for which there is probable cause.

I. Satisfaction with counsel

I am fully satisfied with the representation given me by my attorney and am prepared to repeat this statement at the time I stand before the district court and enter my guilty plea(s). My attorney and I have discussed all possible defenses to the charges to which I am pleading guilty. My attorney has investigated my case and followed up on any information and issues I have raised to my satisfaction.

My attorney has taken the time to fully explain the legal and factual issues involved in my case to my satisfaction. We have discussed the statutes applicable to my offense and sentence as well as the possible effect the U.S.S.G. may have on my sentence.

III. What the United States agrees to do

A. In exchange for the defendant's plea(s) of guilty to Counts 1-15, the United States agrees that it will not prosecute the defendant further for any other offense -- now known -- arising out of the subject of the investigation related to the charging instrument in this case and the defendant's admissions in support of the guilty plea(s). Provided, however, if the defendant's guilty plea(s) is/are rejected, withdrawn, vacated, reversed, or set aside, or if the defendant's sentence is vacated, reversed, set aside, or modified, at any time, in any proceeding, for any reason, the United States will be free to prosecute the defendant on all charges arising out of the investigation of this case for which there is probable cause, including any charges dismissed pursuant to the terms of this agreement, which charges will be automatically reinstated as well as for perjury and false statements.

B. If the defendant is completely candid and truthful with both the district court and the United States Probation Office in admitting the underlying

criminal conduct and the defendant meets the criteria set out in U.S.S.G. § 3E1.1, the United States agrees to recommend the defendant for a two level downward adjustment for acceptance of responsibility and, if U.S.S.G. § 3E1.1(b) applies, to move for the additional one level adjustment for acceptance of responsibility. If, at any time prior to imposition of sentence, the defendant fails to meet the criteria set out in U.S.S.G. § 3E1.1, or acts in a manner inconsistent with acceptance of responsibility, the United States will not make or, if already made, will withdraw this recommendation and motion.

C. The United States agrees that due to the restitution due and owing that the imposition of a fine is not warranted in this case.

IV. Adequacy of the agreement

Pursuant to Local Criminal Rule 11.2 (d)(9), this plea agreement is appropriate in that the agreed statutory sentencing range falls within the applicable guideline range.

V. The defendant's acceptance of the terms of this plea agreement

By my signature below, I, MARK J. AVERY, affirm this document contains all of the agreements made between me— with the assistance of my attorney— and the United States regarding my plea(s). There are no other promises, assurances,

or agreements the United States has made or entered into with me that have affected my decision to enter any plea of guilty or to enter into this agreement. If there are any additional promises, assurances, or agreements, I and the United States will jointly inform the district court in writing before I enter my guilty plea(s).

I understand that I have a right to plead not guilty and proceed to trial, and that no one can force me to plead guilty. I understand that no one, including my attorney, can guarantee the outcome of my case or what sentence the district court may impose. If anyone, including my attorney, has done or said anything other than what is contained in this agreement, I will inform the judge when I stand before him to enter my plea.

I understand the district court will ask me under an oath to answer questions about the offense(s) to which I am pleading guilty and my understanding of this plea agreement. I understand that I may be prosecuted if I make false statements or give false answers and may suffer other consequences set forth in this agreement.

I have read this plea agreement carefully and understand it thoroughly. I know of no reason why the district court should find me incompetent to enter into

this agreement or to enter my plea. I enter into this agreement knowingly and voluntarily. I understand that anything that I discuss with my attorney is privileged and confidential, and cannot be revealed without my permission. Knowing this, I agree that this document will be filed with the court.

Based on my complete understanding of this plea agreement, I therefore wish to enter a plea of guilty to Counts 1-15 of the Information.

DATED: 3/6/07

Mark J. Avery
MARK J. AVERY
Defendant

As counsel for the defendant, I have discussed with the terms of this plea agreement with the defendant, have fully explained the charge(s) to which the defendant is pleading guilty and the necessary elements, all possible defenses, and the consequences of a guilty plea to a felony. Based on these discussions, I have no reason to doubt that the defendant is knowingly and voluntarily entering into this agreement and entering a plea of guilty. I know of no reason to question the defendant's competency to make these decisions. If, prior to the imposition of

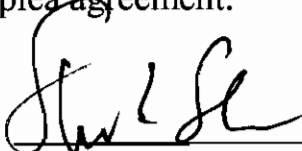
sentence, I become aware of any reason to question the defendant's competency to enter into this plea agreement or to enter a plea of guilty, I will immediately inform the court.

DATED: March 6, 2007



D. SCOTT DATTAN *Alaska Bar #841111*
Attorney for MARK J. AVERY

On behalf of the United States, the following accept MARK J. AVERY's offer to plead guilty under the terms of this plea agreement.

DATED: 3/6/07


STEVEN E. SKROCKI
Assistant U.S. Attorney

DATED: 3/6/07


NELSON P. COHEN
United States Attorney