

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)	Criminal No.
)	
)	Filed:
v.)	
)	Violation: 18 U.S.C. § 1512(c)(1)
NAUTILUS HYOSUNG HOLDINGS, INC.,)	(Counts 1-2)
)	
Defendant.)	

PLEA AGREEMENT

The United States of America and NAUTILUS HYOSUNG HOLDINGS, INC., ("defendant"), a corporation organized and existing under the laws of the State of Delaware, hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

RIGHTS OF DEFENDANT

1. The defendant understands its rights:
 - (a) to be represented by an attorney;
 - (b) to be charged by Indictment;
 - (c) to plead not guilty to any criminal charge brought against it;
 - (d) to have a trial by jury, at which it would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for it to be found guilty;
 - (e) to confront and cross-examine witnesses against it and to subpoena witnesses

in its defense at trial;

- (f) to appeal its conviction if it is found guilty; and
- (g) to appeal the imposition of sentence against it.

AGREEMENT TO PLEAD GUILTY
AND WAIVE CERTAIN RIGHTS

2. The defendant knowingly and voluntarily waives the rights set out in Paragraph 1(b)-(f) above, including all jurisdictional defenses to the prosecution of this case, and agrees voluntarily to consent to the jurisdiction of the United States to prosecute this case against it in the United States District Court for the District of Columbia. The defendant also knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742, that challenges the sentence imposed by the Court if that sentence is consistent with or below the recommended sentence in Paragraph 8 of this Plea Agreement, regardless of how the sentence is determined by the Court. This agreement does not affect the rights or obligations of the United States as set forth in 18 U.S.C. §§ 3742 (b), (c). Nothing in this paragraph, however, shall act as a bar to the defendant perfecting any legal remedies it may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct. The defendant agrees that there is currently no known evidence of ineffective assistance of counsel or prosecutorial misconduct. Pursuant to Fed. R. Crim. P. 7(b), the defendant will waive indictment and plead guilty at arraignment to a two-count Information to be filed in the United States District Court for the District of Columbia. The Information will charge the defendant with two counts of corruptly altering, destroying, mutilating, or concealing a record, document or other object, or attempting to do so, with the intent to impair the object's integrity and availability for use in an official proceeding, in violation of 18 U.S.C. § 1512(c)(1).

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

FACTUAL BASIS FOR OFFENSE CHARGED

4. Had this case gone to trial, the United States would have presented evidence sufficient to prove the following facts:

(a) For purposes of this Plea Agreement, the “relevant period” is that period from in or about February 2008 through in or about February 2009. During the relevant period, the defendant was a corporation organized and existing under the laws of the State of Delaware, and was a wholly-owned subsidiary of NAUTILUS HYOSUNG INC. (“NHI”), a corporation organized and existing under the laws of the Republic of Korea. During the relevant period, NHI was a producer of Automated Teller Machines (“ATMs”) and, directly or through its subsidiaries, was engaged in the sale of ATMs in the United States and elsewhere.

(b) During the relevant period, NHI negotiated for and entered into an agreement for the defendant to acquire Triton Systems of Delaware, Inc. (“Triton”), an entity organized and existing under the laws of the State of Delaware. In conjunction with the acquisition of Triton, in or about August 2008, NHI, as the ultimate parent entity of the defendant, was required to make premerger notification filings with the United States Federal Trade Commission (“FTC”) and the United States Department of Justice (“DOJ”) in the District of Columbia pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18(a), and implementing regulations promulgated thereunder at 16 C.F.R. Part 801, *et seq.* (“HSR filings”). Employees of NHI and other corporations affiliated

with and acting on behalf of NHI and the defendant directed and participated in the identification, review, and collection of documents required to be submitted as part of the HSR filings pursuant to 16 C.F.R. § 803.1, *et. seq.*, including “studies, surveys, analyses and reports . . . evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets.” 16 C.F.R. Part 803 Appendix, at Item 4(c) (the “4(c) documents”).

(c) Executive A of a corporation affiliated with and acting on behalf of NHI and the defendant made, and directed other persons acting on their behalf to make, material alterations to documents required to be submitted to the FTC and DOJ as part of the HSR filing, with the intent to impair the documents’ integrity and availability for use in an official proceeding, to wit, to misrepresent and minimize the competitive impact of the proposed acquisition on markets in the United States and other statements relevant and material to analyses of the proposed acquisition of Triton by the FTC and DOJ.

(d) As a result, HSR filings incorporating the materially altered documents were made to the FTC and DOJ in the District of Columbia on behalf of NHI and the defendant on or about August 7, 2008, and August 29, 2008. The defendant, and Executive A acting on behalf of the defendant, understood that HSR filings and subsequent FTC and DOJ review and analysis of the proposed acquisition constituted an official proceeding under 18 U.S.C. §§ 1512(c)(1), 1515(a)(1)(C).

(e) Executive A of a corporation affiliated with and acting on behalf of NHI and the defendant made, and directed other persons acting on their behalf to make, material alterations to NHI’s pre-existing business and strategic plans for the years 2006, 2007, and 2008, which DOJ, in furtherance of its analysis of the proposed acquisition of Triton, had

requested in a letter dated August 19, 2008. The material alterations were made with the intent to impair the documents' integrity and availability for use in an official proceeding, to wit, to misrepresent statements concerning NHI's business and competition among vendors of ATMs that were relevant and material to DOJ's analysis of the proposed acquisition of Triton.

(f) The materially altered business and strategic plans were produced to the DOJ in the District of Columbia on behalf of NHI and the defendant on or about September 4, 2008. DOJ's analysis of the proposed acquisition of Triton constitutes an official proceeding under 18 U.S.C. §§ 1512(c)(1), 1515(a)(1)(C).

(g) In a series of communications through counsel from February through April, 2009, NHI, on behalf of itself and the defendant, voluntarily disclosed to DOJ that materially altered documents had been submitted as part of the HSR filings and the September 4, 2008 production. Subsequently, the parties abandoned the proposed acquisition of Triton before DOJ completed its investigation or reached a decision whether to challenge the transaction pursuant to the Sherman Act, 15 U.S.C. §1, *et seq.*, and section 7 of the Clayton Act, 15 U.S.C. § 18. Thereafter NHI, the defendant and their affiliates voluntarily provided substantial cooperation to DOJ in connection with its investigation of the obstructive conduct alleged herein.

POSSIBLE MAXIMUM SENTENCE

5. The defendant understands that the statutory maximum penalty which may be imposed against it upon conviction for a violation of 18 U.S.C. § 1512(c) is a fine in an amount equal to \$500,000 (18 U.S.C. § 3571(c)(3)).

6. In addition, the defendant understands that:

(a) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of probation of at least one year, but not more than five years; and

(b) pursuant to 18 U.S.C. § 3013(a)(2)(B), the Court is required to order the defendant to pay a \$400.00 special assessment for each count of conviction.

SENTENCING GUIDELINES

7. The defendant understands that, pursuant to U.S.S.G. §8C2.10, sentencing for the offenses to be charged will be imposed pursuant to 18 U.S.C. §§ 3553 and 3572, because U.S.S.G. §8C2.1, which applies to corporations, does not include 18 U.S.C. § 1512 as an offense to which it applies. To the extent the U.S.S.G. provides relevant guidance by analogy or otherwise, the defendant understands that the Court will consider the Guidelines in effect on the day of sentencing. The defendant understands that the sentence will be made by the Court by a preponderance of the evidence standard, and that the Court's sentence must be reasonable based upon consideration of all relevant sentencing factors set forth in 18 U.S.C. §§ 3553 and 3572.

SENTENCING AGREEMENT

8. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant agree that the appropriate disposition of this case is, and agree to recommend jointly that the Court impose, a sentence requiring the defendant to pay to the United States a criminal fine of one hundred thousand dollars (\$100,000.00) separately for each count charged in the two-count Information to be filed in the United States District Court for the District of Columbia, pursuant to 18 U.S.C. § 3571(d), payable in full before the fifteenth (15th) day after the date of judgment ("the recommended sentence"). The defendant agrees that immediately upon filing of this Plea Agreement with the Court, it will post a letter of credit or standby letter of credit issued by a United States bank or a United States branch of a foreign bank to the benefit of the United States or its designee to guarantee

the entire balance of the proposed fine set forth in this subparagraph. In the event the Court at sentencing imposes a higher fine and the defendant does not exercise its right to withdraw its guilty plea pursuant to paragraph 10(b) below, the defendant agrees it shall promptly post a supplemental or superseding letter of credit or standby letter of credit to guarantee the entire balance of the sentenced fine. The parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the U.S. Sentencing Commission in formulating the Sentencing Guidelines justifying a departure pursuant to U.S.S.G. §5K2.0. The parties further agree that the recommended sentence set forth in this Plea Agreement is reasonable.

(a) The defendant understands that the Court will order it to pay a \$400 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B), in addition to any fine imposed.

(b) Both parties will recommend that no term of probation be imposed, but the defendant understands that the Court's denial of this request will not void this Plea Agreement.

(c) The United States and the defendant jointly submit that this Plea Agreement, together with the record that will be created by the United States and the defendant at the plea and sentencing hearings, and the further disclosure described in Paragraph 9, will provide sufficient information concerning the defendant, the crime charged in this case, and the defendant's role in the crime to enable the meaningful exercise of sentencing authority by the Court under 18 U.S.C. § 3553. The United States and defendant agree to request jointly that the Court accept the defendant's guilty plea and impose sentence on an expedited schedule as early as the date of arraignment, based upon the record provided by the defendant and the United States, under the provisions of Fed. R. Crim. P. 32(c)(1)(A)(ii), and U.S.S.G. §6A1.1. The Court's denial of the request to impose sentence on an expedited schedule will not void

this Plea Agreement.

9. Subject to the ongoing, full, and truthful cooperation of the defendant described in Paragraph 12 of this Plea Agreement, and before sentencing in the case, the United States will fully advise the Court and the Probation Office of the fact, manner, and extent of the defendant's cooperation and its commitment to prospective cooperation with the United States' investigation and prosecutions, all material facts relating to the defendant's involvement in the charged offense, and all other relevant conduct.

10. The United States and the defendant understand that the Court retains complete discretion to accept or reject the recommended sentence.

(a) If the Court does not accept the recommended sentence, the United States and the defendant agree that this Plea Agreement, except for Paragraph 10(b) below, shall be rendered void;

(b) If the Court does not accept the recommended sentence, the defendant will be free to withdraw its guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If the defendant withdraws its plea of guilty, this Plea Agreement, the guilty plea, and any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement or made in the course of plea discussions with an attorney for the government shall not be admissible against the defendant in any criminal or civil proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, the defendant agrees that, if it withdraws its guilty plea pursuant to this subparagraph of this Plea Agreement, the statute of limitations period for any offense referred to in Paragraph 15 of this Plea Agreement shall be tolled for the period between the date of the signing of this Plea Agreement and the date the defendant withdrew its guilty plea or for a period of sixty (60)

days after the date of the signing of this Plea Agreement, whichever period is greater.

11. In the circumstances of this case, the United States agrees that it will not seek a restitution order for the offenses charged in the Information.

DEFENDANT'S COOPERATION

12. The defendant, NHI, and their corporate affiliate, HYOSUNG CORPORATION ("Hyosung"), will cooperate fully and truthfully with the United States in the prosecution of this case, the conduct of the current federal investigation of violations of federal criminal laws relating to the obstruction or attempted obstruction of the investigation of the proposed acquisition of Triton, any other federal investigation resulting therefrom, and any litigation or other proceedings arising or resulting from any such investigation to which the United States is a party ("Federal Proceeding"). The full, truthful, and continuing cooperation of the defendant shall include, but not be limited to:

(a) producing to the United States all non-privileged documents, information, and other materials wherever located (and with translations into English), in the possession, custody, or control of the defendant, NHI or Hyosung, requested by the United States in connection with any Federal Proceeding; and

(b) using its best efforts to secure the ongoing, full, and truthful cooperation, as defined in Paragraph 13 of this Plea Agreement, of the current and former directors, officers, and employees of the defendant, NHI or of Hyosung, as may be requested by the United States, but excluding KYOUNGWON PYO, including making these persons available in the United States and at other mutually agreed-upon locations, at the defendant's expense, for interviews and the provision of testimony in grand jury, trial, and other judicial proceedings in connection with any Federal Proceeding.

13. The ongoing, full, and truthful cooperation of each person described in Paragraph

12(b) above will be subject to the procedures and protections of this paragraph, and shall include, but not be limited to:

(a) producing in the United States and at other mutually agreed-upon locations all non-privileged documents, including claimed personal documents, and other materials, wherever located (and with translations into English), requested by attorneys and agents of the United States;

(b) making himself or herself available for interviews in the United States and at other mutually agreed-upon locations, not at the expense of the United States, upon the request of attorneys and agents of the United States;

(c) responding fully and truthfully to all inquiries of the United States in connection with any Federal Proceeding, without falsely implicating any person or intentionally withholding any information, subject to the penalties of making false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503, *et seq.*);

(d) otherwise voluntarily providing the United States with any non-privileged material or information not requested in (a) - (c) of this paragraph that he or she may have that is related to any Federal Proceeding;

(e) when called upon to do so by the United States in connection with any Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings in the United States fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction of justice (18 U.S.C. § 1503, *et seq.*); and

(f) agreeing that, if the agreement not to prosecute him or

her in this Plea Agreement is rendered void under Paragraph 15(c), the statute of limitations period for any Relevant Offense as defined in Paragraph 15(a) shall be tolled as to him or her for the period between the date of the signing of this Plea Agreement and six (6) months after the date that the United States gave notice of its intent to void its obligations to that person under the Plea Agreement.

GOVERNMENT'S AGREEMENT

14. Upon acceptance of the guilty plea called for by this Plea Agreement and the imposition of the recommended sentence, and subject to the cooperation requirements of Paragraph 12 of this Plea Agreement, the United States agrees that it will not bring further criminal charges against the defendant, NHI or Hyosung for any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of the obstruction or attempted obstruction of the investigation of the proposed acquisition of Triton. The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

15. The United States agrees to the following:

(a) Upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the recommended sentence and subject to the exceptions noted in Paragraph 15(c), the United States will not bring criminal charges against any current or former director, officer, or employee of the defendant, NHI or Hyosung for any act or offense committed before the date of this Plea Agreement and while that person was acting as a director, officer, or employee of the defendant, NHI or Hyosung that was undertaken in furtherance of the obstruction or attempted obstruction of the investigation of the proposed acquisition of Triton ("Relevant Offense"), except that the protections granted in this

paragraph shall not apply to KYOUNGWON PYO.

(b) Should the United States determine that any current or former director, officer, or employee of the defendant, NHI or Hyosung may have information relevant to any Federal Proceeding, the United States may request that person's cooperation under the terms of this Plea Agreement by written request delivered to counsel for the individual (with a copy to the undersigned counsel for the defendant) or, if the individual is not known by the United States to be represented, to the undersigned counsel for the defendant;

(c) If any person requested to provide cooperation under Paragraph 15(b) fails to comply with his or her obligations under Paragraph 13, then the terms of this Plea Agreement as they pertain to that person, and the agreement not to prosecute that person granted in this Plea Agreement, shall be rendered void;

(d) Except as provided in Paragraph 15(e), information provided by a person described in Paragraph 15(b) to the United States under the terms of this Plea Agreement pertaining to any Relevant Offense, or any information directly or indirectly derived from that information, may not be used against that person in a criminal case, except in a prosecution for perjury (18 U.S.C. § 1621), making a false statement or declaration (18 U.S.C. §§ 1001, 1623), or obstruction of justice (18 U.S.C. § 1503, *et seq.*);

(e) If any person who provides information to the United States under this Plea Agreement fails to comply fully with his or her obligations under Paragraph 13 of this Plea Agreement, the agreement in Paragraph 15(d) not to use that information or any information directly or indirectly derived from it against that person in a criminal case shall be rendered void;

(f) The nonprosecution terms of this paragraph do not apply to civil matters of

any kind, to any violation of the federal tax or securities laws, or to any crime of violence;
and

(g) Documents provided under Paragraphs 12(a) and 13(a) shall be deemed responsive to outstanding grand jury subpoenas issued to the defendant, NHI or Hyosung.

16. The United States agrees that when any person travels to the United States for interviews, grand jury appearances, or court appearances pursuant to this Plea Agreement, or for meetings with counsel in preparation therefor, the United States will take no action, based upon any Relevant Offense, to subject such person to arrest, detention, or service of process, or to prevent such person from departing the United States. This paragraph does not apply to an individual's commission of perjury (18 U.S.C. § 1621), making false statements (18 U.S.C. § 1001), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), obstruction of justice (18 U.S.C. § 1503, *et seq.*), or contempt (18 U.S.C. §§ 401-402) in connection with any testimony or information provided or requested in any Federal Proceeding.]

17. The defendant understands that it may be subject to administrative action by federal or state agencies other than the United States Department of Justice, Antitrust Division, based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, other agencies may take. However, the United States agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such administrative action of the fact, manner, and extent of the cooperation of the defendant, NHI and Hyosung as a matter for that agency to consider before determining what administrative action, if any, to take.

REPRESENTATION BY COUNSEL

18. The defendant has been represented by counsel and is fully satisfied that its attorneys have provided competent legal representation. The defendant has thoroughly reviewed this Plea Agreement and acknowledges that counsel has advised it of the nature of the charge, any possible defenses to the charge, and the nature and range of possible sentences.

VOLUNTARY PLEA

19. The defendant's decision to enter into this Plea Agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. The United States has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

VIOLATION OF PLEA AGREEMENT

20. The defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that the defendant, NHI or Hyosung have failed to provide full and truthful cooperation, as defined in Paragraph 12 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United States will notify counsel for the defendant in writing by personal or overnight delivery or facsimile transmission and may also notify counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant, NHI and Hyosung shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses relating to the investigation resulting in this Plea Agreement. The defendant, NHI and Hyosung agree that, in the event that the United States is released from its obligations under this Plea Agreement and brings criminal charges against the defendant, NHI or

Hyosung for any offense referred to in Paragraph 15 of this Plea Agreement, the statute of limitations period for such offense shall be tolled for the period between the date of the signing of this Plea Agreement and six (6) months after the date the United States gave notice of its intent to void its obligations under this Plea Agreement.

21. The defendant understands and agrees that in any further prosecution of it, NHI or Hyosung resulting from the release of the United States from its obligations under this Plea Agreement, because of the defendant's, NHI's or Hyosung's violation of the Plea Agreement, any documents, statements, information, testimony, or evidence provided by it, NHI, Hyosung or current or former directors, officers, or employees of it, NHI or Hyosung to attorneys or agents of the United States, federal grand juries, or courts, and any leads derived therefrom, may be used against it, NHI or Hyosung in any such further prosecution. In addition, the defendant unconditionally waives its right to challenge the use of such evidence in any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

ENTIRETY OF AGREEMENT


22. This Plea Agreement constitutes the entire agreement between the United States and the defendant concerning the disposition of the criminal charges in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

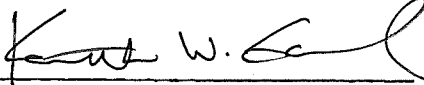
23. The undersigned is authorized to enter this Plea Agreement on behalf of the defendant as evidenced by the Resolution of the Board of Directors of the defendant attached to, and incorporated by reference in, this Plea Agreement.

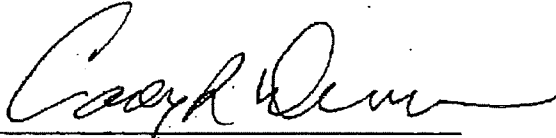
24. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

25. A facsimile signature shall be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

Dated: August 12, 2011

By: 
Charles C. Jung, Ph.D
On behalf of Nautilus Hyosung
Holdings, Inc.

Respectfully submitted,
By: 
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