

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

BL TRADING, LLC,
Defendant.

Criminal Case No. 10-10413-NG

DEFERRED PROSECUTION AGREEMENT WITH BL TRADING, LLC

This Deferred Prosecution Agreement (the "*Agreement*") is made by and between the United States Attorney for the District of Massachusetts ("*USAO*") and Defendant BL Trading, LLC (the "*Company*") acting by and through its authorized representative as evidenced by the copy of the Action of Members by Unanimous Written Consent attached hereto as Exhibit A. The USAO and the Company are sometimes collectively referred to herein as the "*Parties*."

Definitions

1. For reference, the following terms are defined in the noted portions of this Agreement:

Agents, Owners, and Affiliates	Paragraph 6
Agreed Facts	Paragraph 2
Agreement	Introductory paragraph
CEO	Paragraph 7
Chargeable Offenses	Paragraph 20
Company	Introductory paragraph
Compliance Document	Paragraph 13.f
Compliance Officer	Paragraph 12
Computer Company	Paragraph 13.b
Deferral	Paragraph 16
Effective Date	Paragraph 2
EMC	Paragraph 9
Equipment	Paragraph 3
ICE	Paragraph 7
Information	Paragraph 2
Infringing Use	Paragraph 3

Accepted. [Signature] 1/20/11

Law Enforcement Officials	Paragraph 2
Parties	Introductory paragraph
Program	Paragraph 12
Related Defendants	Paragraph 9
Representative(s)	Paragraph 13.e
Subject Matter	Paragraph 3
Term	Paragraph 2
Termination Date	Paragraph 2
USAO	Introductory paragraph

Term of Agreement

2. The effective date of this Agreement shall be the date upon which the Agreement is accepted by the Court pursuant to 18 U.S.C. § 3161(h)(2) (the “*Effective Date*”). Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement (the “*Term*”) shall begin on the Effective Date and shall end on the earlier of (i) the effective date of the notice by which the USAO informs the Company in writing that it is terminating this Agreement as a result of a material breach of the Company’s obligations under this Agreement and (ii) the date that is thirty days after the second anniversary of the Effective Date (the earliest of such dates being referred to herein as the “*Termination Date*”); provided however, that, if on the Termination Date, the USAO or any other federal law enforcement or regulatory agency with which the USAO has directed the Company to cooperate (“*Law Enforcement Officials*”) is then conducting an investigation, prosecution or proceeding relating to the subject matter of the Information attached hereto as Exhibit B (the “*Information*”) or the facts set forth in the Information (the “*Agreed Facts*”), then those portions of this Agreement requiring the Company’s cooperation with said Law Enforcement Officials shall remain in effect until the date upon which such investigation, prosecution or proceeding is finally terminated, as reasonably determined by the Law Enforcement Officials conducting the investigation, prosecution or

proceeding. Within 10 days following the second anniversary of the Effective Date, the Company's Compliance Officer (as defined in paragraph 12 below) shall certify in writing to the USAO that the Company is in compliance with this Agreement, except as may have previously been noted in the reports required of the Compliance Officer described in paragraph 13.g below.

Information and Waiver of Indictment

3. The Company waives its right to indictment with respect to, and consents to the filing of, the Information charging the Company with one count of wire fraud in violation of 18 U.S.C. § 1343 and one count of the sale and receipt of stolen property after transportation in interstate commerce in violation of 18 U.S.C. § 2315. The subject matter of the Information, insofar as it involves the Company (the "*Subject Matter*"), is the sale and receipt of stolen computer equipment and accessories (collectively, "*Equipment*"), and the Company's use of proprietary third-party software and firmware in violation of applicable intellectual property and licensing law to update Equipment purchased by the Company that was used, rebuilt, or new purchased for the resale market (each such use being referred to herein as an "*Infringing Use*").

Acceptance of Responsibility

4. The Company acknowledges that the USAO has developed evidence during its investigation that one or more of its employees violated federal criminal law as described in the Agreed Facts. The Company accepts responsibility for the conduct of its employees described therein. The Company does not endorse, ratify or condone criminal conduct and, as set forth below, is taking steps to prevent such conduct from occurring in the future. The Company stipulates to the accuracy of the Agreed Facts. The Company

agrees that it will not contest either the admissibility into evidence or the accuracy of the Agreed Facts in any subsequent criminal proceedings that may occur in the event of a breach of this Agreement.

5. In light of (i) the Company's willingness to acknowledge responsibility for the wrongful conduct of its employees and to adopt the policies and procedures set forth in this Agreement to ensure that it complies with the law in the future, (ii) the facts and circumstances of this case, which include but are not limited to the fact that the USAO's investigation did not disclose that the present owners and management of the Company engaged in criminal wrongdoing and that prosecuting the Company would likely cause undue harm to innocent persons, the USAO has determined that the interests of justice will best be served by entering this Agreement.

6. The Company has carefully reviewed the Agreed Facts, agrees that they are accurate, and agrees that no present or future owner, shareholder, member, director, officer, employee, attorney, or other type of agent authorized to speak for the Company, its parent, or any of its subsidiaries or sister companies (collectively, "*Agents, Owners, and Affiliates*"), shall make any statement denying or contradicting the Agreed Facts. Any such statement shall constitute a breach of this Agreement. Notwithstanding the foregoing, nothing contained in this Agreement is intended to restrict any person acting in an individual capacity (including, without limitation, any current or former Company employee) from contesting all or any part of the Agreed Facts in defense of any criminal, civil or administrative proceeding brought against such person, and such conduct shall not constitute a breach of this Agreement.

Cooperation

7. The USAO acknowledges that the Company has cooperated fully in the investigation of this matter by, among other things, making its President and Chief Executive Officer ("*CEO*") and other employees available for interview by the USAO and Immigration and Customs Enforcement at the United States Department of Homeland Security ("*ICE*"), producing corporate records, and voluntarily providing other information requested by the USAO and ICE.

8. During the Term (as said Term may be extended to the extent provided in paragraph 2 above), the Company shall cooperate fully with any Law Enforcement Officials in connection with any investigation, prosecution and/or regulatory proceeding relating to the suspected sale or receipt of stolen Equipment or any suspected Infringing Use. The Company's cooperation shall include, but is not limited to, the following:

- a. truthfully and completely responding to any inquiry made by the USAO or any Law Enforcement Officials and, to the extent relevant to said inquiry, disclosing all known information respecting the activities of the Company and its present and former Agents, Owners, and Affiliates relating to suspected stolen Equipment and any suspected Infringing Use;
- b. providing reasonable access to the Company's documents and facilities relating to the investigation;
- c. assembling, organizing and producing, or taking reasonable steps to effectuate the production of, on request from the USAO, all documents, records, or other tangible evidence related to the investigation in the Company's possession, custody, or control in such reasonable format as the USAO requests;

- d. using its reasonable best efforts to identify witnesses who, to the Company's knowledge, may have material information regarding the investigation;
- e. using its reasonable best efforts to make available, as requested by Law Enforcement Officials, its present and former Agents, Owners, and Affiliates to provide information and/or testimony related to the investigation, including sworn testimony before a federal grand jury and in federal trials, as well as interviews with Law Enforcement Officials including, without limitation, testimony and other information deemed necessary by the USAO or the Court to establish the original location, authenticity, or other evidentiary foundation to admit into evidence documents relating to the investigation in any criminal case or other proceeding; and
- f. using its best efforts to maintain the Company, or any successor to the Company that is bound by this Agreement according to paragraph 26, as a lawfully organized and adequately capitalized legal entity for purposes of this Agreement during the Term.

Notwithstanding the foregoing, nothing contained in this Agreement is intended to require that the Company waive the attorney-client privilege or any work product protections.

Restitution

9. Every six months, throughout the Term, the Company shall pay restitution to the victim, EMC Corporation ("EMC"), in equal payments which added together shall equal \$182,404.75, which is the amount of the out-of-pocket and labor expenses that EMC incurred to investigate this matter and assist ICE and the USAO in its investigation. The first payment shall be due six months after the Effective Date. The Company shall certify its payments to ICE and

the USAO. Payments of this restitution can be satisfied not only by paying money, but also by abandoning any stolen Equipment that the Company purchased from Kevin Kelly or Mark Rothfuss (collectively, the "Related Defendants"), either directly or through an affiliated entity, which will be returned to EMC. The value of any such Equipment will be offset against the amount of restitution owed. For such purpose, the Equipment shall be valued at an amount equal to the greater of (i) EMC's standard cost or (ii) the price the Company paid for the Equipment, if the price can be determined. If the price cannot be determined, the Equipment shall be valued at EMC's standard cost. Notwithstanding the foregoing, this valuation method shall not apply to EMC stickers purchased by the Company from Kevin Kelly, one of the Related Defendants, which will be valued at EMC's standard cost regardless of the price paid by the Company. The parties agree that the value of the Equipment already seized by ICE from the Company is equal to \$17,582.40. The parties further agree that the value of stolen Equipment that currently remains at the Company, but which the Company intends to return to EMC in partial satisfaction of its restitution obligations, is equal to \$3,790.12. Payments of restitution by money or the return of Equipment shall be made to:

Stewart A. Broder
Senior Director and Corporate Counsel
EMC Corporation
176 South Street
Hopkinton, MA 01748

10. The Company acknowledges that its restitution obligation under this Agreement extends only to payment of the costs of EMC's investigation and assistance, and does not include payment for the value of the stolen Equipment that the Company purchased from either of the Related Defendants. However, the Company agrees that if further criminal proceedings are brought as a consequence of the Company's breach of this Agreement, the USAO can seek, and

if so ordered by the Court, the Company will be obligated to pay, jointly and severally with the Related Defendants, restitution for the value of the stolen Equipment purchased by the Company from the Related Defendants and, on its own, for the harm suffered by EMC as a result of any Infringing Use.

11. The restitution payments discussed above are a material term of this Agreement and the Company's failure to make such payments shall render the obligations of the USAO under this Agreement null and void at its discretion.

Compliance Program and Officer

12. Within thirty days after the Effective Date, and continuing throughout the Term, the Company will establish, maintain, promote, and put into effect the corporate policies and procedures set forth in paragraph 13 below (collectively, the "*Program*"). The Company will designate its highest-ranking officer, currently its CEO, to implement, oversee, revise, and coordinate the Program (the "*Compliance Officer*"). If the person serving as the Compliance Officer ceases at any point to be the Company's highest-ranking officer, that person shall be replaced, and the Company shall appoint its highest-ranking officer as the replacement Compliance Officer. The Company will provide the Compliance Officer with the authority and resources necessary to implement the Program.

13. The Program shall include the following policies and procedures:

- a. **Identifying Vendors' Identities:** The Company will take reasonable measures to establish its vendors' names, addresses, and corporate entities, and will make its reasonable best efforts to purchase Equipment only from vendors who have obtained said Equipment in a lawful manner. Reasonable measures will include, at a minimum, requiring each vendor to fill out an appropriate Internal Revenue Service

tax form so that the Company can properly document its payments to the vendor, and refusing or ceasing to do business with any vendor whose identity cannot be verified or who reasonably appears to have obtained its Equipment in an unlawful manner. All new vendors must be approved by the Compliance Officer before the Company purchases any Equipment from that vendor.

b. **Avoiding Purchases from Manufacturers' Non-sales Employees:** The Company shall exercise due diligence to avoid purchasing or otherwise obtaining Equipment from any person or entity employed by a computer manufacturer whose brands of equipment are being sold by the Company (such as EMC, Cisco, etc.) or by a licensed distributor for such a manufacturer (each a "*Computer Company*"), unless the employee or entity is authorized by that Computer Company to engage in such sales. The Company shall also exercise due diligence to avoid purchasing or otherwise obtaining Equipment from any vendor who receives goods from any person or entity who is employed by a Computer Company, unless the employee or entity is authorized to engage in such sales. This policy is intended to minimize the likelihood that the Company will purchase Equipment that has been stolen from a Computer Company. The Company will take reasonable best efforts to effectuate this policy. Reasonable best efforts shall include, at a minimum:

- i. including bold-faced language describing the policy in the Company's standard order forms and stating that the sale of any Equipment by a vendor to the Company constitutes a representation by said vendor that such Equipment is not being sold in violation of the policy;

ii. if the Equipment is being offered for sale to the Company is of a type or in a quantity materially inconsistent with the type and/or quantity of such Equipment normally available in the marketplace, or if any other factor should reasonably cause a Company employee to suspect that a vendor might be selling stolen Equipment, the Company shall inquire of the vendor as to the source of such Equipment and refuse to purchase such Equipment if the vendor's response gives the Company probable cause to suspect that the vendor has obtained the Equipment in an unlawful manner;

iii. and, if the Company refuses to purchase Equipment for the reasons stated in clause (ii) above, or purchases such Equipment in violation of clause (ii) above, the Company shall report the vendor to ICE in the manner described below.

c. **Giving Manufacturers Access to Limited Information about Vendors:** Upon the request of an authorized representative of any Computer Company whose Equipment has been purchased by the Company from a vendor within the Term, and upon reasonable notice of not less than one week, the Company shall provide such authorized representative with the following information to the extent available to the Company: the name, address and telephone number of each such vendor, and the name(s) of the vendors' representative(s) who interacted with any Company employee in connection with said purchase(s). The Company will provide additional information concerning the quantity of Equipment purchased from a vendor and the price paid for said Equipment only if the authorized representative certifies to the

Company in writing that the Computer Company has probable cause to believe that the Equipment purchased by the Company was stolen or counterfeit.

d. **Obtaining Prior Express Written Permission to Update Equipment with Software or Firmware:** The Company will not update Equipment that is used, rebuilt, or new but purchased for the resale market with software or firmware obtained from a Computer Company unless such update is expressly authorized under a contract between the Company and the relevant Computer Company or by an online license agreement accepted by the Company prior to updating said Equipment, in each case a copy of which shall be kept in a file maintained by the Compliance Officer.

e. **Reporting Suspicious Vendors or Infringing Uses to the Compliance Officer:** All the Company Agents, Owners, and Affiliates actively involved in the Company's business shall have an affirmative duty to report to the Compliance Officer any circumstance reasonably causing such Agent, Owner, or Affiliate to suspect (i) that any vendor is offering for sale Equipment obtained in an unlawful manner or (ii) that any employee has engaged in an Infringing Use. The Company shall not retaliate against any person who makes such a report to the Compliance Officer.

f. **Training:** The Company shall establish, maintain, and implement a training program to ensure that all of its Agents, Owners, and Affiliates actively involved in the Company's business are aware of and understand the requirements of the Program. A separate document containing the requirements of the Program (in the form attached hereto as Exhibit C) shall be distributed to each Agent, Owner, and Affiliate actively involved in the Company's business during his or her training

session (the "*Compliance Document*"). A training session will be conducted for each Agent, Owner, and Affiliate actively involved in the Company's business when that Agent, Owner, and Affiliate assumes that relationship with the Company. Each Agent, Owner, and Affiliate receiving this training must certify in writing that he or she has received the training and has received a copy of the Compliance Document. Said certifications shall be maintained in the files of the Compliance Officer. All Agents, Owners, and Affiliates actively involved in the Company's business shall be reminded annually in writing of the existence of the Program through a short summary of its basic policies and procedures, and said reminder shall state that additional copies of the Compliance Document are available for any Agent, Owner, and Affiliate who desires one.

g. **Record-keeping, Reviewing, and Reporting:** The Company will maintain records on an ongoing basis that document its compliance (or if applicable, its non-compliance) with the requirements of the Program. The Compliance Officer will review the Company's adherence to the requirements of the Program every six months, both by reviewing records and interviewing employees. Thereafter, the Compliance Officer will prepare a written report of the review, which report shall include a description of the procedure followed during the review and a statement by the Compliance Officer either (i) certifying that the Company has fully complied with the requirements of the Program during the six-month period covered by the report or (ii) listing the instances of non-compliance with the Program during said period. The written report shall be presented to the Company's members, and to ICE in the manner described below. In addition to the six-month reviews, the

Compliance Officer shall notify ICE in writing within one week of the Compliance Officer's obtaining knowledge of any instance of non-compliance with the Program that gives probable cause to suspect illegal conduct related to the Subject Matter by any person and provide ICE the cooperation and records identified in this Agreement to investigate the potentially illegal conduct.

14. **Communications with ICE:** Written communications with ICE shall be directed to Senior Special Agent Edward G. Salvas at the following address:

DHS-ICE
Special Agent in Charge
10 Causeway St., Suite 722
Boston, MA 02222-1054
Attn: SSA Edward Salvas

15. It shall be a breach of this Agreement if the Company fails to adhere, in all material respects, to the requirements of the Program.

Deferral of Prosecution

16. In consideration of the Company's (i) entry into this Agreement, (ii) acknowledgement of, and acceptance of responsibility for, the unlawful conduct of its employees as set forth in the Agreed Facts, (iii) agreement to make the restitution specified in this Agreement, and (iv) agreement to otherwise comply with the terms and conditions of this Agreement, the USAO shall recommend to the Court that prosecution of the Company be deferred during the Term (the "Deferral").

17. Upon the expiration of the Term, if the Company is in compliance with all of its material obligations under this Agreement, the USAO will, within thirty days thereafter, file a dismissal with prejudice of the charges against the Company contained in the Information. Absent a material breach by the Company of its obligations under this

Agreement, the USAO will bring no additional charges against the Company relating to the conduct described in the Information and the Agreed Facts.

18. This Agreement does not protect the Company from prosecution for any crimes except those arising out of the conduct described in the Information and the Agreed Facts, and does not apply to any individual or entity other than the Company.

19. The Parties understand that the Deferral must be approved by the Court in accordance with 18 U.S.C. § 3161(h)(2); specifically, the Court must approve the delay of a trial on the Information for purposes of the Speedy Trial Act in order to allow the Company sufficient time to demonstrate its good conduct. Should the Court for any reason decline to approve the Deferral, including the duration of the Deferral, the Parties shall be released from any and all obligations under this Agreement, and this Agreement shall be null and void.

Limitation of Actions

20. Should the Court decline to approve the Deferral in accordance with 18 U.S.C. § 3161(h)(2), the Company agrees that all applicable statutes of limitation governing federal criminal violations with which the Company has been charged, or for which the Company could have been charged as of the date of the USAO's execution of this Agreement, based on the claims that form the basis for the Information or are related to the Agreed Facts (*"Chargeable Offenses"*) shall be tolled from the date of the USAO's execution of this Agreement to and including the date upon which the Court declines to approve the Deferral. Should the Court approve the Deferral in accordance with 18 U.S.C. § 3161(h)(2), the Company agrees that all applicable statutes of limitation governing Chargeable Offenses shall be tolled from such date to and including the Termination Date. The Company further

agrees that the period of time during which any applicable statute of limitation is tolled in accordance with this paragraph may not be relied upon by the Company in asserting any legal, equitable or constitutional right it may have to a speedy trial pursuant to the Fifth or Sixth Amendments to the United States Constitution, 18 U.S.C. § 3161, Federal Rule of Criminal Procedure 48(b), any applicable local rule of the United States District Court for the District of Massachusetts, or any other applicable legal or equitable principle. The tolling provisions of this paragraph are not intended to apply to any federal criminal violations other than Chargeable Offenses; nor is this Agreement intended to limit the ability of the USAO to prosecute the Company for any criminal violations other than Chargeable Offenses.

Breach of the Agreement

21. Should the USAO, in its sole discretion, which shall not be subject to appeal or review, determine that during the Term the Company has (a) knowingly and willfully given false, incomplete or misleading information to any Law Enforcement Officials, (b) committed any federal crimes, or (c) otherwise knowingly and materially breached any provision of this Agreement, the USAO may terminate this Agreement by written notice to the Company. On and after the effective date of such notice, the USAO may, in its sole discretion, which shall not be subject to appeal or review, prosecute the Company for any Chargeable Offenses. With respect to any such prosecution, the Company waives any right it may have to proceed by way of indictment and waives any and all legal, equitable or constitutional rights it may have (other than application of relevant statutes of limitation consistent with the tolling provisions set forth in paragraph 20 above) that may limit the period of time during which the USAO may seek an indictment or other charging document

(such as a complaint or other information) for the Chargeable Offenses. Moreover, with respect to any Chargeable Offenses that are not time-barred as of the date of this Agreement by the applicable statute of limitations (or any other legal, equitable or constitutional basis upon which a prosecution may be time-barred), the Company agrees to waive venue and any legal or procedural defects in the Information.

22. The decision as to whether conduct and statements of any individual will be imputed to the Company for the purpose of determining whether the Company has committed a breach of this Agreement shall be in the sole discretion of the USAO, which shall not be subject to appeal or review.

23. Should the USAO determine that the Company has committed a breach, the USAO shall provide written notice to the Company of the alleged breach and provide the Company with a two-week period following the effective date of such notice within which to make a presentation to the USAO to demonstrate (a) that no breach occurred, (b) that the breach was not a knowing breach and could not have been avoided with the exercise of due diligence, or (c) that the breach has been cured. The Parties expressly understand and agree that should the Company fail to make a presentation to the USAO within said two-week period, unless such failure is due to the USAO's inability to entertain the presentation within the two-week period, it shall be conclusively presumed, at the USAO's option, that the Company has committed a breach. Within 60 days following expiration of the two-week period referenced in the preceding sentence, the USAO shall notify the Company in writing either (i) that the USAO is not terminating the Agreement because the Company has established to the USAO's reasonable satisfaction that one or more of the circumstances referenced in the first sentence of this paragraph apply or (ii) that the USAO is terminating

the Agreement. Should the USAO fail to give the Company the written notice described in the preceding sentence within the time period specified, such failure shall be deemed a decision by the USAO not to terminate the Agreement. In the event of a breach that results in a prosecution of the Company, such a prosecution may be premised upon any information provided by or on behalf of the Company to the USAO at any time, unless otherwise agreed to at the time the information was provided.

24. The Company agrees that if the USAO, in its sole discretion, which shall not be subject to appeal or review, determines that the Company has committed a breach:
- a. the Company will not contest the filing of the Information or the admissibility into evidence of the Agreed Facts as binding admissions of the Company;
 - b. the Company will not contradict the contents of the Information or the Agreed Facts;
 - c. the Company will not oppose the admission into evidence or move to suppress on any grounds whatsoever (including the U.S. Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, any other federal rule, common law, or any other legal or equitable principle, it being the intent of this agreement to waive any and all rights in the foregoing respects) any statements made by or on behalf of the Company or any current or former Agent, Owner, or Affiliate, or any testimony given by the Company or any current or former Agent, Owner, or Affiliate before a grand jury or elsewhere, or any leads derived from such statements and testimony, if proffered by the USAO in any criminal proceedings brought by the USAO against the Company;

d. the Company shall not assert that the conduct set forth in the Agreed Facts fails to provide a sufficient factual or legal basis to support the charges set forth in the Information; and

e. the Company shall not assert any legal or factual challenge to its liability for the crimes charged in the Information.

25. The Company agrees that the consequences for a breach set forth in this Agreement are remedies to which the USAO is entitled in the event of a breach and shall survive the termination of this Agreement in the event of a breach. The Company further agrees that the USAO's remedies for a breach are not limited to those set forth in this Agreement. The Company further agrees that in the event of a breach, the Company shall nevertheless be bound by its waivers of any legal, equitable or constitutional rights set forth in this Agreement, and those provisions shall survive even in the event of a breach.

Merger and/or Sale of the Company

26. The Company agrees that if it merges with another entity and is not the surviving entity or if the members sell the Company as an ongoing the business concern engaged in substantially the same business in which the Company was engaged on the Effective Date, the Company shall include in any contract for sale or merger agreement a provision binding the purchaser/successor to the obligations described in this Agreement.

Agreement Binding Only on the Company and USAO

27. The Parties understand and acknowledge that this Agreement is binding on the Company and the USAO, but specifically does not bind any other federal agencies, or any state or local law enforcement or licensing authorities. Further, the waivers and other

agreements made by the Company herein shall not be binding upon the Company in any civil or criminal proceeding initiated by any state or local government.

28. Nothing in this Agreement restricts in any way the ability of the USAO from proceeding against any individual or entity not a Party to this Agreement.

Miscellaneous

29. Any certification or notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if sent by United States certified mail, postage prepaid, and return receipt requested, or by United States Express Mail (with signature required for acceptance of delivery) or other comparable overnight courier service for which signature may (and shall in the case of notice under this paragraph shall) be required for delivery to the recipient Party at the following addresses or to such other address as a Party may have designated by notice in the manner stated in this paragraph:

If to the USAO:

AUSA Scott Garland
United States Attorney's Office
Moakley Federal Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210

If to the Company:

Eric Koplovsky, President
BL Trading, LLC
145 Webster Street
Hanover, MA 02339

Each notice shall be deemed received upon the earlier of (i) when received at the appropriate address if sent via United States Express Mail or comparable overnight courier

as provided in this paragraph or (ii) three calendar days following the mailing of such notice via certified mail in the manner specified above.

30. The Company and the USAO agree that this Agreement, including Exhibits A through C, shall be made available to the public.

31. The Company warrants and represents that its members have duly authorized, in a specific resolution, the execution, delivery and performance of this Agreement by the Company, and that the person signing the Agreement has authority to bind the Company to the Agreement's terms.

32. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same Agreement. The exchange of copies of this Agreement and of executed signature pages by facsimile or e-mail shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or e-mail shall be deemed to be their original signatures for all purposes.

33. The Parties agree that should a dispute arise as to the meaning of any provision of this Agreement, the terms of this Agreement shall be construed in favor of the USAO.

Complete Agreement

34. This Agreement, including Exhibits A through C, constitutes the entire agreement between the Parties, and supersedes all prior agreements or understandings, both oral and written, with respect to the subject matter hereof and the disposition of this case. No promises, representations or agreements have been made other than those set

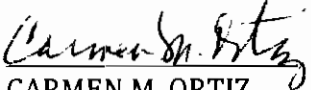
forth in this Agreement. This Agreement can be modified or supplemented only in a written memorandum signed by the parties or by express agreement of the parties on the record in court.

Advice of Counsel

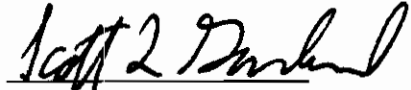
35. By the signatures below of the Company's authorized representative and the Company's legal counsel, both the Company and its legal counsel acknowledge that the terms and provisions of this Agreement have been fully explained to the Company's authorized representative and the Company's members, including, without limitation, the legal, equitable and constitutional rights being waived by the Company under this Agreement; that the Company's authorized representative and members have expressed to legal counsel that they have read the provisions of this Agreement, have had a full and complete opportunity to consult with legal counsel and to ask any questions about the terms and provisions of this Agreement; that they fully understand the nature of the crimes alleged against the Company in the Information, the maximum penalties and Sentencing Guideline provisions applicable to said offense, and penalties potentially applicable to the Company; that they have discussed with counsel the charges against the Company, possible defenses it might have, and whether the Company should go to trial; that they fully understand the terms and provisions of this Agreement; that the Company's agreements and waivers stated herein are knowing and voluntary and are made in with the advice of counsel; and that the Company's authorized representative and members are satisfied with the legal representation provided by its legal counsel.

SO AGREED.

CARMEN M. ORTIZ
United States Attorney

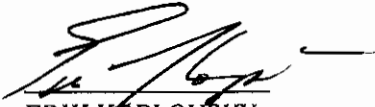
By: 
CARMEN M. ORTIZ
United States Attorney

Dated: 12/2/10


By: 
SCOTT L. GARLAND
Assistant U.S. Attorney

Dated: 12-1-10

BL TRADING, LLC

By: 
ERIK KOPLOVSKY
President and Chief Executive Officer
Hereunto Duly Authorized

Dated: 11/17/2010

By: 
DENIS M. KING, Esq.
Goulston & Storrs, P.C.
Counsel to the Company

Dated: 11/22/10

EXHIBIT A

Action of Members by Unanimous Written Consent

[TO BE DRAFTED BY BL TRADING, LLC]

BL TRADING, LLC

**ACTION OF MEMBERS
BY UNANIMOUS WRITTEN CONSENT**

November 18, 2010

The undersigned, being the holders of 100% of the Member interests in BL Trading, LLC (the "Company"), hereby adopt the following resolutions:

WHEREAS, the Company has been the subject of a grand jury investigation (the "Investigation") conducted by the Office of the United States Attorney for the District of Massachusetts (the "USAO");

WHEREAS, the Company has cooperated fully with the USAO in the Investigation;

WHEREAS, the Investigation has uncovered evidence of criminal conduct initiated by former Company employees but also involving current Company employees, which conduct exposes the Company to federal criminal charges and penalties for the receipt and sale of stolen computer equipment and copyright infringement;

WHEREAS, the USAO has offered to enter into a Deferred Prosecution Agreement with the Company in the form attached hereto as Exhibit A (the "Agreement") pursuant to which the Company can avoid criminal charges and the penalties associated therewith by performing its obligations thereunder;

WHEREAS, counsel for the Company, Denis M. King, Esq. of the law firm of Goulston & Storrs, P.C. has fully explained to the undersigned Members the potential criminal charges and penalties facing the Company, the terms and provisions of the Agreement, and the legal rights that the Company will waive if its Members cause the Company to enter into the Agreement;

WHEREAS, with a full understanding of these matters, the undersigned Members unanimously agree that it is in the best interest of the Company to execute and deliver the Agreement and to faithfully perform the Company's obligations thereunder.

NOW THEREFORE, the undersigned Members hereby adopt the following resolutions:

RESOLVED: That the undersigned Members deem it advisable and in the best interest of the Company to resolve the USAO's investigation by having the Company execute and deliver the Agreement, and to thereafter faithfully perform its obligations thereunder.

FURTHER

RESOLVED: That the President and Chief Executive Officer of the Company, Erik Koplovsky (the "CEO") be, and hereby is, authorized to execute and deliver the Agreement on behalf of the Company and to bind the Company to the terms and provisions set forth in the Agreement.

FURTHER

RESOLVED: That the CEO be, and hereby is, empowered, authorized and directed in the name and on behalf of the Company, to do any and all acts and things and to execute, acknowledge, affix the corporate seal to and deliver any and all certificates, documents, instruments or other writings in such form and with such substance the CEO shall deem necessary or advisable to carry out, implement or comply with the foregoing resolutions, and that the doing of any such act or thing or the execution of any such writing shall be conclusive evidence of the CEO's authority therefor hereunder.


FURTHER

RESOLVED: That, upon execution and delivery of the Agreement as contemplated herein, the CEO, and all other Company employees be, and hereby are, authorized and instructed to perform on behalf of the Company the Company's obligations under the Agreement.

FURTHER

RESOLVED: That Denis M. King, Esq. of the law firm of Goulston & Storrs, P.C. be, and hereby is, authorized to execute and deliver the Agreement as attorney for the Company for the limited purposes stated in the Agreement.

The undersigned further direct that this written consent shall take effect immediately as of the date first above written and shall be filed in the minute book of the Company with the minutes of the meetings of the members.


Erik Koplovsky

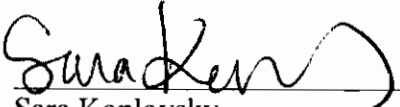

Sara Koplovsky

EXHIBIT B

Information to Be Filed

[ATTACHED BEHIND THIS SHEET]

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

v.

BL TRADING, LLC,

Defendant.

Criminal Case No.

VIOLATIONS:

18 U.S.C. § 1343 (Wire Fraud)

**18 U.S.C. § 2315 (Sale and Receipt of
Stolen Property After Transportation in
Interstate Commerce)**

INFORMATION

The United States Attorney charges that at or about the times alleged below:

1. EMC Corporation, the victim, was a corporation that designed and sold high-end computer and computer networking equipment and accessories. EMC's headquarters were located in the District of Massachusetts.
2. From 2000 through 2009, Kevin B. Kelly, charged separately in this District, worked at EMC's manufacturing and testing facility at Apex, North Carolina.
3. During the relevant periods, **BL TRADING, LLC** was a limited liability company located in Hanover, Massachusetts. **BL TRADING** had two lines of business. In the first line of business, the company sold and configured new EMC equipment and also serviced some used EMC equipment, all pursuant to contractual relationships with EMC and EMC's business partners or licensees, identified herein as "EMC-authorized business." At the same time, **BL TRADING** engaged in the second line of business, in which it purchased new and used EMC equipment from various vendors, both companies and individuals, over the Internet, and

resold that equipment, all outside of any contractual relationships with EMC and EMC's business partners or licensees, identified herein as "resale business" and "the resale market." **BL TRADING's** resale business was separate and independent from its EMC-authorized business.

4. From approximately 2000 through 2009, Kelly used his access as an EMC employee to EMC's facilities and equipment to steal approximately \$929,891 worth of EMC computer equipment from EMC's plant in North Carolina. He did so by concealing the equipment in a small duffel or gym bag in his cubicle and as he carried it out of the plant.

PURCHASE OF STOLEN EQUIPMENT

5. Kelly sold most of the equipment stolen during this period to **BL TRADING**, which bought it to sell again in its resale business.

6. **BL TRADING** and Kelly and communicated about the equipment by e-mails sent between Massachusetts and North Carolina.

7. **BL TRADING** purchased Kelly's stolen equipment largely at the direction and through the actions of a former employee, now deceased, who had primary responsibility for purchasing used and new EMC equipment for **BL TRADING** from the resale market and for the resale market. That employee knew or was willfully blind to the fact that Kelly had stolen his EMC equipment from EMC.

EQUIPMENT UPGRADING AND CONVERSION

8. Just as a computer's functions are governed by an operating system, such as Microsoft Windows or Apple's Snow Leopard, the functions of EMC's computer equipment are also governed by operating systems. These operating systems are generically called "firmware."

9. The firmware for EMC's computer equipment was updated occasionally by EMC

or by companies that provided EMC its firmware. These updates were intended to eliminate bugs or increase efficiency.

10. EMC made its firmware and firmware updates available online to customers with service contracts and to companies like **BL TRADING** that serviced or sold equipment pursuant to EMC-authorized business.

11. EMC did not, however, make its firmware and firmware updates available to customers whose service contracts had expired, or to companies for updating used or new EMC equipment outside of EMC-authorized service contracts and EMC-authorized sales or installation agreements.

12. EMC gave **BL TRADING** access to EMC's firmware and firmware updates under the above arrangements: for EMC-authorized business, that is, EMC-authorized service contracts or sales or installation agreements, and not for other uses such as the resale market.

13. Although it is not illegal, without anything more, to buy and sell EMC equipment on the resale market, **BL TRADING** used EMC's firmware in the resale market unlawfully. Specifically, **BL TRADING** fraudulently obtained and used the firmware and firmware updates that it had acquired from EMC for EMC-authorized business to update equipment that it had purchased on the resale market to sell on the resale market, equipment that was not under a service contract with EMC and for which EMC had not authorized service. **BL TRADING** did so at the direction of or under the supervision of the same former employee who was primarily responsible for purchasing the stolen equipment from Kelly.

14. **BL TRADING** also used the firmware and firmware updates to electronically convert some EMC hard disk drives of a certain model purchased on the resale market into EMC

hard disk drives of a different model. **BL TRADING** sold and attempted to sell the converted drives on the resale market. **BL TRADING** did so according to its own business needs, without authorization from EMC, without EMC's knowledge, and contrary to **BL TRADING's** agreements and promises to EMC. **BL TRADING** did so at the direction of or under the supervision of the same former employee who was responsible for purchasing the stolen equipment from Kelly.

ADVERTISEMENTS AND SALES OVER THE INTERNET

15. **BL TRADING** sold Kelly's stolen equipment and that which had been converted and upgraded as described above through advertisements on its website and through e-mails to its customers, some of which traveled in interstate commerce.

COUNT ONE
Wire Fraud
18 U.S.C. § 1343

16. The United States Attorney realleges and incorporates by reference the allegations in paragraphs 1-15 of this Information and charges that:

Between approximately 2007 and continuing through 2009, in the District of Massachusetts and elsewhere, the defendant,

BL TRADING, LLC

having devised and intending to devise a scheme to defraud EMC Corporation of its property, by means of material false and fraudulent pretenses, representations, and promises, did knowingly transmit and cause to be transmitted by means of wire communication in interstate commerce writings, signs, signals, and pictures for the purpose of executing the scheme, namely e-mails to and from Kevin B. Kelly to purchase stolen equipment, e-mails to and from actual and potential customers to sell stolen and unlawfully-updated and converted equipment, and advertisements on its website to sell this equipment.

All in violation of Title 18, United States Code, Section 1343.

COUNT TWO

**Sale and Receipt of Stolen Property After Transportation in Interstate Commerce
18 U.S.C. § 2315**

17. The United States Attorney realleges and incorporates by reference the allegations in paragraphs 1-15 of this Information and charges that:

Between approximately 2007 and continuing through 2009, in the District of Massachusetts and elsewhere, the defendant,

BL TRADING, LLC,

received, possessed, stored, bartered, sold, and disposed of goods, wares, and merchandise of the value of \$5,000 and more, namely EMC's computer and computer networking equipment and accessories, which crossed a state boundary after being stolen, unlawfully converted, and taken, knowing the same to have been stolen, unlawfully converted, and taken.

All in violation of Title 18, United States Code, Section 2315.

CARMEN M. ORTIZ
United States Attorney

By: _____
Scott L. Garland
Assistant U.S. Attorney

EXHIBIT C

Form of Compliance Program

[ATTACHED BEHIND THIS SHEET]

COMPLIANCE PROGRAM MANUAL
BL TRADING, LLC

General Statement of Company Policy and Purpose of Compliance Program Manual

1. It is the policy of BL Trading, LLC (the “Company”) to conduct its business in a manner that complies with all applicable federal and state laws including, without limitation, laws designed to protect the intellectual property and licensing rights of manufacturers of used equipment purchased by the Company and sold in the secondary market. The Company has adopted this Compliance Program effective November ~~18~~ 2010 (the “*Effective Date*”) in furtherance of this policy.

2. This Compliance Program Manual (the “*Manual*”) is intended as a resource to permit each Company member, officer, employee, attorney, or other type of agent (including corporate affiliates) actively involved in the Company’s business (each a “*Representative*” and, collectively, “*Representatives*”) to familiarize him- or herself with the Compliance Program and to provide the Representative with guidance as to (i) the manner in which the Company intends that its business be conducted and (ii) the steps to be taken if a Representative has reason to suspect that any applicable law has been or is about to be broken by another Representative, or by any non-Representative agent of the Company.

Establishment of the Position of Compliance Officer

3. The Company has created the position of Compliance Officer. The person currently designated as the Compliance Officer is Erik Koplovsky, the Company’s President and Chief Executive Officer. The Compliance Officer is charged by the Company with the implementation, oversight and enforcement of the policies and procedures established by the Compliance Program. The Compliance Officer will also retain all records relating to the Compliance Program. The rest of this document uses Mr. Koplovsky’s name instead of the term “Compliance Officer.” If you have a question about who the Compliance Officer is after a

change in personnel or business structure, please ask the Company's President and/or Chief Executive Officer.

4. Mr. Koplovsky will review the Company's adherence to the Compliance Program every six months, both by reviewing records and interviewing Representatives. Thereafter, Mr. Koplovsky will prepare a written report of the review, which report will include a description of the procedure followed during the review and a statement by Mr. Koplovsky either (i) certifying that the Company has fully complied with the requirements of the Program during the six-month period covered by the report or (ii) listing the instances of non-compliance with the Program during said period. The written report will be presented to the Company's members.

Dealings with Vendors of Used Equipment

5. It is the policy of the Company (collectively, the "*Purchase Policy*") not to purchase equipment (i) from a vendor who has obtained the equipment illegally; (ii) from a vendor who is an employee of the manufacturer of such equipment or a licensed distributor of such a manufacturer (each a "*Computer Company*"), unless the employee is authorized to sell such equipment to the Company or (iii) from a vendor who has obtained the equipment from a Computer Company employee, unless the employee is authorized to sell such equipment to the vendor.

6. In furtherance of the Purchase Policy, the Company will implement the following measures:

(a) Establishing the Identity of Vendors. From the Effective Date forward, the Company will take reasonable measures to establish the actual names, addresses, and telephone numbers of the vendors from whom it purchases equipment, regardless of whether the vendor is an individual or a form of business entity, such as a corporation, limited liability

company, etc. The Company will request that each vendor provide the Company with an IRS Form W-9, unless the vendor has already provided the Company with said form. If the vendor refuses to provide the Company with an IRS Form W-9 in connection with the purchase of equipment by the Company, or if the Company cannot otherwise reasonably verify the actual name, address, and telephone number of a vendor, the Company will refuse to do business with that vendor.

(b) Avoiding Purchases from Non-sales Employees of Computer Companies.

(i) The Company will include bold-faced language describing the Purchase Policy in the Company's standard order forms and stating that the sale of any equipment to the Company by a vendor constitutes a representation by the vendor that the equipment is not being sold by the vendor in violation of the Purchase Policy.

(ii) If a Representative reasonably suspects that equipment being offered for sale to the Company is of a type or in a quantity inconsistent with the type and/or quantity of such equipment normally available in the marketplace, the Representative will ask the equipment's vendor about the source of such equipment.

(c) Reasonable Grounds for Suspicion of Illegal Vendor Activity. If a Representative dealing with a vendor has or should have reasonable cause to suspect that equipment being offered for sale to the Company has been obtained by a vendor illegally, the Representative will report the circumstances giving rise to the Representative's belief to Mr. Koplovsky. The following are non-exclusive examples of factual circumstances that would or should provide a Representative reasonable cause to believe that equipment being offered for sale by a vendor was obtained illegally: (i) the vendor is offering equipment of a type, price, or quality that is not normally found in the used-equipment marketplace; (ii) the Representative

learns that the vendor has been arrested by law enforcement authorities for selling stolen goods; (iii) the Representative learns that a search warrant has been executed at the vendor's place of business, or (iv) the Representative learns that the vendor has been sued civilly for selling stolen or counterfeit equipment.

(d) Reports to the Compliance Officer; Approval of New Vendors. If any Representative suspects that the purchase of equipment from a vendor would violate the Purchase Policy, for any reason whatsoever, whether listed above or otherwise, the Representative will report the suspicions to Mr. Koplovsky. Thereafter, Mr. Koplovsky will determine in good faith whether the Representative's suspicion that the purchase of equipment from a vendor would violate the Purchase Policy is justified and, if Mr. Koplovsky so determines that it is justified, the Company will refuse to purchase the equipment from the vendor. Moreover, before the Company purchases equipment from any new vendor, the Representative who intends to purchase the equipment will report the proposed transaction to Mr. Koplovsky, who will approve or disapprove the proposed transaction based upon his good-faith determination of whether doing business with the vendor would violate the policies stated in this Compliance Program. The Company will not retaliate in any manner against any Representative for having made a report required under this paragraph.

Inquiries by Computer Companies

7. It is the policy of the Company to provide Computer Companies with the vendor information described below under the circumstances described below in order to permit any such Computer Company to investigate whether its equipment is being stolen and sold on the secondary market. The procedure for disclosing this information and the circumstances under which it will be disclosed are as follows:

(a) All requests by Computer Companies for information concerning vendors must be directed to Mr. Koplovsky.

(b) Upon the request of an authorized representative of any Computer Company whose equipment has been purchased by the Company from a vendor within the past three years, and upon reasonable notice of not less than one week, the Company will provide the authorized representative with the following information to the extent available to the Company: the name, address and telephone number of each such vendor, and the name(s) of the vendor's representative(s) who interacted with any Representative in connection with those purchase(s).

(c) If an authorized representative of a Computer Company certifies to the Company in writing that the Computer Company has reasonable grounds to believe that equipment purchased by the Company from a particular vendor was stolen or counterfeit, the Company will provide additional information concerning the quantity of equipment purchased from said vendor and the price paid by the Company for the equipment; provided that the Computer Company identifies for the Company the equipment or type of equipment purchased by the Company that the Computer Company believes to be stolen and/or counterfeit, if known, and the grounds for that belief.

(d) Under no circumstances will the Company disclose to any third party personal indentifying information the disclosure of which is illegal under federal or state law.

Compliance with Intellectual Property Laws and Licensing Agreements

8. It is the policy of the Company to comply with all intellectual property laws and licensing agreements relevant to the Company's business (the "*Intellectual Property and Licensing Policy*"). The Intellectual Property and Licensing Policy prohibits, among other things, the use of proprietary third-party software and firmware in violation of applicable

intellectual property law or licensing agreements to update, or otherwise alter the performance of, equipment purchased by the Company without the prior written consent of the owner of the intellectual property either in the form of a contract, license or other document granting said permission (an "*Infringing Use*"). Should any Representative have a question concerning whether a proposed action would constitute an Infringing Use, that question should be directed to, and answered in good faith by, the Compliance Officer before the proposed action is taken.

Reporting Suspicious Vendors or Infringing Uses to the Compliance Officer

9. Each Representative has an affirmative duty to report to Mr. Koplovsky any circumstance reasonably causing such Representative to suspect (i) that any vendor is offering for sale equipment obtained illegally or (ii) that any Representative has engaged in an Infringing Use. The Company will not retaliate against any person who makes such a report.

Training re Compliance Program

10. The Company will establish, implement and maintain a training program to ensure that all Representatives understand the requirements of the Compliance Program. A copy of the Manual will be provided to each Representative who undergoes the training. A training session will be conducted when a Representative assumes a position with the Company. Each Representative who receives the training will certify in writing that he or she received the training and a copy of the Manual. These certifications will be maintained in the files of the Compliance Officer. All Representatives will be reminded annually in writing of the Program's existence and the availability of additional copies of the Manual for any Representative who desires one.

This Compliance Program has been adopted by the Company's members and board of directors by unanimous written consent as of the 18 day of November 2010.