

**ACCEPTANCE OF A GUILTY PLEA BY A CORPORATION
(FED. R. CRIM. P. 11)**

[Ask the prosecutor if s/he has provided reasonable, accurate and timely notice of the proceeding to any victim(s) of the offense as required by the Justice for All Act of 2004. 18 U.S.C. § 3771.]

***[If the corporate defendant does not appear]* [According to Federal Rule of Criminal Procedure 43(b)(1), an organizational defendant “need not be present” to plead guilty at a Rule 11 hearing so long as the organization is represented by counsel who is present. A corporation is an organizational defendant. If the defendant corporation does not appear, counsel for the corporation will be required to answer questions by the court both in his/her capacity as an authorized agent for the corporation and as legal counsel for the corporation regarding whether the plea is free and voluntary, and made with an understanding of its consequences and of the nature of the charges. As such, the lawyer for the defendant corporation must first establish that the corporation has empowered him/her to act as both the agent and the legal counsel for the corporation, and has authorized him/her to plead guilty on the corporation’s behalf and admit to the relevant facts to support a factual basis for the plea. To do so, the lawyer must offer sufficient evidence that proper authorization was given by the appropriate person(s). That may require a certificate from the Secretary of State identifying the Clerk of the corporation and a certificate by the Clerk concerning the identity of stockholders and/or directors and the relevant votes taken. Such votes must also establish authority for any plea agreement and admission to the prosecution version of the facts on the corporation’s behalf.]**

The judge should be specific concerning which role a particular question is addressed to. If the judge fails to do so, the lawyer should make it clear in the answer.

1. ***[To Nonlawyer Representative]*** ARE YOU AN AUTHORIZED OFFICER/AGENT FOR _____?

2. ARE YOU AUTHORIZED BY A VOTE OF THE BOARD OF DIRECTORS TO SPEAK AND ACT ON THE CORPORATION'S BEHALF THROUGHOUT THIS PROCEEDING?

[Make record re entry in evidence of a certified resolution of the Board of Directors.]

3. DO YOU AND THE OFFICERS AND DIRECTORS OF THE CORPORATION UNDERSTAND WHAT IS HAPPENING IN THESE PROCEEDINGS?

4. HAS THE LAWYER FOR THE CORPORATION EXPLAINED TO YOU AND THE OFFICERS AND DIRECTORS THE CONSEQUENCES THAT MAY FLOW FROM THESE PROCEEDINGS?

5. ***[To Lawyer]*** HAS THE CORPORATION AUTHORIZED YOU, MR/MS _____, TO ACT AS ITS LAWYER?

6. (A) EXPLAIN PURPOSE OF RULE 11 HEARING AND MY QUESTIONS.

(B) IF AT ANY TIME YOU DON'T UNDERSTAND A QUESTION I ASK YOU, DON'T TRY TO ANSWER IT. TELL ME YOU DON'T UNDERSTAND AND I WILL REPHRASE IT.

(C) IF AT ANY TIME YOU WANT TO TALK TO THE CORPORATION'S LAWYER, DON'T TRY TO ANSWER MY QUESTION—TELL ME YOU WANT TO TALK TO THE LAWYER AND I'LL PERMIT YOU TO DO SO.

7. I UNDERSTAND THAT THE CORPORATION WANTS TO CHANGE ITS PLEA TO COUNTS ____ AND ____ OF THE INDICTMENT/INFORMATION. IS THAT CORRECT?

8. **[To Lawyer]** DO YOU APPROVE OF THE CHANGE OF PLEA AND RECOMMEND THAT I ACCEPT IT?

9. IS THAT ACTION LEGALLY AUTHORIZED BY THE BOARD OF DIRECTORS OF THE DEFENDANT?

[Certified Resolution required]

10. THE CLERK MAY PROCEED.

[Clerk obtains tender of a guilty plea]

11. **[To Officer/Agent]** HAS _____ PLEADED GUILTY TO THE CHARGES CONTAINED IN COUNTS ____ AND ____ OF THIS INDICTMENT/INFORMATION BECAUSE IT IS ACTUALLY GUILTY AS CHARGED?

12. **[To Lawyer]** ARE YOU SATISFIED THAT THE DEFENDANT HAS PLEADED GUILTY BECAUSE IT IS ACTUALLY GUILTY?

13. **[To Officer/Agent]** HAVE YOU AND THE OFFICERS AND DIRECTORS OF THE CORPORATE DEFENDANT RECEIVED A COPY OF THE INDICTMENT/ INFORMATION IN THIS CASE?

14. **[To Officer/Agent]** HAVE THE OFFICERS AND DIRECTORS OF THE DEFENDANT CORPORATION DISCUSSED THE CHARGE[S] SET OUT IN THE INDICTMENT/ INFORMATION WITH ITS LAWYER?

15. DID THEY HAVE ENOUGH TIME TO DO SO?

16. DID THE LAWYER EXPLAIN TO YOU AND THEM:
 - (A) THE ELEMENTS AND NATURE OF THE OFFENSES CHARGED?
 - (B) THE PENALTIES THAT CAN BE IMPOSED?

17. **[To Lawyer]** ARE YOU SATISFIED THAT THE OFFICERS AND DIRECTORS OF THE CORPORATE DEFENDANT UNDERSTAND THE CHARGES CONTAINED IN COUNTS ____ AND ____ OF THE INDICTMENT/INFORMATION AND THE PENALTIES THAT CAN BE IMPOSED?

18. **[To Officer/Agent]** THE CORPORATION IS CHARGED IN AN INDICTMENT/ INFORMATION CONTAINING ___ COUNTS:

[Set out brief description of offenses]

19. DO YOU AND THE OFFICERS AND DIRECTORS UNDERSTAND THESE CHARGES?

20. **[To Officer/Agent]** BY PLEADING GUILTY TO THESE CRIMES, THE CORPORATION MUST PAY A MANDATORY ASSESSMENT OF \$200 ON EACH OF THESE COUNTS, FOR A TOTAL OF \$_____. THE CORPORATION IS ALSO SUBJECT TO PUNISHMENT OF TOTAL FINES OF UP TO \$_____, AND PROBATION OF UP TO _____. ***[If applicable]*** THE CORPORATION MAY ALSO BE REQUIRED BY COURT ORDER TO MAKE FULL RESTITUTION TO ANY VICTIM OF THE OFFENSE. THE CORPORATION MAY ALSO BE REQUIRED TO FORFEIT CERTAIN PROPERTY TO THE GOVERNMENT. DO YOU UNDERSTAND THESE PENALTIES?

21. DO YOU AND THE OFFICERS AND DIRECTORS UNDERSTAND THAT THE CORPORATION HAS THE RIGHT TO CONTINUE TO PLEAD NOT GUILTY TO THESE CHARGES?

22. DO YOU AND THEY UNDERSTAND THAT THE CORPORATION HAS A RIGHT TO A TRIAL BY JURY AND THE ASSISTANCE OF THE CORPORATION'S LAWYER AT SUCH A TRIAL?

23. AT A TRIAL, THE CORPORATION WOULD NOT HAVE TO PROVE THAT IT IS INNOCENT. THE CORPORATION WOULD BE PRESUMED INNOCENT. THE GOVERNMENT WOULD HAVE TO PROVE THAT THE CORPORATION IS GUILTY BEYOND A REASONABLE DOUBT. DO YOU AND THE OFFICERS AND DIRECTORS UNDERSTAND?

24. AT A TRIAL THE GOVERNMENT'S WITNESSES WOULD HAVE TO COME INTO OPEN COURT AND TESTIFY IN FRONT OF A CORPORATE REPRESENTATIVE AND THE CORPORATION'S LAWYER. THE CORPORATION'S LAWYER WOULD HAVE THE OPPORTUNITY TO CROSS-EXAMINE ANY GOVERNMENT WITNESSES, TO OBJECT TO EVIDENCE THE GOVERNMENT OFFERED, TO OFFER EVIDENCE FAVORABLE TO THE CORPORATION, AND TO COMPEL WITNESSES TO COME TO COURT. DO YOU AND THEY UNDERSTAND?

25. DO YOU AND THEY UNDERSTAND THAT THE CORPORATION WOULD HAVE THE RIGHT TO TESTIFY THROUGH ITS DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES AT TRIAL?

Note: *A corporation does not have a right not to testify; a corporation is not a “person” entitled to claim the privilege against self-incrimination. Braswell v. United States, 487 U.S. 99, 104-05 (1988); Hale v. Henkel, 201 U.S. 43 (1906). (Similarly, an officer of a corp. cannot refuse to testify or produce corporate documents on the ground that s/he may thereby incriminate the corporation)].*

26. DO YOU AND THEY UNDERSTAND THAT IF I ACCEPT THESE GUILTY PLEA[S], THE CORPORATION WILL HAVE GIVEN UP ITS RIGHT TO A TRIAL AND THE OTHER RIGHTS I HAVE JUST DESCRIBED TO YOU AND THERE WILL BE NO TRIAL OF ANY KIND ON THIS INDICTMENT/INFORMATION?

27. DO YOU AND THEY UNDERSTAND THAT I WILL PROCEED TO ENTER A JUDGMENT OF GUILTY AND SENTENCE THE CORPORATION ON THE BASIS OF ITS GUILTY PLEA AND IF ALL OF THAT HAPPENS, THE CORPORATION WILL HAVE VIRTUALLY NO RIGHT OF APPEAL FROM ITS CONVICTION?

28. DO YOU AND THEY UNDERSTAND THAT YOU MUST ANSWER MY QUESTIONS TRUTHFULLY ABOUT THE CONDUCT THAT GAVE RISE TO THESE CHARGES, AND I WILL TAKE YOUR ANSWERS AS TRUE AND ACT ACCORDINGLY?

29. IN LIGHT OF ALL THAT I HAVE JUST EXPLAINED TO YOU, DO YOU STILL CHOOSE TO PLEAD GUILTY ON BEHALF OF THE CORPORATE DEFENDANT TO THE CHARGES CONTAINED IN COUNTS ____ AND ____ OF THE INDICTMENT/INFORMATION?

30. **[To the U.S. Attorney]** MR/MS _____, PLEASE ADVISE THE COURT WHAT EVIDENCE THE GOVERNMENT WILL PRODUCE IF THIS MATTER SHOULD GO TO TRIAL?

31. **[To Lawyer]** MR/MS _____, ARE YOU SATISFIED THAT THE GOVERNMENT CAN IN FACT PRODUCE THE EVIDENCE JUST DESCRIBED BY THE UNITED STATES ATTORNEY?

32. ARE YOU SATISFIED THAT THE ADMISSIBLE PORTION OF THAT EVIDENCE WOULD PERMIT A PROPERLY INSTRUCTED JURY TO FIND BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY OF [EACH OF] THE CRIME[S] TO WHICH IT IS PLEADING GUILTY?

33. **[To Officer/Agent]** DID YOU HEAR THE ASSISTANT UNITED STATES ATTORNEY DESCRIBE THE EVIDENCE THE GOVERNMENT WOULD PRODUCE IF THIS MATTER WERE TO GO TO TRIAL?

34. IS THERE ANY RESPECT IN WHICH YOU OR THE OFFICERS OR DIRECTORS DISAGREE WITH WHAT HE/SHE HAS SAID?

35. IS THE INFORMATION HE/SHE GAVE ME TRUE TO YOUR OWN PERSONAL KNOWLEDGE AND THAT OF THE OFFICERS AND DIRECTORS OF THIS CORPORATE DEFENDANT?

***[If not satisfied with the status of the factual basis of the plea—
inquire of the defendant as to the essential details of the
crimes to which a plea is tendered.]***

36. I FIND THAT THERE IS A FACTUAL BASIS FOR THE GUILTY PLEA[S] TO THE CRIME[S] CHARGED IN EACH OF COUNTS ____ AND ____ OF THE INDICTMENT/INFORMATION. ***[Admit prosecution version as exhibit]***

37. ***[To Officer/Agent]*** HAS ANYONE THREATENED THE CORPORATION OR ITS OFFICERS, DIRECTORS, OR AGENTS, OR HAS ANYONE ATTEMPTED TO FORCE THE CORPORATION OR THEM ON ITS BEHALF, IN ANY WAY, TO PLEAD GUILTY?

38. ***[To Officer/Agent]*** DOES THE CORPORATION HAVE A PLEA AGREEMENT, WRITTEN OR VERBAL, WITH THE PROSECUTION OR ANY AGREEMENT ABOUT THE SENTENCE OR ABOUT OTHER CHARGES?

39. **[To Prosecutor]** HAS YOUR OFFICE EXTENDED ANY (PRIOR) FORMAL PLEA OFFERS TO THE DEFENSE? IF SO, PLEASE IDENTIFY THE DATES THEY WERE MADE.

[To Defense Lawyer] HAVE YOU COMMUNICATED THOSE FORMAL OFFERS TO YOUR CLIENT?

[To Defendant] DO YOU AGREE YOU RECEIVED NOTICE OF THOSE OFFERS? WERE THEY EXPLAINED TO YOU?

40. IN EXAMINING THE WRITTEN PLEA AGREEMENT:

(A) IS THAT YOUR SIGNATURE ON PAGE ___?

(B) DID YOU SIGN IT VOLUNTARILY?

(C) DID YOU READ IT BEFORE YOU SIGNED IT?

(D) DID YOU UNDERSTAND EVERYTHING BEFORE YOU SIGNED IT?

(E) DID YOU HAVE THE AUTHORITY TO SIGN IT ON BEHALF OF THE CORPORATION?

(F) IN SIGNING IT, DID YOU INTEND ON BEHALF OF THE CORPORATION TO AGREE TO ALL ITS TERMS AND CONDITIONS?

If Waiver Of Right To Appeal Or Section 2255, Or If Forfeiture Provision, Examine On Those Particular Aspects. For Example,

”ORDINARILY THE CORPORATION WOULD HAVE THE RIGHT TO APPEAL THE SENTENCE OR THE SENTENCING PROCEDURES OR ANY ERROR

THAT I MIGHT MAKE IN THESE GUILTY PLEA PROCEEDINGS BY TAKING THE CASE TO A HIGHER COURT, BUT THE CORPORATION IS AGREEING HERE NOT TO TAKE ANY SUCH APPEAL TO A HIGHER COURT. IN OTHER WORDS, I AM THE LAST JUDGE IN THIS CASE AND THE CORPORATION IS AGREEING THAT IT WILL NOT BE ABLE TO OVERTURN WHAT I DO. DO YOU AND THE OFFICERS AND DIRECTORS UNDERSTAND?”

41. (A) *[If an 11(e)(1)(B) agreement]* DO YOU AND THE OFFICERS AND DIRECTORS UNDERSTAND THAT SO FAR AS SENTENCING IS CONCERNED, THIS PLEA AGREEMENT PERMITS THE CORPORATION, THE CORPORATION'S LAWYER AND THE PROSECUTOR TO MAKE RECOMMENDATIONS ON SENTENCING, BUT THAT THE AUTHORITY TO DETERMINE THE APPROPRIATE SENTENCE IN THIS CASE RESTS WITH ME AS THE JUDGE IN THIS COURT, AND IF I DO NOT ACCEPT THOSE RECOMMENDATIONS, THE CORPORATION WILL HAVE NO RIGHT TO WITHDRAW ITS GUILTY PLEA?

(B) *[If an 11(e)(1)(A) or (C) agreement, detail the specific agreement re dismissal of counts (A) or sentence limitations (C) and inform the defendant that if the judge does not ultimately accept those provisions, the corporation will have the opportunity to withdraw the plea.]*

42. ***[To Officer/Agent]*** THERE ARE ADVISORY SENTENCING COMMISSION GUIDELINES THAT WILL HAVE AN IMPACT ON THE CORPORATION'S SENTENCE. HAS THE CORPORATION'S LAWYER TALKED WITH YOU AND THE OFFICERS AND DIRECTORS ABOUT HOW THE SENTENCING COMMISSION GUIDELINES MAY AFFECT THE CORPORATION'S SENTENCE?
43. ***[To Officer/Agent]*** I CAN'T DETERMINE THE GUIDELINE SENTENCE UNTIL AFTER I HAVE READ A PRESENTENCE REPORT THE PROBATION OFFICE WILL PREPARE, AND UNTIL I HAVE GIVEN THE CORPORATION'S LAWYER AND THE GOVERNMENT AN OPPORTUNITY TO CHALLENGE THE FACTS THE PROBATION OFFICE REPORTS. AFTER I DETERMINE WHAT GUIDELINE DOES APPLY TO THIS CASE, THERE STILL MAY BE CIRCUMSTANCES WHERE I DO NOT FOLLOW THE ADVISORY GUIDELINE, BUT INSTEAD IMPOSE A SENTENCE THAT IS MORE SEVERE OR LESS SEVERE THAN THE SENTENCE CALLED FOR BY THE ADVISORY GUIDELINE. DO YOU AND THE OFFICERS AND DIRECTORS OF THE CORPORATION UNDERSTAND?
44. THE CORPORATION AND THE GOVERNMENT WILL HAVE THE RIGHT TO APPEAL ANY SENTENCE THAT I IMPOSE. ***[unless plea agreement limits]***

45. **[To Officer/Agent]** ASIDE FROM THE WRITTEN PLEA AGREEMENT, HAS ANYONE MADE ANY PROMISE TO YOU OR TO ANY OF THE DEFENDANTS' OFFICERS, DIRECTORS, AGENTS OR EMPLOYEES IN AN EFFORT TO INDUCE THE DEFENDANT TO PLEAD GUILTY?

46. **[To Officer/Agent]** HAS ANYONE MADE ANY PROMISE TO ANY OF YOU AS TO WHAT KIND OF SENTENCE I WILL IMPOSE?

47. **[To Officer/Agent]** HAS ANYONE MADE ANY PROMISE TO ANY OF YOU AS TO WHAT THE PROSECUTOR'S SENTENCING RECOMMENDATION WILL BE?

48. **[To Officer/Agent]** I ASK YOU FINALLY, THEN, DO YOU STILL WISH TO PLEAD GUILTY ON BEHALF OF THE CORPORATE DEFENDANT TO THE CHARGES CONTAINED IN COUNTS ____ AND ____ OF THE INDICTMENT/ INFORMATION?

49. **[To Lawyer]** DO YOU, AS THE CORPORATION'S LAWYER, STILL RECOMMEND THAT I ACCEPT THE PLEA OF GUILTY?

50. **[To Officer/Agent]** MR/MS _____, SINCE THE CORPORATE DEFENDANT ACKNOWLEDGES THAT IT IS IN FACT GUILTY AS CHARGED IN COUNTS ____ AND ____ OF THE INDICTMENT/INFORMATION, AND SINCE I

FIND THAT IT KNOWS OF ITS RIGHT TO A TRIAL AND THE RIGHTS ASSOCIATED WITH THE RIGHT TO A TRIAL, AND SINCE I FURTHER FIND THAT IT KNOWS THE MAXIMUM POSSIBLE PUNISHMENT [AND MINIMUM, *if applicable*] THAT MAY BE IMPOSED IF IT IS CONVICTED, AND SINCE I FIND THAT IT HAS NOT BEEN COERCED BUT THAT IT HAS VOLUNTARILY AND KNOWINGLY PLEADED GUILTY TO COUNTS ____ AND ____ OF THIS INDICTMENT/INFORMATION, I NOW ACCEPT ITS GUILTY PLEA.

51. *[If an 11(c)(1)(A) or (C) agreement] I will reserve decision on the acceptance of the Plea Agreement until I have reviewed the Presentence Report.]*

52. I HEREBY ORDER THE PREPARATION OF THE CUSTOMARY PRESENTENCE INVESTIGATION REPORT.

[Counsel to arrange]

53. *[Direct authorized officer/agent to check with Probation re beginning presentence investigation]*