

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,	:	
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	:	
Plaintiff,	:	
v.	:	
	:	
LEE CHI LING,	:	
	:	
	:	13-cv-5364
Defendant,	:	
and	:	<u>Related Case No.</u>
	:	<u>06-cv-6402 (ADS)</u>
PERFECT GENIUS LIMITED,	:	
	:	
Relief Defendant.	:	
	:	
	:	

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**PLAINTIFF SECURITIES AND EXCHANGE COMMISSION’S NOTICE OF MOTION,  
MOTION AND MEMORANDUM OF LAW IN SUPPORT OF AN ORDER TO  
TRANSFER FUNDS TO RELATED PROCEEDING FOR DISTRIBUTION**

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that upon the accompanying Motion, Memorandum, and attached Proposed Order, and all other papers and proceedings herein, Plaintiff United States Securities and Exchange Commission (“SEC” or “Commission”) will move this Court, before the Honorable Arthur D. Spatt, United States District Judge, at a date and time and place to be determined by the Court, for an Order directing the transfer of funds held at the SEC pursuant to the Final Judgment in this matter to be combined with the Fair Fund established by this Court on December 17, 2015, in the related proceeding, *SEC v. China Energy Savings Technology, Inc., New Solomon Consultants, Chiu Wing Chiu, Lai Fun Sim a/k/a/ Stella Sim, Sun Li, Jun Tang Zhao, Defendants, and Amicorp Development Limited, Essence City Limited, Precise Power*

*Holdings Limited, Yan Hong Zhao, AI Qun Zhong, Tung Tsang, Relief Defendants*, 06-cv-6402 (ADS) (E.D.N.Y.), for distribution to harmed investors.

## **MOTION**

Plaintiff SEC moves for an order directing the transfer of all funds held at the SEC in this matter, including any earnings that have been accumulated (the “Perfect Genius Disgorgement Fund”), to the Fair Fund established by this Court on December 17, 2015 in the related proceeding, *SEC v. China Energy Savings Technology, Inc., New Solomon Consultants, Chiu Wing Chiu, Lai Fun Sim a/k/a/ Stella Sim, Sun Li, Jun Tang Zhao, Defendants, and Amicorp Development Limited, Essence City Limited, Precise Power Holdings Limited, Yan Hong Zhao, AI Qun Zhong, Tung Tsang, Relief Defendants*, 06-cv-6402 (ADS) (E.D.N.Y.) (hereinafter the “China Energy Fair Fund”) for distribution to harmed investors. Plaintiff also moves that any future funds the SEC may collect pursuant to the Final Judgment entered in this case be transferred directly to the China Energy Fair Fund, until the Final Judgment is satisfied, without further order of this Court. A Memorandum of Law in support of this Motion and Proposed Order has been contemporaneously filed herewith.

## **MEMORANDUM OF LAW**

### **I. FACTUAL AND PROCEDURAL BACKGROUND**

On December 4, 2006, in a related action, the Commission filed an emergency action against China Energy Savings Technology, Inc. (“China Energy”), several of its former officers, its controlling shareholder, and others, alleging that they orchestrated an elaborate stock manipulation scheme.<sup>1</sup> On March 27, 2009, the Commission obtained final judgments in this

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<sup>1</sup> The Complaint alleged that China Energy, the company’s undisclosed control person, Chiu Wing Chiu (“Chiu”), with the assistance of the company’s Corporate Secretary, Lai Fun Sim a/k/a Stella Sim (“Sim”), devised a wide-ranging stock manipulation scheme to fraudulently obtain Nasdaq National Market System (“NMS”) listings to artificially inflate China Energy’s stock price, and sell millions of

matter against Chiu, Sim, J. Zhao, Li and New Solomon.<sup>2</sup> On April 20, 2007, the Court entered a default judgment against the Relief Defendants.<sup>3</sup> On July 6, 2009, the Court granted summary judgment in favor of the Commission against the Relief Defendants.<sup>4</sup> By Order dated July 31, 2009, and an Amended Judgment dated December 23, 2009, the Commission obtained Final Judgments pursuant to Rule 54(b) of the Federal Rules of Civil Procedure against the Relief Defendants.<sup>5</sup> On December 17, 2015, the Court entered an order in the China Energy case,

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China Energy shares into the U.S. capital markets. Other participants in the scheme, according to the Complaint, included the company's former purported Chairman and CEO, Sun Li ("Li"); a former company employee, Jun Tang Zhao ("J. Zhao") and New Solomon Consultants ("New Solomon"), which was China Energy's majority shareholder. All of the defendants reside or have operations abroad (the "China Energy case").

<sup>2</sup> The Court found China Energy Defendants liable for fraud and permanently enjoined them from violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5], and Section 5 of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §77e], ordered them to pay \$29,665,625.28 in disgorgement, prejudgment interest in the amount of \$3,652,554.34, for a total of \$33,318,179.62. Defendants Chiu and Sim were each ordered to pay a civil penalty of \$1,000,000 and Defendants Li and J. Zhao were each ordered to pay a civil penalty of \$75,000. The court also imposed officer-and-director bars against Chiu, Sim, J. Zhao and Li.

<sup>3</sup> The Court found that the China Energy Relief Defendants violated Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5], and Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §§77e(a) and 77e(c)]. Further, on March, 31, 2008, the Court adopted the March 18, 2008, report and recommendation by United States Magistrate Judge A. Kathleen Tomlinson, granting the Commission's requested relief against the Relief Defendants.

<sup>4</sup> China Energy Relief Defendants Amicorp Development Limited ("Amicorp"), Essence City Limited, Precise Power Holdings Limited, Yan Hong Zhao, Ai Qun Zhong, and Tung Tsang were ordered to disgorge the sums held in the Capital Growth Financial Accounts, namely the Essence City Limited, Precise Power Holdings Limited, Amicorp, and Yan Hong Zhao accounts ("Capital Growth Accounts").

<sup>5</sup> The Court ordered Amicorp and Ai Qun Zhong jointly and severally liable for disgorgement of \$2,445,982, plus accrued interest; Essence City Limited and Tung Tsang jointly and severally liable for disgorgement of \$226,558.75, plus accrued interest; Precise Power Holdings Limited to disgorge \$749,171, plus accrued interest; and Yan Hong Zhao to disgorge \$438,173, plus accrued interest.

establishing a Fair Fund, and unfreezing and transferring funds held in that case to the SEC for distribution to harmed investors.<sup>6</sup>

The Commission filed a complaint in this matter on September 26, 2013 against Lee Chi Ling (“Lee” or “Defendant”) and Perfect Genius Limited, as Relief Defendant (“Perfect Genius” or “Relief Defendant”) for the Defendant’s role in the fraudulent scheme organized by Chiu, Sim, J. Zhao (collectively, the “Chiu Group”), Lee, and others acting in concert with them. As previously noted, the Chiu Group was previously charged in *SEC v. China Energy* and found liable for fraud for their roles in the scheme. The Complaint alleged that Lee, or entities she controlled including Perfect Genius, furthered the fraud by (i) receiving shares of China Energy directed to her by the Chiu Group; (ii) selling some of those shares to profit from artificially high prices created by transactions directed by the Chiu Group and their dissemination of false and misleading information about China Energy to investors and the public; and (iii) acting as nominees, along with a number of other entities, which concealed the illegal trading in the shares of China Energy and masked the Chiu Group’s control of China Energy.

On February 11, 2015, the Court entered a Judgment By Default as to Lee and Perfect Genius (the “Final Judgment”). The Court enjoined Lee and Perfect Genius from violations of Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5], from violations of Section 17(a) of the Securities Act [15 U.S.C. §77q(a)], and ordered Lee and Perfect Genius jointly and severally liable for disgorgement of \$1,360,049.27 as well as all earnings that had accumulated in the Perfect Genius account (Acct. No. xxx-xx-1404) at National Financial Services, LLC (a Fidelity Investments Company, hereinafter “Fidelity”). The Court further ordered, Fidelity to transfer the outstanding balance of the Perfect Genius

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<sup>6</sup> Order to Unfreeze Funds and Transfer Funds to the SEC for Distribution, Establish a Fair Fund for Harmed Investors, Appoint a Tax Administrator and Appoint a Distribution Agent, 06-cv-6402. (E.D.N.Y. December 7, 2015).

Fidelity account, approximately \$1,457,580.85, to the Commission within 10 days of the entry of the Final Judgment.

**II. THE PERFECT GENIUS DISGORGEMENT FUND SHOULD BE COMBINED WITH THE CHINA ENERGY FAIR FUND FOR DISTRIBUTION TO INJURED INVESTORS THROUGH THE RELATED CHINA ENERGY CASE**

The Final Judgment in this matter states that the Commission “may propose a plan to distribute the funds subject to the Court’s approval.” The Court has broad equitable authority to craft remedies for violations of federal securities laws. *SEC v. Fishbach Corp.*, 133 F.3d 170, 175 (2d Cir. 1997). As the Second Circuit has observed: “Once the district court has found federal securities law violations, it has broad equitable power to fashion appropriate remedies, including ordering that culpable defendants disgorge their profits.” *SEC v. First Jersey Secs., Inc.*, 101 F.3d 1450, 1474 (2d Cir. 1996), *cert. denied*, 522 U.S. 312 (1997); *see also SEC v. Lorin*, 76 F.3d 458, 461-62 (2d Cir. 1996) (per curiam); *SEC v. Posner*, 16 F.3d 520, 521 (2d Cir. 1994), *cert. denied*, 573 U.S. 1077 (1995); *SEC v. Manor Nursing Centers, Inc.*, 458 F.2d 1082, 1103-04 (2d Cir. 1972). The equity jurisdiction of this Court has been properly invoked by a showing of a securities law violation.

The standard applied by courts in assessing a plan of distribution is whether it is “fair and reasonable.” *SEC v. Wang*, 944 F.2d 80, 84 (2d Cir. 1991) (Court will approve plan if “fair and reasonable”). Courts have accorded the Commission wide discretion in the development of plans to distribute disgorged funds. *Id.* at 88.

The Defendant’s and Relief Defendant’s violations in this case are based on the same or substantially similar facts as those in the China Energy case. In addition, the injured investors are the same in both proceedings. Thus, the Commission staff believes it is appropriate that the Perfect Genius Disgorgement Fund, consisting of the funds recovered from the Perfect Genius

account at Fidelity, be combined with the related China Energy Fair Fund for distribution to injured investors. Further, while the total funds in the Perfect Genius Disgorgement Fund are not nearly enough to satisfy the Final Judgment against the Defendant and Relief Defendant, combining those funds with the China Energy Fair Fund is a cost-effective and efficient way of making payments to the same injured investors who suffered harm as the result of Defendant and Relief Defendant's actions. As a result, the plan to combine the Perfect Genius Disgorgement Fund with the China Energy Fair Fund is fair and reasonable.

Plaintiff also moves that any future funds the SEC may collect pursuant to the Final Judgment entered in this case be transferred directly to the China Energy Fair Fund, until the Final Judgment is satisfied, without further order of this Court. This will allow the efficient distribution of any future funds to injured investors, should additional funds be recovered.

### III. CONCLUSION

**WHEREFORE**, the Commission respectfully requests that this Court enter the Proposed Order, attached as Exhibit A, (1) directing the Commission to transfer the Perfect Genius Disgorgement Fund to the China Energy Fair Fund in the China Energy Case for distribution to injured investors; (2) stating that any future funds that the Commission may collect pursuant to Final Judgment entered in this case are to be transferred directly to the China Energy Fair Fund, until the Final Judgment in this matter is satisfied, without further order of this Court; and (3) granting such other relief as the Court deems just and proper.

Dated: April 21, 2016

Respectfully submitted,

/s/ Susan S. Pecaro  
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