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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

EMPOWER TELECOMMUNICATIONS CORP.,

WILLIAM H.B. CHAN,

W.H.B. CHAN & CO.,

OSVALDO N. LORENZETTI, and

DONALD E. WHORL,

Defendants.

Civil Action No.

96-6815 WDK (VAPx)  
COMPLAINT FOR PERMANENT  
INJUNCTION AND OTHER  
RELIEF

Plaintiff Securities and Exchange Commission ("Commission")  
for its Complaint alleges as follows:

SUMMARY

1. During 1993 and 1994, the Defendants sold approximately  
\$6.56 million of unregistered securities to about 350 investors  
in three purportedly private placements. These investors--almost  
all of whom were "cold called" and many of whom were  
unaccredited--were told that Empower Telecommunications Corp.  
would use the proceeds to build and operate two telephone  
exchanges in Indonesia. However, in connection with the offer

and sale of Empower securities, each of the defendants made material misrepresentations to investors concerning:

- (a) the use of investor proceeds;
- (b) Empower's purported agreements with a major telecommunications company to cooperate in the development of the Indonesian telephone exchanges;
- (c) the value of Empower's assets;
- (d) Empower's outstanding financial obligations to its investment banker and its business partner;
- (e) the solvency of Empower's business partner;
- (f) Chan's personal bankruptcy;
- (g) the termination date of the first private placement;
- (h) the purported outside audit of Empower by a nationally recognized public accounting firm; and
- (i) the payment of commissions to Empower's sales agents.

2. As relief for the Defendants' various violations of the securities laws, the Commission requests that this Court: enjoin each of them from any further violations; order Defendants William H.B. Chan and W.H.B. Chan & Co. to disgorge wrongfully obtained benefits together with prejudgment interest; impose civil penalties against William H.B. Chan, W.H.B. Chan & Co., Osvaldo Lorenzetti, and Donald Whorl; and order an officer and director bar against William H.B. Chan.

#### JURISDICTION

3. This Court has jurisdiction over this action pursuant to Sections 20(d)(1) and 22(a) of the Securities Act [15 U.S.C.

§§ 77u(d)(1) & 77v(a)] and Sections 21(d)(2), 21(d)(3), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d)(2), 78u(d)(3), 78u(e) & 78aa]. Each defendant has made use of the mails, or means or instrumentalities of interstate commerce, in connection with the transactions, acts, practices and courses of business described in this Complaint.

#### THE DEFENDANTS

4. Empower Telecommunications Corp. ("Empower") was incorporated in Delaware on January 11, 1993, and is a Los Angeles based corporation engaged in the business of building and operating telephone exchanges.

5. William H.B. Chan ("Chan") is a citizen of Singapore who resides in Los Angeles. Chan has been Empower's Chairman since its incorporation in January 1993.

6. W.H.B. Chan & Co. ("Chan & Co.") is a private California corporation formed in 1968, which is owned by Chan, and purportedly provides consulting and management services to private and public companies, including Empower. Chan & Co. is Empower's majority shareholder.

7. Osvaldo N. Lorenzetti ("Lorenzetti") resides in Los Angeles and was Empower's Chief Executive Officer and a director from its incorporation until August 1993.

8. Donald E. Whorl ("Whorl") resides in Marina del Rey, California and was Empower's Treasurer and a director from Empower's incorporation until June 1993. He was reappointed as a director in August 1993.

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I. BACKGROUND

9. In December 1992, Chan & Co. signed agreements to build and operate two telephone exchanges in Indonesia in partnership with two Indonesian corporations (the "Indonesian Agreements"). One month later, Chan formed Empower to hold Chan & Co.'s telecommunication assets, including the Indonesian Agreements. In exchange for receiving an assignment of the Indonesian Agreements, Empower issued 19.6 million preferred shares and a \$1 million promissory note to Chan & Co.

10. Subsequently, in three purported private placements, Empower offered and sold, by use of the mails and telephones, approximately \$6.56 million of its stock to about 350 investors: (1) from January 1993 to August 1993, Empower offered and sold 800,000 preferred shares at \$6.25 per share, raising a total of \$5 million (the "Preferred Offering"); (2) from December 1993 to March 1994, Empower offered and sold shares of its common stock to its current investors (the "Common Offering"), raising an additional \$1 million; and (3) from June 1994 to October 1994, Chan & Co. and Empower separately offered and sold \$560,000 worth of additional Empower preferred shares to current investors (the "Concurrent Offerings").

II. THE PREFERRED OFFERING--JANUARY 1993 TO AUGUST 1993

A. Misrepresentations and Omissions in the Private Placement Memorandum

11. In order to raise proceeds; Lorenzetti wrote, and Chan and Whorl reviewed, a Private Placement Memorandum ("PPM") which they distributed to potential investors in Empower's Preferred

\*

offering. In the ensuing Preferred Offering, between January and August 1993, Empower raised approximately \$5 million.

12. The PPM contained multiple material misrepresentations and omissions as set forth below in §§ 13-25 below.

(1) Misuse of Offering Proceeds

13. The PPM stated that Empower would use the Preferred Offering proceeds to: pay costs related to the offering; repay debt; fund the cost of the Indonesian operations; finance the development of additional businesses; and provide working capital. Notwithstanding the representations in the PPM, Chan and Lorenzetti authorized, and Empower used, more than \$1.2 million of the \$5 million of the Preferred Offering proceeds to pay Chan and Chan & Co.'s unrelated expenses.

14. Empower's undisclosed expenditures of the proceeds raised in the Preferred Offering included: (1) \$700,728 for Chan & Co. projects and payroll expenses; (2) \$123,550 to fund Vietnamese art research and pay costs associated with developing a telephone exchange in China and Russia; (3) \$91,340 to develop a telephone exchange in the Philippines; (4) \$50,344 to fund the development of a telephone switch company; and (5) \$244,628 to purchase a cellular telephone company located in the United States.

(2) The Purported Bell Atlantic Agreements

15. The PPM also stated that Bell Atlantic, Inc. had agreed to provide 50% of the cost of building one of the telephone exchanges; that Empower and Bell Atlantic had preliminarily agreed to jointly bid for, and build and operate, other telephone exchanges in Indonesia; and that Bell Atlantic had proposed

forming a city planning/real estate joint venture for other Indonesian projects.

16. Notwithstanding these representations, Empower never had any such agreements with Bell Atlantic.

**(3) The Value of Empower's Assets**

17. Empower's balance sheet, which was prepared by its Treasurer, Whorl, and included in the PPM, identified two assets:

(1) the Indonesian Agreements and (2) a computer software program called TEMIS which Empower claimed would provide it with a significant advantage over its Indonesian competitors. The balance sheet valued these assets at \$20,604,800.00. In actuality, the value of these two purported assets was grossly overstated. In fact, in April 1993, after the Commission had questioned Empower's valuation of these assets, Empower abruptly restated their value at approximately \$1 million. Moreover, Empower had no ownership interest in the TEMIS software and never received the software.

**(4) Outstanding Financial Obligations**

18. In addition to the misrepresentations described in paragraphs 13-17, Empower's PPM also failed to disclose material facts about its financial condition.

**a. Empower's Liability to its Investment Banker**

19. At the time of the Preferred Offering, Empower had a \$551,000 liability to its investment banker for a bridge loan that it had received prior to the offering. Moreover, the investment banker had the right to receive 4.9% of Empower's outstanding shares as its fee for finding a broker-dealer to sell the Preferred Offering. Although Chan knew about these

liabilities to Empower's investment banker, these liabilities  
2 were not disclosed to investors.

3                   b.   Empower's Liability to its Partners

4           20.   At the time of the Preferred Offering, Chan,  
5 Lorenzetti, and Whorl all knew and agreed on Empower's behalf,  
6 that Empower would reimburse its Indonesian partner for up to  
7 \$1.5 million in engineering costs that the Indonesian partner  
8 incurred prior to the signing of the telephone exchange  
9 agreement. Empower's investors were never informed of this  
10 agreement. Moreover, Empower also failed to inform investors  
11 that one of its Indonesian partners was insolvent, despite  
12 Chan's, Lorenzetti's, and Whorl's knowledge of its financial  
13 condition.

14                   c.   Chan's Bankruptcy

15           21.   The PPM touted Chan's financial acumen. In particular,  
16 it highlighted Chan's past successful business ventures.  
17 However, the PPM omitted to disclose Chan's 1991 bankruptcy, in  
18 which Chan listed liabilities of \$13.4 million and assets of only  
19 \$8,900.

20                   (5)   Offering Termination Date

21           22.   Empower's PPM stated that it would not sell less than  
22 40,000 preferred shares nor more than 800,000 preferred shares  
23 and authorized Empower to extend the offering through June 30,  
24 1993. Despite Empower's written representation to investors,  
25 Chan, Lorenzetti, and Whorl caused Empower to extend the offering  
26 to August 10, 1993.

27           23.   Empower never offered a refund to investors who had  
28 purchased Empower stock before June 30, 1993, nor were those

1 investors asked to reaffirm their prior purchase, as required by  
2 law.

3 B. Unregistered Distribution

4 24. The Preferred Offering was marketed through cold  
5 calling and sold predominantly to investors who had limited -  
6 financial means ("unaccredited investors").

7 25. Chan was personally involved in the Preferred Offering:  
8 he solicited over a dozen investors, hired two brokerage firms to  
9 sell the Preferred Offering, conducted sales meetings for the  
10 firms' respective sales staffs, and provided the firms with free  
11 office space.

12 26. No registration statement was filed or in effect for  
13 the Preferred Offering.

14 III. THE COMMON OFFERING--DECEMBER 1993 TO MARCH 1994

15 27. In order to raise additional capital, between December  
16 1993 and March 1994, Empower offered and sold \$1 million of its  
17 common stock to investors who had previously participated in the  
18 Preferred Offering. In connection with this Common Offering,  
19 Empower did not provide investors with any offering materials  
20 other than a brief, two-page newsletter mid-way through the  
21 offering period. Chan personally participated in the preparation  
22 of this newsletter.

23 A. Misrepresentations and Omissions

24 (1) The Purported Outside Audit

25 28. Empower's newsletter represented that Empower had hired  
26 a nationally recognized public accounting firm to perform a year-  
end audit of Empower's financial statements. In actuality,  
27 although this accounting firm had agreed to perform a limited



review of Empower's books and records in connection with the Commission's then-pending investigation, the accounting firm never agreed to perform an audit. Moreover, even after the accounting firm terminated its relationship with Empower on February 4, 1994, Empower continued to distribute the false and misleading newsletter to investors.

(2) Failure to Correct the Prior Misstatements

29. During the Common Offering, Empower, Chan, Chan & Co. and Whorl knew of the misrepresentations and omissions that Empower had made to investors through the PPM. By failing to disclose the previous misappropriation, the defendants led investors to believe that Empower had used, and would continue to use, investor proceeds for the purposes described in the PPM.

(3) Misuse of Common Offering Proceeds

30. Chan, Chan & Co., and Whorl caused Empower to misuse investor proceeds during the Common Offering. Empower improperly paid Chan & Co. employees approximately \$33,000 of the \$1 million raised from the Common Offering. In addition, Empower improperly paid at least \$69,000 in commissions to four sales agents who had been hired to sell the Common Offering. Those agents had previously told investors, and Empower's purchase agreement represented, that no commissions were to be paid in connection with Empower's Common Offering.

B. Unregistered Distribution

31. In addition to continuing personally to solicit investors in connection with the Common Offering, Chan, on behalf of Empower, hired two former employees of the brokerage firms involved in the Preferred Offering to assist in the sales of

1 Empower's common stock. The former brokerage firm employees  
2 hired and supervised two additional sales agents. Although the  
3 sales agents were aware that most of Empower's investors were  
4 unaccredited and had been cold called, they continued to solicit  
5 investors without regard to their financial condition.

6 32. There was no registration statement filed or in effect  
7 for the Common Offering.

8 C. Chan Acted as an Unregistered Broker or Dealer

9 33. In connection with Chan's sales of Empower's  
10 securities, Chan was not registered as a broker or dealer or  
11 associated with a registered broker or dealer.

12 IV. THE CONCURRENT OFFERINGS--JUNE 1994 TO OCTOBER 1994

13 34. To raise additional capital for Empower, from June 1994  
14 to October 1994, Chan & Co. sold approximately \$500,000 worth of  
15 the Empower preferred shares it had received in exchange for the  
16 assignment of the Indonesian Agreements. Chan & Co. then lent  
17 the proceeds to Empower. During the same period, Empower sold an  
18 additional \$60,000 worth of its securities. No offering  
19 materials were distributed to investors in connection with these  
20 sales.

21 35. Both Empower's and Chan & Co.'s shares were sold by  
22 Chan to existing Empower shareholders.

23 A. Omission

24 36. During the Concurrent Offering, as during the Common  
25 Offering, Empower, Chan, Chan & Co., Lorenzetti and Whorl  
26 continued to mislead investors by failing to disclose the misuse  
of proceeds from the Preferred and Common Offerings.

28 \*

1 B. Unregistered Distribution

2 37. No registration statement was filed or in effect for  
3 the Concurrent Offerings.

4 C. Chan and Chan & Co. Acted as Unregistered Brokers or  
5 Dealers

6 38. In connection with Chan and Chan & Co.'s sales of  
7 Empower's securities, neither Chan nor Chan & Co. was registered  
8 as a broker or dealer nor associated with a registered broker or  
9 dealer.

10 FIRST CLAIM

11 OFFER AND SALE OF UNREGISTERED SECURITIES

12 Sections 5(a) and 5(c)  
13 of the Securities Act [15 U.S.C. §§ 77e(a) & 77e(c)]  
14 (Against Empower, Chan, and Chan & Co.)

15 39. The allegations contained in ¶¶ 1-38 are realleged and  
16 incorporated herein by reference.

17 40. Defendants Empower, Chan, and Chan & Co., by engaging  
18 in the conduct described in ¶¶ 9 through 38 above, through use of  
19 the means or instruments of transportation or communication in  
20 interstate commerce or the mails, offered to sell or sold  
21 securities in the form of Empower common and preferred stock, or  
22 carried or caused such securities to be carried through the mails  
23 or in interstate commerce, for the purpose of sale or delivery  
24 after sale.

25 41. No registration statement has been filed with the  
26 Commission or has been in effect with respect to these  
27 securities.

28 \*

42. By reason of the foregoing, Defendants Empower, Chan,  
and Chan & Co. violated, and unless enjoined will continue to  
violate, Sections 5(a) and 5(c) of the Securities Act.

SECOND CLAIM

FRAUD IN THE OFFER OR SALE OF SECURITIES

Section 17(a) of the

Securities Act [15 U.S.C. § 77q(a)]

(Against Empower, Chan, Chan & Co., Lorenzetti, and Whorl)

43. The allegations contained in ¶¶ 1-38 are realleged and  
incorporated herein by reference.

44. Defendants Empower, Chan, Chan & Co., Lorenzetti, and  
Whorl, by engaging in the conduct described in ¶¶ 9 through 38  
above in the offer or sale of securities in the form of Empower  
stock, by the use of means or instruments of transportation or  
communication in interstate commerce or of the mails:

(a) with scienter, employed devices, schemes or  
artifices to defraud;

(b) obtained money or property by means of untrue  
statements of material fact or by omitting to state  
material facts necessary in order to make the  
statements made, in the light of the circumstances  
under which they were made, not misleading; and

(c) engaged in transactions, practices or courses of  
business which operated or would operate as a fraud or  
deceit upon the purchasers of such securities.

45. By reason of the foregoing, Defendants Empower, Chan,  
Chan & Co., Lorenzetti, and Whorl, violated, and unless enjoined  
will continue to violate, Section 17(a) of the Securities Act.

THIRD CLAIM

FRAUD IN CONNECTION WITH THE  
PURCHASE OR SALE OF SECURITIES

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]

(Against Empower, Chan, Chan & Co., Lorenzetti, and Whorl)

46. The allegations contained in ¶¶ 1-38 are realleged and incorporated herein by reference.

47. Defendants Empower, Chan, Chan & Co., Lorenzetti, and Whorl, by engaging in the conduct described in ¶¶ 9 through 38 above in connection with the purchase or sale of securities in the form of Empower stock, by use of means or instrumentalities of interstate commerce or of the mails, with scienter:

- (a) employed devices, schemes or artifices to defraud;
- (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon other persons.

48. By reason of the foregoing, Defendants Empower, Chan, Chan & Co., Lorenzetti, and Whorl, violated, and unless enjoined will continue to violate, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

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FOURTH CLAIM

FRAUD IN CONNECTION WITH THE

PURCHASE OR SALE OF SECURITIES

Section 10(b) of the Exchange Act

[15 U.S.C. § 78j(b)] and Rule 10b-9 thereunder

[17 C.F.R. § 240.10b-9]

(Against Empower, Chan, Lorenzetti, and Whorl)

49. The allegations contained in ¶¶ 1-38 are realleged and incorporated herein by reference.

50. Defendants Empower, Chan, Lorenzetti, and Whorl, by engaging in the conduct described in ¶¶ 9 through 38 above in connection with the purchase or sale of securities in the form of Empower stock, by use of means or instrumentalities of interstate commerce or of the mails, made manipulative or deception representations with scienter:

- (a) to the effect that Empower stock was being offered or sold on an "all-or-none" basis, unless the stock was part of an offering or distribution that was made on the condition that all or a specified amount of the consideration paid for such stock would be promptly refunded to the purchaser unless (1) all of the shares that were offered were sold at a specified price within a specified time, and (2) the total amount due to Empower was received by Empower by a specified date; or
- (b) to the effect that the Empower stock was being offered or sold on any other basis whereby all or part of the consideration paid for any such share would be refunded to the purchaser if all or some of the shares

were not sold unless the stock was part of an offering or distribution that was being made on the condition that all or a specified part of the consideration paid for such stock would be promptly refunded to the purchaser unless (1) a specified number of units of the shares were sold at a specified price within a specified time, and (2) the total amount due to the seller was received by him by a specified date.

51. By reason of the foregoing, Defendants Empower, Chan, Lorenzetti, and Whorl, violated, and unless enjoined will continue to violate, Section 10(b) of the Exchange Act and Rule 10b-9 thereunder.

#### FIFTH CLAIM

#### FAILURE TO REGISTER AS A BROKER-DEALER

Section 15(a) of the Exchange Act

[15 U.S.C. § 78o(a)]

(Against Chan and Chan & Co.)

52. The allegations contained in ¶¶ 1-38 are realleged and incorporated herein by reference.

53. Defendants Chan and Chan & Co., by engaging in the conduct described in ¶¶ 9 through 38 above acted and conducted business as broker-dealers in securities and as such made use of the mails or means or instrumentalities of interstate commerce to effect transactions in, or induce or attempt to induce the purchase or sale of securities in the form of Empower stock.

54. Defendants Chan and Chan & Co. have neither been registered with the Commission as broker-dealers in accordance with Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)], nor

1 | associated with a registered broker-dealer in connection with the  
2 | sale of Empower's stock.

3 | 55. By reason of the foregoing, Defendants Chan and Chan &  
4 | Co., violated, and unless enjoined will continued to violate,  
5 | Section 15(a) of the Exchange Act.

6 | PRAYER FOR RELIEF

7 | WHEREFORE, the Commission respectfully requests that the  
8 | Court:

9 | I.

10 | Issue findings of fact and conclusions of law that the  
11 | Defendants committed the violations charged and alleged herein.

12 | II.

13 | Issue in a form consistent with Rule 65(d) of the Federal  
14 | Rules of Civil Procedure, a Judgment of Permanent Injunction,  
15 | permanently enjoining Defendants:

16 | A. Empower, Chan and Chan & Co., from violating Sections  
17 | 5(a) and 5(c) of the Securities Act;

18 | B. Empower, Chan, Chan & Co., Lorenzetti, and Whorl from  
19 | violating Section 17(a) of the Securities Act, Section 10(b) of  
20 | the Exchange Act and Rule 10b-5 thereunder;

21 | C. Empower, Chan, Lorenzetti, and Whorl from violating  
22 | Section 10(b) of the Exchange Act and Rule 10b-9 thereunder; and

23 | D. Chan and Chan & Co. from violating Section 15(a) of the  
24 | Exchange Act.

25 | III.

26 | Enter an Order directing Chan and Chan & Co. to pay  
27 | disgorgement, together with prejudgment interest thereon.

28 | \*



IV.

Enter an Order directing Chan, Chan & Co., Lorenzetti and Whorl to pay civil penalties under Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act.

V.

Enter an Order prohibiting Chan, pursuant to Section 21(d) of the Exchange Act, from serving as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

VI.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

VII.

Grant such further relief as this Court deems just and necessary.

DATED: September 26 1996

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Sandra J. Harris  
Joel T. Kornfeld  
Ronald E. Wood  
David M. Rosen

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