

1 HELANE L. MORRISON (Cal. Bar No. 127752)  
SUSAN F. LAMARCA (Cal. Bar No. 215231)  
2 (lamarcas@sec.gov)  
MARK P. FICKES (Cal. Bar No. 178570)  
3 (fickesm@sec.gov)

4 Attorneys for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION  
5 44 Montgomery Street, Suite 2600  
San Francisco, California 94104  
6 Telephone: (415) 705-2500  
Facsimile: (415) 705-2501  
7  
8  
9

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

13  
14 SECURITIES AND EXCHANGE COMMISSION,

15 Plaintiff,

16 vs.

17 JEFFREY B. SCHMIDT; GARY L. GELNETTE;  
and NORMAN R. VALINE,

18 Defendants.  
19  
20

Case No. C-05-5171 MHP

~~PROPOSED~~ ORDER OF FINAL  
JUDGMENT AGAINST DEFENDANT  
JEFFREY B. SCHMIDT

21 The motion by Plaintiff Securities and Exchange Commission (“Commission”) for summary  
22 judgment against Defendant Jeffrey B. Schmidt (“Schmidt”), pursuant to Rule 56 of the Federal  
23 Rules of Civil Procedure, supported by the Declaration of Mark P. Fickes and the exhibits thereto,  
24 was heard by the Court on July 17, 2007.

25 By its motion, the Commission seeks summary judgment against Defendant Schmidt on each  
26 of the claims against him, including violation of the securities laws through the offer and sale of  
27 securities without registration, fraud in the offer and sale of securities, and fraud in connection with  
28 the purchase or sale of a security, as set forth in the Commission’s complaint. The Commission also

1 seeks remedial sanctions, including the entry of an injunction against Defendant, disgorgement plus  
2 prejudgment interest, and an order requiring Defendant to pay civil monetary penalties.

3 The Court, having considered the Commission's motion, and no response thereto having been  
4 filed by Defendant Schmidt, the Court finds that good cause appears therefrom and the Commission's  
5 motion is granted. In particular, the Court finds that:

- 6 1) There is no genuine issue as to any material fact;
- 7 2) Defendant Schmidt, directly or indirectly, by use of the means or instrumentalities of  
8 interstate commerce, or of the mails, or of a national securities exchange, in connection  
9 with the purchase or sale, and the offer or sale, of securities, employed a device, scheme or  
10 artifice to defraud, made untrue statements of material fact or omitted to state material  
11 facts necessary to make the statements made true, in light of the circumstances under  
12 which they were made, in violation of Section 10(b) of the Securities Exchange Act of  
13 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §  
14 240.10b-5, and in violation of Section 17(a) of the Securities Act of 1933 ("Securities  
15 Act"), 15 U.S.C. § 77q(a);
- 16 3) Defendant Schmidt, directly or indirectly, in the absence of any applicable exemption, and  
17 without any registration statement filed with the Commission or in effect as to the  
18 securities, made use of means or instruments of transportation or communication in  
19 interstate commerce or of the mails to sell securities, and to offer to sell securities, in  
20 violation of Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a) and (c); and
- 21 4) Defendant Schmidt, directly or indirectly, made use of the means or instruments of  
22 transportation or communication in interstate commerce or the mails, and acted as a  
23 broker and/or effected transactions in, induced or attempted to induce the purchase or sale  
24 of, securities (other than an exempted security or commercial paper, bankers' acceptances  
25 or commercial bills) without being registered with the Commission in accordance with  
26 Section 15(b) of the Exchange Act, 15 U.S.C. § 78o(b), in violation of Section 15(a) of the  
27 Exchange Act, 15 U.S.C. § 78o(a).

28 According, pursuant to Rules 54(b) and 65(d) of the Federal Rules of Civil Procedure:

## I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant Schmidt and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

## II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Schmidt and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

- 1 (c) to engage in any transaction, practice, or course of business which operates or would  
2 operate as a fraud or deceit upon the purchaser.

3 III.

4 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant  
5 Schmidt and his agents, servants, employees, attorneys, and all persons in active concert or  
6 participation with them who receive actual notice of this Final Judgment by personal service or  
7 otherwise are permanently restrained and enjoined from violating Section 5 of the Securities Act, 15  
8 U.S.C. § 77e, by, directly or indirectly, in the absence of any applicable exemption:

- 9 (1) Unless a registration statement is in effect as to a security, making use of any means or  
10 instruments of transportation or communication in interstate commerce or of the mails  
11 to sell such security through the use or medium of any prospectus or otherwise; or  
12 (2) Making use of any means or instruments of transportation or communication in  
13 interstate commerce or of the mails to offer to sell or offer to buy through the use or  
14 medium of any prospectus or otherwise any security, unless a registration statement  
15 has been filed with the Commission as to such security, or while the registration  
16 statement is the subject of a refusal order or stop order or (prior to the effective date of  
17 the registration statement) any public proceeding or examination under Section 8 of  
18 the Securities Act, 15 U.S.C. § 77h.

19 IV.

20 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant  
21 Schmidt and his agents, servants, employees, attorneys, and all persons in active concert or  
22 participation with them who receive actual notice of this Final Judgment by personal service or  
23 otherwise are permanently restrained and enjoined from violating Section 15(a) of the Exchange Act,  
24 15 U.S.C. § 78o(a), by, directly or indirectly, through use of the means or instruments of  
25 transportation or communication in interstate commerce or the mails, acting as a broker and/or  
26 effecting transactions in, inducing or attempting to induce the purchase or sale of, securities (other  
27 than an exempted security or commercial paper, bankers' acceptances or commercial bills) without  
28

1 being registered with the Commission in accordance with Section 15(b) of the Exchange Act, 15  
2 U.S.C. § 78o(b).

3 V.

4 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Schmidt is  
5 liable jointly and severally with defendant Gary L. Gelnette for disgorgement of \$11,000,000,  
6 received through September 30, 2004, together with prejudgment interest thereon (calculated using  
7 the post-judgment interest rate set forth in 28 U.S.C. § 1961 in effect as of September 30, 2004), in  
8 the amount of \$61,855, for a total of \$11,061,855. Defendant shall satisfy this obligation by paying  
9 \$11,061,855 within ten (10) days of this Final Judgment by certified check, bank cashier's check, or  
10 United States postal money order payable to the Clerk of this Court, together with a cover letter  
11 identifying Jeffrey B. Schmidt as a defendant in this action; setting forth the title and civil action  
12 number of this action and the name of this Court; and specifying that payment is made pursuant to  
13 this Final Judgment. Defendant shall simultaneously transmit a photocopy of the payment and letter  
14 to the Commission's counsel in this action (addressed to Helene L. Morrison, Securities and  
15 Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, California, 94104). The  
16 Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment  
17 System ("CRIS") or any other type of interest bearing account that is utilized by the Court. These  
18 funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held  
19 in the interest bearing account until further order of the Court. In accordance with 28 U.S.C. § 1914  
20 and the guidelines set by the Director of the Administrative Office of the United States Courts, the  
21 Clerk is directed, without further order of this Court, to deduct from the income earned on the money  
22 in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed  
23 that authorized by the Judicial Conference of the United States. The Commission may propose a plan  
24 to distribute the Fund subject to the Court's approval. Defendant shall pay post-judgment interest on  
25 any delinquent amounts pursuant to 28 USC § 1961.

26 VI.

27 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendant Schmidt shall  
28 pay a civil penalty in the amount of \$ 1,000,000.00 pursuant to Section 20 of the

Securities Act, 15 U.S.C. §§ 77t(d)(2), and Section 21 of the Exchange Act, 15 U.S.C. § 78u(d)(3). Defendant shall make this payment within ten (10) business days after entry of this Final Judgment by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia 22312, and shall be accompanied by a letter identifying Jeffrey B. Schmidt as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall simultaneously transmit a photocopy of the payment and letter to the Commission's counsel in this action (addressed to Helane L. Morrison, Securities and Exchange Commission, 44 Montgomery Street, Suite 2600, San Francisco, California, 94104). Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961. The Commission shall remit the funds paid pursuant to this paragraph to the United States Treasury.

#### VII.

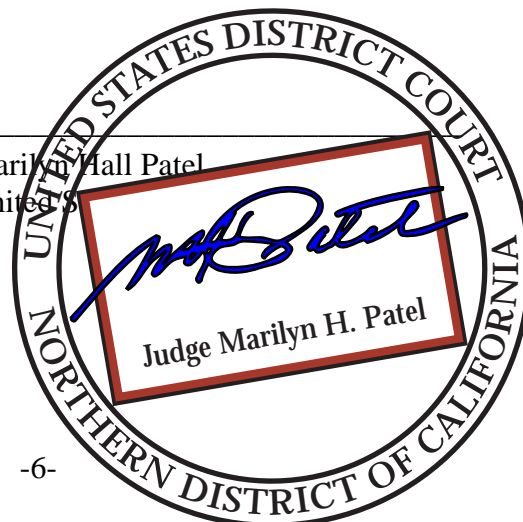
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purpose of enforcing the terms of this Order and for all other purposes.

#### VIII.

There being no just reason for delay, the Clerk is hereby directed to enter this Final Judgment against Defendant Schmidt forthwith and without delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

DATED: 03/27/08

Marilyn H. Patel  
United States District Court



UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

SCHMIDT, et al,

Defendant.

---

Case Number: CV05-05171 MHP


**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on March 28, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Jeffrey B. Schmidt  
2780 Botticelli Drive  
Henderson, NV 89052

Dated: March 28, 2008

  
Richard W. Wieking, Clerk  
By: R.B. Espinosa, Deputy Clerk