

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.: 08-81039-CIV-MARRA/JOHNSON**

<b>SECURITIES AND EXCHANGE COMMISSION,</b>	)
	)
<b>Plaintiff,</b>	)
<b>v.</b>	)
	)
<b>GARY J. GROSS,</b>	)
	)
<b>Defendant.</b>	)
	)

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**JUDGMENT OF PERMANENT INJUNCTION AND  
OTHER RELIEF AS TO GARY J. GROSS**

Plaintiff Securities and Exchange Commission commenced this action by filing its Complaint against Gary J. Gross. In its Complaint, the Commission sought, among other relief: a permanent injunction to prohibit violations by Gross of Section 17(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C. § 77q(a), and Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 (“Exchange Act”), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5; a penny stock bar pursuant to Section 20(g) of the Securities Act and Section 21(d)(6) of the Exchange Act, 15 U.S.C. §§ 77t(g) and 78u(d)(6); an order providing for disgorgement and prejudgment interest; and imposition of a civil money penalty against Gross pursuant to Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act, 15 U.S.C. §§ 77t(d) and 78u(d)(3).

Gross, by the attached Consent, having entered an appearance, waived service of a summons and the Complaint, and consented to the Court’s jurisdiction over him and over the subject matter of this action, has consented to entry of this Judgment of Permanent Injunction and Other Relief (“Judgment”) without admitting or denying the allegations of the Complaint (except as to subject matter and personal jurisdiction); waived findings of fact and conclusions

of law; and waived any right to appeal from the Judgment. This Court having accepted Gross' Consent, having jurisdiction over Gross and the subject matter of this action:

**I.**

**SECTION 17(a) OF THE SECURITIES ACT**

**IT IS ORDERED AND ADJUDGED** that Gross, his officers, agents, servants, representatives, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 17(a) of the 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 artifices 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

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

**II.**

**SECTION 10(b) and RULE 10b-5 OF THE SECURITIES ACT**

**IT IS FURTHER ORDERED AND ADJUDGED** that Gross, his officers, agents, servants, representatives, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Judgment by personal service or otherwise are

permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) and Rule 10b-5 of the Exchange Act, 15 U.S.C. § 78j(b) and 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.

### **III.**

#### **PENNY STOCK BAR**

**IT IS FURTHER ORDERED AND ADJUDGED** that Gross is permanently barred from participating in an offering of penny stock, including engaging in activities with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or attempting to induce the purchase or sale of any penny stock. A penny stock is any equity security that has a price of less than five dollars, except as provided in Rule 3a51-1 under the Exchange Act, 17 C.F.R. § 240.3a51-1.

### **IV.**

#### **DISGORGEMENT AND CIVIL PENALTY**

**IT IS FURTHER ORDERED AND ADJUDGED** that Gross shall pay disgorgement of ill-gotten gains, prejudgment interest thereon, and a civil penalty pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. §

78u(d)(3). The Court shall determine the amounts of the disgorgement and civil penalty upon motion of the Commission. Prejudgment interest shall be calculated from September 30, 2006, based on the rate of interest used by the Internal Revenue Service for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In connection with the Commission's motion for disgorgement and/or civil penalties, and at any hearing held on such a motion: (a) Gross will be precluded from arguing that he did not violate the federal securities laws as alleged in the Complaint; (b) Gross may not challenge the validity of the Consent or this Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for disgorgement and/or civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

**V.**  
**INCORPORATION OF CONSENT**

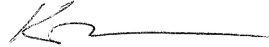
**IT IS FURTHER ORDERED AND ADJUDGED** that Gross' Consent is incorporated herein with the same force and effect as if fully set forth herein, and that Gross shall comply with all of the undertakings and agreements set forth herein.

**VI.**  
**RETENTION OF JURISDICTION**

**IT IS FURTHER ORDERED AND ADJUDGED** that this Court will retain jurisdiction over this matter and Gross in order to implement and carry out the terms of all Orders and Decrees that may be entered and/or to entertain any suitable application or motion for additional relief within

the jurisdiction of this Court, and will order other relief that this Court deems appropriate under the circumstances.

**DONE AND ORDERED** in Chambers at West Palm Beach, Palm Beach County, Florida,  
this 25<sup>th</sup> day of November, 2008.



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KENNETH A. MARRA  
United States District Judge

Copies furnished to:  
all counsel of record