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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

INVESTMENT TECHNOLOGY, INC., *et*
al.,

Defendants.

Case No. CV-S-03-0831-KJD-RJJ

AMENDED FINAL JUDGMENT

The Court having already entered final judgment via order filed October 22, 2004 and entered and served on October 25, 2004, now files this Amended Final Judgment to clarify the date from which Defendants' right to appeal begins to run. The Court's original order (#56) fully complied with Federal Rule of Civil Procedure 58. However, in order to ensure that defendant's appellate rights are crystal clear, it now enters an amended final judgment with this introductory paragraph as the sole addition or alteration to the original final judgment.

This matter came before this Court on the motion of Plaintiff Securities and Exchange Commission, seeking entry of a final judgment by default, providing it with the relief requested in its Complaint against Defendants Investment Technologies, Inc. ("IT"), Investment Technology, Inc. ("IT"), Thomas D. Vidmar ("Vidmar"), Rosenfeld, Goldman & Ware, Inc. ("RGW"), Ulysses

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1 “Thomas” Ware (“Ware”), Small Cap Research Group, Inc. (“Small Cap”), and Centennial Advisors,
2 L.L.C. (“Centennial”) (collectively referred to as (“Defendants”), by reason of their failure to answer
3 the Commission's Complaint in this civil action and as sanction for their continued misconduct.

4 This Court having considered the pleadings and declarations on file herein makes the following
5 findings of fact and conclusions of law:

- 6 1. The Commission's Complaint was filed on July 14, 2003.
- 7 2. Each of the Defendants were served with the Summons and Complaint in accordance
8 with the Federal Rules of Civil Procedure (Docket ## 2, 3, 4, 5, 6 and 11).
- 9 3. Defendants entered an appearance on November 17, 2003 by filing a Motion to Dismiss
10 (Docket # 15).
- 11 4. On July 29, 2004, the Court entered an Order denying Defendants’ Motion to Dismiss
12 (Docket #35).
- 13 5. According to Fed. R. Civ. P. 12(B)(4)(A), Defendants were required to file an answer
14 within 10 days after notice of the Court’s July 29, 2004 Order.
- 15 6. Defendants have failed to answer the Commission's Complaint.
- 16 7. Defendants have failed to associate local counsel as ordered by the Court.
- 17 8. None of the Defendants are infants or incompetent. None of the Defendants are eligible
18 for relief under the Soldiers' and Sailors' Civil Relief Act of 1940 [50 U.S.C. Appendix,
19 § 501 et seq.].
- 20 9. The allegations in the Commission’s Complaint as to the conduct and activities of
21 Defendants are deemed admitted.
- 22 10. The Commission is entitled to entry of this final judgment of permanent injunction
23 providing for the following relief, as set forth in the Commission’s Complaint:
 - 24 A. Permanently enjoining Investment Technology, Inc. from violating 5(a), 5(c) and 17(a)
25 of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §§ 77e(a) and (c) and 77q(a)], and
26 Sections 10(b) and 13(a) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C.

1 §§ 78j(b) and 78m(a)] and Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13 thereunder [17 C.F.R.
2 §§ 240.10b-5, 12b-20, 13a-1, 13a-11, and 13a-13].

3 B. Permanently enjoining Thomas D. Vidmar from violating Sections 5(a), 5(c) and 17(a)
4 of the Securities Act [15 U.S.C. §§ 77e(a) and (c) and 77q(a)], and Sections 10(b) and 16(a)
5 of the Exchange Act [15 U.S.C. §§ 78j(b) and 78p(a)], and Rules 10b-5 and 16a-3 thereunder
6 [17 C.F.R. §§ 240.10b-5 and 16a-3], and for aiding and abetting violations of Section 13(a) of
7 the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13
8 thereunder [17 C.F.R. §§ 240.12b-20, 13a-1, 13a-11, and 13a-13], ordering disgorgement
9 with prejudgment interest and a civil penalty pursuant to Section 20(d) of the Securities Act
10 [15 U.S.C. § 77t(d)], and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], ordering
11 that Vidmar be barred permanently from acting as a director or officer of a public company, and
12 ordering that Vidmar be barred permanently from participating in an offering of penny stock.

13 C. Permanently enjoining Rosenfeld, Goldman & Ware, Inc. from violating Sections 5(a),
14 5(c), 17(a) and 17(b) of the Securities Act [15 U.S.C. §§ 77e(a) and (c), 77q(a), and 77q(b)],
15 and Sections 10(b) and 13(d) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(d)] and
16 Rules 10b-5 and 13d-1 thereunder [17 C.F.R. §§ 240.10b-5 and 13d-1], ordering disgorgement
17 with prejudgment interest and a civil penalty pursuant to Section 20(d) of the Securities Act
18 [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], and
19 ordering that RGW be barred permanently from participating in an offering of penny stock.

20 D. Permanently enjoining Ulysses "Thomas" Ware from violating Sections 5(a), 5(c),
21 17(a) and 17(b) of the Securities Act [15 U.S.C. §§ 77e(a) and (c), 77q(a), and 77q(b)], and
22 Sections 10(b) and 13(d) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78m(d)] and Rules
23 10b-5 and 13d-1 thereunder [17 C.F.R. §§ 240.10b-5 and 13d-1], ordering disgorgement with
24 prejudgment interest and a civil penalty pursuant to Section 20(d) of the Securities Act [15
25 U.S.C. § 77t(d)], and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], and ordering
26 that Ware be barred permanently from participating in an offering of penny stock.

1 E. Permanently enjoining Small Cap Research Group, Inc. and Centennial Advisors, LLC
2 from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], and Section 10(b) of the
3 Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5],
4 ordering disgorgement with prejudgment interest and a civil penalty pursuant to Section 20(d)
5 of the Securities Act [15 U.S.C. § 77t(d)], and Section 21(d) of the Exchange Act [15 U.S.C.
6 § 78u(d)].

7 11. The Commission is entitled to an Order requiring all Defendants to file with the Court
8 and serve upon Plaintiff Commission, no later than 30 days after service on Defendants of this Order,
9 an accounting, under oath, of (1) all monies and other assets they received, directly or indirectly, from
10 investors in the securities described in the Commission's Complaint; (2) all assets in which Defendant
11 has a beneficial interest, directly or indirectly, wherever they may be located and by whomever they are
12 being held; and (3) all accounts with any financial institution or securities brokerage firm maintained in
13 any of their names or for their benefit on or after June 1, 2001.

14 12. The Commission is entitled to an Order requiring Thomas Vidmar and Thomas Ware to
15 disgorge an amount equal to the funds and benefits they obtained illegally as a result of the violations
16 alleged in the Commission's Complaint, plus prejudgment interest on that amount. As set forth in the
17 Commission's Complaint, the Commission is entitled to obtain disgorgement against Thomas Vidmar
18 in the amount of \$31,000 plus prejudgment interest thereon of \$3,811, for a total of \$34,811. As set
19 forth in the Complaint, the Commission is entitled to obtain disgorgement against Thomas Ware in the
20 amount of \$171,000 plus prejudgment interest thereon of \$21,025, for a total of \$192,025.

21 13. The Commission is also entitled to an order imposing a third-tier civil penalty against
22 each Defendant pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], and Section 21(d)
23 of the Exchange Act [15 U.S.C. § 78u(d)]. In accordance with these statutory provisions, the
24 Commission is entitled to civil penalties in the amount of \$120,000 each against Vidmar and Ware and
25 \$600,000 each against IT, RGW, Small Cap and Centennial.

26 On the basis of the foregoing findings of fact and conclusions of law,

1 **IT IS THEREFORE ORDERED:**

2 I.

3 Defendants, their agents, servants, employees, attorneys, and all persons in active concert or
4 participation with them who receive actual notice of this final judgment by personal service or otherwise,
5 and each of them, are permanently restrained and enjoined from:

- 6 A. Violating Section 17(a) of the Securities Act of 1933 (“Securities Act”), 15 U.S.C.
7 § 77q(a), by directly or indirectly, in the offer or sale of any security by the use of
8 any means or instruments of transportation or communication in interstate
9 commerce or by the use of the mails: (1) employing any device, scheme or artifice
10 to defraud; or (2) obtaining money or property by means of any untrue statement
11 of material fact or any omission to state a material fact necessary in order to make
12 the statement(s) made, in the light of the circumstances under which they were
13 made, not misleading; or (3) engaging in any transaction, practice or course of
14 business which operates or would operate as a fraud or deceit upon the purchaser.
- 15 B. Violating Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”),
16 15 U.S.C. § 78j(b), by directly or indirectly, in the use of any means or instruments
17 of interstate commerce, of the mails or of any facility of any national securities
18 exchange, using or employing in connection with the purchase or sale of any
19 security registered on a national securities exchange or any security not so
20 registered any manipulative or deceptive device or contrivance in contravention or
21 a rule or regulation prescribed by the Securities and Exchange Commission.
- 22 C. Violating Rule 10b-5 of the Securities and Exchange Commission, 17 C.F.R. §
23 240.10b-5, by directly or indirectly, in the use of any means or instruments of
24 interstate commerce, of the mails or of any facility of any national securities
25 exchange: (1) employing any device, scheme or artifice to defraud; (2) making any
26 untrue statement of a material fact or omitting to state a material fact necessary in

1 order to make the statement(s) made, in the light of the circumstances under which
2 were made, not misleading; or (3) engaging in any act, practice or course of
3 business which operates or would operate as a fraud or deceit upon any person.

4 II.

5 Defendants IT, Vidmar, RGW and Ware, their agents, servants, employees, attorneys, and all
6 persons in active concert or participation with them who receive actual notice of this final judgment by
7 personal service or otherwise, and each of them, are permanently restrained and enjoined from violating
8 Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. § 77e(a) and (c), by directly or indirectly, (a) making
9 use of any means or instruments of transportation or communication in interstate commerce or of the mails
10 to sell a security through the use or medium of any prospectus or otherwise; or (b) carrying or causing to
11 be carried through the mails or in interstate commerce, by any means or instruments of transportation, a
12 security for the purpose of sale or for delivery after a sale, unless a registration statement is in effect as to
13 that security; or (3) making use of any means or instruments of transportation or communication in
14 interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any
15 prospectus or otherwise any security unless a registration statement has been filed with the Securities and
16 Exchange Commission as to that security or while the registration statement is the subject of a refusal order
17 or a stop order or (prior to the effective date of the registration statement) any public proceeding or
18 examination under Section 8 of the Securities Act, 15 U.S.C. § 77h.

19 III.

20 IT, its agents, servants, employees, attorneys, and all persons in active concert or participation with
21 him who receive actual notice of this final judgment by personal service or otherwise, and each of them,
22 are permanently restrained and enjoined from violating Section 13(a) of the Securities Exchange Act of
23 1934 ("Exchange Act") [15 U.S.C. §§ 78j(b) and 78m(a)] and Rules 10b-5, 12b-20, 13a-1, 13a-11, and
24 13a-13 thereunder [17 C.F.R. §§ 240.10b-5, 12b-20, 13a-1, 13a-11, and 13a-13].

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1 IV.

2 Vidmar, his agents, servants, employees, attorneys, and all persons in active concert or participation
3 with him who receive actual notice of this final judgment by personal service or otherwise, and each of
4 them, are permanently restrained and enjoined from aiding and abetting violations of Section 13(a) of the
5 Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. §§ 78j(b) and 78m(a)] and Rules 10b-5,
6 12b-20, 13a-1, 13a-11, and 13a-13 thereunder [17 C.F.R. §§ 240.10b-5, 12b-20, 13a-1, 13a-11, and 13a-
7 13].

8 V.

9 Vidmar, his agents, servants, employees, attorneys, and all persons in active concert or participation
10 with him who receive actual notice of this final judgment by personal service or otherwise, and each of
11 them, are permanently restrained and enjoined from violating 16(a) of the Exchange Act [15 U.S.C. §
12 78p(a)], and Rule 16a-3 thereunder [17 C.F.R. §§ 240.16a-3].

13 VI.

14 Ware and RGW, their agents, servants, employees, attorneys, and all persons in active concert or
15 participation with them who receive actual notice of this final judgment by personal service or otherwise,
16 and each of them, are permanently restrained and enjoined from violating 13(d) of the Exchange Act [15
17 U.S.C. § 78m(d)] and Rule 13d-1 thereunder [17 C.F.R. § 240.13d-1].

18 VII.

19 Pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Vidmar, his agents,
20 servants, employees, attorneys, and all other persons in active concert or participation with him who
21 receive actual notice of this final judgment, by personal service or otherwise, and each of them, are
22 hereby prohibited from acting as an officer or director of any issuer that has a class of securities
23 registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports
24 pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].
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VIII.

Vidmar and Ware, their agents, servants, employees, attorneys, and all other persons in active concert or participation with him who receive actual notice of this final judgment, by personal service or otherwise, and each of them are 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].

IX.

Each Defendant shall, within 30 (thirty) days of service of this Interlocutory Judgment upon it, make an accounting (1) detailing all monies and other benefits which each of them received, directly and indirectly, as a result of the activities alleged in the Complaint (including the date on which the monies or other benefit was received and the name, address and telephone number of the person paying the money or providing the benefit), (2) listing all current assets of Defendants, and each of them, wherever they may be located and by whomever they are being held (including the name and address of the holder and the amount or value of the holdings) and (3) listing all accounts with any financial or brokerage institution maintained in the name of, on behalf of or for the benefit of Defendants (including the name and address of the account holder and the account number) and the amount held in each account at any point during the period from June 1, 2001, through the date of the accounting.

X.

Vidmar shall pay disgorgement of \$31,000 plus prejudgment interest thereon of \$3,811, for a total of \$34,811. Ware shall pay disgorgement of \$171,000 plus prejudgment interest thereon of \$21,025, for a total of \$192,025.

XI.

Pursuant to Section 20(d) of the Securities Act of 1933 [15 U.S.C. § 77t(d)] and Section 21(d)(3)

1 of the Securities Exchange Act of 1934 [15 U.S.C. § 78u(d)(3)], Defendants Vidmar and Ware shall each
2 pay a civil penalties in the amount of \$120,000 and Defendants IT, RGW, Small Cap and Centennial shall
3 each pay a civil penalty in the amount of \$600,000.

4 XII.

5 Defendants shall satisfy the obligations set forth in Paragraphs XI and XII above within 30
6 business days after service of this final judgment by U.S. Postal money order, certified check, bank
7 cashier's check, or bank money order to the Clerk of this Court, together with a cover letter identifying
8 Defendants as defendants in this action; setting forth the title and civil action number of this action and
9 the name of this Court; and specifying that payment is made pursuant to this Final Judgment.
10 Defendants shall simultaneously transmit photocopies of such payment and letter to the Commission's
11 counsel in this action. By making this payment, Defendants relinquish all legal and equitable right, title,
12 and interest in such funds, and no part of the funds shall be returned to Defendants.

13 The Clerk shall deposit the funds into an interest bearing account with the Court Registry
14 Investment System ("CRIS"). These funds, together with any interest and income earned thereon
15 (collectively, the "Fund"), shall be held by the CRIS until further order of the Court. In accordance with
16 the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is
17 directed, without further order of this Court, to deduct from the income earned on the money in the Fund
18 a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized
19 by the Judicial Conference of the United States.

20 The Commission may by motion propose a plan to distribute the Fund subject to the Court's
21 approval. Such a plan may provide that Fund shall be distributed pursuant to the Fair Fund provisions
22 of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund
23 distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be
24 treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the
25 deterrent effect of the civil penalty, Defendant shall not, in any Related Investor Action, benefit from any
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1 offset or reduction of any investor's claim by the amount of any Fair Fund distribution to such investor
2 in this action that is proportionately attributable to the civil penalty paid by Defendant ("Penalty Offset").
3 If the court in any Related Investor Action grants such an offset or reduction, Defendants shall, within
4 30 days after entry of a final order granting the offset or reduction, notify the Commission's counsel in
5 this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as
6 the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not
7 be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this
8 paragraph, a "Related Investor Action" means a private damages action brought against Defendant by
9 or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint
10 in this action.

11 XIII.

12 This Court shall retain jurisdiction over this action for all purposes, including for purposes of
13 entertaining any suitable application or motion by the Commission for additional relief within the
14 jurisdiction of this Court, including but not limited to setting disgorgement, and prejudgment interest
15 thereon, and all other relief requested by the Commission in its Complaint.

16 XIV.

17 This Order may be served upon Defendants in person, by electronic mail or by certified mail, either
18 by the United States Marshal, the Clerk of the Court, or any member of the staff of the Securities and
19 Exchange Commission or by a person designated by the staff of the Securities and Exchange Commission.

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XV.

There being no just reason for delay, the Clerk of this Court is hereby directed to enter this Order pursuant to Rules 54, 58 and 79 of the Federal Rules Civil Procedure.

DATED this 7th day of April 2005.



Kent J. Dawson
United States District Judge