

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF INDIANA  
(South Bend Division)**

<b>SECURITIES AND EXCHANGE COMMISSION,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>CASE NO. 3:03-CV-0418AS</b>
	)	
<b>PHILIP J. YODER, individually and d/b/a “ALL THE WAY TO THE TOP”,</b>	)	<b>Hon. Allen Sharp</b>
	)	
	)	
<b>Defendant.</b>	)	
	)	

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**FINAL JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF BY  
DEFAULT AGAINST DEFENDANT PHILIP J. YODER**

This cause coming to be heard on Plaintiff Securities and Exchange Commission’s (“Commission”) motion for a Final Judgment of Permanent Injunction and Other Relief By Default Against Defendant Philip J. Yoder (the “Defendant” or “Yoder”), the Commission having complied with the notice requirement of Lewis v. Faulkner, 689 F.2d 100 (7th Cir. 1982) by sending Defendant such notice on January 12, 2005, the Court having held oral argument on May 11, 2005, the Defendant having failed to appear, the Court having considered all the evidence and the arguments before it, and being fully advised in the premises:

**I.**

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendant Philip J. Yoder and his agents, servants, employees, attorneys and all persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, be and hereby are, permanently restrained and enjoined from, directly or indirectly:

A. making use of any means or instruments of transportation or communication in interstate commerce or of the mails, to sell securities through the use or medium of any

prospectus or otherwise unless and until a registration statement is in effect with the Commission as to such securities;

B. carrying or causing to be carried securities through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or for delivery after sale, unless and until a registration statement is in effect with the Commission as to such securities; or

C. making use of any means or instruments of transportation or communication in interstate commerce or of the mails, to offer to sell or offer to buy, through the use or medium of any prospectus or otherwise, securities unless and until a registration statement has been filed with the Commission as to such securities, or while the registration statement is the subject of a refusal or stop order or under any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. §77h];  
in violation of Sections 5(a) and 5(c) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §77e(a) and §77e(c)].

## II.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant Philip J. Yoder and his agents, servants, employees, attorneys and all persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, be and hereby are, permanently restrained and enjoined from, in the offer or sale of any securities, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, directly or indirectly:

A. employing any device, scheme or artifice to defraud;

- B. obtaining money or property by means of any untrue statement of material fact or omission 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. engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser;

in violation of Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§ 77q(a)(1), 77q(a)(2) and 77q(a)(3)].

### III.

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant Philip J. Yoder and his agents, servants, employees, attorneys and all persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, be and hereby are, permanently restrained and enjoined from, directly or indirectly, in connection with the purchase or sale of securities, by the use of any means or instrumentality of interstate commerce or by the use of the mails, or of any facility of any national securities exchange:

- A. employing any device, scheme or artifice to defraud;
- B. making any untrue statement of a material fact or omitting 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.

engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person

in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. 240.10b-5].

**IV.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant Philip J. Yoder and his agents, servants, employees, attorneys and all persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, be and hereby are, permanently restrained and enjoined from, making use of the mails or means or instrumentalities of interstate commerce in order to effect transactions in, or induce or attempt to induce the purchase or sale of securities without being registered with the Commission as a broker or dealer in violation of Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)].

**V.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant Philip J. Yoder is liable for disgorgement of \$317,483, representing profits gained as a result of the conduct alleged in the Complaint filed in this matter on June 9, 2003, together with prejudgment interest thereon in the amount of \$77,508.70, for a total of \$394,991.70. Defendant shall satisfy this obligation by paying \$394,991.70 within thirty days (30) after entry of this Order to the Clerk of this Court, together with a cover letter identifying Philip J. Yoder as the 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 photocopies of such payment and letter to the Commission's counsel in this action. By making this payment, Defendant relinquishes all legal and equitable right, title and interest in such funds, and no part of the funds shall be returned to Defendant. The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS"). These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held by the CRIS until further order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States. The Commission may propose a plan to distribute the Fund subject to the Court's approval. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

**VI.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after thirty (30) days following entry of this Order. In response to any such civil contempt motion by the Commission, the defendant may assert any legally permissible defense.

**VII.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Defendant Philip J. Yoder shall pay a civil penalty in the amount of \$110,000.00 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)]. Defendant Philip J. Yoder shall make this payment within thirty (30) business days after entry of this Order 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 Philip J. Yoder 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 Order. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 USC § 1961.

**VIII.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Court shall retain jurisdiction of this matter for all purposes, including, but not limited to, the purpose of implementing and carrying out the terms of all orders and decrees which may be entered herein, enforcement of this Order, and to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

**IX.**

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that there being no just reason for delay, the Clerk of the Court is hereby directed to enter this Final Judgment of Permanent Injunction and Other Relief By Default Against Defendant Philip J. Yoder.

IT IS SO ORDERED.

DATED: May 12, 2005

s/ ALLEN SHARP  
**HONORABLE ALLEN SHARP**  
**UNITED STATES DISTRICT JUDGE**

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