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**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

v.

MILLENNIUM CAPITAL HEDGE  
FUND, L.P.; MILLENNIUM  
CAPITAL GROUP, LLC; and  
ANDREAS F. ZYBELL,

Defendants.

Case No. CV-03-1862-PHX-FJM

~~PROPOSED~~ FINAL JUDGMENT OF  
DISGORGEMENT, PREJUDGMENT  
INTEREST AND PENALTY AGAINST  
DEFENDANT ANDREAS F. ZYBELL

1 Plaintiff Securities and Exchange Commission ("Commission"), having  
2 filed and served upon Defendant Andreas F. Zybell ("Zybell") a Summons and  
3 Complaint in this action; Zybell having admitted service upon him of the  
4 Summons and Complaint in this action and the jurisdiction of this Court over him  
5 and over the subject matter of this action; having been fully advised and informed  
6 of his right to a judicial determination of this matter; having waived the entry of  
7 findings of fact and conclusions of law as provided by Rule 52 of the Federal  
8 Rules of Civil Procedure; having consented to the entry of this Final Judgment of  
9 Disgorgement, Prejudgment Interest and Penalty Against Andreas F. Zybell  
10 ("Disgorgement Final Judgment") without admitting or denying the allegations in  
11 the Complaint, except as specifically set forth in the Consent of Defendant  
12 Andreas F. Zybell To Entry of Final Judgment of Disgorgement, Prejudgment  
13 Interest and Penalty Against Andreas F. Zybell ("Consent"); no notice of hearing  
14 upon the entry of this Final Judgment being necessary; and this Court being fully  
15 advised:

16 **I.**

17 On November 19, 2003, this Court entered a Final Judgment of Permanent  
18 Injunction and Other Relief Against Andreas F. Zybell ("Zybell Permanent  
19 Injunction"), and a Final Judgment of Permanent Injunction and Other Relief  
20 Against Millennium Capital Group, LLC ("Millennium Capital Permanent  
21 Injunction"). On November 21, 2003, this Court entered a Final Judgment of  
22 Permanent Injunction and Other Relief Against Millennium Capital Hedge Fund,  
23 L.P. ("Millennium Permanent Injunction"). The Zybell Permanent Injunction, the  
24 Millennium Capital Permanent Injunction, and the Millennium Permanent  
25 Injunction were each based on a Consent and shall remain in full force and effect.

26 **II.**

27 NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED  
28 that Zybell shall disgorge the sum of \$82,000.00 representing his gains from the

1 conduct alleged in the Complaint, plus prejudgment interest thereon in the amount  
2 of \$2,100.00 as of October 31, 2005, as set forth herein. Zybell shall also pay a  
3 civil money penalty in the amount of \$25,000.00 pursuant to Section 20(d) of the  
4 Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77t(d), Section 21(d)(3) of  
5 the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78u(d), and  
6 Section 209(e) of the Investment Advisers Act of 1940 ("Advisers Act"), 15  
7 U.S.C. § 80b-9(e)(1). Zybell shall make an initial payment of \$55,000.00 within  
8 thirty (30) days after entry of the Disgorgement Final Judgment in this case and the  
9 balance within one year of the date of entry of this Disgorgement Final Judgment.  
10 Zybell has placed the first payment of \$55,000.00 in escrow. On or before the  
11 thirtieth day after entry of the Disgorgement Final Judgment, the funds deposited  
12 in this escrow account shall be transmitted to the Commission in the form of a  
13 certified check, bank cashier's check, or United States postal money order payable  
14 to the Securities and Exchange Commission. The payment shall be delivered or  
15 mailed to the Office of Financial Management, Securities and Exchange  
16 Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3,  
17 Alexandria, Virginia 22312 and shall be accompanied by a letter identifying Zybell  
18 as a defendant in this action, setting forth the title and civil action number of this  
19 action and the name of this Court and specifying that payment is made pursuant to  
20 this Disgorgement Final Judgment. A copy of such cover letter shall be  
21 simultaneously transmitted to Counsel for the Commission in this action at its Los  
22 Angeles Office. Payment of the second installment shall be made not later than  
23 one year after entry of this Disgorgement Final Judgment, also as set forth above.  
24 Defendant shall pay post-judgment interest on this second installment and on any  
25 delinquent amounts in accordance with the provisions of 28 U.S.C. Section 1961.  
26 By making these payments, Zybell relinquishes all legal and equitable right, title,  
27 and interest in such funds, and no part of the funds shall be returned to Zybell. In  
28 the event that Zybell fails to make any scheduled payment, the entire amount set

1 forth in this Disgorgement Final Judgment shall immediately become due and  
2 payable and the Commission may take all appropriate legal action to collect such  
3 past due sums.

4 **III.**

5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the  
6 provisions of the Consent filed concurrently with this Judgment are incorporated  
7 herein with the same force and effect as if fully set forth herein and that Zybelle  
8 shall comply with his Consent.

9 **IV.**

10 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that during  
11 the pendency of this action, Zybelle shall remain subject to the discovery provisions  
12 of the Federal Rules of Civil Procedure which apply to parties, and, in addition,  
13 that Zybelle agrees and undertakes, without service of a subpoena, to testify as a  
14 witness at any trial of this action or at any related proceeding. None of the  
15 foregoing shall be deemed to constitute a waiver of Zybelle's Fifth Amendment  
16 privilege against self-incrimination. Failure to comply will subject Zybelle to the  
17 remedies and sanctions set forth in Rule 37 of the Federal Rules of Civil Procedure  
18 and all other available remedies.

19 **V.**

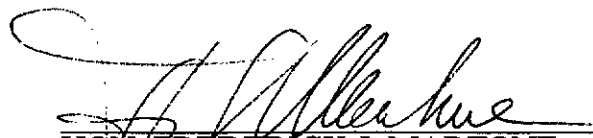
20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this  
21 Court shall retain jurisdiction over this action for all purposes, including  
22 implementing and carrying out the terms of this Judgment and all other orders  
23 which may be entered herein, and to entertain any suitable application or motion  
24 for additional relief within the jurisdiction of this Court.

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**VI.**

There being no just reason for delay, the Clerk of the Court is hereby directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter this Judgment.

DATED November 4, 2005

  
HON. FREDERICK J. MARTONE  
UNITED STATES DISTRICT JUDGE