

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
	:	
Plaintiff,	:	Civil Action No.
	:	1:04-CV-2933
v.	:	
	:	
MARKET-TIMING TECHNOLOGIES LLC and DAVID A. PERRY,	:	
	:	
	:	
Defendants.	:	
	:	
	:	

CONSENT JUDGEMENT

Plaintiff Securities and Exchange Commission (“Commission”), having filed its Complaint herein, and defendants Market-Timing Technologies LLC and David A. Perry (collectively “defendants”), having entered a general appearance, having admitted the in personam jurisdiction of this Court over them and the jurisdiction of this Court over the subject matter of the action, having waived entry of findings of fact and conclusions of law under Rules 52 and 65 of the Federal Rules of Civil Procedure and having waived any right to appeal from this Judgment, without admitting or

denying the allegations of the Commission's complaint, except as to jurisdiction and venue which they admit, and having consented to the entry of this Consent Judgment and the Court being fully advised in the premises;

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants and their agents, servants, employees and attorneys, and other persons in active concert or participation with Defendants who receive actual notice of this Consent Judgment, by personal service or otherwise, and each of them, be and hereby are enjoined and restrained from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. 240.10b-5], by, through the use of any means or instrumentality of interstate commerce or of the mails or of any facility of any national securities exchange:

- (1) employing any device, scheme or artifice to defraud;
- (2) 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
- (3) engaging in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person,

in connection with the purchase or sale of any security.

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants and their agents, servants, employees and attorneys, and other persons in active concert or participation with Defendants who receive actual notice of this Consent Judgment, by personal service, facsimile or otherwise, and each of them, be and hereby are, enjoined and restrained from violating or aiding and abetting violations of Section 206 of the Investment Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. 80b-6] and Rule 206(4)-1(a)(5) thereunder, by, directly or indirectly, making use of means and instruments of transportation and communication in interstate commerce and of the mails:

(1) to employ any device, scheme, or artifice to defraud any client or prospective client;

(2) to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client;

(3) to engage in any act, practice or course or business which is fraudulent, deceptive or manipulative; or

(4) to publish, circulate or distribute any advertisement which (i) refers, directly or indirectly, to any testimonial of any kind concerning the investment

adviser or any service rendered by the investment adviser; (ii) refers, directly or indirectly to any past specific recommendations of the investment adviser except as provided by the rule; (iii) represents directly or indirectly that any graph, formula or other device being offered can in and of itself be used to determine which securities to buy and sell or when to buy and sell them or can be used to assist in such decisions, unless the limitations and difficulties with respect to such use are prominently disclosed in such advertisement; (iv) states that any service will be rendered without charge, unless such service shall be rendered without charge or without any condition or obligation, directly or indirectly; or (v) otherwise contains any untrue statement of a material fact or which is otherwise false and misleading.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendants and their agents, servants, employees and attorneys, and other persons in active concert or participation with Defendants who receive actual notice of this Consent Judgment, by personal service, facsimile or otherwise, and each of them, be and hereby are, enjoined and restrained from violating Section 204 of the Advisers Act [15 U.S.C. 80b-4] and Rules 204-2(a)(2), 204-2(a)(7) and 204-2(a)(16) thereunder, by, directly or indirectly, while registered as an investment adviser or required to be registered by

Section 203 of the Advisers Act, failing to maintain fully and accurately the books and records required by those provisions or failing to produce such books and records to the Commission's staff as required, or aiding and abetting any investment adviser in violating this provision.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Perry shall pay a civil penalty in the amount of \$25,000 pursuant to Section 21(d)(3) of the Exchange Act and Section 209(e) of the Advisers Act. Defendant Perry shall make this payment within ten (10) business days after entry of this Consent 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 David A. Perry 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 Consent Judgment. Defendant shall provide a copy of the payment to M. Graham Loomis, Securities and

Exchange Commission, Atlanta District Office, 3475 Lenox Road, Suite 1000, Atlanta, Georgia 30326.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED

that, in the event Defendant Perry (a) elects to continue conducting advisory business through Defendant Market-Timing, (b) resumes advisory business as an individual not associated with any advisory firm, (c) obtains a controlling interest in another advisory firm, either directly or indirectly, or (d) associates with another advisory firm whose compliance department does not review and/or approve Perry's advertisements and books and records, Defendant Perry shall at his cost retain the services of a consultant for one year, not unacceptable to the Commission staff and at his own expenses, and within twenty (20) days of retaining that independent consultant, provide the staff of the Securities and Exchange Commission with a copy of an engagement letter detailing the scope of the independent consultant's responsibilities.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the responsibilities with which the Defendant Perry will task the consultant will include (a) reviewing advertisements by Perry or the investment adviser,

to determine the appropriateness of any representations regarding investment performance; and (b) reviewing whether Defendant Perry or the investment adviser has complied with all applicable advertisements and books and records provisions of the federal securities laws. Defendant Perry shall also instruct the consultant to conduct such review to determine whether he has complied with this Consent Judgment and shall direct the consultant to make recommendations concerning Defendant Perry or the investment adviser's policies and procedures regarding advertising and the maintenance of books and records. Defendant Perry or the investment adviser shall take all necessary and appropriate steps to adopt and to implement all recommendations of the consultant, provided, however, as to any of the consultant's recommendations that Defendant Perry or the investment adviser determine are unduly burdensome or impractical, Defendant Perry or the investment adviser may suggest an alternative procedure designed to obtain the same objective, submitted in writing to the consultant. The consultant shall reasonably evaluate the alternative procedure and approve the alternative if it is not unreasonable. Defendant Perry or the investment adviser will abide by the consultant's determination with regard thereto and adopt those recommendations deemed appropriate by the consultant.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that for one year following the entry of this Consent Judgment, Defendant Perry shall give a copy of this Consent Judgment and the Commission's complaint in this matter to any potential client who expresses an interest in retaining Defendant Perry as an investment adviser, unless at that time Perry is associated with another advisory firm which he neither directly or indirectly controls and whose compliance department reviews and approves Perry's advertisements and books and records. Such documents shall be provided, with a cover letter not unacceptable to the Commission staff, no later than the day the client executes the advisory agreement. Defendants shall also send copies of the Consent Judgment and the Commission's complaint in this matter to any existing clients who receive advisory services from either Defendant after this Consent Judgment is entered.

VIII.

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

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Consent Judgment.

SO ORDERED, this 14th day of February, 2006.

/s/Thomas W. Thrash
UNITED STATES DISTRICT JUDGE