

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS  
WICHITA DIVISION**

SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	Civil No: 04-CV-1275 MLB
	:	
SCOTT B. KAYE,	:	
TRUEHEDGE ADVISORS, L.L.C, and	:	
TRUEHEDGE CAPITAL PARTNERS, L.P.,	:	
	:	
Defendants.	:	

**AGREED FINAL JUDGMENT AS TO DEFENDANT SCOTT B. KAYE**

The Securities and Exchange Commission (“Commission”) having filed a Complaint and Defendant Scott B. Kaye (“Defendant”) having entered a general appearance; consented to the Court’s jurisdiction and the subject matter of this action; consented to entry of this Agreed Final Judgment without admitting or denying the allegations of the Complaint (except as to jurisdiction); waived findings of fact and conclusions of law; and waived any right to appeal from this Agreed Final Judgment:

**I.**

IT IS HEREBY **ORDERED** that Defendant and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Agreed Final Judgment by personal service or otherwise, are restrained and enjoined in the offer or sale of any securities by use of any means or instruments of transportation or communication in interstate commerce, or of the mails, from, directly or indirectly:

- (a) employing any device, scheme or artifice to defraud;
- (b) obtaining money or property by means of any untrue statement of a material fact or any omission to state 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) engaging in any transactions, practices or courses of business which operate or would operate as a fraud or deceit upon any purchaser or prospective purchaser.

[Securities Act § 17(a) (15 U.S.C. § 77q(a))].

## II.

IT IS FURTHER **ORDERED** that Defendant and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Agreed Final Judgment by personal service or otherwise, are restrained and enjoined from making use of any means or instrumentalities of interstate commerce, or of the mails or of any facility of a national security exchange, directly or indirectly, 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 light of the circumstances under which they were made, not misleading;
- (c) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or
- (d) to use or employ manipulative or deceptive device or contrivance in contravention of a rule or regulation prescribed by the Securities and Exchange Commission.

[Exchange Act § 10(b) and Rule 10b-5 thereunder (15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5)].

**III.**

IT IS FURTHER **ORDERED** that Defendant and his agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Agreed Final Judgment by personal service or otherwise, are restrained and enjoined from making use of any means or instrumentalities of interstate commerce, or of the mails or of any facility of a national security exchange, directly or indirectly, and:

- (a) employing any device, scheme or artifice to defraud any client or prospective client;
- (b) engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client; and
- (c) engaging in any act, practice or course of business which is fraudulent, deceptive or manipulative.

[Investment Advisers Act §§ 206(1), and (2) [15 U.S.C. §§ 80b-6(1) and (2)].

**IV.**

IT IS FURTHER **ORDERED** that Defendant is liable for disgorgement of \$840,000 representing alleged unjust enrichment as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$27,614 for a total of \$867,614. Based on Defendant's sworn representations in his Statement of Financial Condition dated October 13, 2004 and other documents and information submitted to the Commission, however, the Court is not ordering Defendant to pay a civil penalty and payment of all but \$135,928 of the disgorgement and pre-judgment interest thereon is waived. The determination not to impose a civil penalty and to waive payment of \$731,686 of the disgorgement and pre-judgment interest is contingent upon the accuracy and completeness of Defendant's Statement of Financial Condition. If at any time following the entry of this Agreed Final Judgment the Commission

obtains information indicating that Defendant's representations to the Commission concerning his assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to Defendant, petition the Court for an order requiring Defendant to pay the unpaid portion of the disgorgement, pre-judgment and post-judgment interest thereon, and the maximum civil penalty allowable under the law. In connection with any such petition, the only issue shall be whether the financial information provided by Defendant was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Defendant to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Agreed Final Judgment. The Commission may also request additional discovery. Defendant may not, by way of defense to such petition: (1) challenge the validity of this Consent or the Agreed Final Judgment; (2) contest the allegations in the Complaint filed by the Commission; (3) assert that payment of disgorgement, pre-judgment and post-judgment interest or a civil penalty should not be ordered; (4) contest the amount of disgorgement and pre-judgment and post-judgment interest; (5) contest the imposition of the maximum civil penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

#### V.

IT IS FURTHER **ORDERED** that any order to pay disgorgement, pre-judgment interest, or civil penalties is given preclusive effect in any bankruptcy case filed by or against Defendant. Solely for the purpose of such bankruptcy proceedings, such order establishes all the factual

elements necessary to enable a court to make a finding that it is non-dischargeable pursuant to 11 U.S.C. §523(a)(4).

**VI.**

IT IS FURTHER **ORDERED** that the Consent filed herein be, and the same is hereby, incorporated in this Agreed Final Judgment with the same force and effect as if fully set forth herein.

**VII.**

IT IS FURTHER **ORDERED** that this Court shall retain jurisdiction of this action for all purposes, including for purposes of entertaining any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court, including but not limited to the relief requested by the Commission in its Complaint in this action.

**VIII.**

IT IS FURTHER **ORDERED** that this Agreed Final Judgment may be served upon Defendant in person or by mail either by the United States Marshal, by the Clerk of the Court or by any member of the staff of the Commission.

**IX.**

IT IS FURTHER **ORDERED** that, there being no just reason for delay, the Clerk of this Court is ordered and directed to enter this Agreed Final Judgment pursuant to Rule 54 of the Federal Rules of Civil Procedure.

DATED this 3<sup>rd</sup> day of February, 2005.

s/ Monti Belot

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HONORABLE MONTE L. BELOT  
UNITED STATES DISTRICT JUDGE

Agreed:

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Timothy P. Davis  
Kansas Bar No. 18647  
Texas Bar No. 00798134

Attorney for Plaintiff  
U.S. Securities and Exchange Commission  
Burnett Plaza, Suite 1900  
801 Cherry Street, Unit #18  
Fort Worth, TX 76102-6882  
(817) 978-6438  
(817) 978-4927 (fax)  
E-Mail: [davistp@sec.gov](mailto:davistp@sec.gov)

Agreed:

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Mitchell L. Herren  
Bar Number 20507  
*Attorneys for Scott B. Kaye, Truehedge Advisors, L.L.C.  
and Truehedge Capital Partners, L.P.*  
Hinkle Elkouri Law Firm L.L.C.  
2000 Epic Center  
301 North Main Street  
Wichita, Kansas 67202  
Telephone: (316) 267-2000  
Facsimile: (316) 264-1556  
E-mail: [mherren@hinklaw.com](mailto:mherren@hinklaw.com)