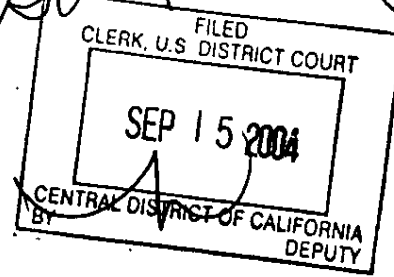
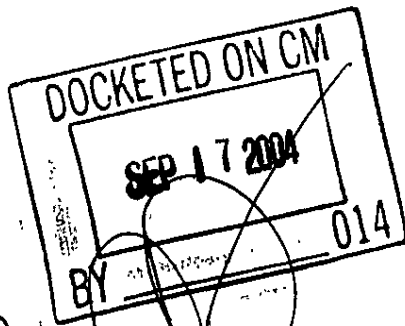


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LOS ANGELES



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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

04-07435 JSL

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

CLAYTON CHAN, et al.,

Defendant.

Civil Action No.

FMOX

**FINAL JUDGMENT OF
PERMANENT INJUNCTION AND
OTHER RELIEF AGAINST
DEFENDANT CLAYTON CHAN**

Plaintiff Securities and Exchange Commission ("Commission"), having filed and served upon Defendant Clayton Chan ("Chan") a Summons and Complaint in this action; Chan having admitted service upon him of the Summons and Complaint in this action and the jurisdiction of this Court over him and over the subject matter of this action; having been fully advised and informed of his right to a judicial determination of this matter; having waived the entry of findings of fact and conclusions of law as provided by Rule 52 of the Federal Rules of Civil Procedure; having consented to the entry of this Final Judgment Of Permanent Injunction And Other Relief Against Clayton Chan ("Final Judgment") without admitting or denying the allegations in the Complaint, except as specifically set forth in the Consent Of Clayton Chan To Entry Of Final

1 Judgment Of Permanent Injunction And Other Relief ("Consent"); no notice of
2 hearing upon the entry of this Final Judgment being necessary; and this Court
3 being fully advised:

4 I.

5 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Chan and
6 his agents, servants, employees, attorneys, and all persons in active concert or
7 participation with them who receive actual notice of this Final Judgment by
8 personal service or otherwise, and each of them, are permanently restrained and
9 enjoined from, directly or indirectly, in the offer or sale of the securities of any
10 issuer, by the use of any means or instruments of transportation or communication
11 in interstate commerce or by the use of the mails:

- 12 A. employing any device, scheme or artifice to defraud;
13 B. obtaining money or property by means of any untrue statement of a
14 material fact or any omission to state a material fact necessary in
15 order to make the statements made, in the light of the circumstances
16 under which they were made, not misleading; or
17 C. engaging in any transaction, practice, or course of business which
18 operates or would operate as a fraud or deceit upon the purchaser;
19 in violation of Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a).

20 II.

21 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED
22 that Chan and his agents, servants, employees, attorneys, and all persons in active
23 concert or participation with them who receive actual notice of this Final
24 Judgment by personal service or otherwise, and each of them, are permanently
25 restrained and enjoined from, directly or indirectly, in connection with the
26 purchase or sale of any security, by the use of any means or instrumentality of
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1 interstate commerce, or of the mails, or of any facility of any national securities
2 exchange:

- 3 A. employing any device, scheme, or artifice to defraud;
- 4 B. making any untrue statement of a material fact or omitting to state a
5 material fact necessary in order to make the statements made, in the
6 light of the circumstances under which they were made, not
7 misleading; or
- 8 C. engaging in any act, practice, or course of business which operates or
9 would operate as a fraud or deceit upon any person;

10 in violation of Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C.
11 § 78j(b) (the "Exchange Act"), and Rule 10b-5 thereunder, 17 C.F.R. § 240.10b-5.

12 III.

13 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED
14 that Chan and his agents, servants, employees and attorneys, and all persons in
15 active concert or participation with any of them, who receive actual notice of this
16 Final Judgment, by personal service or otherwise, and each of them, are
17 permanently restrained and enjoined from, directly, or indirectly, by the use of any
18 means or instrumentality of interstate commerce or of the mails, or of any facility
19 of any national securities exchange:

- 20 A. causing the failure to devise and maintain a system of internal
21 accounting controls sufficient to provide reasonable assurances that
22 financial statements are prepared in conformity with Generally
23 Accepted Accounting Principles;
- 24 B. falsifying or causing to be falsified books, records or accounts subject
25 to Section 13(b)(2)(A) of the Exchange Act;
- 26 C. making or causing to be made, or causing another person to omit or
27 state, a materially false or misleading statement, or omitting to state a
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1 material fact in order to make statements made, in light of the
2 circumstances under which such statements were made, not
3 misleading to an accountant in connection with (1) an audit or
4 examination of financial statements required to be made pursuant to
5 the Exchange Act regulations, or (2) the preparation or filing of
6 reports or documents required to be filed with the Commission
7 pursuant to Exchange Act regulations or otherwise;
8 in violation of Section 13(b)(5) of the Exchange Act, 15 U.S.C., § 78m(b)(5), and
9 Rules 13b2-1 and 13b2-2 thereunder, 17 C.F.R. §§ 240.13b2-1 and 240.13b2-2.

10 IV.

11 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED
12 that Chan and his agents, servants, employees and attorneys and all persons in
13 active concert or participation with any of them, who receive actual notice of this
14 Final Judgment, by personal service or otherwise, and each of them, are
15 permanently restrained and enjoined from, directly or indirectly:

16 causing the filing of a required periodic report with the Commission
17 containing any untrue statement of material fact or omitting to state a
18 material fact required to be stated or necessary in order to make the
19 statements made, in light of the circumstances under which they were
20 made, not misleading;
21 in violation of Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and Rules
22 12b-20 and 13a-13 thereunder, 17 C.F.R. §§ 240.12b-20 and 240.13a-13.

23 V.

24 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED
25 that Chan and his agents, servants, employees and attorneys, and all persons in
26 active concert or participation with any of them, who receive actual notice of this
27 Final Judgment, by personal service or otherwise, and each of them, are
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1 permanently restrained and enjoined from, directly, or indirectly, by the use of any
2 means or instrumentality of interstate commerce or of the mails, or of any facility
3 of any national securities exchange:

4 causing the failure to make and keep accurate books, records, and
5 accounts which, in reasonable detail, accurately and fairly reflect
6 financial transactions and disposition of assets;

7 in violation of Section 13(b)(2)(A) of the Exchange Act, 15 U.S.C.

8 § 78m(b)(2)(A).

9 VI.

10 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED
11 that, pursuant to Section 21(d)(2) of the Exchange Act 15 U.S.C. § 78u(d)(2),
12 Chan is prohibited for 10 years from acting as an officer or director of any issuer
13 that has a class of securities registered pursuant to Section 12 of the Exchange Act,
14 15 U.S.C. § 781 or that is required to file reports pursuant to Section 15(d) of the
15 Exchange Act, 15 U.S.C. § 78o(d).

16 VII.

17 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED
18 that Chan is liable for disgorgement of \$179,124, representing profits gained as a
19 result of the conduct alleged in the Complaint, together with prejudgment interest
20 thereon in the amount of \$12,458, and a civil penalty in the amount of \$50,000
21 pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d) and Section
22 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3). Chan shall satisfy this
23 obligation by paying \$50,000 within sixty days of the entry of this judgment,
24 \$50,000 within 120 days of the entry of this judgment, \$50,000 within 180 days of
25 the entry of this judgment. Chan shall pay the remaining balance of \$91,582
26 within one year of the entry of this judgment. All payments shall be made to the
27 Clerk of this Court, together with a cover letter identifying Chan's name as a
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1 defendant in this action; setting forth the title and civil action number of this
2 action and the name of this Court; and specifying that payment is made pursuant to
3 this Final Judgment. Chan shall simultaneously transmit photocopies of payments
4 and letters to the counsel for the Commission at its Los Angeles office located at
5 5670 Wilshire Boulevard, 11th floor, Los Angeles, California 90036. By making
6 these payments, Chan relinquishes all legal and equitable right, title, and interest
7 in such funds, and no part of the funds shall be returned to Chan.

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

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

9 VIII.

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

14 IX.

15 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED
 16 that this Court shall retain jurisdiction over this matter for the purposes of
 17 enforcing the terms of this Final Judgment.

18 X.


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

22 DATED: SEP 15 2004

J. SPENCER LETTS

UNITED STATES DISTRICT JUDGE

24 Submitted By:

25 
 26 Jessica Rigley Marren
 27 Attorney for Plaintiff
 28 Securities and Exchange Commission