

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

IBIZ TECHNOLOGY CORP.,  
KENNETH W. SCHILLING,  
H. MARK PERKINS,  
JEFFREY S. FIRESTONE,  
D. SCOTT ELLIOTT, AND  
JERROLD B. MCROBERTS,

Defendants.

No. CV 06-0502-PHX-JAT

Judgment

**Final Judgment Against Defendant Kenneth W. Schilling**

The Court finds that Plaintiff Securities and Exchange Commission (“Commission”) has filed a Complaint; and Defendant Kenneth W. Schilling has entered a general appearance, consented to the Court’s jurisdiction over him and the subject matter of this action, consented to entry of this 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 of appeal from this Final Judgment (Doc. #145). Accordingly,

**I.**

IT IS ORDERED, ADJUDGED, AND DECREED that Defendant Kenneth W. Schilling and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by

1 personal service or otherwise, and each of them, are permanently restrained and  
2 enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange  
3 Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated  
4 thereunder, 17 C.F.R. § 240.10b-5, by using any means or instrumentality of interstate  
5 commerce, or of the mails, or of any facility of any national securities exchange, in  
6 connection with the purchase or sale of any security:

7 (a) to employ any device, scheme, or artifice to defraud;

8 (b) to make any untrue statement of a material fact or to omit to state a  
9 material fact necessary in order to make the statements made, in the light of the  
10 circumstances under which they were made, not misleading; or

11 (c) to engage in any act, practice, or course of business which operates or  
12 would operate as a fraud or deceit upon any person.

13 II.

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant  
15 Kenneth W. Schilling and his agents, servants, employees, attorneys, and all persons in  
16 active concert or participation with any of them, who receive actual notice of this Final  
17 Judgment, by personal service or otherwise, and each of them, are permanently enjoined  
18 and restrained from aiding and abetting any violation of Section 13(a) of the Exchange  
19 Act, 15 U.S.C. § 78m(a), and Rules 12b-20, 13a-1, and 13a-13 promulgated thereunder,  
20 17 C.F.R. §§ 240.12b-20, 240.13a-1, and 240.13a-13, by knowingly providing  
21 substantial assistance to an issuer that has a class of securities registered pursuant to  
22 Section 12 of the Exchange Act, 15 U.S.C. § 78l, or Section 15(d) of the Exchange Act,  
23 15 U.S.C. § 78o, in failing to file with the Commission such accurate and complete  
24 information, reports, and documents as are required to be filed with the Commission  
25 pursuant to Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), and the  
26 Commission's rules thereunder, including but not limited to, quarterly reports on Form  
27 10-Q, 17 C.F.R. § 249.308a, as prescribed by Commission Rule 13a-13, 17 C.F.R. §  
28 240.13a-13, or annual reports on Form 10-K, 17 C.F.R. § 249.308, as prescribed by

1 Commission Rule 13a-1, 17 C.F.R. § 240.13a-1, with such information, reports and  
2 documents to contain, in addition to such information as is expressly required to be  
3 included in a statement or report to the Commission, such further material information,  
4 if any, as may be necessary to make the required statements, in the light of the  
5 circumstances under which they are made, not misleading, as prescribed by  
6 Commission Rule 12b-20, 17 C.F.R. § 240.12b-20.

7 III.

8 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant  
9 Kenneth W. Schilling and his agents, servants, employees, attorneys, and all persons in  
10 active concert or participation with them who receive actual notice of this Final  
11 Judgment by personal service or otherwise, and each of them, are permanently  
12 restrained and enjoined from violating Section 13(a) of the Exchange Act, 15 U.S.C. §  
13 77m(a), and Rule 13a-14 promulgated thereunder, 17 C.F.R. § 240.13a-14, by failing to  
14 include a certification or signing, as a principal executive or principal financial officer  
15 of an issuer, a certification that is attached to a report, including transition reports, filed  
16 on Form 10-Q, Form 10-QSB, Form 10-K, Form 10-KSB, Form 20-F or Form 40-F  
17 with the Securities and Exchange Commission under Section 13(a) of the Exchange  
18 Act, 15 U.S.C. § 78m(a), which certification contains an untrue statement of material  
19 fact or omission of a material fact necessary to make the statement made, in light of the  
20 circumstances under which such statement was made, not misleading.

21 IV.

22 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant  
23 Kenneth W. Schilling and his agents, servants, employees, attorneys, and all persons in  
24 active concert or participation with them who receive actual notice of this Final  
25 Judgment by personal service or otherwise, and each of them, are permanently  
26 restrained and enjoined from, directly or indirectly, violating Section 14(a) of the  
27 Exchange Act, 15 U.S.C. § 78n(a), and Rule 14a-9 promulgated thereunder, 17 C.F.R. §  
28 240.14a-9, by using the mails, means or instrumentality of interstate commerce, or any

1 facility of a national securities exchange or otherwise, to solicit or to permit the use of  
 2 such person's name to solicit any proxy, consent, authorization, or notice of meeting  
 3 with respect to any issuer's security (other than an exempt security) registered pursuant  
 4 to Section 12 of the Exchange Act, 15 U.S.C. § 78l, which contains any statement of  
 5 material fact which:

6 (A) At the time and in the light of the circumstances under which it is made, is  
 7 false or misleading;

8 (B) Omits to state any material fact necessary to make the statement made not  
 9 false or misleading; or

10 (C) Omits to state any material fact necessary to correct any statement in any  
 11 earlier communication with respect to the solicitation of a proxy for the same meeting or  
 12 subject matter which has become false or misleading.

13 V.

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant  
 15 Kenneth W. Schilling and his agents, servants, employees, attorneys, and all persons in  
 16 active concert or participation with them who receive actual notice of this Final  
 17 Judgment by personal service or otherwise, and each of them, are permanently  
 18 restrained and enjoined from violating Section 14(c) of the Exchange Act, 15 U.S.C. §  
 19 78n(c), and Rule 14c-6 promulgated thereunder, 17 C.F.R. § 240.14c-6, directly or  
 20 indirectly, by soliciting by or on behalf of the management of the issuer, proxies,  
 21 consents, or authorizations with respect of a security registered pursuant to Section 12  
 22 of the Exchange Act or a security issued by an investment company registered under the  
 23 Investment Company Act of 1940, through the means of an information statement  
 24 which contains any statement of material fact, which, at the time and in light of the  
 25 circumstances under which it is made, is false or misleading, or which omits to state any  
 26 material fact necessary in order to make the statements therein not false or misleading or  
 27 necessary to correct any statement in any earlier communications with respect to the  
 28 same meeting or subject matter which has become false or misleading.

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Kenneth W. Schilling and his agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise, and each of them, are permanently restrained and enjoined from violating Section 5 of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77e, by, directly or indirectly, in the absence of any applicable exemption:

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; 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 any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding of examination under Section 8 of the Securities Act, 15 U.S.C. § 77h.

VII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Kenneth W. Schilling is liable for disgorgement of \$ 778,280 representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment

1 interest thereon in the amount of \$ 287,152, for a total of \$1,065,432. Based upon  
2 Defendant's sworn representations in his Statement of Financial Condition dated  
3 September 29, 2008, and other documents and information submitted to the  
4 Commission, however, the Court is not ordering Defendant to pay a civil penalty, and  
5 payment of all of the disgorgement and pre-judgment interest thereon is waived.  
6 Defendant shall also pay post-judgment interest on any delinquent amounts pursuant to  
7 28 U.S.C. § 1961. The determination not to impose a civil penalty and to waive  
8 payment of disgorgement and prejudgment interest is contingent upon the accuracy and  
9 completeness of Defendant's Statement of Financial Condition. If at any time following  
10 the entry of this Final Judgment the Commission obtains information indicating that  
11 Defendant's representations to the Commission concerning his assets, income,  
12 liabilities, or net worth were fraudulent, misleading, inaccurate, or incomplete in any  
13 material respect as of the time such representations were made, the Commission may, at  
14 its sole discretion and without prior notice to Defendant, petition the Court for an order  
15 requiring Defendant to pay the unpaid portion of the disgorgement, pre-judgment and  
16 post-judgment interest thereon, and the maximum civil penalty allowable under the law.  
17 In connection with any such petition, the only issue shall be whether the financial  
18 information provided by Defendant was fraudulent, misleading, inaccurate, or  
19 incomplete in any material respect as of the time such representations were made. In its  
20 petition, the Commission may move this Court to consider all available remedies,  
21 including, but not limited to, ordering Defendant to pay funds or assets, directing the  
22 forfeiture of any assets, or sanctions for contempt of this Final Judgment. The  
23 Commission may also request additional discovery. Defendant may not, by way of  
24 defense to such petition: (1) challenge the validity of the Consent or this Final  
25 Judgment; (2) contest the allegations in the Complaint filed by the Commission; (3)  
26 assert that payment of disgorgement, pre-judgment and post judgment interest or a civil  
27 penalty should not be ordered; (4) contest the amount of disgorgement and pre-  
28 judgment and post judgment interest; (5) contest the imposition of the maximum civil

1 penalty allowable under the law; or (6) assert any defense to liability or remedy,  
2 including, but not limited to, any statute of limitations defense.

3 VIII.

4 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to  
5 Section 20(e) of the Securities Act, 15 U.S.C. § 77t(e), and Section 21(d)(2) of the  
6 Exchange Act, 15 U.S.C. § 78u(d)(2), Defendant Kenneth W. Schilling is prohibited  
7 from acting as an officer or director of any issuer that has a class of securities registered  
8 pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78l, or that is required to file  
9 reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

10 IX.

11 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that pursuant to  
12 Section 20(g) of the Securities Act, 15 U.S.C. § 77u(g), and Section 21(d)(6) of the  
13 Exchange Act, 15 U.S.C. § 78u(d)(6), Defendant Kenneth W. Schilling is permanently  
14 barred from participating in an offering of penny stock, including engaging in activities  
15 with a broker, dealer, or issuer for purposes of issuing, trading, or inducing or  
16 attempting to induce the purchase or sale of any penny stock. A penny stock is any  
17 equity security that has a price of less than five dollars, except as provided in Rule  
18 3a51-1 promulgated under the Exchange Act, 17 C.F.R. § 240.3a51-1.

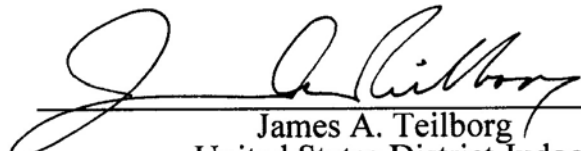
19 X.

20 IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this  
21 matter for purposes of enforcing the terms of this Final Judgment.

22 XI.

23 There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules  
24 of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith and  
25 without further notice.

26 Dated this 20th day of February, 2009.

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28  
  
James A. Teilborg  
United States District Judge