

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

08 Civ. 3324 (RWS)

-against-

PENTAGON CAPITAL MANAGEMENT PLC and
LEWIS CHESTER,

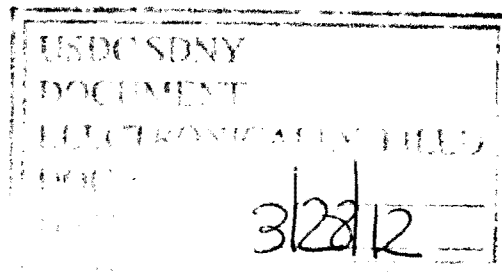
Defendants,

-and-

PENTAGON SPECIAL PURPOSE FUND, LTD.,

Relief Defendant.

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FINAL JUDGEMENT

WHEREAS on April 3, 2008, Plaintiff Securities and Exchange Commission ("SEC") commenced this action by filing a Complaint (Dkt. No. 1) against Defendants Pentagon Capital Management PLC ("PCM") and Lewis Chester ("Chester"), and Relief Defendant Pentagon Special Purpose Fund, Ltd. ("PSPF"), alleging that PCM and Chester orchestrated a scheme to defraud mutual funds in the United States through late trading and deceptive market timing in violation of Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.C.S. § 77q(a), Section

10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, thereunder. In the alternative, the SEC asserted a claim for aiding and abetting violations of Section 10(b) of the Exchange Act and Rule 10b-5.

WHEREAS on August 1, 2008, Defendants and Relief Defendant filed a motion to dismiss the Complaint. (Dkt. No. 11.)

WHEREAS on September 9, 2008, the SEC filed an Amended Complaint (Dkt. No. 15), and on October 8, 2008 Defendants and Relief Defendant moved to dismiss the Amended Complaint (Dkt. No. 23). That motion was heard on December 3, 2008, and by an opinion of February 9, 2009 it was denied (Dkt. No. 30). SEC v. Pentagon Capital Management PLC, 612 F. Supp. 2d 241 (S.D.N.Y. 2009).

WHEREAS on March 16, 2011, the SEC moved for partial summary judgment. (Dkt. No. 92.) That motion was heard on April 5, 2011 and denied in open court and then by memo endorsement on April 22, 2011 (Dkt. No. 141).

WHEREAS beginning on April 12, 2011, the bench trial was conducted over seventeen days, ending May 4, 2011, during which the Court heard testimony from eighteen witnesses and received in evidence many hundreds of exhibits.

WHEREAS final argument was heard on September 27, 2011.

WHEREAS this Court entered its Opinion in this action on February 14, 2012 (Dkt. No. 205) in which the Court, inter alia: found that the entire record establishes that the Defendants did not violate the securities law by pursuing a strategy of market timing, but did violate the securities laws by engaging in late trading, thereby entitling the SEC to judgment; found that Defendants intentionally and egregiously violated the federal securities laws through a broad ranging fraudulent late trading scheme through broker-dealer Trautman Wasserman & Company, Inc. ("TW&Co.") from February 2001 to September 2003; found Defendants and Relief Defendant jointly and severally liable for disgorgement of \$38,416,500 of profits from the U.S. mutual fund trades executed through TW&Co. plus prejudgment interest; and imposed civil penalties in the amount

equal to the profits accrued through Defendants' late trades through TW&Co., a sum of \$38,416,500.

NOW THEREFORE

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants and Defendants' 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 are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, 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 the light of the circumstances under which they were made, not misleading;

or

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

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants and Defendants' 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 are permanently restrained and enjoined from violating Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
 - (b) to obtain money or property by means of any untrue statement of a material fact or any omission of 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) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants and Relief Defendant are liable, on a joint and several basis, for disgorgement of \$38,416,500, representing profits gained as a result of the fraudulent late trading through TW&Co., together with prejudgment interest thereon in the amount of \$21,787,923.20, for a total of \$60,204,423.20. Defendants and Relief Defendant shall satisfy this obligation by paying \$60,204,423.20 within 14 days after entry of this Final Judgment to the Clerk of this Court, together with a cover letter identifying PCM, Chester, and PSPF as Defendants and Relief 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 Final Judgment. Defendants and Relief Defendant shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. By making this payment, Defendants and Relief Defendant relinquish all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendants or Relief Defendant. Defendants and Relief Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

If Defendants and Relief Defendant fail to pay any of this amount within 14 days following entry of this Final Judgment, the Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. In response to any such civil contempt motion by the Commission, Defendants and Relief Defendant may assert any legally permissible defense.

The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS") or any other type of interest bearing account that is utilized by the Court. These funds, together with any interest and income earned thereon and any payments made pursuant to the civil penalties imposed in Paragraph IV of this Final Judgment (collectively, the "Fund"), shall be held in the interest bearing account until further order of the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not

exceed that authorized by the Judicial Conference of the United States.

The Commission may by motion propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002, 15 U.S.C. § 7246, for the benefit of victims of the violations of the federal securities laws found in this action. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Final Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendants shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendants' payment of disgorgement in this action, argue that they are entitled to, nor shall they further benefit by, offset or reduction of such compensatory damages award by the amount of any part of Defendants' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendants shall, within 30 days after entry of a final order granting the Penalty Offset,

notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Final Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendants by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants Chester and PCM shall pay civil penalties, on a joint and several basis, in the amount of \$38,416,500 pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3). Defendants Chester and PCM shall pay \$38,416,500 within 14 days after entry of this Final Judgment to the Clerk of this Court, together with a cover letter identifying Chester and PCM as Defendants 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 Final Judgment.

Defendants shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. Defendants shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Clerk shall deposit the funds into an interest bearing account with the CRIS or any other type of interest bearing account that is utilized by the Court as provided for in Paragraph III of this Final Judgment.

v.

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 Final Judgment.

New York, NY
March 28, 2012



ROBERT W. SWEET
U.S.D.J.