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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

ANTHONY J. CUTI and  
WILLIAM J. TENNANT,

Defendants.

08 Civ. 8648 (PAE)

ECF CASE

**FINAL JUDGMENT AS TO DEFENDANT ANTHONY CUTI**

The Securities and Exchange Commission having filed a Complaint and Defendant Anthony J. Cuti having entered a general appearance; consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this Final Judgment ; waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's 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 Securities Exchange Act of 1934 (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 Defendant and Defendant's 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 of 1933 (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 Defendant and Defendant's 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, directly or indirectly from:

- (1) knowingly circumventing or failing to implement a system of internal accounting controls;
- (2) knowingly falsifying any book, record, or account described in Exchange Action Section 13(b)(2); or
- (3) knowingly making, or causing to be made, materially false or misleading statements or omissions to an auditor;

in violation of Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] and Rules 13b2-1 and 13b2-2 thereunder [17 C.F.R. §§ 240.13b2-1 and 240.13b2-2].

IV.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's 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 aiding and abetting any violation of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B) and 15(d) of the Exchange Act [15 U.S.C. § 78m(a), 15 U.S.C. § 78m(b)(2)(A), 15 U.S.C. § 78m(b)(2)(B) and 15 U.S.C. § 780(d)], and Rules 12b-20,

13a-1, 13a-11, 13a-13, 15d-1, 15d-11, 15d-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, 240.13a-13, 240.15d-1, 240.15d-11, and 240.15d-13] by knowingly providing substantial assistance to an issuer that

- (a) fails to file with the Commission in accordance with the rules and regulations prescribed by the Commission, such information and documents as the Commission has prescribed;
- (b) files with the Commission information and documents, including the amendments thereto, which contain false and materially misleading statements or omissions of material fact;
- (c) fails to file with the Commission material information as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading;
- (d) fails to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of an issuer; or
- (e) fails to devise and maintain a sufficient system of internal accounting controls, unless Defendant acts in good faith and does not directly or indirectly induce the act or acts constituting the violation.

V.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant and Defendant's 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, directly or indirectly from filing false or misleading certifications in violation of Rules 13a-14 and 15d-14 of the Exchange Act [17 C.F.R. §§ 240.13a-14 and 240.15d-14].

VI.

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

VII.

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

VIII.

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.

Dated: Jan. 3, 2012

Paul A. Engbrayn  
UNITED STATES DISTRICT JUDGE

*re*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X		
<b>SECURITIES AND EXCHANGE COMMISSION,</b>	:	
	:	
<b>Plaintiff,</b>	:	<b>08 Civ. 8648 (PAE)</b>
	:	
<b>v.</b>	:	
	:	
<b>ANTHONY J. CUTI and</b>	:	
<b>WILLIAM J. TENNANT,</b>	:	<b>ECF CASE</b>
	:	
<b>Defendants.</b>	:	
-----X		

**CONSENT OF DEFENDANT ANTHONY CUTI**

1. Defendant Anthony J. Cuti ("Defendant") acknowledges having been served with the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.
2. Defendant acknowledges that an amended judgment of conviction was entered against him, adjudicating him guilty on one count of conspiracy in violation of 18 U.S.C. § 371; one count of securities fraud in violation of 15 U.S.C. § 78j(b); two counts of false filings with the Securities and Exchange Commission, 15 U.S.C. § 78m(a); and one count of false filings with the Securities and Exchange Commission, 15 U.S.C. § 780(d), in United States v. Cuti, 08 CR 972 (DAB) (the "Criminal Judgment") and acknowledges that the Criminal Judgment is pending on appeal before the United States Court of Appeals for the Second Circuit, No. 11-3756.
3. Defendant hereby consents to the entry of the final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

- (a) permanently restrains and enjoins Defendant from violation of Section 17(a) of the Securities Act of 1933 (the "Securities Act"), 15 U.S.C. § 77q(a), Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. §§ 78j(b) and 78m(b)(5), and Rules 10b-5, 13b2-1, 13b2-2, 13a-14, and 15d-14, 17 C.F.R. §§ 240.10b-5, 240.13b2-1, 240.13b2-2, 240.13a-14, and 240.15d-14 and from aiding and abetting future violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B) and 15(d) of the Exchange Act, 15 U.S.C. §§ 78m(a), 78m(b)(2)(A), 78m(b)(2)(B) and 78o(d), and Rules 12b-20, 13a-1, 13a-11, 13a-13, 15d-1, 15d-11, and 15d-13, 17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, 240.13a-13, 240.15d-1, 240.15d-11, and 240.15d-13; and
- (b) permanently bars Defendant, pursuant to Section 20(e) of the Securities Act, 15 U.S.C. § 77t(e) and Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), from serving as an officer or director of any issuer that has a class of securities registered under Section 12 of the Exchange Act, 15 U.S.C. § 78l or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

4. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

6. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any



member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

7. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

8. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

9. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

10. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a

member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

11. Defendant understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Defendant acknowledges the conviction for related criminal conduct described in paragraph 2 above, and agrees: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; and (ii) that upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.


12. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes,

Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

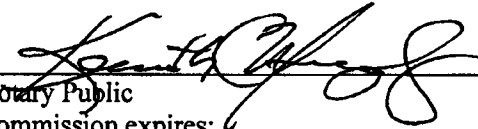
13. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

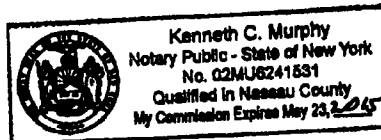
14. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: 12/21/11

  
\_\_\_\_\_  
Anthony J. Cuti

On December 21<sup>st</sup>, 2011, Anthony J. Cuti, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

  
\_\_\_\_\_  
Notary Public  
Commission expires: 6



Approved as to form:

  
\_\_\_\_\_

Brian D. Waller  
Simon & Partners LLP  
The French Building  
551 Fifth Avenue  
New York, NY 10176  
(212) 332-8900  
Attorney for Defendant

United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213

Date:

In Re:

-v-

Case #:

( )

Dear Litigant,

Enclosed is a copy of the judgment entered in your case.

Your attention is directed to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, which requires that if you wish to appeal the judgment in your case, you must file a notice of appeal within 30 days of the date of entry of the judgment (60 days if the United States or an officer or agency of the United States is a party).

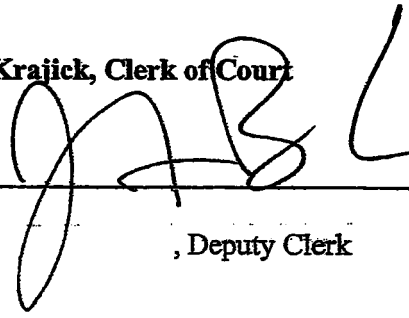
If you wish to appeal the judgment but for any reason you are unable to file your notice of appeal within the required time, you may make a motion for an extension of time in accordance with the provision of Fed. R. App. P. 4(a)(5). That rule requires you to show "excusable neglect" or "good cause" for your failure to file your notice of appeal within the time allowed. Any such motion must first be served upon the other parties and then filed with the Pro Se Office no later than 60 days from the date of entry of the judgment (90 days if the United States or an officer or agency of the United States is a party).

The enclosed Forms 1, 2 and 3 cover some common situations, and you may choose to use one of them if appropriate to your circumstances.

The Filing fee for a notice of appeal is \$5.00 and the appellate docketing fee is \$450.00 payable to the "Clerk of the Court, USDC, SDNY" by certified check, money order or cash. **No personal checks are accepted.**

Ruby J. Krajick, Clerk of Court

by: \_\_\_\_\_



, Deputy Clerk

APPEAL FORMS

United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213

-----X  
-V-  
-----X

NOTICE OF APPEAL

civ. ( )

Notice is hereby given that \_\_\_\_\_  
(party)  
hereby appeals to the United States Court of Appeals for the Second Circuit from the Judgment [describe it]

entered in this action on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_  
(day) (month) (year)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State and Zip Code)

Date: \_\_\_\_\_

( ) \_\_\_\_\_  
(Telephone Number)

**Note:** You may use this form to take an appeal provided that it is received by the office of the Clerk of the District Court within 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

FORM 1

United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213

MOTION FOR EXTENSION OF TIME  
TO FILE A NOTICE OF APPEAL

-V-

civ. ( )

Pursuant to Fed. R. App. P. 4(a)(5), \_\_\_\_\_ respectfully  
requests leave to file the within notice of appeal out of time.

\_\_\_\_\_ (party)  
desires to appeal the judgment in this action entered on \_\_\_\_\_ (party)  
\_\_\_\_\_ (day) but failed to file a  
notice of appeal within the required number of days because:

[Explain here the "excusable neglect" or "good cause" which led to your failure to file a notice of appeal within the  
required number of days.]

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State and Zip Code)

Date: \_\_\_\_\_ ( ) \_\_\_\_\_  
(Telephone Number)

**Note:** You may use this form, together with a copy of Form 1, if you are seeking to appeal a judgment and  
did not file a copy of Form 1 within the required time. If you follow this procedure, these forms must be  
received in the office of the Clerk of the District Court no later than 60 days of the date which the judgment  
was entered (90 days if the United States or an officer or agency of the United States is a party).

APPEAL FORMS

District Court will receive it within the 30 days of the date on which the judgment was entered (60 days if the United States or an officer or agency of the United States is a party).

FORM 3

United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213

-----X  
-V-  
-----X

**AFFIRMATION OF SERVICE**

civ. ( )

I, \_\_\_\_\_, declare under penalty of perjury that I have served a copy of the attached \_\_\_\_\_

upon \_\_\_\_\_

whose address is: \_\_\_\_\_

Date: \_\_\_\_\_  
New York, New York

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State and Zip Code)

FORM 4

APPEAL FORMS

FORM 2

**United States District Court  
Southern District of New York  
Office of the Clerk  
U.S. Courthouse  
500 Pearl Street, New York, N.Y. 10007-1213**

-V-

**NOTICE OF APPEAL  
AND  
MOTION FOR EXTENSION OF TIME**

civ. ( )

1. Notice is hereby given that \_\_\_\_\_ hereby appeals to  
(party)  
the United States Court of Appeals for the Second Circuit from the judgment entered on \_\_\_\_\_.  
[Give a description of the judgment]

2. In the event that this form was not received in the Clerk's office within the required time  
\_\_\_\_\_ respectfully requests the court to grant an extension of time in  
(party)  
accordance with Fed. R. App. P. 4(a)(5).

a. In support of this request, \_\_\_\_\_ states that  
(party)  
this Court's judgment was received on \_\_\_\_\_ and that this form was mailed to the  
(date)  
court on \_\_\_\_\_  
(date)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State and Zip Code)

Date: \_\_\_\_\_

( ) \_\_\_\_\_  
(Telephone Number)

**Note:** You may use this form if you are mailing your notice of appeal and are not sure the Clerk of the

APPEAL FORMS