

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**SECURITIES & EXCHANGE
COMMISSION,**

Plaintiff,

v.

HEDGELENDER LLC, et al.

Defendants.

Case No. 2:09-cv-859

JUDGE EDMUND A. SARGUS, JR.

**MAGISTRATE JUDGE TERENCE P.
KEMP**

FINAL JUDGMENT AS TO DEFENDANT FRED R. WAHLER, JR.

The Securities and Exchange Commission (“SEC”) having filed a Complaint; Defendant Fred R. Wahler, Jr. (“Defendant”) having entered a general appearance, consented to the Court’s jurisdiction over Defendant and the subject matter of this action, consented to the entry of an order of permanent injunction (“Consent”) (Doc. 3-2) 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 that order of permanent injunction; the Court having entered an Order of Permanent Injunction and Other Relief as to Defendant (“Order”) (Doc. 4); the SEC having filed a Motion to Set Disgorgement Plus Prejudgment Interest and Impose Third-Tier Civil Penalties Against Defendants (“Motion”) (Doc. 13); and the Court having granted as framed the SEC’s Motion (Doc. 43), the Court orders as follows:

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 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 the 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.

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, 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 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.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for disgorgement of \$298,065.00, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of \$60,081.00, for a total of \$358,146.00, for which amount Defendant is jointly and severally liable with Defendant HedgeLender LLC. Defendant shall satisfy this obligation by paying \$358,146.00 within fourteen (14) days after entry of this Final Judgment to the Clerk of this Court, together with a cover letter identifying Defendant as a defendant in this action; setting forth the title and case number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall simultaneously transmit photocopies of such payment and letter to counsel representing the SEC in this action. By making this payment, Defendant relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to Defendant. 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 (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 SEC may propose a plan to distribute the Fund subject to the Court’s approval. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a civil penalty in the amount of \$50,000.00 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). Defendant shall make this payment by certified check, bank cashier's check, or United States postal money order payable the Securities and Exchange Commission within fourteen (14) days after entry of this Final Judgment. The payment shall be delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop 0-3, Alexandria, Virginia, 22312, and shall be accompanied by a letter identifying Defendant as a defendant in this action; setting forth the title and case number of this action and the name of this Court; and specifying that payment is made pursuant to this Final Judgment. Defendant shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The SEC shall remit the funds paid pursuant to this paragraph to the United States Treasury.

V.

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.


VI.

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.

IT IS SO ORDERED.

3-36-2011

DATED


EDMUND A. SARGUS, JR.
UNITED STATES DISTRICT JUDGE