

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

v.

SCOTT M. ROSS,

Defendant.

CIVIL ACTION

FILE NO. 09 C 683

PARTIAL FINAL JUDGMENT
AND ORDER OF PERMANENT
INJUNCTION, ASSET FREEZE AND OTHER RELIEF

Plaintiff, U.S. Securities and Exchange Commission ("SEC") filed a complaint in this matter, and Defendant Scott M. Ross ("Defendant" or "Ross") has, in his Consent hereto and incorporated herein (attached as Exhibit 1), acknowledged receipt of the complaint and admitted the personal jurisdiction of the Court over him and over the subject matter thereof, and without admitting or denying the allegations of the complaint, except as to jurisdiction, and without trial, argument or adjudication of any facts or law herein, consented to the entry of this Partial Final Judgment and Order of Permanent Injunction and Other Relief ("Partial Final Judgment"). The SEC and the Defendant have waived the entry of findings of fact and conclusions of law, as provided by Rule 52 of the Federal Rules of Civil Procedure and the Defendant has waived any right to appeal from this Partial Final Judgment. The Court having jurisdiction over the parties and the subject matter hereof, and being fully advised in the premises, hereby states:

I.

IT IS ORDERED, ADJUDGED AND DECREED that Defendant Scott M. Ross, his officers, agents, servants, employees, attorneys, assigns, and all persons in active concert or participation with him who receive actual notice of this Partial Final Judgment by personal service or otherwise, and each of them are permanently restrained and enjoined from, in the offer or sale of any securities, 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, employing any device, scheme or artifice to defraud, in violation of Section 17(a)(1) of the Securities Act [15 U.S.C. §77q(a)(1)].

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Scott M. Ross, his officers, agents, servants, employees, attorneys, assigns, and all persons in active concert or participation with him who receive actual notice of this Partial Final Judgment by personal service or otherwise, and each of them are permanently restrained and enjoined from, in the offer or sale of any securities by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, obtaining money or property by means of any untrue statement of a material fact or any omission 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 engaging any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser, in violation of Sections 17(a)(2) and 17(a)(3) of the Securities Act [15 U.S.C. §§77q(a)(2) and 77q(a)(3)].

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant Scott M. Ross, his officers, agents, servants, employees, attorneys, assigns, and all persons in active concert or participation with them who receive actual notice of this Partial Final Judgment by personal service or otherwise, and each of them are permanently restrained and enjoined from, directly or indirectly, in connection with the purchase or sale of any security, by the use of any means or instrumentality of interstate commerce, or of the mails, or any facility of any national securities exchange:

- (a) employing any device, scheme or artifice to defraud; or
- (b) making any untrue statement of material fact or omitting 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) engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person, in violation of Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. §78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F. R. §240.10b-5].

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant disgorge all ill-gotten gains received as a result of the conduct alleged in the complaint, plus prejudgment interest on those amounts. The Court will set the specific amounts of disgorgement and will also determine whether to impose civil penalties 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)] on the Defendant, and in what amount, at a separate hearing upon due notice and

motion by the SEC. At that hearing, the issues will be limited to determining: (a) the amounts of disgorgement to be ordered; and (b) whether civil penalties should be imposed on the Defendant, and the amounts of any such penalties. At that hearing, the Defendant will be precluded from arguing that he did not violate, directly or indirectly, the federal securities laws in the manner set out in the complaint, but will not be precluded from presenting evidence as to what amounts of disgorgement, prejudgment interest and whether and what civil penalties are appropriate. Nothing herein affects the Defendant's: (a) testimonial obligations; or (b) right to take legal or factual positions in litigation or other legal proceedings in which the SEC is not a party.

V.

ORDER FREEZING ASSETS

IT IS FURTHER ORDERED that until otherwise ordered by the Court:

A. all funds and other assets of the Defendant Scott M. Ross, including but not limited to all assets of entities owned, managed or controlled by Ross, and all investor funds wherever located are hereby frozen; accordingly, Defendant Scott M. Ross and his officers, agents, affiliates, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with any one or more of them, and each of them, who receive actual notice of this Order or of the terms of the asset freeze provisions contained herein, by personal service, mail, facsimile transmission or otherwise, are hereby temporarily restrained from directly or indirectly:

- (1) transferring, selling, encumbering, receiving, changing, pledging, assigning, liquidating or otherwise disposing of, or withdrawing, any assets or property, including, but not limited to: cash; free credit balances; fully paid-for

securities; property pledged or hypothecated as collateral for loans owned by, controlled by, or in the possession or custody of the Defendant or any entities owned, managed, or controlled by the Defendant; any and all accounts at any financial institution in the name of or under the control of the Defendant or any entities owned, managed, or controlled by the Defendant; and any and all accounts at any financial institution in which the Defendant or any entities owned, managed, or controlled by the Defendant have signatory authority or a beneficial interest;

(2) transferring, selling, encumbering, receiving, changing, pledging, assigning, withdrawing, liquidating or otherwise disposing of, in any manner, any funds or assets that constitute investor funds or any accounts or property into which investor funds were deposited or invested; and

(3) opening or causing to be opened any safe deposit boxes, commercial mail boxes, or storage facilities titled in the name of the Defendant or any entities owned, managed, or controlled by the Defendant, or subject to access by the Defendant or any entities owned, managed, or controlled by the Defendant, without providing the Commission prior notice and an opportunity to inspect the contents in order to determine that they contain no assets subject to this order;

B. that any bank, financial or brokerage institution, or other person or entity holding any such funds or other assets referred to in Paragraph A of Section V of this Order, in the name of, for the benefit of, or under the control of the Defendant or any entities owned, managed, or controlled by the Defendant, or any account holding investor funds wherever located, and which receives actual notice of this Order or of the terms of the asset freeze provisions contained

herein, by personal service, mail, facsimile transmission or otherwise, shall hold and retain within its control and prohibit the withdrawal, removal, transfer, disposition, pledge, encumbrance, assignment, set off, sale, liquidation, dissipation, concealment, or other disposal of any such finds or other assets.

VI.

RECEIVER

IT IS FURTHER ORDERED that from the date of this Order and until such other time as the Court may order, Phillip Stern, Esq. is appointed Receiver over all assets under the possession, custody or control of Defendant Scott M. Ross, including but not limited to all assets of any entities owned, managed or controlled by Scott M. Ross and all investor funds, wherever located. The said Receiver shall take control of all assets of Defendant Scott M. Ross, including but not limited to all assets of any entities owned, managed or controlled by Scott M. Ross and all investor funds, wherever located, including any operations, funds, assets and property wherever situated, with the powers set forth herein, including powers over all funds, assets, premises (whether owned, leased, occupied, or otherwise controlled), choses in action, books, records, and other property belonging to or in the possession, custody, or control of Defendant Scott M. Ross, including but not limited to all assets of any entities owned, managed or controlled by Scott M. Ross and all investor funds wherever located. The Receiver is hereby authorized, empowered, and directed:

- A. to have access to and take control of all funds, assets, premises (whether owned, leased, occupied or otherwise controlled), choses in action, books, records, papers, and other property of the Defendant, including but not limited to all assets of any entities owned, managed or controlled by the Defendant and all investor funds, wherever located, with full power to monitor and approve each transaction, disbursement or receipt of funds, or any other disposition relating to such funds, assets or property, and with

full power to take such steps as he deems necessary to secure such premises, funds and property;

- B. to have control of, and to be added as an authorized signatory for, all accounts of the Defendant, including but not limited to all assets of any entities owned, managed or controlled by the Defendant at any bank, brokerage firm or financial institution which has possession, custody or control of any assets or funds of the Defendant, including but not limited to all assets of any entities owned, managed or controlled by the Defendant or any investor funds, wherever located;
- C. to take such action as is necessary and appropriate to preserve and take control of, and to prevent the dissipation, concealment, or disposition of any assets of the Defendant, including but not limited to all assets of any entities owned, managed or controlled by the Defendant and all investor funds, wherever located;
- D. to make or authorize such payments and disbursements from the funds and assets taken into control, or thereafter received by him, and to incur, or authorize the incurrence of, such expenses and make, or authorize the making of, such agreements as may be reasonable, necessary and advisable in discharging his duties as Receiver;
- E. to engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, counsel and accountants; and

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, in connection with the appointment of the Receiver provided for above:

- A. The Defendant and his officers, agents, servants, employees, attorneys-in-fact, shareholders, and other persons who are in custody, possession, or control of any assets, books, records, or other property of the Defendant, including but not limited to all assets of any entities owned, managed or controlled by the Defendant and all investor funds, wherever located shall give access to and control of such property to the Receiver, and shall grant to the Receiver authorization to be a signatory as to all accounts at banks, brokerage firms or financial institutions which have possession, custody or control of any assets or funds in the name of or for the benefit of the Defendant, including but not limited to all assets of any entities owned, managed or controlled by the Defendant;

- B. All banks, brokerage firms, financial institutions, and other business entities which have possession, custody or control of any assets, funds or accounts in the name of or for the benefit of the Defendant, including but not limited to all assets of any entities owned, managed or controlled by the Defendant shall cooperate expeditiously in the granting of control and authorization as a necessary signatory as to said assets and accounts to the Receiver;
- C. Unless and as authorized by the Receiver, the Defendant shall not take any action, or purport to take any action, in the name of or on behalf of the Defendant;
- D. The Defendant and his respective officers, agents, servants, employees, and attorneys-in-fact, shall cooperate with and assist the Receiver, including, if deemed necessary by the Receiver, by appearing for deposition testimony and producing documents upon four days' faxed notice, and shall take no action, directly or indirectly, to hinder, obstruct, or otherwise interfere with the Receiver in the conduct of his or her duties or to interfere in any manner, directly or indirectly, with the custody, possession, management, or control by the Receiver of the funds, assets, premises, and choses in action described above;
- E. All applications for costs, fees and expenses for services rendered in connection with the Receiver shall be made by application setting forth in reasonable detail the nature of the services and shall be heard by the Court and shall be submitted in accordance with guidance supplied by the plaintiff;
- F. No bond shall be required in connection with the appointment of the Receiver. Except for an act of gross negligence, the Receiver shall not be liable for any loss or damage incurred by the Defendant or his officers, agents or employees, or any other person, by reason of any act performed or omitted to be performed by the Receiver in connection with the discharge of his or her duties and responsibilities hereunder.

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, pending the determination of the Commission's action on the merits, representatives of the Receiver are authorized to have continuing access to and to inspect or copy any or all of the corporate books and records and other documents of the Defendant, and continuing access to inspect the Defendant's funds, property and assets, wherever they may be located.

IX.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Scott M. Ross shall transfer to the Receiver, as and when directed by the Receiver, any and all funds, property, documents or records of Scott M. Ross or any entities owned, managed, or controlled by Scott M. Ross that are in his possession, custody or control; and that Defendant Scott M. Ross shall forthwith take all steps necessary to relinquish his signatory authority as to all accounts at banks, brokerage firms or financial institutions which have possession, custody or control of any assets or funds in his name or in the name of any entities he owns, manages or controls.

X.

ACCOUNTING

IT IS FURTHER ORDERED that Defendant Scott M. Ross shall make a sworn accounting, to this Court, within ten (10) days of the issuance of this Order. Nothing contained in this Section of this Order shall prevent the Defendant Scott M. Ross from asserting a Fifth Amendment privilege against self-incrimination and, in turn, nothing contained in this Section of the Order shall prevent the Commission from opposing or challenging Defendant Scott M. Ross's assertion of a Fifth Amendment privilege against self-incrimination. Said sworn accountings shall consist of:

A. (1) all assets, funds and property received, directly or indirectly, from anyone who invested in or otherwise gave, directly or indirectly, assets, funds or property to the Defendant or any entities owned, managed, or controlled by the Defendant; (2) the amount of such funds or value of such assets; (3) the location of where such funds were put and for each location provide the name and address of the bank or other financial institution, the account name, the account number and the approximate date on which the funds were placed at the location; (4) the uses to

which such funds were put; and (5) the amounts of any remaining assets or funds described in Section X(A)(1) of this Order and the location of any such remaining assets or funds and for each location provide the name and address of the bank or other financial institution, the account name, the account number and the approximate date on which the funds were placed at the location.

B. all of the assets and liabilities for the Defendant wherever located, and for each asset and liability provide: (1) a description; (2) the amount or value; (3) the location including the name and address of the bank or other financial institution, the account name and the account number; and (4) the date the asset was acquired or the date the liability was incurred.

C. all funds received in connection with the offer, purchase or sale of securities and the uses of such funds

XI.

RECORDS PRESERVATION

IT IS FURTHER ORDERED that the Defendant and his officers, agents, servants, employees, attorneys, depositories, banks, and those persons in active concert or participation with any one or more of them, and each of them, be and they hereby are temporarily restrained and enjoined from, directly or indirectly, destroying, mutilating, concealing, altering, disposing of, or otherwise rendering illegible or indecipherable in any manner, any of the books, records, documents, correspondence, ledgers, accounts, statements, files and other property of or pertaining to the Defendant or any entities owned, managed, or controlled by the Defendant or any matters described in the Complaint filed by the United States Securities and Exchange Commission in this action, however maintained and wherever located, until further order of this Court.

XII.

DOCUMENT PRODUCTION

IT IS FURTHER ORDERED that the Defendant produce to the Plaintiff, within 10 days of the issuance of the Order, all accountant's reports, bank statements, brokerage statements, documents indicating title to real or personal property and any other indicia of current asset ownership in his possession, custody or control or in the possession, custody or control of any entities owned, managed, or controlled by the Defendant, however maintained and wherever located; and all books, records and other documents in his possession, custody or control or in the possession, custody or control of any entities owned, managed, or controlled by the Defendant, however maintained and wherever located, relating to the offer, purchase or sale of securities.

XIII.

EXPEDITED DISCOVERY

IT IS FURTHER ORDERED that:

A. Immediately upon entry of this Order, Plaintiff SEC and the Receiver are granted leave to serve interrogatories, requests for documents, and requests for admissions, take depositions and subpoena documents immediately, and the time allowed to respond to such discovery requests is shortened to 10 calendar days after a request is served unless otherwise ordered by the Court.

B. Should a recipient of a request for admission fail to respond to the request for admission within 10 calendar days of service, that request may be deemed admitted for all purposes in this action.

C. Should a recipient of an interrogatory fail to respond to the interrogatory within 10 calendar days of service, the recipient may be prohibited from introducing any evidence concerning the subject of the interrogatory for any purpose in this action.

D. Should a recipient of a request for production of documents fail to produce a responsive document within 10 calendar days of service, the recipient may be prohibited from introducing the withheld document for any purpose in this action.

E. All other discovery rules contained in the Federal Rules of Civil Procedure and Local Rules for the Northern District of Illinois shall apply unless otherwise ordered by this Court. All responses to the Commission's discovery requests shall be delivered to the Securities and Exchange Commission, Chicago Regional Office, Attention: Andrew P. O'Brien, 175 W. Jackson Blvd., Suite 900, Chicago, Illinois 60604 by the most expeditious means available, including via facsimile to (312) 886-8514. Service of discovery requests shall be sufficient if made upon the parties by facsimile or overnight courier and depositions may be taken by telephone or other remote electronic means.

XIV.

NOTICE OF THIS ORDER

IT IS FURTHER ORDERED that notice of this Order may be accomplished by delivery of a copy of the Order by first class mail, overnight delivery, facsimile, electronic mail, or personally by agents or employees of the Commission, to the Defendant, and to any bank, savings and loan institution, credit union, financial institution, transfer agent, broker-dealer, investment company, title company, commodity trading company, storage company, or any other person, partnership, corporation, or legal entity that may subject to any provision of this Order.

XV.

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

XVI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the SEC is expressly authorized to engage in continued discovery regarding any unresolved issue in this case with respect to the Defendant, including, but not limited to, discovery for the purposes of determining the amount of ill-gotten gains and civil penalties, if any.

XVII.

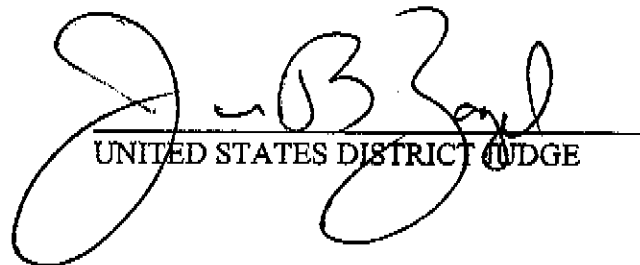
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court shall retain jurisdiction of this matter for all purposes, including, but not limited to, enforcement of the Partial Final Judgment.

XVIII.

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

SO ORDERED:

Dated: February 3, 2009


UNITED STATES DISTRICT JUDGE