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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

**SECURITIES AND EXCHANGE
COMMISSION,**

Plaintiff,

v.

**MILLENNIUM CAPITAL HEDGE
FUND, L.P.; MILLENNIUM
CAPITAL GROUP, LLC; and
ANDREAS F. ZYBELL,**

Defendants.

Case No. CV-03-1862-PHX-FJM

**[PROPOSED] FINAL JUDGMENT OF
PERMANENT INJUNCTION AND
OTHER RELIEF AGAINST
ANDREAS F. ZYBELL**

1 Plaintiff Securities and Exchange Commission ("Commission"),
2 having filed and served upon Defendant Andreas F. Zybell ("Zybell") a
3 Summons and Complaint in this action; Zybell having admitted service
4 upon him of the Summons and Complaint in this action and the jurisdiction
5 of this Court over him and over the subject matter of this action; having
6 been fully advised and informed of his right to a judicial determination of
7 this matter; having waived the entry of findings of fact and conclusions of
8 law as provided by Rule 52 of the Federal Rules of Civil Procedure; having
9 consented to the entry of this Final Judgment Of Permanent Injunction And
10 Other Relief Against Andreas F. Zybell ("Judgment") without admitting or
11 denying the allegations in the Complaint, except as specifically set forth in
12 the Consent Of Defendant Andreas F. Zybell To Entry Of Final Judgment
13 Of Permanent Injunction And Other Relief ("Consent"); no notice of
14 hearing upon the entry of this Judgment being necessary; and this Court
15 being fully advised:

16 I.

17 IT IS ORDERED, ADJUDGED AND DECREED that Zybell and his
18 agents, servants, employees, attorneys, and all persons in active concert or
19 participation with any of them, who receive actual notice of this Judgment
20 by personal service or otherwise, and each of them, are permanently
21 restrained and enjoined from, directly or indirectly, making use of any
22 means or instruments of transportation or communication in interstate
23 commerce or of the mails, to sell, to offer to sell or to offer to buy any
24 security; or carrying or causing any security to be carried through the mails
25 or in interstate commerce, by any means or instruments of transportation,
26 for the purpose of sale or delivery after sale, unless a registration statement
27 is in effect as to such security, in violation of

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1 Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act"), 15
2 U.S.C. §§ 77 (e)(a) and 77(e)(c).

3 II.

4 IT IS ORDERED, ADJUDGED AND DECREED that Zybell and his
5 agents, servants, employees, attorneys, and all persons in active concert or
6 participation with any of them, who receive actual notice of this Judgment
7 by personal service or otherwise, and each of them, are permanently
8 restrained and enjoined from, directly or indirectly, in the offer or sale of
9 any securities, by the use of any means or instruments of transportation or
10 communication in interstate commerce or by the use of the mails:

- 11 A. employing any device, scheme, or artifice to defraud;
- 12 B. obtaining money or property by means of any untrue statement
- 13 of a material fact or omitting to state a material fact necessary
- 14 in order to make the statements made, in light of the
- 15 circumstances under which they were made, not misleading; or
- 16 C. engaging in any transaction, practice, or course of business
- 17 which operates or would operate as a fraud or deceit upon the
- 18 purchaser;

19 in violation of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a).

20 III.

21 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
22 Zybell and his agents, servants, employees, attorneys, and those persons in
23 active concert or participation with them who receive actual notice of this
24 Judgment by personal service or otherwise, are permanently restrained and
25 enjoined from, directly or indirectly, in connection with the purchase or sale
26 of any security, by the use of any means or instrumentality of interstate

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1 commerce, or of the mails, or of any facility of any national securities
2 exchange:

- 3 A. employing any device, scheme, or artifice to defraud;
4 B. making any untrue statement of a material fact or omitting to
5 state a material fact necessary in order to make the statements
6 made, in the light of the circumstances under which they were
7 made, not misleading; or
8 C. engaging in any act, practice, or course of business which
9 operates or would operate as a fraud or deceit upon any person;

10 in violation of Section 10(b) of the Securities Exchange Act of 1934
11 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R.
12 § 240.10b-5.

13 IV.

14 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
15 Zybell and his agents, servants, employees, attorneys, and those persons in
16 active concert or participation with them who receive actual notice of this
17 Judgment by personal service or otherwise, and each of them, are
18 permanently restrained and enjoined from, directly or indirectly, using the
19 mails or means or instrumentalities of interstate commerce:

- 20 A. employing any device, scheme or artifice to defraud; or
21 B. engaging in transactions, practices, or courses of business
22 which operate as a fraud or deceit upon clients or prospective
23 clients;

24 in violation of Sections 206(1) and 206(2) of the Investment Advisers Act of
25 1940 ("Advisers Act"), 15 U.S.C. §§ 80b-6(1) & 80b-6(2).

26 V.

27 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
28 Court retains jurisdiction to determine the appropriateness and amounts of

1 disgorgement, prejudgment interest and a civil penalty. Prejudgment
2 interest shall be calculated pursuant to 28 U.S.C. § 1961 to the date the
3 judgment fixing the amount of disgorgement is entered. Zybell shall not
4 raise as a defense that he is not liable for the payment of such disgorgement
5 or for a civil penalty, if any, because he did not violate one or more of the
6 provisions of the Securities Act, Exchange Act, Exchange Act Rule, and the
7 Advisers Act set forth in this Judgment. Solely for the purposes of
8 determining the appropriateness and amounts of disgorgement and a civil
9 penalty, the facts alleged in the Commission's Complaint are accepted as
10 and deemed true by the Court.

11 VI.

12 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
13 provisions of the Consent filed concurrently with this Judgment are
14 incorporated herein with the same force and effect as if fully set forth herein
15 and that Zybell shall comply with his Consent.

16 VII.

17 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that
18 during the pendency of this action, Zybell shall remain subject to the
19 discovery provisions of the Federal Rules of Civil Procedure which apply to
20 parties, and, in addition, that Zybell agrees and undertakes, without service
21 of a subpoena, to appear for its deposition or to testify as a witness at any
22 trial of this action or at any related proceeding. None of the foregoing shall
23 be deemed to constitute a waiver of Zybell's Fifth Amendment privilege
24 against self-incrimination. Failure to comply will subject Zybell to the
25 remedies and sanctions set forth in Rule 37 of the Federal Rules of Civil
26 Procedure and all other available remedies.

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Exhibit 1

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VIII.

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2 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the
3 freeze placed on all monies and assets in the brokerage account of defendant
4 Millennium Capital Hedge Fund, L.P. set forth below, pursuant to the Court's
5 Temporary Restraining Order, and Temporary Order Freezing Assets, filed
6 September 25, 2003, shall remain in full force and effect until further order of this
7 Court. The brokerage account is as follows: Account Number 5074-6700, at
8 Charles Schwab & Co., Inc. in the name of Millennium Capital Hedge Fund, L.P.

IX.

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10 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that.
11 this Court shall retain jurisdiction over this action for all purposes,
12 including implementing and carrying out the terms of this Judgment and all
13 other orders which may be entered herein, to resolve the Commission's
14 pending claims against Zybell for disgorgement together with prejudgment
15 interest and for civil penalties, and to entertain any suitable application or
16 motion for additional relief within the jurisdiction of this Court.

X.

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

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22 DATED this 18 day of Nov, 2003.

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HON. FREDERICK J. MARTONE
UNITED STATES DISTRICT JUDGE