

5/12/2003 5:29 FROM: Dave Lenny, Esq. TO: 1-626-244-3926 PAGE 2 OF 013

1 BERNARD J. BARRETT, State Bar No. 165869
2 LOUIS V. TRAEGER, State Bar No. 038714
3 MYRNA D. MORGANSTERN, State Bar No. 72011
4 COMMODITY FUTURES TRADING COMMISSION
10900 Wilshire Blvd., Suite 400
5 Los Angeles, CA 90024
Telephone: (310) 443-4700
6 Facsimile: (310) 443-4745

FILED
CLERK, U.S. DISTRICT COURT
JUL - 1 2003
CENTRAL DISTRICT OF CALIFORNIA
DEPU. ✓

Priority
Send
Enter
Closed
JS-5/JS-6
JS-2/JS-3
Scan Only

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ORIGINAL

7
8
9
10
11
12 COMMODITY FUTURES TRADING) Case No. 01-06926 JFW (RZx)
13 COMMISSION,)
14 Plaintiff,)
15 vs.) ~~PROPOSED~~ CONSENT ORDER OF
16 ACRO INFORMATION SERVICE,) PERMANENT INJUNCTION
INC., a California Corporation,) AND OTHER EQUITABLE RELIEF
17 PAKCO HOLDINGS LIMITED, a) RE DEFENDANTS
Nevada Corporation, Dr.) DR. FLORENTIUS CHAN
18 FLORENTIUS CHAN, SANDY H.) AND SANDY H. CHAN
19 CHAN and ANDREW TAI WAI a/k/a)
ANDREW HONGCHOW WAI,)
20 Defendants)
21)
22)

THIS CONSTITUTES NOTICE OF ENTRY
AS REQUIRED BY FRCP, RULE 77(d).

23
24 On August 9, 2001, Plaintiff Commodity Futures Trading Commission (the
25 "Commission") filed a complaint against Dr. Florentius Chan and Sandy H. Chan
26 ("the Chan Defendants") and others seeking injunctive and other equitable relief,
27 as well as the imposition of civil penalties, for violations of the Commodity
28 Exchange Act, as amended (the "Act"), 7 U.S.C. §§ 1 et seq. (1994).

ENTERED
CLERK, U.S. DISTRICT COURT
JUL 2 - 2003
CENTRAL DISTRICT OF CALIFORNIA

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I

CONSENTS AND AGREEMENTS

To effect settlement of the matters alleged in the Complaint against the Chan defendants without a trial on the merits or any further judicial proceedings, the Chan Defendants:

1. Without admitting or denying the Findings and Conclusions contained herein, consent to the entry of this Consent Order of Permanent Injunction and Other Equitable Relief (the "Order").

2. Affirm that they have agreed to this Order voluntarily, and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein.

3. Acknowledge service of the Summons and Complaint.

4. Admit jurisdiction of this Court over them and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001).

5. Admit that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2001).

6. Waive:

a. all claims which they may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (1994) and 28 U.S.C. § 2412 (1994), as amended by Pub. L. No. 104-121, §§ 231-32, 110 Stat. 862-63, and Part 148 of the Regulations, 17 C.F.R. § 148.1, et seq. (2001), relating to, or arising from, this action;

b. any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing injunctive and any other equitable relief,

c. all rights of appeal from this Order, and

1 d. the entry of Findings and Conclusions in this action pursuant to
2 Fed. R. Civ. P. 52, except as provided in Part II. below.

3 7. Consent to the continued jurisdiction of this Court for the purpose of
4 enforcing the terms and conditions of this Order and for any other purposes
5 relevant to this case.

6 II.

7 FINDINGS AND CONCLUSIONS

8 The Court makes the following Findings and Conclusions:

9 8. From at least December 21, 2000, and continuing to May 22, 2001,
10 the Chan Defendants violated Section 4(a) of the Commodity Exchange Act, 7
11 U.S.C. § 6(a) (2001).

12 9. From at least December 21, 2000, and continuing to May 22, 2002,
13 Dr. Chan violated Section 4b(a)(i) and (iii) of the Act, 7 U.S.C. § 6b(a)(i) and (iii)
14 (2001).

15 10. The Chan Defendants have consented to the entry of this Consent
16 Order of Permanent Injunction and Other Equitable Relief, which Consent is filed
17 concurrently herewith.
18

19 III.

20 ORDER FOR PERMANENT INJUNCTION

21 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

22 11. The Chan Defendants and any person insofar as he or she is acting in
23 the capacity of officer, agent, servant, employee, or attorney of the Chan Defendants,
24 and any person insofar as he or she is acting in active concert or participation with the
25 Chan Defendants who receives actual notice of this Order by personal service or
26 otherwise, are permanently enjoined from directly or indirectly violating, or aiding
27 and abetting any other person in violating, Section 4(a) of the Act, 7 U.S.C. §
28 6(a)(2001) by offering to enter into, entering into, executing, confirming the

1 execution of, or conducting business for the purpose of soliciting, accepting any
2 order for, or otherwise dealing in any transaction in, or in connection with, a
3 contract for the purchase or sale of a commodity for future delivery, when:

4 (A) such transactions have not been conducted on or subject to the rules of a
5 board of trade which has been designated or registered by the Commission as a
6 contract market or derivatives transaction execution facility for such commodity;
7 and

8 (B) such contracts have not been executed or consummated by or through a
9 member of a contract market.

10 12. Dr. Chan and any person insofar as he or she is acting in the capacity
11 of officer, agent, servant, employee, or attorney of Dr. Chan, and any person
12 insofar as he or she is acting in active concert or participation with Dr. Chan who
13 receives actual notice of this Order by personal service or otherwise, are
14 permanently enjoined from directly or indirectly:

15 A. In or in connection with any order to make, or the making of, any
16 contract of sale of any commodity for future delivery, made, or to be made, for or on
17 behalf of any other person if such contract for future delivery is or may be used for
18 (A) hedging any transaction in interstate commerce in such commodity or the
19 products or byproducts thereof, or (B) determining the price basis of any transaction
20 in interstate commerce in such commodity, or (C) delivering any such commodity
21 sold, shipped, or received in interstate commerce for the fulfillment thereof:

22 (i) Cheating or defrauding or attempting to cheat or defraud such other
23 person, in violation of Section 4b(a)(i) of the Act, 7 U.S.C. § 6b(a)(i)
24 (2001);

25 (ii) Willfully deceiving or attempting to deceive such other person by
26 any means whatsoever in regard to any such order or contract or the
27 disposition or execution of any such order or contract, or in regard to
28 any act of agency performed with respect to such order or contract for

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

such person, in violation of Section 4b(a)(iii) of the Act, 7 U.S.C. § 6b(a)(iii) (2001).

13. The Chan Defendants and any person insofar as he or she is acting in the capacity of officer, agent, servant, employee, or attorney of the Chan Defendants, and any person insofar as he or she is acting in active concert or participation with the Chan Defendants who receives actual notice of such order by personal service or otherwise, are permanently enjoined from directly or indirectly:

- A. Trading on or subject to the rules of any registered entity as defined by the Act and any other entity subject to the jurisdiction of the Commission.
- B. Engaging in, controlling, or directing the trading of any futures or options account for or on behalf of any other person or entity, whether by power of attorney or otherwise;
- C. Soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity futures or option on futures ("commodity interest") contract, placing orders, giving advice or price quotations or other information in connection with the purchase or sale of commodity interest contracts for himself or others, introducing customers to any other person engaged in the business of commodity interest trading issuing statements or reports to others concerning commodity interest trading, and otherwise engaging in any business activities relating to commodity interest trading; and
- D. Applying for registration or claiming exemption from registration with the Commission in any capacity, or engaging in any activity requiring registration or exemption from registration, except as provided for in Section 4.14(a)(9) of the Commission's Regulations, 17 C.F.R. § 4.14(a)(9)(2001); or acting as a principal, agent or officer of any person registered, required to be registered, or exempted from

1 registration with the Commission, unless such exemption is pursuant
2 to Section 4.14(a)(9) of the Commission's Regulations, 17 C.F.R. §
3 4.14(a)(9)(2001).

4 IV.

5 **MONETARY RELIEF**

6 IT IS FURTHER ORDERED THAT:

7 14. The Chan Defendants shall pay a civil monetary penalty, for which they
8 will be jointly and severally liable, in the amount of \$225,000, with the payment of
9 \$50,000 due within five days after the date of entry of this order. The remainder of
10 the civil monetary penalty (\$175, 000.00) shall be paid in five installments of
11 \$35,000 beginning one year from the entry of this Order and annually on the same
12 date through 2008. Payments shall be made by electronic funds transfer or by U.S.
13 postal money, order, certified check, bank cashier's check, or bank money order,
14 made payable to the National Futures Association, 200 W. Madison Street,
15 Chicago, Illinois 60606, which shall act as Monitor as described in paragraph 17 of
16 this Order, under cover letter that identifies the Chan Defendants and the name and
17 docket number of the proceeding. The Chan Defendants shall simultaneously
18 transmit a copy of the cover letter and the form of payment to the Director,
19 Division of Enforcement, Commodity Futures Trading Commission, Three
20 Lafayette Center, 1155 21st Street, N.W., Washington, D.C. 20581.

21 15. The funds received by the Monitor from the accounts listed in paragraph
22 20 of section V. below shall be applied to the Chan Defendants' first payment of
23 \$50,000. The balance of the \$50,000 payment shall be made by the Chan
24 Defendants according to the same procedure specified for annual payments in
25 paragraph 14 above. The balance shall be due within five days from the
26 notification of the Chan Defendants by the Monitor or the CFTC of the balance due
27 on the initial payment.

28

1 16. Any failure by the Chan Defendants to carry out any of the terms,
2 conditions or obligations under any paragraph of this Order shall constitute an
3 Event of Default. If any Event of Default occurs, the Commission (or its designee)
4 shall be entitled to:

5 a. an order requiring immediate payment of any unpaid portion of
6 the civil monetary penalty set forth above in paragraph 14 above;

7 and/or

8 b. move the Court for imposition of all other available remedies,
9 including, but not limited to, an order holding the Chan Defendants in
10 contempt for violation of this Order.

11 17. Upon the occurrence of an Event of Default based upon a claim or
12 cause of action that the Chan Defendants failed to make any annual installment
13 payments when due, the Chan Defendants will be barred from asserting any
14 defense, including the expiration of any statute of limitations, waiver, estoppel, or
15 laches, where such defense is based on the alleged failure of the Commission to
16 pursue such claims or causes of action during the pendency of this civil action,
17 during the negotiation of the Chan Defendants' Consent to this Order or while this
18 Order remains in effect. The only issue that the Chan Defendants may raise in
19 defense is whether they have made the annual installment payment as required by
20 this Order. Any motion by the Commission for entry of an order pursuant to this
21 paragraph requiring less than the full amount of the civil monetary penalty set
22 forth in paragraph 14 above, or any acceptance by the Commission of partial
23 payment of the annual installment payments made by the Chan Defendants, shall
24 not be deemed a waiver of the Commission's right to require the Chan Defendants
25 to make further payments pursuant to this Order, or, in the event of a further Event
26 of Default, a waiver of the Commission's right to require immediate payment of
27 the entire remaining balance or any unpaid portion of the civil monetary penalty
28 set forth in paragraph 14 above.

1 18. Based upon the Chan Defendants' representations in their Financial
2 Disclosure Statement and other evidence provided by the Chan Defendants to the
3 Commission regarding their financial condition, the Court is not ordering payment of
4 a civil monetary penalty other than as required by paragraph 14 above. This
5 determination is contingent upon the accuracy and completeness of the Chan
6 Defendants' Financial Disclosure Statement, other evidence provided by the Chan
7 Defendants regarding their financial condition, and other information obtained by the
8 Commission. If at any time following the entry of this Order, the Commission
9 obtains information indicating that the Chan Defendants' representations to the
10 Commission concerning their financial condition or accounting were fraudulent,
11 misleading, inaccurate or incomplete in any material respect as of the time such
12 representations were made, the Commission may move this Court for the immediate
13 entry against the Chan Defendants of a judgment for \$300,000, for which amount the
14 Chan Defendants will be jointly and severally liable pursuant to the Court's Order.
15 In connection with any such motion, the only issues shall be whether the financial
16 information provided by the Chan Defendants was fraudulent, misleading, inaccurate
17 or incomplete in any material respect as of the time such representations were made.
18 In its motion, the Commission may move this Court to consider all available
19 remedies, including, but not limited to, ordering the Chan Defendants to pay funds or
20 transfer assets or directing the forfeiture of any assets, and the Commission may also
21 request additional discovery. The Chan Defendants may not, by way of defense to
22 such motion, challenge the validity of their Consent or this Order, or contest any of
23 the Findings or Conclusions set forth in this Order, assert that payment of a civil
24 monetary penalty should not be ordered, or contest the amount of the civil monetary
25 penalty to be paid. If the Commission moves for, and the Court orders, payment of
26 less than the full amount of the civil monetary penalty, such motion will not be
27 deemed a waiver of the Commission's right to require the Chan Defendants to make
28 further payment pursuant to the payment plan set forth above.

1 19. The National Futures Association shall be designated as Monitor for
2 the period beginning with the date of entry of this Order and continuing until the
3 disposition of the entire amount of the civil monetary penalty as required by this
4 Order in accordance with the following procedure: The civil monetary penalty shall
5 be held by the Monitor in an escrow account. In the event that an order of restitution
6 or other order requiring payment by the Chan Defendants is entered in a criminal
7 action against the Chan Defendants based on facts arising out of the pending
8 litigation, the entire amount of the funds in the escrow account shall be applied to the
9 restitution obligation of the Chan Defendants pursuant to the order of the Court. In
10 the event that no criminal action is taken against the Chan Defendants by August 14,
11 2006, the entire amount of the funds then in the escrow account shall be paid to the
12 U.S. Treasury as a civil monetary penalty, and all subsequent payments shall be made
13 to the U.S. Treasury.

14 V.

15 **RELEASE OF FUNDS BY FINANCIAL INSTITUTIONS**

16 IT IS FURTHER ORDERED THAT:

17 20. Upon instruction by the Monitor for transfer of funds from the following
18 accounts:

- 19 a. Charles Schwab Account #2203-9683
- 20 b. Bank of America Account # 24269-31647
- 21 c. Bank of America Account # 24268-00168
- 22 d. Bank of America Account # 06514-03369
- 23 e. Bank of America Account # 4961808826
- 24 f. Eastern International Bank Account # 01-80044018
- 25 g. East West Bank Account # 80800352

26 Charles Schwab, Bank of America, Eastern International Bank, and East West
27 Bank will immediately transfer to the Monitor all remaining funds and other assets

28

1 in the listed accounts, provide an accounting of funds in these accounts, and close
2 these accounts if requested to do so by the Monitor.

3 21. Upon instruction by the Chan Defendants, Charles Schwab, Bank of
4 America, Eastern International Bank, and East West Bank will immediately
5 transfer to the Chan Defendants all remaining funds in the following accounts and
6 safety deposit box:

- 7 a. East West Bank Account #01305077
- 8 b. East West Bank Account #13050711
- 9 c. East West Bank Account #10667186
- 10 d. East West Bank Account #810000010
- 11 e. East West Bank Safety Deposit Box (Sandy Chan),
12 Montebello Branch, #525
- 13 f. Charles Schwab Account #1051-9601
- 14 g. Charles Schwab Account #2203-4272

15 VI.

16 GENERAL PROVISIONS

17 IT IS FURTHER ORDERED THAT:

18 22. Notices: All notices required by this Order shall be sent by certified
19 mail, return receipt requested, as follows:

- 20 Notice to Commission:
- 21 Director, Division of Enforcement
- 22 Commodity Futures Trading Commission
- 23 1155 21st St. NW
- 24 Washington, DC 20581
- 25 Notice to Monitor:
- 26 Vice President, Compliance
- 27 National Futures Association
- 28 200 West Madison Street

1 Chicago, IL 60606
 2 Notice to the Chan Defendants :
 3 Dr. Florentius and Sandy H. Chan
 4 1681 Kingspoint Drive
 5 Walnut, CA 91789
 6

7 23. In the event that the Chan Defendants change their residential or
 8 business telephone number(s) and/or address(es) at any time, they shall provide
 9 written notice of the new number(s) and/or address(es) to the Monitor and to the
 10 Commission within ten (10) calendar days thereof.
 11

12 24. This Order incorporates all of the terms and conditions of the
 13 settlement among the parties hereto. Nothing shall serve to amend or modify this
 14 Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all
 15 parties hereto; and (3) approved by order of this Court.
 16

17 23. 25. This Order shall inure to the benefit of and be binding upon the
 18 successors, assigns, heirs, beneficiaries, and administrators of the parties hereto.
 19

20 26. If any provision of this Order or the application of any provisions or
 21 circumstances is held invalid, the remainder of this Order and the application of the
 22 provision to any other person or circumstance shall not be affected by the holding.
 23

24 27. This Court shall retain jurisdiction of this cause to assure compliance
 25 with this and for all other purposes related to this action.
 26

27 28. Upon being served with a copy of this Order after entry by the Court,
 28 the Chan Defendants shall sign an acknowledgement of such service and serve such

1 acknowledgement on the attorneys of record for the Commission within seven (7)
2 days.

3
4
5 DATED: July 1, 2003

John F. Walter
Hon. John F. Walter
United States District Judge

6
7
8
9 Consented to and
10 Approved for Entry by:

11 Dr. Florentius Chan
12 Dr. Florentius Chan

Sandy H. Chan
Sandy H. Chan

13
14 Dated: 5/12/03

Dated: 5/12/03

15
16
17 Myrna D. Morganstern
18 Myrna D. Morganstern
19 Attorney for Plaintiff
20 Commodity Futures
21 Trading Commission

Dated: 5/13/03

22 APPROVED AS TO FORM AND CONTENT:

23 _____ Dated: _____
24 Dave Lenny, Esq.
25 Rosen & Associates
26 300 South Grand Avenue, 27th floor
27 Los Angeles, California 90071
28 Attorneys for Dr. Florentius Chan and Sandy H. Chan