

ORIGINAL

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

FILED  
JUN 29 2005  
RICHARD W. WIEKING  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
JUN 23 11:10:59

U.S. COMMODITY FUTURES TRADING )  
COMMISSION and THE COMMISSIONER )  
OF CORPORATIONS OF THE STATE OF )  
CALIFORNIA, )

Case No.:

05 2641 SW

Plaintiffs,

FILED UNDER SEAL

vs.

SEALED  
BY COURT ORDER

[Proposed] Ex Parte Statutory Restraining  
Order; Order Permitting Expedited Discovery,  
and Other Equitable Relief

NATIONAL INVESTMENT )  
CONSULTANTS, INC., a California )  
corporation, SOUTH CHINA )  
INVESTMENTS, INC., a California )  
corporation, )  
PACIFIC BEST GROUP LTD, a.k.a. )  
PACIFIC BEST COMPANY LTD, a British )  
Virgin Islands Corporation, YI KERRY XU, )  
an individual, RUN PING ZHOU a.k.a )  
FLORA ZHOU, an individual, and WEI M. )  
TSE a.k.a. RAYMOND TSE, an individual, )  
Defendants, )

and

THERESA C. WONG, an individual, )  
Relief Defendant. )

This matter came before this Court for hearing on June 29, 2005 on the Motion without  
notice of Plaintiffs Commodity Futures Trading Commission and the Commissioner of  
Corporations of the State of California for an *ex parte*: (1) Statutory Restraining Order; (2) Order  
Permitting Immediate Expedited Discovery; and (3) Order to Show Cause re: Preliminary  
Injunction (the "Application"). The Court, having considered the Plaintiffs' Complaint, Motion,  
Memorandum of Points and Authorities, Exhibits, other materials, all other evidence presented by  
Plaintiffs filed herein, and having heard the arguments of Plaintiffs' counsel, finds that:



1 of the term in Federal Rule of Civil Procedure 34(a), and includes, but is not limited to, writings,  
2 drawings, graphs, charts, photographs, audio and video recordings, computer records, and other  
3 data compilations from which information can be obtained and translated, if necessary, through  
4 detection devices into reasonably usable form. A draft or non-identical copy is a separate  
5 document within the meaning of the term.

6  
7 9. "Assets" means any legal or equitable interest in, right to, or claim to, any real or  
8 personal property, including but not limited to: chattels, goods, instruments, equipment, fixtures,  
9 general intangibles, effects, leaseholds, mail or other deliveries, inventory, checks, notes,  
10 accounts including bank accounts and accounts at financial institutions, credits, receivables, lines  
11 of credit, contracts including spot and futures contracts, insurance policies, and all cash,  
12 wherever located.

13  
14 10. "Defendants" means National Investment Consultants, Inc. ("NICI"), South China  
15 Investments, Inc. ("South China"), Pacific Best Group Ltd., a.k.a. Pacifica Best Company Ltd.  
16 ("Pacific Best"), Yi Kerry Xu ("Xu"), Run Ping Zhou a.k.a. Flora Zhou ("Zhou"), and Wei M.  
17 Tse a.k.a. Raymond Tse ("Tse"), and any person insofar as he or she is acting in the capacity of  
18 an officer, agent, servant, employee, or attorney of Defendants, and any person who receives  
19 actual notice of this Order by personal service or otherwise insofar as he or she is acting in  
20 concert or participation with the Defendants.

21  
22 **RELIEF GRANTED**

23 **I.**

24 **ORDER AGAINST TRANSFER, DISSIPATION, AND DISPOSAL OF ASSETS**

25 **IT IS HEREBY ORDERED** that

26  
27 11. Defendants are restrained and enjoined from directly or indirectly transferring,  
28 selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning, concealing,

1 dissipating, converting, withdrawing, or otherwise disposing of any assets, including those held  
2 in the name of any of the Defendants, wherever located, including assets held outside the United  
3 States, except as provided in Paragraph III of this Order, or as otherwise ordered by the Court.  
4 The assets affected by this paragraph shall include both existing assets and assets acquired after the  
5 effective date of this Order.  
6

7 12. Defendants, and their agents, servants, employees, attorneys, and persons in active  
8 concert or participation with them who receive actual notice of this Order by personal service  
9 except as otherwise ordered by this Court, are restrained and enjoined from directly or indirectly  
10 transferring, selling, alienating, liquidating, encumbering, pledging, leasing, loaning, assigning,  
11 concealing, dissipating, converting, withdrawing, or otherwise disposing of any assets, including  
12 those held in the name of any of the Defendants, wherever located, including assets held outside  
13 the United States, except as provided in Paragraph III of this Order, or as otherwise ordered by  
14 the Court. The assets affected by this paragraph shall include both existing assets and assets  
15 acquired after the effective date of this Order.  
16

17 13. Defendants are restrained and enjoined from directly or indirectly opening or  
18 causing to be opened any safe deposit boxes titled in the name or subject to access by the  
19 Defendants.  
20

## 21 II.

### 22 *DIRECTIVES TO FINANCIAL INSTITUTIONS AND OTHERS*

23 **IT IS FURTHER ORDERED**, pending further Order of this Court, that any financial or  
24 brokerage institution, business entity, or person that holds, controls, or maintains custody of any  
25 account or asset of the Defendants, or has held, controlled, or maintained custody of any account  
26 or asset of the Defendants at any time since July 1, 2000, shall:  
27

28 14. Prohibit Defendants and all other persons from withdrawing, removing, assigning,

1 transferring, pledging, encumbering, disbursing, dissipating, converting, selling or otherwise  
2 disposing of any such asset except as directed by further order of the Court;

3 15. Deny Defendants and all other persons access to any safe deposit box that is: (a)  
4 titled in the name of the Defendants either individually or jointly; or (b) otherwise subject to  
5 access by the Defendants;

6  
7 16. Provide counsel for the Commission, within five (5) business days of receiving a  
8 copy of this Order, a statement setting forth: (a) the identification number of each and every such  
9 account or asset titled in the name, individually or jointly, of the Defendants, or held on behalf  
10 of, or for the benefit, of the Defendants; (b) the balance of each such account, or a description of  
11 the nature and value of such asset as of the close of business on the day on which this Order is  
12 served, and, if the account or other asset has been closed or removed, the date closed or removed,  
13 the total funds removed in order to close the account, and the name of the person or entity to  
14 whom such account or other asset was remitted; and (c) the identification of any safe deposit box  
15 that is either titled in the name, individually or jointly, of the Defendants or is otherwise subject  
16 to access by the Defendants; and  
17

18 17. Upon request by the Commission, promptly provide the Commission with copies  
19 of all records or other documentation pertaining to such account or asset, including, but not  
20 limited to, originals or copies of account applications, account statements, signature cards,  
21 checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit  
22 instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs.  
23

### 24 III

## 25 ACCOUNTING AND TRANSFER OF FUNDS AND DOCUMENTS

26 **IT IS FURTHER ORDERED** that within five (5) business days following the service of  
27 this Order, Defendants shall:  
28

1 18. Provide the Commission with a full accounting of all funds, documents, and  
2 assets, including those outside of the United States, that are held by them, for their benefit, or  
3 under their direct or indirect control, whether jointly or singly;

4 ~~19. Transfer to the territory of the United States all funds, documents, and assets~~  
5 ~~located in foreign countries which are held by them, for their benefit, or under their direct or~~  
6 ~~indirect control, whether jointly or singly; and~~

7  
8 20. Provide the Commission access to all records of the defendants held by financial  
9 institutions located outside the territorial United States by signing the Consent to Release of  
10 Financial Records attached to this Order.

11 **IV**

12 ***MAINTENANCE OF BUSINESS RECORDS***

13  
14 **IT IS FURTHER ORDERED that:**

15 21. Defendants and all persons or entities who receive notice of this Order by personal  
16 service or otherwise, are restrained and enjoined from directly or indirectly destroying,  
17 mutilating, erasing, altering, concealing or disposing of, in any manner, directly or indirectly, any  
18 documents that relate to the business practices or business or personal finances of the  
19 Defendants.  
20

21 **V.**

22 **INSPECTION AND COPYING OF BOOKS AND RECORDS**

23 **IT IS FURTHER ORDERED that:**

24 22. Representatives of the Commission be immediately allowed to inspect the books,  
25 records, and other documents of the Defendants and their agents including, but not limited to,  
26 electronically stored data, tape recordings, and computer discs, wherever they may be situated  
27 and whether they are on the person of the Defendants or others, and to copy said documents, data  
28

1 and records, either on or off the premises where they may be situated; and

2 23. Defendants and their agents, servants, employees, attorneys, and persons in active  
3 concert or participation with them who receive actual notice of this Order by personal service or  
4 otherwise, including facsimile transmission, shall cooperate fully with the Commission to locate  
5 and provide to representatives of the Commission all books and records of the Defendants,  
6 wherever such books and records may be situated.  
7

8 VI.

9 BOND NOT REQUIRED OF PLAINTIFF

10 IT IS FURTHER ORDERED that:

11 24. Plaintiff Commission is an agency of the United States of America and, accordingly,  
12 no bond need be posted by the Commission.  
13

14 VII

15 ORDER TO SHOW CAUSE

16 IT IS FURTHER ORDERED that:

17 25. Defendants shall appear before this Court on July 8, 2005 at 9:00am to show cause, if  
18 there be any, why an Order for Preliminary Injunction should not be granted to prohibit further  
19 violations of the Act and why the other relief requested should not be granted pending trial on the  
20 merits of this action.  
21

22 26. Should any party wish to file a memorandum of law or other papers in opposition  
23 to Plaintiff's Motion for a Preliminary Injunction, all papers shall be filed on or before

24 July 5, 2005 at noon and served no later than noon on July 5, 2005.

25 Plaintiffs may file a reply by no later than noon on July 6, 2005.  
26 VIII.

27 ORDER PERMITTING EXPEDITED DISCOVERY

28 IT IS FURTHER ORDERED that:

1 27. The prohibition upon discovery before the early meeting of counsel is removed  
2 pursuant to Rule 26(d) of the Federal Rules of Civil Procedure.

3 28. The prohibition upon the immediate commencement of depositions is removed  
4 pursuant to Rule 30(a)(2)(C) of the Federal Rules of Civil Procedure.

5 29. The parties may proceed to take the oral deposition of any person upon three  
6 calendar days actual notice if the notice is served upon the parties personally or by telecopier to  
7 the party's last known business telecopier number.

8 30. The parties may take the deposition of any person for the purpose of discovering  
9 the nature, location, status and extent of assets of the defendants and the location of any  
10 documents reflecting those assets.  
11

12 IX.

13 SERVICE OF ORDER

14 IT IS FURTHER ORDERED that:

15 33. Copies of this Order may be served by any means, including facsimile  
16 transmission, upon any entity or person that may have possession, custody, or control of any  
17 documents or assets of the Defendant or that may be subject to any provision of this Order, and,  
18 additionally, that representatives of the Commission, are specially appointed by the Court to  
19 effect service. *Plaintiffs shall serve Defendants by 3:00pm on  
20 June 30, 2005 and shall inform the Court by 5:00pm on June 30, 2005  
21 if they are unable to comply with this provision. X.*  
22 *with this provision.*

23 FORCE AND EFFECT

24 IT IS FURTHER ORDERED that this Order shall remain in full force and effect until  
25 further order of this Court, and that this Court retains jurisdiction of this matter for all purposes.  
26  
27  
28

