

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

PHONG NGUYEN AND CHANH NGUYEN,

Defendant.

Civil Action No. 03-863
(JMR/FLN)

PROPOSED FINAL JUDGMENT AS TO
DEFENDANT CHANH NGUYEN

The Securities and Exchange Commission ("Commission") having filed a *Complaint* and Defendant Chanh Nguyen ("Defendant") having consented to the Court's jurisdiction over Defendant and the subject matter of this action; consented to entry of this *Final Judgment*, 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 this *Final Judgment*:

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, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 ("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

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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.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall disgorge \$14,062.50 in profits from transactions in iNTELEFILM securities realized as a result of Defendant's illegal trading as alleged in the *Complaint*, together with prejudgment interest thereon and postjudgment interest as described below. Additional disgorgement of \$6,750 in profits and \$2,181.38 in prejudgment interest from tippee transactions in iNTELEFILM as alleged in the *Complaint* are not included in this Order based on Defendant's demonstrated inability to pay. The above limitation on Defendant's obligation to disgorge the balance of profits realized plus prejudgment thereon is contingent upon the truthfulness, accuracy and completeness of Defendant's Statement of Financial Condition. If at any time following the entry of this *Final Judgment* the Commission obtains information indicating that Defendant's representations to the Commission concerning his assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate, or incomplete in any material respect as of the

time such representations were made, the Commission may, at its sole discretion and without prior notice to Defendant, petition the Court for an order requiring Defendant to pay the unpaid portion of the disgorgement, prejudgment and postjudgment interest thereon, and the maximum civil penalty allowable under the law. In connection with any such petition, the only issue shall be whether the financial information provided by Defendant was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Defendant to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this *Final Judgment*. The Commission may also request additional discovery. Defendant may not, by way of defense to such petition: (1) challenge the validity of this *Final Judgment* or the *Consent*; (2) contest the allegations in the *Complaint* filed by the Commission; (3) assert that payment of disgorgement, prejudgment and postjudgment interest or a civil penalty should not be ordered; (4) contest the amount of disgorgement and prejudgment and postjudgment interest; (5) contest the imposition of the maximum civil penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall deliver into the Registry of this Court, within ten (10) business days of the entry of this *Final Judgment*, a certified check, bank cashier's check or United States postal money order in the amount of \$6,202.23, which shall consist of \$4,687.50

disgorgement plus prejudgment interest thereon in the amount of \$1,514.73, to be placed in an interest bearing account with the Court Registry Investment System ("CRIS"), representing a portion of the disgorgement and prejudgment interest referred to above. Within one hundred eighty-three (183) days of the entry of this *Final Judgment*, Defendant shall deliver into the Registry of this Court, a certified check, bank cashier's check or United States postal money order in the amount of \$6,202.23, which shall consist of \$4,687.50 disgorgement plus prejudgment interest in the amount of \$1,514.73, representing another portion of the disgorgement and prejudgment interest referred to above. Within three hundred sixty-five (365) days of the entry of this *Final Judgment*, Defendant shall deliver into the Registry of this Court a certified check, bank cashier's check or United States postal money order in the amount of \$6,202.24, which shall consist of \$4,687.50 disgorgement plus prejudgment interest in the amount of \$1,514.74, representing the remainder of the disgorgement and prejudgment interest referred to above. At the time Defendant makes each payment on these disgorgement and prejudgment interest obligations, Defendant shall also pay postjudgment interest, calculated pursuant to 28 U.S.C. § 1961, on any amount of disgorgement and prejudgment interest obligations that was not paid within ten (10) business days of the entry of the *Final Judgment*. Defendant shall pay this postjudgment interest by delivering into the Registry of this Court a certified check, bank cashier's check or United States postal money order in the appropriate amount.

Defendant shall simultaneously transmit photocopies of such payments and letters to the Commission's counsel in this action. By making these payments, 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 CRIS. These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be held by the CRIS until further order of the Court. In accordance with 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 (10) percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States. The Commission may propose a plan to distribute the Fund subject to the Court's approval.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant shall pay a civil penalty in the amount of \$14,062.50 pursuant to Section 21A of the Exchange Act [15 U.S.C. §78u-1]. Defendant shall make a payment of \$4,687.50, representing a portion of the penalty amount referred to above, within ten (10) business days after entry of this *Final Judgment* by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission. Defendant shall make an additional payment of \$4,687.50 within one hundred eighty-three (183) days of the entry of this *Final Judgment* by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, representing another portion of the penalty amount referred to above. Defendant shall make a final payment of \$4,687.50 within three hundred sixty-five (365) days of the entry of this *Final Judgment* again by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission,

representing the remainder of the penalty amount referred to above. At the time Defendant makes each payment on this civil penalty obligation, Defendant shall also pay postjudgment interest, calculated pursuant to 28 U.S.C. § 1961, on any amount of civil penalty obligation that was not paid within ten (10) business days of the entry of the *Final Judgment*. Defendant shall pay this postjudgment interest by certified check, bank cashier's check or United States postal money order in the appropriate amount payable to the Securities and Exchange Commission.

These payments 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 letters identifying Chanh Nguyen as a defendant in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this *Final Judgment*. The amount of the penalty assessed is based upon Defendant's representations under oath that he is financially unable to pay any greater penalty. The Court's limiting the penalty to the amount ordered to be paid is contingent upon the truthfulness, accuracy and completeness of Defendant's Statement of Financial Condition. The Commission may at any time following entry of this *Final Judgment* petition the Court for an order as set forth in paragraph II, above.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the *Consent* of Defendant Chanh Nguyen 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.

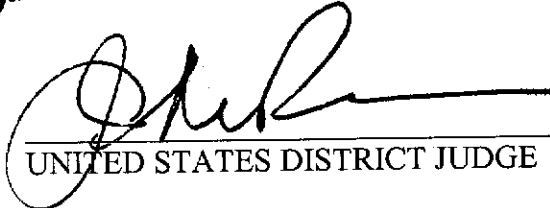
VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter to and until October 31, 2005 for the purposes of enforcing the terms of this *Final Judgment*. JMR
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VII.

There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Clerk is ordered to enter this *Final Judgment* forthwith and without further notice.

Dated this 17th day of September, 2004.


UNITED STATES DISTRICT JUDGE