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ENTERED
CLERK, U.S. DISTRICT COURT
AUG - 9 2007
CENTRAL DISTRICT OF CALIFORNIA
BY DEPUTY

FILED - SOUTHERN DIVISION
CLERK, U.S. DISTRICT COURT
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CENTRAL DISTRICT OF CALIFORNIA
BY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

15 SECURITIES AND EXCHANGE
16 COMMISSION,

17 Plaintiff,

18 vs.

19 TRI ENERGY, INC., et al.

20 Defendants.

Case No. ED CV 05-351 AG(MANx)

~~PROPOSED~~ JUDGMENT AS TO
DEFENDANTS DANIEL J.
MERRIMAN, DJM, LLC,
FINANCIAL MD, INC., AND
FINANCIAL MD AND
ASSOCIATES

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

21 The Securities and Exchange Commission ("Commission"), having filed and
22 served an Amended Complaint on Defendants Daniel J. Merriman, DJM, LLC,
23 Financial MD, Inc., and Financial MD and Associates ("Defendants"); having

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1 entered a general appearance; consented to the Court's jurisdiction over
2 Defendants and the subject matter of this action; consented to entry of this
3 Judgment without admitting or denying the allegations of the Complaint (except as
4 to jurisdiction); waived findings of fact and conclusions of law; and waived any
5 right to appeal from this Judgment:
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8 **I.**

9 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that
10 Defendants and Defendants' agents, servants, employees, and all persons in active
11 concert or participation with them who receive actual notice of this Judgment by
12 personal service or otherwise are permanently restrained and enjoined from
13 violating Sections 5(a) and 5(c) of the Securities Act of 1933 (the "Securities Act")
14 [15 U.S.C. § 77e(a) & 77e(c)] by, directly or indirectly, in the absence of any
15 applicable exemption:
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- 18 (a) Unless a registration statement is in effect as to a security, making use
19 of any means or instruments of transportation or communication in
20 interstate commerce or of the mails to sell such security through the
21 use or medium of any prospectus or otherwise;
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23 (b) Unless a registration statement is in effect as to a security, carrying or
24 causing to be carried through the mails or in interstate commerce, by
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1 any means or instruments of transportation, any such security for the
2 purpose of sale or for delivery after sale; or

- 3 (c) Making use of any means or instruments of transportation or
4 communication in interstate commerce or of the mails to offer to sell
5 or offer to buy through the use or medium of any prospectus or
6 otherwise any security, unless a registration statement has been filed
7 with the Commission as to such security, or while the registration
8 statement is the subject of a refusal order or stop order or (prior to the
9 effective date of the registration statement) any public proceeding or
10 examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

14 **II.**

15 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED

16 that Defendants and Defendants' agents, servants, employees, and all persons in
17 active concert or participation with them who receive actual notice of this

18 Judgment by personal service or otherwise are permanently restrained and enjoined

19 from violating Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)] in the offer

20 or sale of any security by the use of any means or instruments of transportation or

21 communication in interstate commerce or by use of the mails, directly or

22 indirectly:

23 indirectly:

- 24 (a) to employ any device, scheme, or artifice to defraud;

1 (b) to obtain money or property by means of any untrue statement of a
2 material fact or any omission of a material fact necessary in order to make
3 the statements made, in light of the circumstances under which they were
4 made, not misleading; or
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6 (c) to engage in any transaction, practice, or course of business which
7 operates or would operate as a fraud or deceit upon the purchaser.
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9 **III.**

10 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED
11 that Defendants and Defendants' agents, servants, employees, and all persons in
12 active concert or participation with them who receive actual notice of this
13 Judgment by personal service or otherwise are permanently restrained and enjoined
14 from violating, or aiding and abetting violations of, directly or indirectly, Section
15 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §
16 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using
17 any means or instrumentality of interstate commerce, or of the mails, or of any
18 facility of any national securities exchange, in connection with the purchase or sale
19 of any security:
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23 (a) to employ any device, scheme, or artifice to defraud;

24 (b) to make any untrue statement of a material fact or to omit to state a
25 material fact necessary in order to make the statements made, in the
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1 light of the circumstances under which they were made, not
2 misleading; or

3 (c) to engage in any act, practice, or course of business which operates or
4 would operate as a fraud or deceit upon any person.
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6 **IV.**

7 **IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED**

8 that Defendants and Defendants' agents, servants, employees, and all persons in
9 active concert or participation with them who receive actual notice of this
10 Judgment, by personal service or otherwise, and each of them, are permanently
11 enjoined and restrained from, directly or indirectly, any involvement in, or conduct
12 facilitating or relating in any way to, investing or soliciting investment in any
13 program purporting to involve coal or a coal mine operation, an international gold
14 transaction, or an international banking transaction, with or from any participant,
15 officer, director, or investor in Tri Energy Inc., H&J Energy Inc., La Vie D'Argent,
16 Marina Investors Group, Inc., or Global Village Records. This paragraph does not
17 preclude cooperation with the Commission or the receiver in the operation of, or
18 attempts to recover monies related to, any of the entities listed above.
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23 **V.**

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25 **IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND**
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1 DECREED that Defendants are jointly and severally liable for disgorgement of
2 \$101,500, representing monies unlawfully gained as a result of the conduct alleged
3 in the Amended Complaint, together with prejudgment interest thereon in the
4 amount of \$16,371, and a civil penalty in the amount of \$75,000 pursuant to
5 Section 21(d)(3)(B)(iii) of the Exchange Act [15 U.S.C. § 78u(d)(3)(B)(iii)].
6

7 Defendants shall satisfy this obligation by paying \$192,871 pursuant to the terms
8 of the payment schedule set forth in paragraph VI below to the Clerk of this Court,
9 together with a cover letter identifying which Defendant is making the payment
10 and that they are a defendant in this action; setting forth the title and civil action
11 number of this action and the name of this Court; and specifying that payment is
12 made pursuant to this Final Judgment. Defendants shall simultaneously transmit
13 photocopies of such payment and letter to the Commission's counsel in this action.
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15 By making this payment, Defendants relinquish all legal and equitable right, title,
16 and interest in such funds, and no part of the funds shall be returned to Defendants.
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18 The Clerk shall deposit the funds into the Registry Account of this Court or
19 any other type of interest bearing account that is utilized by the Court. These
20 funds, together with any interest and income earned thereon (collectively, the
21 "Fund"), shall be held in the interest bearing account until further order of the
22 Court. In accordance with 28 U.S.C. § 1914, LR 67-2, and the guidelines set by
23 the Director of the Administrative Office of the United States Courts, the Clerk is
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1 directed, without further order of this Court, to deduct from the income earned on
2 the investment in the Fund a fee not to exceed the amount prescribed by the
3 Judicial Conference of the United States.
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5 The Commission may by motion propose a plan to distribute the Fund
6 subject to the Court's approval. Such a plan may provide that Fund shall be
7 distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-
8 Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is
9 made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall
10 be treated as penalties paid to the government for all purposes, including all tax
11 purposes. To preserve the deterrent effect of the civil penalty, Defendants shall
12 not, after offset or reduction of any award of compensatory damages in any
13 Related Investor Action based on Defendants' payment of disgorgement in this
14 action, argue that they are entitled to, nor shall they further benefit by, offset or
15 reduction of such compensatory damages award by the amount of any part of
16 Defendants' payment of a civil penalty in this action ("Penalty Offset"). If the
17 court in any Related Investor Action grants such a Penalty Offset, Defendants
18 shall, within 30 days after entry of a final order granting the Penalty Offset, notify
19 the Commission's counsel in this action and pay the amount of the Penalty Offset
20 to the United States Treasury or to a Fair Fund, as the Commission directs. Such a
21 payment shall not be deemed an additional civil penalty and shall not be deemed to
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1 change the amount of the civil penalty imposed in this Judgment. For purposes of
2 this paragraph, a "Related Investor Action" means a private damages action
3 brought against Defendants by or on behalf of one or more investors based on
4 substantially the same facts as alleged in the Complaint in this action.
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6 **VI.**
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8 Defendants shall pay a composite amount of \$ 192,871 in three installments
9 according to the following schedule: (1) \$100,000 within 10 days of entry of this
10 Final Judgment; (2) \$23,218 within 100 days of entry of this Final Judgment plus
11 post-judgment interest of 5.25% (\$334); (3) \$23,218 within 180 days of entry of
12 this Final Judgment plus post-judgment interest of 5.25% (\$601); \$23,218 within
13 270 days of entry of this Final Judgment plus post-judgment interest of 5.25%
14 (\$902); and a final payment of \$23,217 within 365 days of entry of this Final
15 Judgment plus post-judgment interest of 5.25% (\$1219).
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19 If Defendants fail to make any payment by the date agreed and/or in the
20 amount agreed according to the schedule set forth above, all outstanding payments
21 under this Final Judgment, including post-judgment interest, minus any payments
22 made, shall become due and payable immediately without further application to the
23 Court.
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VII.

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

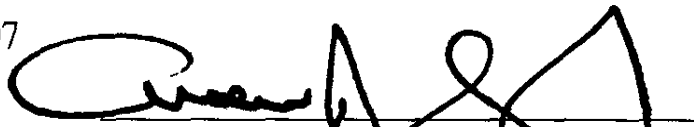
VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over this action for all purposes, including implementing and enforcing the terms of this Judgment and all other orders and decrees which have been or may be entered in this case, and granting such other relief as the Court may deem necessary and just.

IX.

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

Dated: August 8, 2007



HONORABLE ANDREW GUILFORD
UNITED STATES DISTRICT JUDGE