

The Honorable John C. Coughenour

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

vs.

C. PAUL SANDIFUR, JR., THOMAS G.
TURNER, ROBERT A. NESS, THOMAS R.
MASTERS, DAN W. SANDY, DAVID R. SYRE,
and TRILLIUM CORPORATION,

Defendants.

Case No. C05-1631C

~~PROPOSED~~ FINAL JUDGMENT AS TO
DEFENDANT ROBERT A. NESS

The Securities and Exchange Commission having filed an Amended Complaint and Defendant Robert A. Ness (“Ness”) having entered a general appearance; consented to the Court’s jurisdiction over Ness and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the Amended 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 Ness and his agents, servants, employees, those with powers of attorney on Ness’s behalf, and all persons acting in concert or participation with any of them, who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them, are permanently enjoined and restrained from, directly or

1 indirectly, violating Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. §
2 77q(a)] by:

- 3 1. employing any device, scheme, or artifice to defraud;
- 4 2. obtaining money or property by means of untrue statements of material fact or by omitting
5 to state a material fact necessary in order to make the statements made, in light of the
6 circumstances under which they were made, not misleading; or
- 7 3. engaging in any transaction, practice, or course of business which operates or would
8 operate as a fraud or deceit upon the purchaser

9 in the offer or sale of any securities by the use of any means or instrumentality of interstate
10 commerce, or of the mails.

11 II.

12 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Ness and his agents,
13 servants, employees, attorneys-in-fact, and all persons in active concert or participation with any of
14 them, who receive actual notice of this Final Judgment, by personal service or otherwise, and each of
15 them, are permanently enjoined and restrained from, directly or indirectly, violating, or aiding and
16 abetting violations of, Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15
17 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder by:

- 18 1. employing any device, scheme, or artifice to defraud;
- 19 2. making any untrue statement of a material fact or omitting to state a material fact
20 necessary in order to make the statements made, in the light of the circumstances
21 under which they were made, not misleading; or
- 22 3. engaging in any act, practice, or course of business which operates or would operate as
23 a fraud or deceit upon any person,

24 in connection with the purchase or sale of the securities of any issuer, by the use of any means or
25 instrumentality of interstate commerce, or of the mails, or of any facility of any national securities
26 exchange.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Ness and his agents, servants, employees and attorneys-in-fact, and all persons in active concert or participation with any of them, who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them, are permanently enjoined and restrained from aiding and abetting any violation of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 12b-20, 13a-1 and 13a-13 promulgated thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13] by knowingly providing substantial assistance to an issuer which has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or Section 15(d) of the Exchange Act [15 U.S.C. § 78o] in failing to file with the Commission such accurate and complete information, reports, and documents as are required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and the Rules thereunder, including but not limited to, annual reports on Form 10-K [17 C.F.R. § 249.310] as prescribed by Exchange Act Rule 13a-1 [17 C.F.R. § 240.13a-1], quarterly reports on Form 10-Q [17 C.F.R. § 249.308a] as prescribed by Exchange Act Rule 13a-13 [17 C.F.R. § 240.13a-13], such information and documents to contain, in addition to such information as is expressly required to be included in a statement or report to the Commission, such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading, as prescribed by Rule 12b-20 of the Exchange Act [17 C.F.R. § 240.12b-20].

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Ness and his agents, servants, employees, attorneys-in-fact, and all persons in active concert or participation with any of them, who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them, are permanently enjoined and restrained from, directly or indirectly, violating Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)] by knowingly circumventing or failing to implement a system of internal accounting controls or knowingly falsifying any book, record, or account described in Rule 13b2-1 of the Exchange Act [17 C.F.R. § 240.13b2-1].

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Ness and his agents, servants, employees and attorneys-in-fact, and all persons in active concert or participation with any of them, who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them, are permanently enjoined and restrained from aiding and abetting any violation of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)] by causing any issuer which has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or Section 15(d) of the Exchange Act [15 U.S.C. § 78o] to fail to make or keep books, records or accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the issuer's assets.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Ness and his agents, servants, employees and attorneys-in-fact, and all persons in active concert or participation with any of them, who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them, are permanently enjoined and restrained from aiding and abetting any violation of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] by causing any issuer which has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78l] or Section 15(d) of the Exchange Act [15 U.S.C. § 78o] to fail to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that:

A. transactions are executed in accordance with management's general or specific authorization;

B. transactions are recorded as necessary (i) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (ii) to maintain accountability for assets;

C. access to assets is permitted only in accordance with management's general or specific authorization; and

D. the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Ness and his agents, servants, employees, attorneys-in-fact, and all persons in active concert or participation with any of them, who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them, are permanently enjoined and restrained from violating Rule 13b2-2 of the Exchange Act [17 C.F.R. §240.13b2-2] by making or causing to be made a materially false or misleading statement, or by omitting to state or causing another person to omit to state, any material fact necessary in order to make statements made, in light of the circumstances under which such statements were made, not misleading, to an accountant in connection with (A) any audit or examination of the financial statements of an issuer required to be made pursuant to the federal securities laws or (B) the preparation or filing of any document or report required to be filed with the Commission pursuant to the federal securities laws or otherwise.

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Ness and his agents, servants, employees, attorneys-in-fact, and all persons in active concert or participation with any of them, who receive actual notice of this Final Judgment, by personal service or otherwise, and each of them, are permanently enjoined and restrained from, directly or indirectly, violating Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rule 13a-14 of the Exchange Act [17 C.F.R. § 240.13a-14] by falsely certifying annual and quarterly reports filed with the Commission under Section 13(a) of the Exchange Act.

IX.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)], Ness is prohibited, for a period of five years following the date of entry of this Final Judgment, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act [15 U.S.C. § 78I] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

X.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that, based on Ness's sworn representations in his Statement of Financial Condition dated May 26, 2006, and other documents and information submitted to the Commission, no civil penalty shall be imposed on Ness. The determination not to impose a civil penalty is contingent upon the accuracy and completeness of Ness's Statement of Financial Condition. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Ness'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 Ness, petition the Court for an order requiring Ness to pay 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 Ness 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 Ness 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. Ness may not, by way of defense to such petition: (1) challenge the validity of the Consent or this Final Judgment; (2) contest the allegations in the Amended Complaint filed by the Commission; (3) assert that payment of a civil penalty should not be ordered; (4) contest the imposition of the maximum civil penalty allowable under the law; or (5) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

XI.

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

XII.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

XIII.

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.

PRESENTED BY:

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Dated this 2nd day of February, 2007



The Honorable John C. Coughenour
United States District Judge