

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES SECURITIES)	
AND EXCHANGE COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	No. 12 C 07125
)	
NIKOLAI S. BATTOO, BC CAPITAL)	Judge Edmond E. Chang
GROUP S.A. (PANAMA), BC CAPITAL)	
GROUP LIMITED (HONG KONG), and)	
TRACY LEE SUNDERLAGE,)	
)	
Defendants.)	

ORDER

This matter having come before the Court on the Plaintiff Securities and Exchange Commission’s (SEC) Motion for Entry of a Final Judgment of Permanent Injunction and Other Relief by Default Against Defendants Nikolai S. Battoo, BC Capital Group S.A. (Panama), and BC Capital Group Limited (Hong Kong) (collectively, the Battoo Defendants), and the Court having considered this Motion, the brief filed in support of this motion, the Securities and Exchange Commission’s Complaint, and the evidence, papers and arguments presented therein:

I.

IT IS HEREBY ORDERED that the Motion by Plaintiff Securities and Exchange Commission is GRANTED against the Battoo Defendants.

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Battoo Defendants, and each of their 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 (the 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 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 the 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.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Battoo Defendants and their 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 Section 17(a) of the Securities Act of 1933 (the “Securities

Act”) [15 U.S.C. § 77q(a)] by, in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to obtain money or property by means of any untrue statement of a material fact or any omission of 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 transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Battoo Defendants and their agents, servants, employees, attorneys, and all persons in active concert or participation with him who receive actual notice of this Final Judgment by personal service or otherwise are permanently restrained and enjoined from violating, directly or indirectly, Section 15(a) of the Exchange Act [15 U.S.C. § 78o(a)], by, while engaging in business as a broker or dealer, making use of the mails or any instrumentality of interstate commerce to effect any transactions in, or to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers’ acceptances, or commercial bills) unless registered as a broker dealer in accordance with Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)] or associated with a broker or dealer that is registered with the

Commission in accordance with Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)].

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Battoo Defendants and their agents, servants, employees, attorneys, 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, be and hereby are enjoined from violating Section 206(4) of the Advisers Act [15 U.S.C. §80b-6(4)] and Rule 206(4)-8 thereunder [17 C.F.R. § 275.206(4)-8] while using the mails or any means or instrumentality of interstate commerce and acting as an investment adviser within the meaning of Section 202(11) of the Advisers Act [15 U.S.C. § 80b-2(11)], by directly or indirectly:

- (a) engaging in any act, practice, or course of business which is fraudulent, deceptive or manipulative;
- (b) making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading to any investor or prospective investor in a pooled investment vehicle;
or
- (c) otherwise engaging in an act, practice, or course of business which is fraudulent, deceptive or manipulative with respect to any investor or prospective investor in a pooled investment vehicle.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Battoo Defendants shall pay disgorgement of \$272,600,000 representing profits gained as a result of the conduct alleged in the Complaint, together with

prejudgment interest thereon in the amount of \$17,529,196.86, for a total of \$290,129,196.86. The Battoo Defendants shall also pay a civil penalty in the amount of \$68,000,000 pursuant to Section 20(d) of the Securities Act, Section 21(d)(3) of the Exchange Act, and Section 209(e) of the Advisers Act. The civil penalty is a third-tier penalty (plainly, based on the record, the requirements for third-tier treatment (fraud and substantial losses) are met). It represents around one-quarter of the \$272,600,00 disgorgement amount (before interest). This is an appropriate penalty because of the sheer enormity of the fraud, both in dollar figure and number of investors. There must be a substantial penalty both to punish the Battoo Defendants, and to deter others from committing fraud on this scale. The Battoo Defendants are jointly and severally liable for disgorgement, prejudgment interest and the civil penalty imposed in this paragraph. The Battoo Defendants shall satisfy this obligation by paying \$290,129,196.86 plus the civil penalty of \$68,000,000 to the Securities and Exchange Commission within fourteen days after entry of this Final Judgment.

VII.

The Battoo Defendants may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. The Battoo Defendants may also pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch

6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; the names of the Battoo Defendants in this action; and specifying that payment is made pursuant to this Final Judgment.

The Battoo Defendants shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, the Battoo Defendants relinquish all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to the Battoo Defendants.

The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 14 days following entry of this Final Judgment. The Battoo Defendants shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall hold the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court.

The Commission may propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the Commission staff determines that the Fund will not be

distributed, the Commission shall send the funds paid pursuant to this Final Judgment to the United States Treasury.

Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, the Battoo Defendants shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on the Battoo Defendants' payment of disgorgement in this action, argue that any or all of them are entitled to, nor shall they further benefit by, offset or reduction of such compensatory damages award by the amount of any part of their payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, the Battoo Defendants shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against any of the Battoo Defendants by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

VIII.

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.

IX.

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.

ENTERED:

s/Edmond E. Chang
Honorable Edmond E. Chang
United States District Judge

DATE: September 30, 2014