

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

SECURITIES AND EXCHANGE COMMISSION,
 Plaintiff,
 v.
 ALLEN K. DEARY and
 DENNIS A. FICHTER,
 Defendants.

CIVIL ACTION
NO.

Handwritten notes: MEL

FINAL JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF
AGAINST DEFENDANT ALLEN K. DEARY

Plaintiff Securities and Exchange Commission ("**COMMISSION**"), having filed a **COMPLAINT** herein, and Defendant Allen K. Deary ("**DEARY**"), in the annexed Consent of Defendant Allen K. Deary ("**CONSENT**"), having entered a general appearance herein; having admitted to the jurisdiction of this Court over him and over the subject matter of this action; having waived the entry of findings of fact and conclusions of law under Rule 52 of the Federal Rules of Civil Procedure with respect to this Final Judgment of Permanent Injunction and Other Relief against Defendant Allen K. Deary ("**FINAL JUDGMENT**"); and, without admitting or denying the allegations of the **COMPLAINT**, except as

Handwritten circled number: 14

to jurisdiction and service, which he admits, having consented to the entry of this **FINAL JUDGMENT** which: (1) permanently restrains and enjoins him from directly or indirectly engaging in transactions, acts, practices or courses of business which constitute or would constitute violations of Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §§ 78j(b) and 78m(b)(5)], and Rules 10b-5, 13b2-1 and 13b2-2 promulgated thereunder [17 C.F.R. §§ 240.10b-5, 240.13b2-1 and 240.13b2-2], and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a), 78m(b)(2)(A) and 78m(b)(2)(B)] and Rules 13a-13 and 12b-20 promulgated thereunder [17 C.F.R. §§ 240.13a-13 and 240.12b-20]; and (2) orders Defendant **DEARY** to pay a civil penalty in the amount of \$25,000; and it further appearing that this Court has jurisdiction over Defendant **DEARY** and the subject matter hereof, and the Court being fully advised in the premises:

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant **DEARY**, his officers, agents, servants, attorneys, successors and assigns, and all persons in active concert or participation with him who receive actual notice of this **FINAL JUDGMENT** by personal

service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, violating Section 10(b) of 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:

- (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;

in connection with the purchase or sale of any security

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant **DEARY**, his officers, agents, servants, attorneys, successors and assigns, and all persons in active concert or participation with him who receive actual notice of this **FINAL JUDGMENT** by personal service or otherwise, and each of them, be and hereby are

permanently restrained and enjoined from, directly or indirectly, violating Section 13(b)(5) of the Exchange Act [15 U.S.C. § 78m(b)(5)], by knowingly circumventing or knowingly failing to implement a system of internal accounting controls, or knowingly falsifying any book, record, or account of any issuer which has a class of securities registered with the **COMMISSION** pursuant to Section 12 of the Exchange Act [15 U.S.C. § 781] or any issuer which is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant **DEARY**, his officers, agents, servants, attorneys, successors and assigns, and all persons in active concert or participation with him who receive actual notice of this **FINAL JUDGMENT** by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, aiding and abetting violations of Section 13(b)(2)(A) of the Exchange Act [15 U.S.C. § 78m(b)(2)(A)], by knowingly circumventing or knowingly failing to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant **DEARY**, his officers, agents, servants, attorneys, successors and assigns, and all persons in active concert or participation with him who receive actual notice of this **FINAL JUDGMENT** by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, violating Rule 13b2-1 [17 C.F.R. § 240.13b2-1], by falsifying or causing to be falsified any book, record or account subject to Section 13(b) (2) (A) of the Exchange Act [15 U.S.C. § 78m(b) (2) (A)].

V.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant **DEARY**, his officers, agents, servants, attorneys, successors and assigns, and all persons in active concert or participation with him who receive actual notice of this **FINAL JUDGMENT** by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, violating Rule 13b2-2 [17 C.F.R. § 240.13b2-2] by, as a director or officer of any issuer:

- (a) making or causing to be made a materially false or misleading statement, or

(b) 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 (1) any audit or examination of the financial statements of an issuer required to be made pursuant to the rules and regulations under the Exchange Act [17 C.F.R. §§ 240.0-1 et seq.] or (2) the preparation or filing of any document or report required to be filed with the **COMMISSION**.

VI.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant **DEARY**, his officers, agents, servants, attorneys, successors and assigns, and all persons in active concert or participation with him who receive actual notice of this **FINAL JUDGMENT** by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, aiding and abetting violations of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)] and Rules 13a-13 and 12b-20 promulgated thereunder [17 C.F.R. §§ 240.13a-13, 240.12b-20] by filing with the **COMMISSION** a quarterly report on behalf of any issuer which is 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 and

regulations promulgated thereunder, which contains any untrue statements of material fact required to be stated therein or necessary to make the statements made, in light of the circumstances under which they were made, not misleading, or which fails to comply in any material respect with the requirements of Section 13(a) of the Exchange Act [15 U.S.C. § 78m(a)], and the Rules and regulations promulgated thereunder.

VII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant **DEARY**, his officers, agents, servants, attorneys, successors and assigns, and all persons in active concert or participation with him who receive actual notice of this **FINAL JUDGMENT** by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, aiding and abetting violations of Section 13(b)(2)(B) of the Exchange Act [15 U.S.C. § 78m(b)(2)(B)] by failing 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 to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and 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.

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant **DEARY** be assessed and shall pay a civil penalty in the amount of twenty-five thousand dollars (\$25,000), pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)]. Payment of the penalty shall be: (i) made within thirty (30) days of the entry of this **FINAL JUDGMENT**; (ii) by bank cashiers check, bank money order, certified check or United States postal money order; (iii) made payable to the Securities and Exchange Commission; (iv) mailed or hand-delivered to the Comptroller, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (v) submitted under cover of letter that identifies Defendant **DEARY** as a defendant in this action, the caption and civil action number of this action and the name of this Court, with a copy to James B. Adelman, Counsel for the **COMMISSION**, at its Boston District Office, 73 Tremont St., Sixth Floor, Boston, MA 02108.

IX.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the annexed **CONSENT** be, and hereby is, incorporated by reference herein with the same force and effect as if fully set forth herein.

X.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction over Defendant **DEARY** as a party to this matter for the purpose of implementing and enforcing the terms and conditions of this **FINAL JUDGMENT**.

XI.

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

DONE AND ORDERED at Boston, Massachusetts this 13 day of April, 2000.

Memphis Carter
UNITED STATES DISTRICT JUDGE