

over Smith and the subject matter hereof, and the Court being fully advised in the premises, hereby states:

I.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Smith, his officers, agents, servants, employees, attorneys and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, in the offer or sale of any securities, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails:

- (1) employing any device, scheme or artifice to defraud;
- (2) obtaining money or property by means of any untrue statement of material fact or omission 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
- (3) engaging in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser;

in violation of Sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77q(a)(1), 77q(a)(2) and 77q(a)(3)].

II.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Smith, his officers, agents, servants, employees, attorneys and those persons in active concert or participation with him who receive actual notice of this Order by personal

service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, in connection with the purchase or sale of securities, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange:

- (1) employing any device, scheme or artifice to defraud;
- (2) making any untrue statement of material fact or omitting 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
- (3) engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person,

in violation of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §78j(b)] and Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder.

III.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Smith, his officers, agents, servants, employees, attorneys and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, and each of them, be and are hereby permanently restrained and enjoined from, directly or indirectly:

- (1) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails, to sell securities through the use or medium of any prospectus or otherwise unless and until a registration statement is in effect with the Commission as to such securities;

(2) Carrying or causing to be carried securities through the mails or in interstate commerce, by any means or instruments of transportation, for the purpose of sale or for delivery after sale, unless and until a registration statement is in effect with the Commission as to such securities;

(3) Making use of any means or instruments or transportation or communication in interstate commerce or of the mails, to offer to sell or offer to buy, through the use or medium of any prospectus or otherwise, securities unless and until a registration statement has been filed with the Commission as to such securities, or while the registration statement is the subject of a refusal or stop order or under any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. §77h];

in violation of Sections 5(a) and 5(c) of the Securities Act [15 U.S.C. §77e(a) and §77e(c)]. Provided, however, that nothing in this portion of the Order (Section III) shall apply to any security or transaction which is exempt from the provisions of Section 5 of the Securities Act [15 U.S.C. §77e].

IV.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Smith, his officers, agents, servants, employees, attorneys and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, as principals or as aiders and abettors, by use of the mails or any means or instrumentality of interstate commerce, effecting any

transaction in, or inducing or attempting to induce the purchase or sale of any security (other than an exempted security or commercial paper, bankers' acceptances or commercial bills) unless registered with the Commission as a broker or dealer in accordance with Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)], in violation of Section 15(a) of the Exchange Act [15 U.S.C. §78o(a)].

V.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant Smith, his officers, agents, servants, employees, attorneys and those persons in active concert or participation with him who receive actual notice of this Order by personal service or otherwise, and each of them, be and hereby are permanently restrained and enjoined from, directly or indirectly, as principals or as aiders and abettors, while acting as a broker or dealer, making use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or inducing or attempting to induce the purchase or sale of, any securities (other than commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange of which he is a member, by means of any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or by means of any untrue statement of a material fact or omission 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, where such statement or omission is made with knowledge or reasonable grounds to believe that it is untrue or misleading, in violation of Section 15(c)(1) of the Exchange Act [15 U.S.C. §78o(c)(1)] and Rule 15c1-2 [17 C.F.R. §240.15c1-2] promulgated thereunder.

VI.

IT IS FURTHER ORDERED that Defendant Smith disgorge all ill-gotten gains received by him as a result of the conduct alleged in the Commission's Complaint, plus prejudgment interest on those amounts. This Court will set the specific amount of disgorgement, and will determine whether to impose civil penalties on Defendant Smith, and in what amount, in a separate hearing upon due notice and motion by the Commission. At that hearing, the issues will be limited to determining (i) the amount of disgorgement to be ordered and (ii) whether civil penalties should be imposed on Defendant Smith, and the amount of any such penalties. Defendant Smith will be precluded from arguing that he did not violate the federal securities laws in the manner set out in the Commission's Complaint.

VII.

IT IS FURTHER ORDERED that the Commission is expressly authorized to engage in discovery regarding any unresolved issue in the case with respect to Defendant Smith, which shall include, but not be limited to, discovery for purposes of determining the amount of ill-gotten gains and civil penalties, if any.

VIII.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the attached Consent and Stipulation of Defendant Smith be, and hereby is, incorporated herein with the same force and effect as if fully set out herein.

IX.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court shall retain jurisdiction of this matter for all purposes, including, but not limited to enforcement of this Order of Permanent Injunction.

X.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that there being no just reason for delay, the Clerk of the Court is hereby directed to enter this Order of Permanent Injunction.

IT IS SO ORDERED.

JOHN DANIEL TINDER

HONORABLE JOHN DANIEL TINDER
UNITED STATES DISTRICT COURT JUDGE

Dated: 11/16/00