

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Honorable Marcia S. Krieger

Civil Action No. 05-cv-00480-MSK-CBS

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

JOSEPH P. NACCHIO,
ROBERT S. WOODRUFF,
AFSHIN MOHEBBI,
JAMES J. KOZLOWSKI, and
FRANK T. NOYES,

Defendants.

**JUDGMENT AGAINST DEFENDANT JOSEPH P. NACCHIO PURSUANT
TO FED. R. CIV. P. 54(b)**

PURSUANT TO the Plaintiff's Unopposed Motion for Entry of Judgment By Consent (**# 829**), and upon the express consent of Defendant Joseph P. Nacchio to the terms herein, the Court hereby enters judgment in favor of the Plaintiff and against Defendant Nacchio on the claims in this action as follows:

1. Defendant Nacchio, his 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 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.

2. Defendant Nacchio and his 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 Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] 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.

3. Defendant Nacchio and his 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 aiding and abetting any violations of Sections 13(a) and 13(b)(2) of the Exchange Act [15 U.S.C. §§ 78m(a), and 78m(b)(2)] and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder [17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-11, and 240.13a-13], by knowingly providing substantial assistance to an issuer that:

(a) fails to file with the Commission any report or statement required to be filed with the Commission pursuant to Section 13(a) of the Exchange Act and the rules and regulations promulgated thereunder, or information and documents required by the Commission to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to Section 12 of the Exchange Act;

(b) fails, in addition to the information expressly required to be included in a statement or report, to add such further material information as is necessary to make the required statements, in the light of the circumstances under which they were made not misleading;

(c) fails to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of assets of the issuer;

(d) fails to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: transactions are executed in accordance with management's general or specific

authorization; 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; access to assets is permitted only in accordance with management's general or specific authorization; and the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

4. Defendant Nacchio and his 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 13(b)(5) of the Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78m(b)(5)] and Rule 13b2-1 promulgated thereunder [17 C.F.R. § 240.13b2-1] by:

- (a) falsifying or causing to be falsified any book, record or account subject to Section 13(b)(2) of the Exchange Act; or

- (b) knowingly circumventing or knowingly failing to implement a system of internal accounting controls.

5. Defendant Nacchio and his 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, Exchange Act Rule 13b2-2(a) [17 C.F.R. § 240.13b2-2(a)] by making

materially false or misleading statements, or omitting to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, to an issuer's accountants and/or independent auditors in connection with an audit or examination of the issuer's financial statements or in the preparation or filing of the issuer's documents or reports filed with the Commission.

6. Pursuant to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] and Section 20(e) of the Securities Act [15 U.S.C. § 77t(e)], Defendant Nacchio is prohibited 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. § 78l] or that is required to file reports pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

7. Defendant Nacchio shall disgorge the sum of \$44,632,464.38 (plus interest any interest that has accrued on the forfeited amount held in the Court Registry Investment System in connection with the related criminal case of *U.S. v. Joseph P. Nacchio*, 05-cr-00545 (Dist. Colo.) (hereinafter "related criminal case")), representing profits gained as a result of the conduct alleged in the Corrected Second Amended Complaint. Such sum shall be reduced by any amounts (including accrued interest) forfeited and paid by or on behalf of Defendant Nacchio to the United States in connection with the related criminal case. Defendant Nacchio

relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to him.

Pursuant to the parties' agreement, the Court is not imposing a civil penalty in this case.

The Clerk shall maintain the funds paid by or on behalf of Defendant Nacchio, in an interest bearing account with the Court Registry Investment System ("CRIS") or any other type of interest bearing account that is utilized by the Court. In accordance with 28 U.S.C. § 1914 and the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is permitted, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent (but not more than that authorized by the Judicial Conference of the United States) of the income earned on the Fund. The Commission shall, by motion, propose a plan to distribute the Fund.

8. This Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.
9. There being no just reason for delay, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, this Judgment shall enter forthwith.

Dated this 24th day of January, 2011

BY THE COURT:

Marcia S. Krieger

Marcia S. Krieger
United States District Judge