

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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: UNITED STATES OF AMERICA, :
: :
: Plaintiff, :
: :
: - v - :
: :
: STEINHARDT MANAGEMENT COMPANY, : 94 Civ. 9044 (RPP)
: INC.; and CAXTON CORPORATION, :
: :
: Defendants, :
: :
: -and- :
: :
: \$12,500,000 THAT IS THE PROPERTY :
: OF STEINHARDT MANAGEMENT :
: COMPANY, INC.; :
: :
: Steinhardt Management :
: Company, Inc., :
: Real Party in Interest :
: :
: -and- :
: :
: \$12,500,000 THAT IS THE PROPERTY :
: OF CAXTON CORPORATION, :
: :
: Caxton Corporation, :
: Real Party in Interest. :
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FINAL JUDGMENT

WHEREAS Plaintiff, United States of America, having filed its Complaint in this action on December 16, 1994, and plaintiff and defendant entities, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law; and without this Final Judgment constituting any evidence or admission by any party with respect to any issue of fact or law;

AND WHEREAS defendant entities have agreed to be bound by Section IV of this Final Judgment pending its approval by the Court;

NOW THEREFORE, before any testimony is taken, and without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is hereby

ORDERED, ADJUDGED AND DECREED:

I.

JURISDICTION

This Court has jurisdiction of the subject matter of this action and of the person of the defendant entities and of the defendant property by virtue of 28 U.S.C. §§ 1345, 1355. Venue exists in this Court pursuant to 28 U.S.C. § 1395(b). The Complaint states a claim upon which relief may be granted under Sections 1 and 6 of the Sherman Act, 15 U.S.C. §§ 1, 6.

II.

DEFINITIONS

As used in this Final Judgment:

1. "Agree" means to enter into any contract, combination, conspiracy, concert of action, or mutual understanding, formal or informal, express or implied, with any other person.

2. "Any" means one or more.

3. "Cash market" means the market in which Treasury securities are bought and sold, and includes the when-issued market and the secondary market.

4. "CUSIP number" means the alphanumeric description of a

Treasury security established by the American Bankers Association's Committee on Uniform Securities Identification Procedures.

5. "Defendant entities" means Steinhardt Management Company, Inc. and Caxton Corporation.

6. "Finance" or "financing transaction" means any transaction whereby a person who has a position in an issue obtains cash or credit from another person by using such position as collateral, including any transaction pursuant to which possession or ownership of a position in an issue is transferred by one party to another with a simultaneous agreement that the second party will later return such position to the first party, such as a repurchase agreement, a reverse repurchase agreement, or a borrow versus pledge agreement.

7. "Financing market" means the market for financing positions in Treasury securities through which an issue may be made available to holders of short positions in that issue.

8. "Includes" or "including" means includes, but is not limited to.

9. "Issue" means a particular marketable United States Treasury security, as distinguished from all others by its CUSIP number.

10. "Or" means either or both, and is used as a word of inclusion rather than exclusion.

11. "Other person" means a person other than: a defendant entity; any subsidiary, officer, director, employee, agent, successor, or assign of a defendant entity; any person who makes, or has authority to make, trading or investment decisions on behalf of a defendant entity in the cash or financing markets; any person in which any shareholder in a defendant entity as of the date of entry of this Final Judgment makes, or has authority to make, trading or investment decisions in the cash or financing markets; any account or assets managed on a discretionary basis by a defendant entity or, while acting in respect to such account or assets, by a defendant entity's designee.

12. "Person" means any individual, partnership, firm, corporation, association, sole proprietorship, joint venture, or other business or legal entity, whether or not organized for profit.

13. "Position" means the quantity of an issue held, whether outright or as the consequence of any financing transaction, except that a person shall not be deemed to have obtained a position in an issue as the result of having engaged in a financing transaction with a defendant entity.

14. "Treasury auction" means any auction of Treasury securities conducted by or on behalf of the United States Department of the Treasury.

15. "Treasury security" means any marketable United States Treasury bill, note, or bond.

16. "Withhold" means to decline to sell or finance for any period of time part or all of a position in any issue.

Use of either the singular or plural should not be deemed a limitation and the use of the singular should be construed to include, where applicable, the plural and vice versa.

III.

APPLICABILITY

This Final Judgment shall apply to the defendant entities and each of their subsidiaries, officers, directors, employees, agents, successors, and assigns; to any entity for or in which any person who is a shareholder in a defendant entity as of the date of entry of this Final Judgment, whether directly or indirectly, conducts or directs asset management or investment advisory activities that involve transactions in the cash market or in the financing market (hereinafter "related entity"); and to all persons acting in concert with any defendant entity and having actual notice of this Final Judgment; provided, however, that this Final Judgment shall not apply to any fund or other entity whose assets are managed or invested in whole or in part by a defendant entity or by a related entity.

IV.

PROHIBITED CONDUCT

A. The defendant entities are enjoined and restrained from agreeing with each other or with any other person to restrain trade in the cash or financing markets in violation of the antitrust laws of the United States.

B. The defendant entities are enjoined and restrained from agreeing with each other or with any other person:

1. to purchase or refrain from purchasing any issue from a particular person; or

2. to sell or refrain from selling any issue to or through a particular person.

C. The defendant entities are enjoined and restrained from agreeing with any other person:

1. to withhold, directly or indirectly, all or any part of such other person's position from the cash market; or

2. to withhold, directly or indirectly, all or any part of such other person's position from the financing market.

D. The defendant entities are enjoined and restrained from agreeing with any other person:

1. to withhold, directly or indirectly, all or part of a defendant entity's position from the cash market for the purpose of (a) maintaining the value of such other person's position or (b) causing the value of such other person's position to increase, for any period of time; or

2. to withhold, directly or indirectly, all or part of a defendant entity's position from the financing market for the purpose of (a) maintaining the value of such other person's position or (b) causing the value of such other person's position to increase, for any period of time.

E. Notwithstanding any provision of Section IV.B to the contrary, nothing in this Final Judgment shall prohibit a

defendant entity:

1. from agreeing with its counterparty to enter into a transaction to purchase or sell an issue; or

2. from agreeing with another person that such other person tender a bid on behalf of such defendant entity at a Treasury auction.

F. Notwithstanding any provision of either Section IV.B or Section IV.C to the contrary, nothing in this Final Judgment shall prohibit any defendant entity from agreeing with another person that such other person not increase or decrease its position in an issue while such other person is endeavoring to transact the purchase, sale, or financing of a position in such issue with or on behalf of a defendant entity.

V.

COMPLIANCE PROVISIONS

Each defendant entity is ordered to initiate and maintain an antitrust compliance program which shall include designating, within thirty (30) days of the entry of this Final Judgment, an Antitrust Compliance Officer, who shall monitor the activities of all persons responsible for trading or financing Treasury securities on behalf of the defendant entity and shall be responsible for establishing an antitrust compliance program designed to provide reasonable assurance of compliance with this Final Judgment and with the federal antitrust laws by the defendant entity. The Antitrust Compliance Officer shall also:

1. Distribute, within thirty (30) days from the entry of

this Final Judgment, a copy of this Final Judgment to: (a) all members of the Board of Directors and Officers of the defendant entity; (b) all traders or other employees of the defendant entity whose duties include the trading or financing of Treasury securities; and (c) all agents of the defendant entity whose responsibilities include the trading or financing Treasury securities on behalf of such defendant entity (not including brokers or dealers who may occasionally act as agents of a defendant entity on a transaction-specific basis).

2. Distribute within thirty (30) days a copy of this Final Judgment to (a) any person who becomes a member of the Board of Directors or officers of the defendant entity and (b) to any employee of the defendant entity who is, in the future, given any duties which include the trading or financing of Treasury securities.

3. Brief annually those persons designated in Paragraphs 1 and 2 of this Section on the meaning and requirements of the federal antitrust laws and this Final Judgment and inform them that the Antitrust Compliance Officer or a designee of the Antitrust Compliance Officer is available to confer with them regarding compliance with such laws and with this Final Judgment.

4. Obtain from each person designated in Paragraphs 1 and 2 of this Section an annual written certification that he or she: (a) has read, understands, and agrees to abide by the terms of this Final Judgment; (b) has been advised and understands that noncompliance with this Final Judgment may result in his or her

being found in civil or criminal contempt of court; and (c) is not aware of any violation of the federal antitrust laws or of this Final Judgment that he or she has not reported to the Antitrust Compliance Officer.

5. Maintain a record of persons to whom this Final Judgment has been distributed and from whom the certification required by Paragraph 4 of this Section has been obtained.

6. Certify to the Court and to the Assistant Attorney General in charge of the Antitrust Division, within forty-five (45) days after entry of this Final Judgment, that the defendant entity: (a) has designated an Antitrust Compliance Officer, specifying his or her name, business address, and telephone number; and (b) has distributed this Final Judgment, briefed the appropriate persons, and obtained certifications, as required by this Section V.

VI.

PLAINTIFF ACCESS

For the purpose of determining or securing compliance with this Final Judgment, duly authorized representatives of the plaintiff shall, upon written request of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the relevant defendant entity, subject to any lawful privilege, be permitted: access during such defendant entity's regular office hours to inspect and copy all records and documents in its possession or custody, or subject to its control, relating to any matters contained in this Final Judgment; and to depose or

interview such defendant entity's officers, employees, trustees, or agents, who may have counsel present, regarding any matters contained in this Final Judgment; such depositions or interviews to be subject to the reasonable convenience of and without restraint or interference from the defendant entity.

Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, each of the defendant entities shall submit such written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be reasonably requested.

No information or documents obtained by the means provided in this Section shall be divulged by the plaintiff to any person other than a duly authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by a defendant entity to plaintiff, such defendant entity represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such materials, "Confidential: Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days' notice shall be given by plaintiff to such defendant

entity prior to divulging such material in any legal proceeding to which that defendant entity is not a party; provided, however, that nothing herein shall apply to any use of such information or documents in any grand jury proceeding.

VII.

FURTHER ELEMENTS OF DECREE

A. Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify or terminate any of its provisions, to enforce compliance, and to punish violations of its provisions.

B. This Final Judgment shall terminate ten (10) years from the date of entry.

C. The defendant property that is the property of Steinhardt Management Company, Inc. is hereby forfeited to the United States. Steinhardt Management Company, Inc. shall pay \$12,500,000, plus the Additional Amount defined in the Civil Settlement Agreement between Steinhardt Management Company, Inc. and the United States Department of Justice dated December 16, 1994, within five (5) business days after receipt of notice of this Final Judgment. Such amount represents that portion of the settlement amount forfeited to the Department of Justice pursuant to 15 U.S.C. § 6, and which is payable to the Department of Justice Asset Forfeiture Fund.

D. The defendant property that is the property of Caxton

Corporation is hereby forfeited to the United States. Caxton Corporation shall pay \$12,500.000 plus the Additional Amount defined in the Civil Settlement Agreement between Caxton Corporation and the United States Department of Justice dated December 16, 1994, within five (5) business days after receipt of notice of this Final Judgment. Such amount represents that portion of the settlement amount forfeited to the Department of Justice pursuant to 15 U.S.C. § 6, and which is payable to the Department of Justice Asset Forfeiture Fund.

E. Entry of this Final Judgment is in the public interest.

DATED:

UNITED STATES DISTRICT JUDGE