

SEC V. YUN SOO OH PARK AND TOKYO JOE'S SOCIETE ANONYME CORP.

SECURITIES AND EXCHANGE COMMISSION

Litigation Release No. 16925 / March 8, 2001

SEC v. Yun Soo Oh Park and Tokyo Joe's Societe Anonyme Corp., N.D. Ill., Civil No. 00-C-0049, filed January 5, 2000

On March 8, 2001, the Securities and Exchange Commission filed a Consent and Stipulation ("Consent") and a proposed Final Order and Judgment of Permanent Injunction ("Final Order") that settle the enforcement action brought by the Commission against Defendants Yun Soo Oh Park ("Park"), a self-proclaimed Internet stock-picking guru, and Tokyo Joe's Societe Anonyme Corp. ("Societe Anonyme"), the company through which Park operates an Internet web site. The Commission's enforcement action is pending in the United States District Court for the Northern District of Illinois before the Hon. Charles P. Kocoras, who entered the Final Order on March 8th. (SEC v. Yun Soo Oh Park, et al., N.D. Ill., Case No. 00-C-0049). The Final Order permanently enjoins Park and Societe Anonyme from violating the antifraud and other provisions of the federal securities laws, orders Park and Societe Anonyme to pay \$324,934 in ill-gotten gains and \$429,696 in civil penalties, for a total monetary payment of \$754,630. Park and Societe Anonyme also agreed to post a hyperlink to the Final Order on the home page of Park's Tokyo Joe web site for a period of thirty days.

In its Complaint, filed in January 2000, the Commission alleged that Park operated an Internet web site through which members of Societe Anonyme, who paid a monthly fee to join Societe Anonyme, received stock recommendations and other investment advice from Park. The Commission charged that Park defrauded members of Societe Anonyme by failing to disclose that, in several instances, he had already purchased shares of the stock that he was recommending and that he planned to sell his shares into the buying flurry and subsequent price rise that followed his recommendations, an illegal practice known as scalping. The Commission also charged that Park touted one company to members of Societe Anonyme and to the public without disclosing that he had received shares of stock in the company in exchange for his recommendation. Finally, the Commission charged that the past performance results posted on Park's web site were materially false and misleading.

Under the terms of the settlement, Park and Societe Anonyme, without admitting or denying the allegations in the Commission's Complaint, consent to the entry of the Final Order. The Final Order permanently enjoins Park and Societe Anonyme from violating the antifraud provisions of the Investment Advisers Act of 1940 ("Advisers Act") [Sections 206(1) and 206(2)] and the Securities Exchange Act of 1934 [Section 10(b) and Rule 10b-5 thereunder] and from violating the anti-touting provision of the Securities Act of 1933 [Section 17(b)]. The Final Order also requires Park and Societe Anonyme to disgorge all of the \$279,696 in profits they made from the thirteen instances of scalping and the one instance of illegal touting alleged by the Commission, plus \$45,238 in prejudgment interest on that amount, for a total disgorgement payment of \$324,934. The Final Order also imposes a civil penalty on Park and Societe Anonyme equal to the amount of Park's scalping and illegal touting profits (\$279,696) plus an additional penalty of \$150,000 based on Park's posting of false and misleading past performance results on the Tokyo Joe web site. Finally, the Final Order requires that, within two days of the entry of the Final Order, Park must post a hyperlink to a copy of the Final Order on the home page of his web site for a period of thirty days.

Before submitting his settlement offer, Park moved to dismiss the Commission's Complaint, arguing primarily that, since he dispensed his stock picks and investment advice over the Internet, he was not an "investment adviser" within the meaning of the Advisers Act and that the antifraud provisions of that Act could not be constitutionally applied to him. The District Court denied Park's motion to dismiss in its entirety and held that the Commission's Complaint sufficiently alleged that Park was an "investment adviser" under the Advisers Act and that Park was subject to that Act's antifraud provisions. SEC v. Park, 99 F. Supp. 2d 889 (N.D. Ill. 2000). Efforts by Park to seek interlocutory review of the District Court's ruling were rejected by the Seventh Circuit.

