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# SEC NEWS DIGEST

Issue 2001-149

August 2, 2001

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## COMMISSION ANNOUNCEMENTS

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### CLOSED MEETING – THURSDAY, AUGUST 9, 2001 – 11:00 A.M.

The subject matter of the closed meeting scheduled for Thursday, August 9, at 11:00 a.m. will be: Institution and settlement of injunctive actions; and Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

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## ENFORCEMENT PROCEEDINGS

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### COMMISSION SUSTAINS NASD FINDINGS THAT BRIAN PRENDERGAST DEFRAUDED INVESTORS IN OFFERING AND OPERATION OF HEDGE FUND

On August 1, the Commission sustained the NASD's findings that Brian Prendergast defrauded investors in the hedge fund that Prendergast marketed to smaller investors. Between March and November 1994, 34 investors bought \$920,000 worth of interests in the hedge fund operated by Prism Financial LLC. By November 30, 1994, Prendergast had lost all but \$64,000 of the investment. The Commission found that Prendergast's offering materials contained material misstatements and omitted material facts and that Prendergast used the proceeds of the offering in a manner inconsistent with the offering documents. Prendergast further violated NASD rules by using misleading sales literature, engaging in a general solicitation connected with a private securities offering, and using misleading and defective advertisements. Finally, Prendergast violated NASD rules requiring persons associated with NASD members to notify their employers regarding accounts with other NASD member firms and to provide information to NASD staff.

The Commission barred Prendergast from the securities industry in all capacities. (Rel. 34-44632; File No. 3-9964)

## **COMMISSION CENSURES AND SUSPENDS ROGER RAWLINGS, FORMER BRANCH MANAGER OF D.E. FREY & CO. BRANCH OFFICE**

On August 1, the Commission entered an order finding that Roger A. Rawlings failed reasonably to supervise a registered representative who was subject to Rawlings' supervision. Rawlings, a former manager of D.E. Frey & Co.'s Colorado Springs, Colorado, branch office, was censured and suspended from association with any broker or dealer in any supervisory or proprietary capacity for one year.

According to the order, Rawlings knew that the registered representative had a disciplinary history prior to his association with Frey & Co., and that the representative was subject to a special supervision order with the State of Colorado's Division of Securities that was to be implemented by Rawlings. Nonetheless, in 1998 the registered representative engaged in unsuitable trading in the accounts of at least three elderly Frey & Co. clients and churned two of those accounts. The order noted that Rawlings was responsible for satisfying himself that the registered representative's trades were in accord with each client's investment objectives. However, Rawlings failed to monitor the registered representative's trading activity for a period of time, such as by reviewing exception reports for the representative's clients. If Rawlings had followed his firm's procedures, including reviewing the exception reports during this time period, Rawlings might have discovered the excessive trading in client accounts. He further failed to review account documents that might have revealed that the representative had been granted discretion in one account and was exercising de facto discretion in another, contrary to the representative's and Frey & Co.'s agreement with the state.

The order concluded that Rawlings failed reasonably to supervise, within the meaning of Section 15(b) of the Securities Exchange Act of 1934, an individual subject to his supervision with a few to preventing and detecting willful violations of the federal securities laws. Rawlings was censured and suspended from association in a supervisory or proprietary capacity with any broker or dealer for one year, but was not assessed a civil penalty because of Rawlings' demonstrated inability to pay. Rawlings consented to entry of the order and the bar from association without admitting or denying the Commission's findings. (Rel. 34-44634; File No. 3-10310)

## **TLC ENTITIES' CFO AND PRESIDENT ENJOINED AND ORDERED TO PAY OVER \$11 MILLION IN DISGORGEMENT**

The Commission announced that on July 26, 2001 and July 27, 2001, the Honorable David O. Carter, United States District Judge for the Central District of California, entered Final Judgments of Permanent Injunction and Other Relief against Gary W. Williams and Ernest F. Cossey, respectively. Williams and Cossey consented to the entry of the orders without admitting or denying the Commission's allegations. Williams was ordered to pay \$248,145 in disgorgement and Cossey was ordered to pay a total of \$11,072,618.53 in disgorgement, prejudgment interest and civil penalties.

The Commission's complaint, filed on October 3, 2000, alleged that since 1998, TLC Investments & Trade Co., TLC America, Inc., dba Brea Development Company, TLC Brokerage, Inc., dba TLC Marketing, TLC Development, Inc, and TLC Real Properties RLLP-1)(TLC Entities), entities Williams and Cossey controlled, committed securities fraud in connection with a real estate Ponzi scheme. The TLC Entities raised \$151.6 million from more than 1,800 investors. Further, the Commission's complaint alleged that Williams and Cossey misused at least \$28.3 million to pay other investors, invest in a prime bank scheme, buy racehorses, and make charitable contributions.

Specifically, Williams and Cossey were permanently enjoined from violating Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Act of 1934, and Rule 10b-5 thereunder. Cossey was also enjoined from violating Sections 5(a) and 5(c) of the Securities Act. [SEC v. TLC Investments & Trade Co., et al., Civil Action No. SACV-00-0960 DOC, MLG, CD California] (LR-17085)

### **SEC v. ELLIOT LAVIGNE**

The Commission announced today that it has reached a settlement with Elliot Lavigne, the former Chairman of the Perry Ellis Division at Salant Corp. Lavigne also served as Chief Operating Officer of Donna Karan Jeanswear and Chief Executive Officer of Jordache Enterprises, where he built the "FUBU" brand. Lavigne is currently the President of OOC Apparel, Inc.

The Commission filed a complaint against Lavigne on November 2, 2000, alleging that he violated the antifraud provisions of the federal securities laws by participating in the manipulation of twenty-three initial public offerings (IPOs) underwritten by Stratton Oakmont, Inc. (Stratton), over a five-year period.

Lavigne has now agreed to settle the Commission's action and has consented, without admitting or denying the allegations of the Complaint, to the entry of a judgment that: (1) permanently enjoins Lavigne from future violations of Section 17(a) of the Securities Act of 1933, 15 U.S.C. § 77q(a), Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5; (2) orders Lavigne to pay a civil penalty of \$100,000; and (3) bars Lavigne from serving as an officer or director of a public company for a period of seven years. The case will remain open pending a determination of the amount of money Lavigne must pay as disgorgement of his ill-gotten gains.

The Commission's complaint alleges as follows:

From 1991 through 1995, Lavigne was a key participant in a series of manipulations orchestrated by Stratton. Stratton was a quintessential "boiler room" and the

manipulations followed a standard formula. Stratton gained control over the float of each stock by issuing allocations of IPO stock to persons with whom Stratton had entered into secret agreements to serve as "nominees." The nominees received their stock with the understanding that they would sell the stock back to Stratton at pre-arranged, below-market prices once trading had commenced in the aftermarket. Stratton would then earn huge profits by selling the stock to their own customers at artificially inflated prices created by the use of high-pressure sales tactics.

In at least one of the Stratton IPO manipulations, Lavigne played a second, similar role. In this IPO, Lavigne received "bridge" units as part of his compensation for making a bridge loan to the issuer. Although Lavigne signed a lock-up agreement precluding him from selling his bridge units for at least thirteen months after the IPO, he entered into a secret agreement with Stratton by which Stratton would release him from the lock-up agreement in order to sell his bridge units back to Stratton shortly after trading began in the aftermarket. Thus, Lavigne earned a quick profit on the bridge units while helping Stratton to control the outstanding float of the IPO. Also, by putting the bridge units back into the hands of Stratton, Lavigne gave the firm more IPO stock to later resell to its customers at artificially inflated prices.

Lavigne earned a stream of risk-free profits totaling over \$7.7 million in return for his participation in the enterprises. A secret agreement between Lavigne and Stratton's principal provided that the two would evenly split the after-tax profits from Lavigne's trading.

The Commission acknowledges the assistance of the United States Attorney's Office for the Eastern District of New York in this matter. [SEC v. Elliot Lavigne, 00-CV-6024, EDNY] (LR-17086)

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## **INVESTMENT COMPANY ACT RELEASES**

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### **NATIONS SEPARATE ACCOUNT TRUST, ET AL.**

A notice has been issued giving interested persons until August 23 to request a hearing on an application filed by Nations Separate Account Trust (the Trust) and Banc of America Advisors, LLC (BA Advisors) for an order under Section 6(c) of the Investment Company Act to permit shares of the Trust and any other investment company that is designed to fund insurance products and for which BA Advisors or any of its affiliates may serve as investment adviser, manager, principal underwriter, sponsor, or administrator to be sold to and held by: (a) separate accounts funding variable annuity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; (b) qualified pension and retirement plans outside of the separate account context; (c) separate accounts that are not registered as investment companies under the Act pursuant to exemptions from

registration under Section 3(c) of the Act; (d) BA Advisors or its affiliates and (e) the general account of any life insurance company, or certain related corporations, whose separate accounts hold, or will hold, shares of the Trusts. (Rel. IC- 25096 - July 31)

#### **NORTHERN INSTITUTIONAL FUNDS, ET AL.**

An order has been issued on an application filed by Northern Institutional Funds, et al. exempting applicants from Sections 12(d)(1), 17(a) and 17(e) of the Investment Company Act and permitting certain joint transactions in accordance with Section 17(d) of the Act and Rule 17d-1 under the Act. The order permits certain registered open-end investment companies to use their cash reserves to purchase shares of affiliated money market funds. The order also would permit certain registered open-end investment companies to use cash collateral from securities lending transactions to purchase shares of money market funds or private investment funds and to pay fees based on a share of the revenue generated from securities lending transactions to an affiliated lending agent. The order also would permit the lending agent and certain of its affiliates to engage in principal transactions with and receive brokerage commissions from certain registered investment companies that become affiliated with the lending agent and its affiliates solely as a result of investing cash collateral. (Rel. IC-25097 – August 1)

#### **SAGE LIFE ASSURANCE OF AMERICA INC., ET AL.**

A notice has been issued giving interested persons until August 27 to request a hearing on an application filed by Sage Life Assurance of America, Inc., Sage Life Assurance Co. of New York, Sage Advisors, Inc., Sage Distributors, Inc. and Sage Life Investment Trust for an order exempting applicants from Sections 12(d)(1)(A) and 12(d)(1)(B) of the Investment Company Act and from Section 17(a) of the Act. The order would permit a fund of funds that would invest in other funds that are part of the same group of investment companies and in funds that are not part of the same group of investment companies in reliance on Section 12(d)(1)(F) of the Act. (Rel. IC-25098 – August 1)

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### **SELF-REGULATORY ORGANIZATIONS**

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#### **PROPOSED RULE CHANGE**

The Chicago Board Options Exchange filed a proposed rule change (SR-CBOE-2001-35) relating to Marketing and Administrative Fees. Publication of the proposal is expected in the Federal Register during the week of August 6. (Rel. 34-44628)

## APPROVAL OF PROPOSED RULE CHANGE

The Commission approved a proposed rule change (SR-NASD-00-38) filed by the National Association of Securities Dealers to adopt a rule enumerating the NASD rules and interpretative materials applicable to exempted securities, including government securities but not municipal securities. Publication of the approval order is expected in the Federal Register during the week of August 6. (Rel. 34-44631)

## IMMEDIATE EFFECTIVENESS OF PROPOSED RULE CHANGE

A proposed rule change filed by the National Securities Clearing Corporation which allows NSCC to enhance its Insurance Processing Service (SR-NSCC-2001-10) has become effective under Section 19(b)(3)(A) of the Securities Exchange Act of 1934. Publication of the proposal is expected in the Federal Register during the week of August 6. (Rel. 34-44635)

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## SECURITIES ACT REGISTRATIONS

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The following registration statements have been filed with the SEC under the Securities Act of 1933. The reported information appears as follows: Form, Name, Address and Phone Number (if available) of the issuer of the security; Title and the number and/or face amount of the securities being offered; Name of the managing underwriter or depositor (if applicable); File number and date filed; Assigned Branch; and a designation if the statement is a New Issue.

Registration statements may be obtained in person or by writing to the Commission's Public Reference Branch at 450 Fifth Street, N.W., Washington, D.C. 20549 or at the following e-mail box address: <publicinfo@sec.gov>. In most cases, this information is also available on the Commission's website: <www.sec.gov>.

S-8 INTERNATIONAL SPEEDWAY CORP, 1801 W INTERNATIONAL SPEEDWAY BLVD,  
DAYTONA BEACH, FL 32114 (904) 254-2700 - 1,000,000 (\$42,150,000)  
COMMON STOCK. (FILE 333-65868 - JUL. 26) (BR. 5)

SB-2 MICROHELIX INC, 16125 SW 72ND AVE., PORTLAND, OR 97224 (503) 968-  
1600 -  
3,781,250 (\$36,002,813) COMMON STOCK. (FILE 333-65872 - JUL. 26)  
(NEW ISSUE)

S-3 PRECISE SOFTWARE SOLUTIONS LTD, 1 HASHIKMA STREET P O BOX 88,  
SAVYON ISREAL 56518, - 820,424 (\$15,719,515) COMMON STOCK. (FILE  
333-65876 - JUL. 26) (BR. 3)

S-8 PRECISE SOFTWARE SOLUTIONS LTD, 1 HASHIKMA STREET P O BOX 88,  
SAVYON ISREAL 56518, - 2,252,031 (\$43,406,988) COMMON STOCK. (FILE

333-65878 - JUL. 26) (BR. 3)

S-8 GLOBAL WEB INC, 11781 S LONE PEAK PARKWAY NO 110, DRAPER, UT 84020  
(801) 222-9242 - 40,000 (\$16,000) COMMON STOCK. (FILE 333-65882 - JUL.  
26)  
(BR. 9)

S-8 HERITAGE COMMERCE CORP, 150 ALMADEN BOULEVARD, SAN JOSE, CA 95113  
(408) 947-6900 - 500,000 (\$4,150,000) COMMON STOCK. (FILE 333-65884 -  
JUL. 26) (BR. 7)

S-3 AMERICAN GENERAL FINANCE CORP, 601 NW SECOND ST, EVANSVILLE, IN  
47708  
(812) 424-8031 - 3,500,000,000 (\$3,500,000,000) STRAIGHT BONDS. (FILE  
333-65886 - JUL. 26) (BR. 7)

S-8 AUTHENTIDATE HOLDING CORP, BLDG 50 ROTTERDAM INDUSTRIAL PK,  
SCHENECTADY,  
NY 12306 (518) 356-9741 - 5,000,000 (\$24,600,000) COMMON STOCK. (FILE  
333-65894 - JUL. 26) (BR. 3)

S-4 DSET CORP, 1011 US HIGHWAY 22, BRIDGEWATER, NJ 08807 (908) 526-7500  
-  
9,124,547 (\$672,479) COMMON STOCK. (FILE 333-65898 - JUL. 26) (BR. 3)

S-8 BROWN SHOE CO INC/, 8300 MARYLAND AVE, P O BOX 29, ST LOUIS, MO  
63105  
(314) 854-4000 - 500,000 (\$7,750,000) COMMON STOCK. (FILE 333-65900 -  
JUL. 26) (BR. 2)

S-3 VISIONICS CORP, 5600 ROWLAND RD, MINNETONKA, MN 55343 (612) 932-0888  
-  
1,980,349 (\$13,208,927) COMMON STOCK. (FILE 333-65902 - JUL. 26) (BR.  
3)

S-8 VIRYANET LTD, 5 KIRYAT HAMADA STREET, PO BOX 23052, HAR HOTZVIM,  
ISRAEL,  
JERUSALEM 91230, (508) 490-8600 - 8,999,535 (\$28,694,201.95) COMMON  
STOCK.  
(FILE 333-65904 - JUL. 26) (BR. 3)

S-8 CELGENE CORP /DE/, 7 POWDER HORN DR, WARREN, NJ 07059 (732) 271-1001  
-  
2,000,000 (\$50,100,000) COMMON STOCK. (FILE 333-65908 - JUL. 26) (BR.  
1)

S-3 FIRST KEYSTONE CORP, 111 W FRONT ST, BERWICK, PA 18603 (717) -75-2-  
36 -  
100,000 (\$1,875,000) COMMON STOCK. (FILE 333-65910 - JUL. 26) (BR. 7)

S-8 SMITH INTERNATIONAL INC, 16740 HARDY ST, P O BOX 60068, HOUSTON, TX  
77032 (281) 443-3370 - 20,000 (\$1,090,600) COMMON STOCK. (FILE 333-  
65912 -  
JUL. 26) (BR. 2)

S-8 DIGITAL INSIGHT CORP, 26025 MUREAU RD, CALABASAS, CA 93012  
 (818) 871-0000 - 2,550,000 (\$47,621,250) COMMON STOCK. (FILE 333-65914  
 -  
 JUL. 26) (BR. 8)

S-8 CARDIMA INC, 47266 BENICIA STREET, FREMONT, CA 94538 (510) 354-0300  
 -  
 1,500,000 (\$1,650,000) COMMON STOCK. (FILE 333-65916 - JUL. 26) (BR.  
 5)

S-3 OPTION CARE INC/DE, 100 CORPORATE N STE 212, BANNOCKBURN, IL 60015  
 (847) 615-1690 - 3,450,000 (\$56,959,500) COMMON STOCK. (FILE 333-65918  
 -  
 JUL. 26) (BR. 1)

S-8 CENTURY ALUMINUM CO, 2511 GARDEN ROAD, BUILDING A SUITE 200,  
 MONTEREY,  
 CA 93940 (304) 273-6000 - 500,000 (\$8,955,000) COMMON STOCK. (FILE  
 333-65924 - JUL. 26) (BR. 6)

S-8 CARDIMA INC, 47266 BENICIA STREET, FREMONT, CA 94538 (510) 354-0300  
 -  
 2,000,000 (\$2,200,000) COMMON STOCK. (FILE 333-65928 - JUL. 26) (BR.  
 5)

S-3 CINERGY CORP, 139 E FOURTH ST, CINCINNATI, OH 45202 (513) 287-2644 -  
 500,000,000 (\$500,000,000) STRAIGHT BONDS. (FILE 333-65930 - JUL. 26)  
 (BR. 2)

S-8 CIRTRAN CORP, 4125 SOUTH 6000 WEST, WEST VALLEY CITY, UT 84128  
 (801) 963-5112 - 1,000,000 (\$1,500,000) COMMON STOCK. (FILE 333-65932  
 -  
 JUL. 26) (BR. 5)

S-8 ZIMMER HOLDINGS INC, 345 EAST MAIN STREET, WARSAW, IN 46580  
 (219) 267-6131 - 4,800,000 (\$5,808,000) COMMON STOCK. (FILE 333-65934  
 -  
 JUL. 26) (BR. 5)

S-8 ZIMMER HOLDINGS INC, 345 EAST MAIN STREET, WARSAW, IN 46580  
 (219) 267-6131 - 2,000,000 (\$2,420,000) COMMON STOCK. (FILE 333-65936  
 -  
 JUL. 26) (BR. 5)

S-8 ZIMMER HOLDINGS INC, 345 EAST MAIN STREET, WARSAW, IN 46580  
 (219) 267-6131 - 27,500,000 (\$33,275,000) COMMON STOCK. (FILE 333-  
 65938 -  
 JUL. 26) (BR. 5)

S-8 ZIMMER HOLDINGS INC, 345 EAST MAIN STREET, WARSAW, IN 46580  
 (219) 267-6131 - 221,597 (\$268,132.37) COMMON STOCK. (FILE 333-65940 -  
 JUL. 26) (BR. 5)

S-8 NEW FOCUS INC, 5215 HELLYER AVENUE STE 100, SAN JOSE, CA 95138  
 (408) 980-8088 - 100,000 (\$654,500) COMMON STOCK. (FILE 333-65944 -



JUL. 26) (BR. 5)

S-8 NORTH VALLEY BANCORP, 880 E CYPRESS AVE, REDDING, CA 96002  
(530) 221-3400 - 172,443 (\$2,398,682) COMMON STOCK. (FILE 333-65948 -  
JUL. 26) (BR. 7)

S-8 NORTH VALLEY BANCORP, 880 E CYPRESS AVE, REDDING, CA 96002  
(530) 221-8400 - 264,200 (\$3,675,022) COMMON STOCK. (FILE 333-65950 -  
JUL. 26) (BR. 7)

S-2 COMPUTER MOTION INC, 130 B CREMONA DRIVE, GOLETA, CA 93117  
(805) 968-9600 - 4,411,765 (\$14,602,942) COMMON STOCK. (FILE 333-65952

JUL. 26) (BR. 5)

SB-2 STARUNI CORP, 1642 WESTWOOD BLVD, SUITE 201, LOS ANGELES, CA 90024  
(310) -47-0-93 - 30,500,000 (\$2,400,000) COMMON STOCK. (FILE 333-65954

JUL. 26) (BR. 9)

S-3 GUNTHER INTERNATIONAL LTD, ONE WINNENDEN, NORWICH INDUSTRIAL PARK,  
NORWICH, CT 06360 (203) 823-1427 - 16,000,000 (\$8,000,000) COMMON  
STOCK.

(FILE 333-65956 - JUL. 26) (BR. 3)

S-8 ZIMMER HOLDINGS INC, 345 EAST MAIN STREET, WARSAW, IN 46580  
(219) 267-6131 - 4,018,910 (\$4,862,881.10) COMMON STOCK. (FILE 333-  
65958 -  
JUL. 26) (BR. 5)

S-8 DSP GROUP INC /DE/, 3120 SCOTT BLVD, SANTA CLARA, CA 95054  
(408) 986-4300 - 1,000,000 (\$21,025,000) COMMON STOCK. (FILE 333-65960

JUL. 26) (BR. 7)

S-8 DSP GROUP INC /DE/, 3120 SCOTT BLVD, SANTA CLARA, CA 95054  
(408) 986-4300 - 1,000,000 (\$21,025,000) COMMON STOCK. (FILE 333-65962

JUL. 26) (BR. 7)

S-8 SUPPORT COM INC, 575 BROADWAY, REDWOOD, CA 94063 (650) 233-4539 -  
2,652,067 (\$10,236,979) COMMON STOCK. (FILE 333-65964 - JUL. 26) (BR.  
3)

S-8 MEDQUIST INC, FIVE GREENTREE CENTRE STE 311, STATE HIGHWAY 73 N,  
MARLTON, NJ 08053 (856) 810-8000 - 1,000,000 (\$31,110,000) COMMON  
STOCK.

(FILE 333-65966 - JUL. 26) (BR. 3)

S-8 NATIONAL GRID GROUP PLC, 9A IRONMONGER LANE ST OLAVES HOUSE,  
LONDON EC2V 8EY, X0 - 1,500,000 (\$11,025,000) COMMON STOCK. (FILE  
333-65968 - JUL. 26) (BR. 2)

S-4 CENTURY ALUMINUM CO, 2511 GARDEN ROAD, BUILDING A SUITE 200,  
MONTEREY,

CA 93940 (304) 273-6000 - 325,000,000 (\$325,000,000) COMMON STOCK.  
(FILE 333-65970 - JUL. 26) (BR. 6)

SB-2 SELECT THERAPEUTICS INC, 50 CUMMINGS PARK, WOBURN, MA 01801  
(617) 520-6693 - 8,894,989 (\$23,126,971.40) COMMON STOCK. (FILE 333-  
65972  
- JUL. 26) (BR. 1)