

INTERNATIONAL INSTITUTE FOR SECURITIES MARKET DEVELOPMENT

2005 PROGRAM

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I. AN OVERVIEW OF ENFORCEMENT

A. The Division of Enforcement

The Division of Enforcement ("Division") administers the Securities and Exchange Commission's Enforcement Program. The Division is responsible for detecting and investigating a wide range of potential violations of the federal securities laws and regulations. The securities laws prohibit fraudulent conduct both criminally and civilly, but the Commission is responsible only for civil enforcement and administrative actions.

In a civil enforcement action filed in a United States District Court, the Commission can obtain a court order enjoining an individual from further violations of the securities laws, disgorgement of any money obtained from the illegal conduct, and in some circumstances, civil penalties. In addition, the Commission can impose civil penalties against broker-dealers, investment advisers, and other regulated entities, as well as individuals associated with those entities. In an administrative proceeding, the Commission can require a respondent to "cease and desist" certain activities, disgorge illegal profits, and institute procedures to prevent further violations. The Commission can also, through administrative disciplinary proceedings, bar a firm from acting as a securities firm or an investment adviser, bar an individual from associating with any securities firm or investment adviser, or bar a professional from practice before the Commission.

Criminal enforcement of the federal securities laws is done through the U.S. Department of Justice and the individual U.S. Attorney's offices throughout the country. The Division provides assistance to United States Attorneys throughout the country by, among other things, providing access to Commission investigative files and assigning Commission staff to assist those offices as Special Assistant U.S. Attorneys. A defendant in a criminal securities fraud prosecution may be subject to both criminal fines and prison. A criminal prosecution does not preclude the Commission from taking civil

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action for the same conduct, and similarly, Commission action does not generally preclude a subsequent criminal prosecution.

B. Investigations

Many different events and sources of information can trigger a Commission investigation: broker-dealer, investment company and investment adviser inspections, which the Commission can conduct without cause and at its discretion; examinations of filings made with the Commission; referrals from NASD (formerly known as the National Association of Securities Dealers), the Exchanges, and other self-regulatory organizations; complaints from members of the public, including issuers and their current or former employees, and anonymous sources; news media; referrals from other government agencies; and other investigations.

An investigation is not the same as a prosecution. Investigations involve fact finding by the Commission staff and are usually not public. In this way, the mere existence of an investigation does not harm an individual or entity. During an investigation, neither the staff nor the Commission makes any determination of wrongdoing. If, however, the staff ultimately believes that there has been a violation of the securities laws, it generally will make a recommendation to the Commission to take further action. The Commission then determines whether to file a public civil lawsuit in court or to institute a public administrative proceeding and whether to accept offers of settlement, if there are any.

1. Preliminary Investigations

Commission investigations usually begin as "informal" or "preliminary" investigations. In an informal investigation, the Commission staff does not have power to compel testimony or the production of documents by subpoena. Rather, the staff relies on the cooperation of individuals and entities from which information is sought. Preliminary investigations are nonpublic, except in the rare circumstance where the Commission orders the investigation to be made public. Entire investigations can often be done on an informal basis. Many individuals and entities voluntarily produce documents and provide testimony. The staff can also obtain documents from regulated entities, broker-dealers, investment companies and investment advisers through the Commission's inspection powers without a subpoena.

In addition, certain procedural safeguards that apply to a formal investigation also apply to informal investigations. Interviews with witnesses are typically conducted with a court reporter present and a verbatim transcript is usually produced. Although the staff cannot administer oaths or affirmations in a preliminary investigation, if a witness is willing to testify on the record, the Staff, after obtaining the witnesses's consent, will have the court reporter administer an oath. A criminal statute, which prohibits the making of false statements to government officials, 18 U.S.C. § 1001, applies even if the witness is not under oath. If the witness is placed under oath, then false testimony may be subject to punishment under federal perjury laws as well.

A preliminary investigation can conclude with or without a staff recommendation that the Commission authorize a formal investigation or an enforcement proceeding. Although cooperation by the persons and entities from which information is sought may keep an investigation informal, non-cooperation by third party witnesses, or the need to obtain information from entities that require a subpoena, such as banks and telephone companies, often necessitates that the staff seek Commission authorization to conduct a formal investigation.

2. Formal Investigations

To collect information needed to conduct or complete an investigation, the staff may seek authorization to conduct a formal investigation. A “formal order” from the Commission is a delegation of broad fact-finding and investigative authority to the staff. The formal order identifies a broad outline of the general matters, which the staff is empowered to investigate, and identifies particular staff members as officers of the Commission authorized to issue subpoenas compelling the production of documents and testimony and authorized to administer oaths. Lawyers and other Commission staff members such as accountants, analysts and investigators can be designated officers of the Commission for the purposes of a formal investigation. If a witness fails to comply with a Commission subpoena, the Commission can seek a court order compelling compliance. If the witness then fails to comply with the court's order, the witness can be held in contempt and subjected to court imposed sanctions. As in informal investigations, witnesses who testify before the staff in a formal investigation have the right to be accompanied by counsel and may refuse to testify, based on their right against self-incrimination under the Fifth Amendment to the U.S. Constitution.

3. Investigative Technique

Generally, in an informal or formal investigation, the staff utilizes the same fact-finding methods. Typically, the staff first obtains and reviews relevant documents by reviewing, for example, public documents, filings made with the Commission, newspaper articles, and documents obtained from those persons and entities involved in the matter under investigation. Depending upon the subject matter of the investigation, the staff may also examine brokerage account statements, telephone records, corporate documents, and auditor's working papers. After a thorough review of the documents, the staff schedules the testimony of those witnesses with knowledge of the facts relevant to the investigation. The witnesses may identify other persons with relevant information, causing the staff to request additional documents and testimony. After gathering all of the relevant facts, the staff makes a determination, based on a review of the record and an assessment of all the information gathered, including judgments about witness credibility, as to whether it believes that a violation of the securities law has occurred.

C. Staff Recommendations to the Commission

If the staff determines that its investigation shows that a violation of the securities laws has occurred, it formulates a recommendation for Commission action. The staff

prepares a comprehensive memorandum discussing, in detail, the facts gathered in the investigation and legal theories that support the recommendation. Although the memorandum to the Commission is confidential, the staff generally discusses the facts and legal theories supporting its recommendation with opposing counsel prior to making its recommendation. Absent extraordinary circumstances, such as the need to obtain a temporary restraining order freezing illegal profits or preserving original documents, the staff usually provides potential defendants and respondents an opportunity to respond in writing to the staff's recommendation. This response, called a Wells submission, is provided to the Commission along with the staff's recommendation and generally contains factual and legal arguments why the Commission should not authorize enforcement action in a given case. After the staff makes a recommendation, the matter is scheduled for discussion by the Commission at a non-public or "closed" Commission meeting attended only by the Commissioners and the staff.

The Commission may authorize all or part of the action being recommended by the staff, or it may determine that no action is warranted. If the Commission determines to institute enforcement proceedings in a given case, it has several options as to the nature of the proceedings that might be brought. The Commission may bring what is called a civil injunctive action against a person or an entity that it believes has violated the federal securities laws. This type of enforcement action, which has traditionally been the most frequently employed remedial relief sought by the Commission, is brought before a federal judge and, unless settled, is litigated pursuant to the procedural and evidentiary rules governing federal court litigation. In an injunctive action, the Commission seeks a court order that compels the defendant to obey the law in the future. Violating such an order can result in criminal contempt proceedings, which may result in fines, incarceration, or both.

The Commission may also seek what is called "ancillary relief" -- specific requirements imposed on a defendant that are designed to remedy the harm caused by the violation. For instance, such ancillary relief may include an accounting, disgorgement of any ill-gotten gain when a defendant has profited from the violation, or a bar from serving as an officer or director of a public company. In filing a civil case, the Commission also may ask the U.S. courts for emergency relief, generally in the form of a temporary restraining order ("TRO"). In seeking a TRO, the Commission often requests that the court issue an order freezing illegally obtained money to prevent its dissipation so that, at the successful conclusion of the case, the assets can be returned to defrauded investors.

The Commission may also institute administrative proceedings -- proceedings that are litigated before a Commission administrative law judge and that are subject to appeal directly to the Commission and thereafter to a U.S. Court of Appeals. The Commission, while it acts in a prosecutorial capacity in authorizing the enforcement action, acts in a judicial capacity if it reviews the administrative law judge's initial decision on appeal. Administrative proceedings provide for a variety of relief, including an order to comply with the law, a censure or a limitation on activities (in the case of a regulated entity or associated person), or a cease and desist order. With the passage of the Securities Law

Enforcement Remedies and Penny Stock Reform Bill of 1990, the Commission was vested with the power to obtain cease and desist orders, an accounting, disgorgement, and civil money penalties in appropriate cases. The Act enhanced the Commission's powers by enabling the Commission to seek civil money penalties against any person who has violated any provision of the federal securities laws and confirmed a federal court's authority to bar those who have engaged in securities fraud from serving as an officer or director of a public company. Additionally, the Sarbanes-Oxley Act of 2002 gave the Commission the authority in administrative actions to bar individuals from serving as officers or directors of publicly-held companies.

An outline of recent SEC cases is attached.

RECENT SEC ENFORCEMENT CASES¹

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March 16, 2005

¹ Parts of this outline have been used in other publications.

² The Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any private publication or statement by any of its employees. The views expressed herein are those of the authors and do not necessarily reflect the views of the Commission or its staff.

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As our capital markets continue to experience unprecedented growth and expansion, the Securities and Exchange Commission's ("Commission" or "SEC") enforcement program has been challenged to keep pace of market developments. Violations involving broker-dealers, mutual funds and investment advisers, fraudulent securities offerings, issuer disclosure, financial fraud, and insider trading continue to form the core of the enforcement program.

This Outline will review some of the Division's significant recent activity. Copies of orders, administrative releases, and litigation releases concerning the cases discussed below can be accessed on the Commission's web site at <www.sec.gov>.

I. FINANCIAL FRAUD & OTHER DISCLOSURE AND REPORTING VIOLATIONS

SEC v. Joseph Nacchio, Robert S. Woodruff, Robin R. Szeliga, Afshin Mohebbi, Gregory M. Casey, James J. Koslowski, Frank T. Noyes

SEC v. Roger B. Hoaglund

SEC v. William L. Eveleth

Litigation Release No. 19136 (March 15, 2005)

<http://www.sec.gov/litigation/litreleases/lr19136.htm>

On March 15, 2005, the Commission charged Joseph P. Nacchio, former co-chairman and chief executive officer of Qwest Communications International Inc., and eight other former Qwest officers and employees with fraud and other violations of the federal securities laws. In three separate but related civil actions, the Commission alleges that, between 1999 and 2002, the Qwest defendants engaged in a multi-faceted fraudulent scheme designed to mislead the investing public about the company's revenue and growth. According to the SEC's complaints, Nacchio and others made numerous false and misleading statements about Qwest's financial condition in annual, quarterly, and current reports, in registration statements that incorporated Qwest's financial statements, and in other public statements, including earnings releases and investor calls. As a result of that scheme, Qwest fraudulently recognized over \$3 billion of revenue and excluded \$71.3 million in expenses. The Commission, in October 2004, sued Qwest in a settled injunctive action in which the company agreed to pay a \$250 million penalty for its misconduct. In addition to Nacchio, the Commission's complaints name former chief financial officers Robert S. Woodruff and Robin R. Szeliga, former chief operating officer Afshin Mohebbi, former executive vice president of wholesale markets Gregory M. Casey, former senior vice president of pricing and offer management Roger B. Hoaglund, former senior vice president of finance William L. Eveleth, former director of financial reporting James J. Koslowski, and former senior manager of financial reporting Frank T. Noyes.

Hoaglund consented to the entry of a judgment enjoining him from violating the antifraud and internal control provisions of the federal securities laws and aiding and abetting reporting and books and records provisions, and directing him to pay a civil penalty of \$100,000 and disgorgement of \$200,000 plus prejudgment interest. Eveleth

consented to entry of a judgment enjoining him from violating the antifraud and internal control provisions of the federal securities laws and aiding and abetting reporting and books and records provisions, and directing him to pay a civil penalty of \$75,000 and disgorgement of \$35,575 plus prejudgment interest, and prohibiting him from acting as an officer or director of any public company for five years. The actions against the other defendants are still pending.

On March 15, 2005, the Commission also instituted settled cease-and-desist proceedings and filed related civil actions for penalties against Mark A. Schumacher and Brian K. Treadway, former controllers at Qwest. (Litigation Release Nos. 19134 and 19135; Sec. Exch. Act. Rel. Nos. 34-51373 and 34-51375). The Commission also instituted a settled cease and desist proceeding against Jennifer J. Black, a former director of finance at Qwest. (Sec. Exch. Act. Rel. No. 34-51374).

SEC v. Qwest Communications International Inc.

Litigation Release No. 18936 (October 21, 2004)
<http://www.sec.gov/litigation/litreleases/lr18936.htm>

On October 21, 2004, the Commission charged Qwest Communications International Inc., one of the largest telecommunications companies in the United States, with securities fraud and other violations of the federal securities laws. The Commission's complaint alleged that, between 1999 and 2002, Qwest fraudulently recognized over \$3.8 billion in revenue and excluded \$231 million in expenses as part of a multi-faceted fraudulent scheme to meet optimistic and unsupportable revenue and earnings projections. Qwest consented to entry of a judgment enjoining it from violating the Securities Act and the Exchange Act and the Rules thereunder. The judgment also directed Qwest to pay a civil penalty of \$250 million and \$1 disgorgement. The entire penalty amount will be distributed to defrauded investors. In addition, Qwest was required to maintain permanently a chief compliance officer ("CCO") reporting to a committee of outside directors and responsible for ensuring the company conducts its business in compliance with the federal securities laws.

The Commission's complaint alleged, among other things, that Qwest fraudulently characterized non-recurring revenue from IRU (Indefeasible Rights of Use) and equipment transactions as recurring "data and Internet service revenues," thereby masking its declining financial condition and artificially inflating its stock price; ignored generally accepted accounting principles ("GAAP") by recognizing upfront revenue from IRU transactions and equipment sales; failed to disclose in periodic filings with the Commission that it had committed to buy millions of dollars of equipment that it never intended to deploy in its network and entered into strategic relationships with, and invested in, many equipment and service vendors in part for the benefit of certain members of its senior management; and failed to disclose that its executives received, as compensation, investment opportunities in some of its vendors.

Previously, in February 2003, the Commission filed a civil injunctive action against former Qwest officers Joel M. Arnold, William L. Eveleth, Grant Graham,

Thomas W. Hall, Douglas K. Hutchins, Bryan K. Treadway, John M. Walker, and Richard L. Weston (Litigation Release No. 17996). In September 2003, the Commission instituted a settled cease-and-desist proceeding and filed a related civil action for penalties against Loren D. Pfau, a former Qwest sales manager (Litigation Release No. 18374). In June 2004, the Commission instituted settled cease-and-desist proceedings and filed related civil actions for penalties against Augustine M. Cruciotti, a former Qwest executive vice president, and Steven L. Haggerty, a former Qwest senior vice president (Litigation Release Nos. 18754 and 18755). In July 2004, the Commission filed a civil injunctive action against Michael Felicissimo, the former CFO of Qwest's Wireless division (Litigation Release No. 18800). Also in July 2004, the Commission filed a subpoena enforcement action against Drake Tempest, Qwest's former general counsel (Litigation Release No. 18804).

SEC v. Elan Corporation, plc

Litigation Release No. 19066 (February 8, 2005)

<http://www.sec.gov/litigation/litreleases/lr19066.htm>

On February 8, 2005, the Securities and Exchange Commission announced the filing of a settled civil action against Elan Corporation, plc, a pharmaceutical company headquartered in Dublin, Ireland. The Commission charged Elan with violating the antifraud provisions of the federal securities laws for failing to disclose material information about the company's financial results in periodic reports filed with the Commission and in quarterly earnings press releases disseminated to investors in the United States.

According to the complaint, during 2000 and 2001, Elan represented in its public statements that it was generating record amounts of revenue, net income and operating cash flow from drug sales and licensing activities. Elan also claimed that it was making significant progress towards achieving its goal of transforming itself into a fully integrated pharmaceutical company and generating \$5 billion of annual revenue by 2005. The complaint alleged that these statements were materially misleading because Elan failed to disclose, or inadequately disclosed, certain transactions that were critical to Elan's perceived success. As a result, investors were led to believe that Elan had achieved record results through improvements in the company's business, when in fact it had not.

Without admitting or denying the allegations in the complaint, Elan consented to the entry of a final judgment that permanently enjoins the company from violating the antifraud provisions of the federal securities laws as well as the reporting and internal controls provisions. The judgment also ordered Elan to pay \$1 in disgorgement and a \$15 million civil penalty, which is intended to be distributed to investors harmed by the alleged violations. The final judgment is subject to Court approval.

In the Matter of Google, Inc. and David C. Drummond

Admin. Proc. File No. 3-11795 (January 13, 2005)

<http://www.sec.gov/litigation/admin/33-8523.htm>

On January 13, 2005, the Commission charged Google, Inc. with failing to register the issuance of option grants to employees or provide required financial information to the option recipients. According to the Commission, the Silicon Valley search engine technology company issued over \$80 million in stock options to its employees in the two years preceding its IPO, yet failed to register the securities or make financial disclosures mandated by federal securities law. The federal securities laws require companies issuing over \$5 million in options during a 12-month period either to provide detailed financial information to the option recipients, or to register the securities offering with the Commission and thereby publicly disclose financial and other important information. According to the Commission, Google far exceeded the \$5 million disclosure threshold, yet failed to register the options or provide the required financial information to employees. Google - which, at the time, was still a privately held company - viewed the disclosure of the information to employees as strategically disadvantageous, fearing the information could leak to Google's competitors.

The Commission's Order charged Google with violating Section 5 of the Securities Act of 1933, which imposes registration and disclosure obligations in the offer or sale of securities, and further charges Drummond with causing Google's violation. Without admitting or denying the Commission's findings, Google and Drummond consented to an order that they cease and desist from violating or causing violations of Section 5. The Commission's Order also found that Google's General Counsel, David Drummond, was aware that the registration and related financial disclosure obligations had been triggered, but believed that Google could avoid providing the information to its employees by relying on an exemption from the law. According to the Commission, Drummond advised Google's Board that it could continue to issue options, but failed to inform the Board that the registration and disclosure obligations had been triggered or that there were risks in relying on the exemption, which was in fact inapplicable.

SEC v. Mark A. Bailin et al.

Litigation Release No. 19034 (January 13, 2005)

<http://www.sec.gov/litigation/litreleases/lr19034.htm>

SEC v. Koninklijke Ahold N.V. (Royal Ahold); SEC v. A. Michiel Meurs and Cees van der Hoeven; SEC v. Johannes Gerhardus Andreae; In the Matter of Ture Roland Fahlin

Litigation Release No. 18929 (October 13, 2004)

<http://www.sec.gov/litigation/litreleases/lr18929.htm>

SEC v. Peter O. Marion

Litigation Release No. 18796, (July 27, 2004)

<http://www.sec.gov/litigation/litreleases/lr18796.htm>

SEC v. Michael Resnick, Mark P. Kaiser, Timothy J. Lee, and William Carter

Litigation Release No. 18797, (July 27, 2004)

<http://www.sec.gov/litigation/litreleases/lr18797.htm>

On January 13, 2005, the Securities and Exchange Commission filed enforcement actions against nine individuals alleging they aided and abetted a massive financial fraud by signing and returning materially false audit confirmations sent to them by the auditors of the U.S. Foodservice, Inc. subsidiary of Royal Ahold (Koninklijke Ahold N.V.). The actions filed named as defendants Mark A. Bailin, Kenneth H. Bowman, Timothy Neal Daly, Michael J. Hannigan, Peter O. Marion, John Nettle, Gordon Redgate, Bruce Robinson and Michael Rogers. All of these individuals were employees of or agents for vendors that supplied U.S. Foodservice. The Commission's complaints alleged that U.S. Foodservice personnel contacted vendors and urged them to sign and return the false confirmation letters. Each of the individuals aided and abetted the fraud by signing and sending to the company's independent auditors confirmation letters that they knew materially overstated the amounts of promotional allowance income paid or owed to U.S. Foodservice. According to the Commission, U.S. Foodservice engaged in a scheme to report earnings equal to or greater than its targets, regardless of the company's true performance. Bailin, Hannigan, Nettle, Redgate, and Rogers each settled the Commission's action. The U.S. Attorney's Office for the Southern District of New York announced criminal charges in this matter.

The Commission also filed a separate complaint against Bailin alleging that during February and March of 2000, after learning of material, nonpublic information about Ahold's intention to acquire U.S. Foodservice, he traded in the shares of U.S. Foodservice and recommended the purchase of U.S. Foodservice to six other traders. Bailin settled the Commission's action, by consenting to a permanent injunction, and payment of \$2,224,446.51 disgorgement, \$751,031.78 prejudgment interest and a \$175,000 penalty.

On October 13, 2004, the Commission filed fraud and other charges in federal district court against Royal Ahold and three former top executives: Cees van der Hoeven A. Michiel Meurs, and Jan Andreae. The Commission's complaints alleged that, as a result of the fraudulent inflation of promotional allowances at U.S. Foodservice the improper consolidation of joint ventures through fraudulent side letters, and other

accounting errors and irregularities, Ahold's original SEC filings overstated net income, operating income and net sales. Ahold, Van der Hoeven, Meurs, and Fahlin settled settlements with the Commission. In a related matter, the Commission filed an administrative action charging Roland Fahlin, a former member of Ahold's supervisory board and audit committee, with causing violations of the reporting, books and records, and internal controls provisions of the securities laws.

Finally, on July 27, 2004, the Commission filed a complaint in federal district court alleging that Michael Resnick, Mark P. Kaiser, Timothy J. Lee and William Carter engaged in or substantially participated in the scheme to overstate the income of Royal Ahold by \$700 million or more in SEC filings and other public announcements for at least fiscal years 2001 and 2002. Resnick, Kaiser, Lee, and Carter were top executives at U.S. Foodservice. The complaint alleged that they grossly inflated reported profits and induced numerous suppliers to submit false confirmations to the company's auditors in order to conceal their fraud.

SEC v. TV Azteca S.A. de C.V., Azteca Holdings, S.A. de C.V., Ricardo Salinas Pliego, Pedro Padilla Longoria, and Luis Echarte Fernandez

Litigation Release No. 19022 (January 4, 2005)

<http://www.sec.gov/litigation/litreleases/lr19022.htm>

On January 4, 2005, the Commission filed civil fraud charges against TV Azteca S.A. de C.V., a Mexican issuer whose American depository receipts trade on the NYSE, its parent company, Azteca Holdings, S.A., de C.V. (Azteca Holdings), and three current and former TV Azteca officers and directors, Ricardo Salinas Pliego, Pedro Padilla Longoria, and Luis Echarte Fernandez. The Commission alleged in its complaint that the defendants engaged in an elaborate scheme to conceal Salinas's role in a series of transactions through which he personally profited by \$109 million. The Commission's complaint also alleged that Salinas and Padilla sold millions of dollars of TV Azteca stock while Salinas's self-dealing remained undisclosed to the market place.

According to the Commission's complaint, Salinas and others caused TV Azteca or Azteca Holdings to file periodic reports that did not disclose Salinas's involvement in related party transactions between Unefon, a subsidiary of TV Azteca, and a private entity secretly co-owned by Salinas, called Codisco. The Commission also alleged that TV Azteca filed the false reports concealing Salinas' involvement in the Unefon debt transactions, despite receiving advice from its U.S. counsel that these transactions were material, reportable transactions under U.S. federal securities laws.

In a consent filed simultaneously with the complaint, Echarte settled the Commission's action against him by agreeing to the entry of a final judgment permanently enjoining him from violating, and aiding and abetting violations of the antifraud, reporting, books and records, and internal controls provisions of the federal securities laws and to pay a penalty of \$200,000 and disgorgement of \$1.

SEC v. The Walt Disney Company

Admin. Proc. File No. 3-11777 (December 20, 2004)

<http://www.sec.gov/litigation/admin/34-50882.htm>

On December 20, 2004, the Commission instituted settled enforcement proceedings against The Walt Disney Company (Disney). The Commission charged Disney for failing to disclose certain related party transactions between Disney and its directors, and for failing to disclose certain compensation paid to a Disney director. Under the settlement, Disney consented to the entry of an Order that it cease and desist from violating the proxy solicitation and periodic reporting provisions of the federal securities laws. The Commission found that between 1999 and 2001, Disney failed to disclose relationships between the company and its directors which were required to be disclosed in its proxy statements and annual reports filed with the Commission. In particular, Disney failed to disclose that the company employed three children of its directors, who received annual compensation ranging from \$60,000 to more than \$150,000. In addition, Disney did not disclose that the spouse of another director was employed by a subsidiary 50% owned by Disney and received compensation in excess of one million dollars annually. Further, Disney failed to disclose that it made regular payments to a corporation owned by a Disney director that provided air transportation to that director for Disney-related business purposes. Finally, Disney failed to disclose that it provided office space, secretarial services, a leased car, and a driver to another Disney director, services valued by the company at over \$200,000 annually. Disney consented to the issuance of the Commission's Order, which requires Disney to cease and desist from committing or causing any violations and any future violations of Sections 13(a) and 14(a) of the Securities Exchange Act of 1934 and Rules 13a-1, 12b-20, and 14a-3(a) thereunder.

SEC v. American International Group, Inc.

Litigation Release No. 18985 (November 30, 2004)

<http://www.sec.gov/litigation/litreleases/lr18985.htm>

On November 30, 2004, the Commission filed a civil action against American International Group, Inc. (AIG) for violating antifraud provisions of the federal securities laws and for aiding and abetting violations of reporting and record-keeping provisions of those laws. The Commission's action arises out of the conduct of AIG, primarily through its wholly owned subsidiary AIG Financial Products Corp. (AIG-FP), in developing, marketing, and entering into transactions that purported to enable a public company to remove certain assets from its balance sheet. AIG consented to the issuance of a final judgment (1) permanently enjoining it from violating, and from aiding and abetting violations of, certain provisions of the federal securities laws, (2) ordering it to comply with its undertaking to retain an independent consultant to examine certain prior transactions and to establish a transaction review committee to review future transactions, and (3) ordering it to disgorge the amount of fees that it received. In consenting to settle the Commission's action and related criminal charges, AIG and AIG-FP agreed to pay disgorgement, plus prejudgment interest, and penalties totaling \$126,366,000.

In its complaint, the Commission alleged that from at least March 2001 through January 2002, AIG, primarily through AIG-FP, developed a product called a Contributed Guaranteed Alternative Investment Trust Security (C-GAITS), marketed that product to several public companies, and ultimately entered into three C-GAITS transactions with one such company, The PNC Financial Services Group, Inc. (PNC). For a fee, AIG and AIG-FP offered to establish a special purpose entity (SPE) to which the counter-party would transfer troubled or other potentially volatile assets. AIG and AIG-FP represented that, under generally accepted accounting principles (GAAP), the SPE would not be consolidated on the counter-party's financial statements. The counter-party thus would be able to avoid charges to its income statement resulting from declines in the value of the assets transferred to the SPE. The transaction that AIG and AIG-FP developed and marketed, however, did not satisfy the requirements of GAAP for non-consolidation of SPEs.

SEC v. Wachovia Corporation

Litigation Release No. 18958 (November 4, 2004)

<http://www.sec.gov/litigation/litreleases/lr18958.htm>

On November 4, 2004, the Commission filed settled civil action against Wachovia Corporation for violations of proxy disclosure laws and other reporting rules involving the 2001 merger between First Union Corporation (First Union) and Old Wachovia Corporation (Old Wachovia). The complaint alleges that Old Wachovia and First Union failed to disclose in quarterly reports and in a joint proxy statement-prospectus filed in connection with the merger the total number of shares of First Union common stock that Old Wachovia intended to and did purchase during the period when First Union and SunTrust Corporation (SunTrust) were engaged in a hostile takeover battle for Old Wachovia.

With respect to these purchases, neither First Union nor Old Wachovia disclosed in the quarterly or annual reports, or in their joint proxy sent to over two hundred thousand shareholders on June 29, 2001, that: (a) Old Wachovia authorized the purchase of First Union common stock; (b) subject to regulatory filings, Old Wachovia intended to purchase up to \$500 million worth of First Union common stock; and (c) the total number of First Union common shares that Old Wachovia purchased in May and June 2001. This material information was not disclosed until August 2001, after the shareholders voted on the merger. Old Wachovia should have publicly disclosed more detailed information about its purchases of First Union common stock so that the market would be able to evaluate the effect of those purchases on First Union common stock price during that period.

Without admitting or denying the allegations in the complaint, Wachovia consented to entry of a judgment enjoining it from violating disclosure laws and reporting rules, and payment of a \$37 million civil penalty.

In the Matter of Morgan Stanley

Admin. Proc. File No. 3-11725 (November 4, 2004)

<http://www.sec.gov/litigation/admin-34-50632.htm>

On November 4, 2004, the Commission instituted settled cease-and-desist proceedings against Morgan Stanley. According to the Commission, Morgan Stanley valued certain aircraft in its aircraft leasing business and certain bonds in its high-yield bond portfolio in a manner that violated financial reporting, recordkeeping, and internal controls provisions of the federal securities laws.

Regarding its impaired aircraft, the Commission alleged that Morgan Stanley used a valuation method not in compliance with Generally Accepted Accounting Principles (GAAP) to determine the value of certain impaired aircraft in its aircraft-leasing portfolio. GAAP requires that the value for these aircraft be recorded at “fair value.” Instead, during a slump in the aircraft leasing business brought on by the terrorist attacks of September 11, 2001, and for the third quarter of fiscal year 2002, the Commission alleged that Morgan Stanley obtained independent appraisers’ estimates of “base value” and used the average of their estimates of base value to establish the recorded value of a number of its aircraft in violation of GAAP.

Regarding its high-yield bond portfolio, the Commission alleged that Morgan Stanley overvalued certain bonds in the portfolio in 2000 by taking a “longer view” as to their value, which entailed discounting current market conditions such as imbalances in supply and demand. By overvaluing those bonds, Morgan Stanley took less of a markdown than it would have had it complied with GAAP, thereby overstating its trading revenue for the fourth quarter of its fiscal year 2000.

Morgan Stanley agreed to cease and desist from committing or causing any violations of, and any future violations of the Exchange Act.

In the Matter of Hawaiian Airlines, Inc.

Admin Proc. File No. 3-11717 (October 22, 2004)

<http://www.sec.gov/litigation/admin34-50584.htm>

On October 22, 2004, the Securities and Exchange Commission instituted settled cease-and-desist proceedings against Hawaiian Airlines, Inc. (Hawaiian). This matter involved the failure to disclose material changes during the course of a \$25,000,000 issuer tender offer by Hawaiian in mid-2002. The offer was intended to allow Hawaiian’s majority stockholder, a partnership controlled by Hawaiian’s then CEO, to cash out some of its Hawaiian holdings. Hawaiian failed to disclose to its shareholders that, prior to the closing of the tender offer, the company had experienced two months of financial results falling far short of Hawaiian’s internal projections and casting doubt on Hawaiian’s stated conclusion in the offering materials that the tender offer would not impair its future solvency. Had they disclosed the information, a higher proportion of Hawaiian’s shareholders reasonably could have decided to tender their shares, reducing sales proceeds for Hawaiian’s majority shareholder. Instead, non-tendering shareholders

retained their shares, to their detriment. Nine months later, Hawaiian filed for bankruptcy. According to the Commission, Hawaiian failed to disclose to its shareholders that its financial results for April and May 2002, and the revised projections based on those results, materially undermined statements made by Hawaiian in the tender offer documents. As a result, Hawaiian violated and agreed to cease and desist from committing or causing any violations and any future violations of the Exchange Act and the Rules thereunder.

Previously, on September 23, 2004, the Commission instituted settled cease-and-desist proceedings against John W. Adams, Hawaiian's then-Chairman and CEO, and AIP, LLC, Hawaiian's majority shareholder, a partnership managed by Adams. The Commission ordered that Respondents cease and desist from causing any violations of the federal securities laws, and that Respondent AIP disgorge \$2,229,193 and prejudgment interest in the amount of \$237,094, for a total payment of \$2,466,287. Adams was ordered to disgorge \$3,782 and prejudgment interest in the amount of \$402, for a total payment of \$4,184 (In the Matter of John W. Adams and AIP, LLC, Administrative Proceeding File No. 3-11676 (September 23, 2004)).

In the Matter of General Electric Company

Admin Proc. File No. 3-11677 (September 23, 2004)

<http://www.sec.gov/litigation/admin/34-50426.htm>

On September 23, 2004, the Commission instituted settled cease-and-desist proceedings against General Electric Company (GE). The Commission charged that GE failed to fully describe the substantial benefits it had agreed to provide its former chairman and CEO John F. "Jack" Welch, Jr., under an "employment and post-retirement consulting agreement."

The Commission found that in proxy statements and annual reports filed with the Commission, GE failed to fully and accurately describe the retirement benefits Welch was entitled to receive from the company. In December 1996, GE and Welch entered into an "employment and post-retirement consulting agreement" under which Welch agreed to continue as CEO until he was 65 and serve as a consultant thereafter. In the agreement, Welch received, as his principal form of compensation, lifetime access to the perquisites and benefits he had received as GE's chairman and CEO. GE's proxy statements only referred to Welch's entitlement to "...continued lifetime access to Company facilities and services comparable to those that are currently made available to him by the Company," but did not provide any other specific information about the "facilities and services" Welch would receive in retirement.

The agreement itself, which was appended as an exhibit to GE's 1996 annual report, stated that Welch was entitled to receive in retirement "continued access to Company facilities and services comparable to those provided to him prior to his retirement, including access to Company aircraft, cars, office, apartments, and financial planning services," but did not provide further meaningful and complete disclosure of those "facilities and services." Moreover, GE made no other disclosures in its SEC

filings that allowed investors to understand the nature and scope of Welch's retirement benefits-specifically, investors could not learn from GE's previously filed proxy statements many of the most significant "facilities and services" Welch had been provided prior to his retirement, including personal use of GE-owned aircraft, personal use of chauffeured limousines and home security systems. The Commission further found that in the first year following Welch's retirement in September 2001, Welch received approximately \$2.5 million in benefits under the agreement.

The Commission concluded that GE's inadequate disclosures violated the Exchange Act and the Rules thereunder. GE consented to the issuance of the Order, which orders GE to cease and desist from committing or causing any violations and any future violations of the foregoing statutory provisions and rules.

SEC v. Computer Associates International, Inc.

SEC v. Sanjay Kumar and Stephen Richards

SEC v. Steven Woghin

Litigation Release No. 18891 (September 22, 2004)

<http://www.sec.gov/litigation/litreleases/lr18891.htm>

On September 22, 2004, the Commission filed a partially settled securities fraud action in federal district court against Computer Associates International, Inc. and three of the company's former top executives – Sanjay Kumar, former CEO and Chairman; Stephen Richards, former Head of Sales; and Steven Woghin, former General Counsel. The Commission alleged that Computer Associates routinely kept its books open to record revenue from contracts executed after the quarter ended in order to meet Wall Street quarterly earnings estimates. In total, Computer Associates prematurely recognized \$2.2 billion in revenue in FY2000 and FY2001 and more than \$1.1 billion in premature revenue in prior quarters. In addition, the Commission alleged that Computer Associates, through former executives Kumar, Richards, Woghin and others, obstructed the Commission's investigation into the company's accounting practices.

According to the Commission, while the accounting fraud was occurring, defendants Kumar, Richards and Woghin received ill-gotten gains in the form of compensation they received from Computer Associates. In addition to committing securities fraud, the defendants interfered with the Commission's investigation by making materially false and misleading statements in a joint proffer session with the Commission and the United States Attorney's Office. During the same relevant period, Richards made materially false and misleading statements in sworn investigative testimony and Woghin encouraged several Computer Associates employees to make false and misleading statements to the SEC and/or Computer Associates' outside counsel.

In a joint settlement with the Commission and the USAO, Computer Associates agreed to a permanent injunction against the future violations of the antifraud, reporting, books and records and internal control provision of the federal securities laws; to be subject to the review of an Independent Examiner, reporting to the Commission, the Justice Department and Computer Associates' Board of Directors; and to establish a

comprehensive new ethics and compliance program, overseen by a new Chief Compliance Officer, and a new Compliance Committee of its Board of Directors. In addition, Computer Associates entered into a deferred prosecution agreement with the USAO requiring Computer Associates to pay \$225 million to injured shareholders and directing Computer Associates to undertake the same remedial measures in the Commission's consent judgment. Woghin consented to a partial judgment imposing a permanent injunction prohibiting him from violating the antifraud reporting, books and records and internal control provisions of the federal securities laws and permanently barring him from serving as an officer or director of a public company. On November 10, 2004, the SEC instituted settled administrative proceedings against Steven Woghin, based on the entry of the permanent injunction, suspending him from appearing or practicing before the Commission as an attorney (In the Matter of Steven Woghin, Esq., Admin. Proc. File No. 3-11735 (November 10, 2004)).

SEC v. Royal Dutch Petroleum Company and The "Shell" Transport and Trading Company, P.L.C.

Litigation Release No. 18844 (August 24, 2004)

<http://www.sec.gov/litigation/litreleases/lr18844.htm>

On August 24, 2004, the Commission announced a settlement of an enforcement action against foreign-based oil companies Royal Dutch Petroleum Company ("Royal Dutch") and The "Shell" Transport and Trading Company, p.l.c. (together, Shell) in connection with their overstatement of 4.47 billion barrels of previously reported proved hydrocarbon reserves. Royal Dutch is a Dutch corporation headquartered in The Hague, while Shell Transport is an English corporation headquartered in London.

According to the Commission's order and complaint, Shell overstated proved reserves reported in its 2002 Form 20-F by 4.47 billion barrels of oil equivalent overstated the standardized measure of future cash flows reported in this filing by approximately \$6.6 billion, and Shell materially misstated its reserves replacement ratio ("RRR"), a key performance indicator in the oil and gas industry. The Commission found that Shell's overstatement of proved reserves and its delay in correcting the overstatement, resulted from (i) its desire to create and maintain the appearance of a strong RRR, (ii) the failure of its internal reserves estimation and reporting guidelines to conform to SEC requirements, and (iii) the lack of effective internal controls over the reserves estimation and reporting process. These failures led Shell to record and maintain proved reserves it knew (or was reckless in not knowing) did not satisfy SEC requirements, and to report for certain years a stronger RRR than it actually had achieved.

Royal Dutch and Shell Transport settled these proceedings by consenting to a cease-and-desist order finding violations of the antifraud, internal controls, record-keeping and reporting provisions of the federal securities laws, and by paying \$1 disgorgement and a \$120 million penalty in a related civil action the Commission filed in federal district court. Shell has also undertaken to commit an additional \$5 million to develop and implement a comprehensive internal compliance program under the direction

and oversight of the Group's legal director. The companies settled without admitting or denying the Commission's substantive findings.

SEC v. Bristol-Myers Squibb Company

Litigation Release No. 18820 (August 4, 2004)

<http://www.sec.gov/litigation/litreleases/lr18820.htm>

SEC v. Bristol-Myers Squibb Company

Litigation Release No. 18867 (September 2, 2004)

<http://www.sec.gov/litigation/litreleases/lr18867.htm>

On August 4, 2004, the Commission filed a settled enforcement action against Bristol-Myers Squibb Company, a New York-based company whose largest division, the U.S. Medicines Group, is based in New Jersey. The Commission's complaint, filed in federal district court, alleged that Bristol-Myers perpetrated a fraudulent earnings management scheme by, among other things, selling excessive amounts of pharmaceutical products to its wholesalers ahead of demand, improperly recognizing revenue from \$1.5 billion of such sales to its two largest wholesalers, and using "cookie jar" reserves to meet its internal sales and earnings targets and analysts' earnings estimates.

According to the Commission, Bristol-Myers inflated its results primarily by (1) stuffing its distribution channels with excess inventory near the end of every quarter in amounts sufficient to meet its targets by making pharmaceutical sales to its wholesalers ahead of demand; and (2) improperly recognizing \$1.5 billion in revenue from such pharmaceutical sales to its two biggest wholesalers. When Bristol-Myers' results still fell short of the Street's earnings estimates, the company tapped improperly created divestiture reserves and reversed portions of those reserves into income to further inflate its earnings. As a result of its channel-stuffing, Bristol-Myers materially understated its accruals for rebates due to Medicaid and certain of its prime vendors, customers of its wholesalers that purchased large quantities of pharmaceutical products from those wholesalers.

Bristol-Myers agreed to the following relief: a permanent injunction against future violations of certain antifraud, reporting, books and records and internal controls provisions of the federal securities laws; disgorgement of \$1; a civil penalty of \$100 million; an additional \$50 million payment into a fund for the benefit of shareholders; various remedial undertakings, including the appointment of an independent adviser to review, assess and monitor Bristol-Myers' accounting practices, financial reporting and disclosure processes and internal control systems. A final Judgment Order was entered against Bristol-Meyers in federal district court on August 6, 2004. (Litigation Release No. 18822).

In the Matter of Halliburton Company and Robert Charles Muchmore Jr.

Administrative Proceeding File No. 3-11574 (August 3, 2004)

<http://www.sec.gov/litigation/admin/33-8452.htm>

SEC v. Gary V. Morris

Litigation Release No. 18817 (August 3, 2004)

<http://www.sec.gov/litigation/litreleases/lr18817.htm>

SEC v. Halliburton Company and Robert Charles Muchmore Jr.

Litigation Release No. 18817 (August 3, 2004).

<http://www.sec.gov/litigation/litreleases/lr18817.htm>

On August 3, 2004 the SEC initiated enforcement proceedings against Halliburton Co., its former chief financial officer, Gary V. Morris, and its former controller, Robert C. Muchmore, Jr. The Commission's actions are in response to Halliburton's failure to disclose a 1998 change to its accounting practice. As a result of that undisclosed change, Halliburton's public statements regarding its income in 1998 and 1999 were materially misleading. Halliburton and Muchmore agreed to settle the enforcement actions by consenting to a Commission order to cease and desist from committing or causing future securities law violations and by agreeing to pay penalties of \$7.5 million and \$50,000 respectively, in a related civil action. Halliburton's penalty for the disclosure failure reflects lapses in the company's conduct during the course of the Commission investigation, which commenced in mid-2002.

Halliburton provides a wide range of industrial construction services. In providing those services, Halliburton, at times, incurs cost overruns; the overruns may be recovered from Halliburton's customer depending on the terms of the construction contract and the nature of the overruns. Historically, Halliburton recognized income arising from cost overrun claims only in the financial quarter in which the claim was finally resolved with the customer. From 1993 to 1997, Halliburton had set forth this practice in its periodic filings with the Commission. In the second quarter of 1998, Halliburton changed its historical accounting practice and began recognizing revenues by offsetting losses on certain projects with revenues based on estimated probable recoveries on claims that had not been resolved with customers.

Under the new practice, Halliburton recognized revenues on certain claims that the company believed were probable of collection rather than, pursuant to the prior practice, claims that had been finally resolved with its customers. Although both of Halliburton's claims recognition practices, the historical one and the revised one, are appropriate under Generally Accepted Accounting Principles, there was a significant difference in their respective effects on Halliburton's financial presentation: the new practice reduced losses on several large construction projects. As a result, Halliburton's reported income was higher under the revised practice than it would have been under the prior practice. Over six reporting periods, spanning approximately 18 months covering 1998 and 1999, Halliburton failed to disclose its change of accounting practice. In the absence of any disclosure, the investing public was deprived of a full opportunity to assess Halliburton's reported income - more particularly, the precise nature of that income, and its comparability to Halliburton's income in prior periods. It was not until

March 2000 that Halliburton, in its 1999 Form 10-K, disclosed its change in accounting practice.

SEC v. Henry C. Yuen and Elsie M. Leung

Litigation Release No. 18199 (June 20, 2003)

<http://www.sec.gov/litigation/litreleases/lr18199.htm>

SEC v. Henry C. Yuen et al.

Litigation Release No. 18530 (January 6, 2004)

<http://www.sec.gov/litigation/litreleases/lr18530.htm>

SEC v. Gemstar-TV Guide International, Inc.

Litigation Release No. 18760 (June 23, 2004)

<http://www.sec.gov/litigation/litreleases/lr18760.htm>

SEC v. Peter C. Boylan

Litigation Release No. 18826 (August 10, 2004)

<http://www.sec.gov/litigation/litreleases/lr18826.htm>

In the Matter of Jonathan B. Orlick, Esq.

Admin. Proc. File No. 3-11801 (January 26, 2005)

<http://www.sec.gov/litigation/admin/34-51081.htm>

SEC v. Henry C. Yuen et al.

Litigation Release No. 19047 (January 21, 2005)

<http://www.sec.gov/litigation/litreleases/lr19047.htm>

During June of 2004, the Commission filed a complaint in federal district court charging Gemstar-TV Guide International, Inc. with improperly reporting its highly touted interactive program guide licensing and advertising revenues in its financial statements from 1999 through 2002. According to the Commission, during the relevant period, Gemstar generated revenues from the IPG by licensing the technology to third parties and selling advertising space on the IPG. The Commission's complaint alleged that Gemstar materially overstated its revenues by nearly \$250 million by (1) recording revenue under expired, disputed, or non-existent agreements, and improperly reporting this as IPG licensing and advertising revenue; (2) recording and reporting revenue from a long-term agreement on an accelerated basis in contravention of GAAP and Gemstar's own stated and disclosed revenue recognition policy; (3) inflating its IPG advertising revenue by improperly recording and reporting revenue amounts from multiple-element transactions; (4) improperly recording and reporting IPG advertising revenue from non-monetary and barter transactions; and (5) improperly reporting certain revenues as IPG advertising revenues when in fact those revenues were derived from the sale of print advertising. The misstatements of revenue were reported in Forms 10-K, 10-Q, and 8-K filed with the Commission. The Commission alleged that these public statements misrepresented Gemstar's true financial performance and failed to disclose material information about that performance.

Gemstar agreed to settle the case by, among other things, paying a \$10 million civil penalty and agreeing to a permanent injunction against further violations of the periodic reporting, recordkeeping, and internal controls provisions of the federal securities laws. In assessing the penalty amount, the Commission considered the scope and severity of Gemstar's misconduct, Gemstar's initial failure to cooperate in the

Commission's investigation or undertake remedial actions, and Gemstar's significant cooperation and remediation following a change in senior management and restructuring of its corporate governance.

Previously, on January, 6, 2004, the Commission filed securities fraud charges against three former senior executives of Gemstar-TV Guide International, Inc., Peter Boylan, Johathan Orlick, and Craig Waggy representing its former co-president, general counsel, and chief financial officer of its wholly owned subsidiary, TV Guide, Inc. The complaint charged that these executives participated in Gemstar's widespread and complex scheme to inflate its licensing and advertising revenue and to mislead investors about the company's true financial performance. The January 6, 2004 action amended the Commission's complaint filed against Gemstar's former chief executive officer, Henry C. Yuen, and former chief financial officer, Elsie M. Leung, on June 19, 2003. The complaint sought permanent injunctions, civil money penalties, disgorgement of ill-gotten gains (including salaries, bonuses and any proceeds from the sale of stock during the fraud), and bars from service as an officer or director of a public company. Peter Boylan settled the federal district court action filed by the Commission. As part of the settlement Boylan consented to a fraud injunction and to pay a total of \$600,000 in disgorgement and penalties.

On January 20, 2005, the court entered a consent judgment permanently enjoining Jonathan B. Orlick, a former Deputy General Counsel and Senior Vice President of Gemstar, from future violations or aiding and abetting violations of the Exchange Act. Orlick was also ordered to pay \$150,000 in disgorgement, \$5,510.62 in prejudgment interest, and a \$150,000 penalty. Orlick was also prohibited from serving as an officer or director of a public company for ten years. In a related administrative action, Orlick agreed to be suspended from appearing or practicing before the SEC as an attorney. Orlick consented to the relief without admitting or denying the SEC's allegations.

The Commission's action is pending against three other former executives of Gemstar: Henry C. Yuen, former chief executive officer; Elsie M. Leung, former chief financial officer; and Craig Waggy, former CFO of TV Guide.

SEC v. Lucent Technologies Inc., Nina Aversano, Jay Carter, A. Leslie Dorn, William Plunkett, John Bratten, Deborah Harris, Charles Elliot, Vanessa Patrini, Michelle Hayes-Bullock, and David Ackerman

Litigation Release No. 18715 (May 17, 2004)

<http://www.sec.gov/litigation/litreleases/lr18715.htm>

In May of 2004, the Commission charged Lucent Technologies Inc. with securities fraud, and violations of the reporting, books and records and internal control provisions of the federal securities laws. The Commission also charged nine current and former Lucent officers, executives and employees, and one former Winstar Communications Inc. officer with securities fraud and aiding and abetting Lucent's violations of the federal securities laws.

The Commission's complaint alleged that Lucent fraudulently and improperly recognized approximately \$1.148 billion of revenue and \$470 million in pre-tax income during its fiscal year 2000. According to the Commission, the defendants, in their drive to realize revenue, meet internal sales targets and/or obtain sales bonuses, improperly granted, and/or failed to disclose, various side agreements, credits and other incentives (collectively "extra-contractual commitments") to induce Lucent's customers to purchase the company's products. These extra-contractual commitments were made in at least ten transactions in fiscal 2000, and Lucent violated GAAP by recognizing revenue on these transactions both in circumstances: (a) where it could not be recognized under GAAP; and (b) by recording the revenue earlier than was permitted under GAAP. The Commission also alleged that David Ackerman, at the time an officer of Winstar, engaged in a scheme with Plunkett that resulted in Lucent improperly recording a \$125 million software purchase by Winstar at the end of Lucent's fourth quarter of fiscal year 2000.

Lucent agreed to pay a penalty for its failure to cooperate, based on, among other things, (1) incomplete document production, (2) failure to ensure that a relevant document was preserved and produced, (3) characterization by Lucent's counsel that Lucent's fraudulent booking of the \$125 million software pool agreement between Lucent and Winstar was a "failure of communication" thus denying that an accounting fraud had occurred, (4) expanding the scope of employees that could be indemnified after reaching an agreement in principle to settle the case, and (5) failure to provide timely and full disclosure to the staff on a key issue concerning indemnification of employees. In addition, Lucent, Plunkett, Harris and Petrini have agreed to settle with the Commission, consenting to the entry of permanent injunctions against future violations of the anti-fraud, reporting, books and records and internal controls provisions of the federal securities laws. Lucent will pay a penalty of \$25 million, while Plunkett will pay a penalty of \$110,000 and be barred from acting as an officer or director of a public company; Harris will pay a penalty of \$100,000 and be barred from acting as an officer or director of a public company for five years; and Petrini will pay a penalty of \$60,000 and disgorge \$109,505, representing profits gained as a result of the conduct alleged in the complaint, together with prejudgment interest thereon in the amount of \$23,487. The Commission will litigate this case against the remaining seven defendants.

SEC v. Scott D. Sullivan (WorldCom)

Litigation Release No. 18605 (March 2, 2004)

<http://www.sec.gov/litigation/litreleases/lr18605.htm>

The Commission filed a civil enforcement action against Scott D. Sullivan, the former Chief Financial Officer of WorldCom, Inc. The Commission charged Sullivan with engaging in a fraudulent scheme to conceal WorldCom's poor financial performance. The Commission alleged that Sullivan, with the consent and knowledge of WorldCom's former Chief Executive Officer, Bernard J. Ebbers, caused numerous improper adjustments and entries in WorldCom's books and records, often in the hundreds of millions of dollars, to make the company's quarterly and yearly financial results appear to meet Wall Street's expectations. In addition, the Commission alleged

that Sullivan made numerous false and misleading public statements about WorldCom's financial condition and performance, and signed a number of SEC filings that contained false and misleading material information. In connection with the same conduct, Sullivan pleaded guilty to criminal charges filed by the U.S. Attorney's Office for the Southern District of New York. In addition, that office announced the related indictment of Bernard J. Ebbers.

Simultaneously with the filing of the complaint, Sullivan agreed, to the entry of an order permanently enjoining him from violating, directly or indirectly, provisions of the federal securities laws, including the antifraud, reporting, books and records, internal controls, and lying-to-auditors provisions. Sullivan also agreed to the entry of an order that would permanently bar him from serving as an officer or director of a public company. Monetary relief will be decided by the Court. In a separate administrative proceeding, Sullivan agreed to a Commission administrative order suspending him from appearing or practicing before the Commission as an accountant, under Rule 102(e) of the Commission's Rules of Practice.

The Commission's action against Sullivan is its fifth civil enforcement action related to the WorldCom fraud. The first was filed against WorldCom, Inc. on June 27, 2002, the day after WorldCom announced that it intended to restate its financial results for five quarters - all quarters in 2001 and the first quarter of 2002 (Litigation Release No. 17588). On Nov. 26, 2002, the Commission obtained a judgment against WorldCom that provided the full injunctive relief sought against the company. In addition, the judgment ordered WorldCom to undertake extensive reviews of its corporate governance and internal controls, as well as required the company to establish a training and education program for WorldCom officers and employees to minimize the possibility of future violations of the federal securities laws (Litigation Release No. 17866). Subsequently, the U.S. District Court ordered WorldCom to satisfy the Commission's civil monetary penalty judgment by paying \$500 million in cash and transferring \$250 million worth of common stock in the reorganized company when it emerges from bankruptcy into a fund for distribution to victims of the company's fraud, pursuant to Section 308 (Fair Funds for Investors) of the Sarbanes-Oxley Act of 2002 (Litigation Release Nos. 17829, 18219 and 18277). The Commission's plan for distributing the penalty to defrauded investors was approved July 19, 2004. (Litigation Release No. 18789). Previously, the Commission filed civil actions against former WorldCom Controller David F. Myers (Litigation Release No. 17753); former WorldCom Director of General Accounting Buford "Buddy" Yates, Jr. (Litigation Release No. 17771); and Betty L. Vinson and Troy M. Normand, former accountants in WorldCom's General Accounting Department (Litigation Release No. 17783). All of these actions are pending.

Enron Cases

The Commission brought the following actions against Enron's employees or employees of subsidiaries of Enron:

SEC v. Mark E. Koenig

Litigation Release No. 18849 (August 25, 2004)

<http://www.sec.gov/litigation/litreleases/lr18849.htm>

On August 25, 2004, the Commission charged Mark E. Koenig, a former Executive Vice-President and Director of Investor Relations at Enron Corp., with violating the antifraud provisions of the federal securities laws by participating in a scheme to defraud by disseminating and approving the dissemination of false and misleading information to the public about Enron's business in earnings releases and analyst calls. Koenig agreed to be enjoined permanently from violating the antifraud provisions of the federal securities laws, and to be barred from acting as an officer or director of a public company. As part of the settlement agreement, which is subject to the approval of the U.S. District Court, Koenig will pay disgorgement and a civil penalty totaling \$1,493,572. The Commission brought this action in coordination with the U.S. Department of Justice Enron Task Force, which filed a related criminal charge with Koenig. Koenig agreed to enter into a guilty plea in connection with that charge and to cooperate with the government's continuing investigation.

SEC v. Paula H. Rieker

Litigation Release No. 18717 (May 19, 2004)

<http://www.sec.gov/litigation/litreleases/lr18717.htm>

On May 19, 2004, the Commission charged Paula H. Rieker (Rieker), a former Managing Director for Investor Relations and Corporate Secretary for Enron Corp., with violating federal securities laws by engaging in insider trading by trading on material inside information about significant losses in Enron Broadband Services (EBS) and by providing substantial assistance to Enron executives and senior managers in the dissemination of false and misleading information to the public about Enron business units in analyst calls and earnings releases. Rieker agreed to be permanently enjoined from violating and aiding and abetting the antifraud provisions, and to be barred from acting as an officer or director of a public company. As part of a settlement agreement, Rieker will pay disgorgement, prejudgment interest, and a civil penalty totaling \$499,333. The Commission brought this action in coordination with the U.S. Department of Justice Enron Task Force, which filed a related criminal charge against Rieker. Rieker agreed to enter a guilty plea in connection with that charge and to cooperate with the government's continuing investigation.

SEC v. Richard A. Causey and Jeffrey K. Skilling

Litigation Release No. 18582 (February 19, 2004)
<http://www.sec.gov/litigation/litreleases/lr18582.htm>

SEC v. Andrew S. Fastow

Litigation Release No. 18543 (January 14, 2004)
<http://www.sec.gov/litigation/litreleases/lr18543.htm>

In January 2004, the Commission charged Richard A. Causey, the former Chief Accounting Officer of Enron Corp., with violating, and aiding and abetting the violation of, the antifraud, periodic reporting, books and records, and internal controls provisions of the federal securities laws. In February 2004, The Commission amended it's complaint to charge Jeffrey K. Skilling, Enron Corp.'s former President, Chief Executive Officer and Chief Operating Officer, with the same violations. The Amended Complaint further alleges that Skilling sold Enron stock while in possession of material, non-public information that generated unlawful proceeds of approximately \$63 million. According to the Commission, Causey, Skilling, and others at Enron, engaged in a wide-ranging scheme to manipulate Enron's publicly reported earnings through a variety of devices designed to produce materially false and misleading financial results. The Commission also alleged that Causey, and others, made false and misleading statements concerning Enron's financial results and the performance of its businesses, and that these misrepresentations also were reflected in Enron's public filings with the Commission. The Commission is sought disgorgement of all ill-gotten gains, civil money penalties, a permanent bar from acting as a director or officer of a publicly held company, and an injunction against future violations of the federal securities laws. The Commission brought this action in coordination with the Justice Department's Enron Task Force, which filed related criminal charges against Causey and Skilling.

Also in January, the Commission settled civil fraud charges against Andrew S. Fastow, Enron's former chief financial officer. The complaint, filed on October 2, 2002 in federal district court alleged that Fastow defrauded Enron's shareholders and enriched himself and others by, among other things, entering into undisclosed side deals, manufacturing earnings for Enron through sham transactions, and inflating the value of Enron's investments. Fastow agreed to be enjoined permanently from violating the antifraud, periodic reporting, books and records, and internal control provisions of the federal securities laws, and to be barred permanently from acting as an officer or director of a public company. The Commission settled its action in coordination with the Justice Department's Enron Task Force, which entered into a guilty plea with Fastow on related criminal charges. In resolving the parallel civil and criminal proceedings, Fastow agreed to serve a ten-year sentence, disgorge more than \$23 million and to cooperate with the government's continuing investigation.

SEC v. Richard A. Causey, Jeffrey K. Skilling and Kenneth L. Lay

Litigation Release No. 18776 (July 8, 2004)

<http://www.sec.gov/litigation/litreleases/lr18776.htm>

In July of 2004, the Commission initiated civil charges against Kenneth L. Lay, former Chairman and Chief Executive Officer of Enron Corp., for his role in a wide-ranging scheme to defraud by falsifying Enron's publicly reported financial results and making false and misleading public representations about Enron's business performance and financial condition. The Commission alleged, among other things, that Lay profited from the scheme to defraud by selling large amounts of Enron stock at prices that did not reflect its true value and that the sales occurred while Lay was in possession of material non-public information concerning Enron and generated unlawful proceeds in excess of \$90 million during 2001. The Commission is seeking disgorgement of all ill-gotten gains, civil money penalties, a permanent bar from acting as a director or officer of a publicly held company, and an injunction against future violations of the federal securities laws.

SEC v. David W. Delainey

Litigation Release No. 18435 (October 30, 2003)

<http://www.sec.gov/litigation/litreleases/lr18435.htm>

On October 30, 2003, the Commission charged David W. Delainey (Delainey), the former Chief Executive Officer of Enron North America and Enron Energy Services, with violating the antifraud provisions of the federal securities laws by engaging in a wide-ranging scheme to manipulate Enron's publicly reported earnings through a variety of devices designed to produce materially false and misleading financial results. Delainey agreed, in part, to be enjoined permanently from violating the antifraud provisions, and to be barred from acting as an officer or director of a public company. As part of the settlement agreement, Delainey will pay nominal disgorgement of \$100 and a civil penalty of approximately \$3.74 million. The Commission brought this action in coordination with the U.S. Department of Justice Enron Task Force, which filed a related criminal charge against Delainey. Delainey agreed to enter a guilty plea in connection with that charge, forfeit approximately \$4.26 million in unlawful proceeds, and cooperate with the government's continuing investigation.

SEC v. Wesley H. Colwell

Litigation Release No. 18403 (October 9, 2003)

<http://www.sec.gov/litigation/litreleases/lr18403.htm>

On October 9, 2003, the Commission charged Wesley H. Colwell (Colwell), the former Chief Accounting Officer of Enron North America, with violating the antifraud provisions of the federal securities laws by engaging in a wide ranging scheme to defraud by manipulating Enron's publicly reported earnings through a variety of devices designed to produce materially false and misleading financial results. The scheme included the misuse of reserve accounts, concealment of losses, inflation of asset values, and deliberate use of improper accounting treatment for transactions. Colwell agreed, in part,

to be enjoined permanently from violating the antifraud provisions, be barred from acting as an officer or director of a public company, and pay \$300,000 in disgorgement and prejudgment interest and a civil penalty of \$200,000. As part of this settlement, Colwell will continue to cooperate with on-going investigations into Enron Corp. by the Commission and the U.S. Department of Justice Enron Task Force.

SEC v. Ben F. Glisan, Jr.

Litigation Release No. 18335 (September 10, 2003)

<http://www.sec.gov/litigation/litreleases/lr18335.htm>

On September 10, 2003, the Commission charged Ben F. Glisan, Jr. (Glisan), a former senior executive of Enron, with violations of antifraud, lying to auditors, periodic reporting, books and records, and internal controls provisions of the federal securities laws. The Commission alleged that Glisan participated in Enron's manipulation of its reported financial results through a series of fraudulent transactions designed to inflate Enron's earnings and operating cash flows, while at the same time concealing the full extent of its debt. Glisan agreed to file a consent and final judgment settling the Commission's action against him and to the entry of an officer and director bar against him.

SEC v. Kevin A. Howard, Michael W. Krautz, Kenneth D. Rice, Joseph Hirko, Kevin P. Hannon, Rex T. Shelby, and F. Scott Yeager

Litigation Release 18122 (May 1, 2003)

<http://www.sec.gov/litigation/litreleases/lr18122.htm>

SEC v. Kevin P. Hannon, et al.

Litigation Release 18862 (August 31, 2004)

<http://www.sec.gov/litigation/litreleases/lr18862.htm>

The Commission filed an Amended Complaint charging Kenneth D. Rice, former chief executive officer, Joseph Hirko, former chief executive officer, Kevin P. Hannon, former chief operating officer, Rex T. Shelby, a former senior vice president, and F. Scott Yeager, a former senior vice president, of Enron Broadband Services, Inc. ("EBS"), a wholly-owned subsidiary of Enron Corp., with violating the antifraud provisions of the federal securities laws by engaging in a wide-ranging fraudulent scheme to, among other things, inflate the value of Enron stock through a series of false and misleading statements and the omission of material information in such public statements about the technology, financial condition, performance and value of EBS. This action amended the Complaint filed against Kevin A. Howard and Michael W. Krautz, two former EBS executives, on March 12, 2003. In its Amended Complaint, the Commission sought disgorgement of the defendants' ill-gotten gains, civil money penalties, a permanent bar from acting as an officer or director of a publicly held company, and an injunction against future violations of the federal securities laws.

On August 31, 2004, the Commission settled civil fraud charges filed against Kevin P. Hannon. Hannon agreed to be enjoined permanently from violating antifraud provisions of the federal securities laws, and to be barred permanently from acting as an

officer or director of a public company. The Commission settled its action in coordination with the Justice Department's Enron Task Force, which entered into a plea agreement with Hannon on related criminal charges. In resolving the parallel civil and criminal proceedings, Hannon agreed to pay disgorgement and a civil penalty totaling \$3.2 million and to cooperate with the government's continuing investigation.

SEC v. Michael J. Kopper

Litigation Release No. 17692 (August 21, 2002)

<http://www.sec.gov/litigation/litreleases/lr17692.htm>

On August 21, 2002, the Commission charged Michael J. Kopper (Kopper), a former high-ranking Enron official, with violating the antifraud provisions of the federal securities laws by engaging in a scheme to create the appearance that certain entities that Kopper and others at Enron funded and controlled were independent of Enron to permit Enron's financial statements to not properly reflect Enron's interest in these entities, thereby enabling Enron to engage in various transactions with these entities that were designed to improve its apparent financial results. Kopper agreed to be enjoined permanently from violating the antifraud provisions, and to be barred permanently from acting as an officer or director of a public company. As part of the settlement agreement, Kopper will disgorge and forfeit a total of approximately \$12 million. The Commission brought this action in coordination with the Justice Department's Enron Task Force, which filed related criminal charges against Kopper. Kopper agreed to enter a guilty plea in connection with those charges and to cooperate with the government's continuing investigation.

The Commission brought the following actions against entities that assisted or aided and abetted Enron in its fraudulent activity:

Canadian Imperial Bank of Commerce, Daniel Ferguson, Ian Schottlaender, Mark Wolf

Litigation Release No. 18517 (December 22, 2003)

<http://www.sec.gov/litigation/litreleases/lr18517.htm>

On December 22, 2003, the Commission charged Canadian Imperial Bank of Commerce ("CIBC") and three of its executives with aiding and abetting Enron's manipulation of its reported financial results through a series of complex structured finance transactions that were designed as "asset sales" for accounting purposes and allowed Enron to hide from investors and rating agencies the true extent of its borrowings. CIBC consented to entry of a final judgment settling the Commission's action against it and agreed to be permanently enjoined from future violations of the antifraud, books and records, and internal control provisions of the federal securities laws. CIBC also agreed to pay \$80 million: \$37.5 million in disgorgement, a \$37.5 million civil penalty and \$5 million in prejudgment interest. The Commission intends to have these funds paid into a court account pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002 ("Fair Fund") for ultimate distribution to victims of the fraud.

Daniel Ferguson and Mark Wolf also consented to the entry of a final judgment that permanently enjoins each from violating the same antifraud, books and records, and internal control provisions of the federal securities laws. Ferguson has agreed to pay a total of \$563,000: disgorgement of \$265,000, a penalty of \$265,000, and prejudgment interest of \$33,000, and agreed to the entry of an order barring him from serving as an officer or director of a publicly traded company for a period of five years. Wolf, who is no longer employed by CIBC, agreed to pay a total of \$60,000: \$27,500 as disgorgement, a penalty of \$27,500, and prejudgment interest of \$5,000. The Commission will likewise direct those monies to Enron fraud victims pursuant to the Fair Fund provisions. Ian Schottlaender, a former managing director in CIBC's corporate leveraged finance group in New York City, is contesting the matter.

SEC v. J.P. Morgan Chase & Co.

Litigation Release No. 18252 (July 28, 2003)

<http://www.sec.gov/litigation/litreleases/lr18252.htm>

On July 28, 2003, the Commission charged J.P. Morgan Chase & Co. with aiding and abetting Enron's manipulation of its reported financial results through a series of complex structured finance transactions that were used by Enron to report loans from J.P. Morgan Chase as cash from operating activities and allowed Enron to hide the true extent of its borrowings from investors and rating agencies. J.P. Morgan Chase agreed to file a consent and final judgment settling the Commission's action against it and to be permanently enjoining it from future violations of the antifraud provisions of the federal securities laws. Morgan Chase also agreed to pay disgorgement, penalties and interest in the amount of \$135 million.

In re Citigroup

Securities Exchange Act Release No. 48230 (July 28, 2003)

<http://www.sec.gov/litigation/admin/34-48230.htm>

On July 28, 2003, the Commission instituted and settled enforcement proceedings against Citigroup, Inc. for its role in assisting Enron and Dynegy to enhancing artificially their financial presentations through a series of complex structured transactions whose purpose and effect, among other things, was to allow those companies to report proceeds of financings as cash from operating activities on their statements of cash flows. Citigroup settled the matter with the Commission and agreed to disgorge \$52,750,000 and pay a penalty of \$48,500,000 in connection with its Enron-related conduct; to disgorge \$9,750,000 and pay a penalty of \$9,000,000 in connection with its Dynegy-related conduct; and to cease and desist from committing or causing any violation of, and any future violations of, federal securities laws.

SEC v. Merrill Lynch & Co., Inc., et al.

Litigation Release No. 18038 (March 17, 2003)

<http://www.sec.gov/litigation/litreleases/lr18038.htm>

On March 17, 2003 the Commission charged Merrill Lynch & Co. Inc. and four of its former senior executives with aiding and abetting Enron's earnings manipulation by engaging in two fraudulent year-end transactions which had the purpose and effect of overstating Enron's reported financial results. According to the Commission, Merrill Lynch believed that the two trades were essentially a wash, knew that the transaction would have a significant impact on Enron's reported results, bonuses, and stock price and demanded a multi-million dollar fee for entering into this transaction. The Commission agreed to accept Merrill Lynch's offer to settle this matter. Merrill Lynch agreed to pay \$80 million dollars in disgorgement, penalties and interest and agreed to the entry of a permanent anti-fraud injunction prohibiting future violations of the federal securities laws. The four former Merrill Lynch executives named in the complaint, Robert S. Furst, Schuyler M. Tilney, Daniel H. Bayly and Thomas W. Davis, are contesting the matter.

SEC v. Hollinger International, Inc.

Litigation Release No. 18551, (January 21, 2004)

<http://www.sec.gov/litigation/litreleases/lr18550.htm>

SEC v. Conrad M. Black, et al.

Litigation Release No. 18969 (November 15, 2004)

<http://www.sec.gov/litigation/litreleases/lr18969.htm>

On November 15, 2004, the Commission filed an enforcement action in federal district court against Hollinger International's former Chairman and CEO Conrad M. Black (Black), former Deputy Chairman and COO F. David Radler (Radler), and Hollinger, Inc., a Canadian public holding company controlled by Black. The Commission's complaint alleged that Black, Radler and Hollinger, Inc. engaged in a fraudulent and deceptive scheme to divert cash and assets from Hollinger International, Inc., a U.S. public company and a subsidiary of Hollinger, Inc., and concealed their self-dealing from Hollinger International's public shareholders. According to the Commission, Black, Radler and Hollinger, Inc., among other things, defrauded Hollinger International shareholders through a series of related party transactions by which Black and Radler diverted to themselves, other corporate insiders and Hollinger, Inc. approximately \$85 million of the proceeds from Hollinger International's sale of newspaper publications through purported "non-competition" payments. The Commission sought injunctions against the defendants from further violations of the securities laws, disgorgement of ill-gotten gains, pre-judgment interest, civil penalties, bars against Black and Radler from serving as officers or directors of a public company, and a voting trust upon the shares of Hollinger International held directly or indirectly by Black and Hollinger, Inc.

II. CASES INVOLVING ACCOUNTANTS AND AUDITORS

In the Matter of KPMG LLP, Bryan E. Palbaum, CPA, John M. Wong, CPA, Kenneth B. Janeski, CPA, David A. Hori, CPA

Admin. Proc. File No. 3-11714 (October 20, 2004)

<http://www.sec.gov/litigation/admin/34-50564.htm>

On October 20, 2004, the Commission instituted settled public administrative proceedings against KPMG LLP, Bryan E. Palbaum, John M. Wong, Kenneth B. Janeski, and David A. Hori, for engaging in improper professional conduct as auditors for Gemstar-TV Guide International, Inc. As part of the settlement, KPMG was censured and agreed to pay \$10 million to harmed Gemstar shareholders. (Gemstar, based in Hollywood, Calif., publishes TV Guide magazine and licenses and sells advertising on an interactive program guide (IPG) for television that enables consumers to navigate through and select television programs). KPMG has also agreed to conduct training for its partners and managers on qualitative materiality, accounting for multi-element transactions, and consideration of appropriate disclosure related to complex accounting issues. KPMG will adopt a policy that requires more effective consultation between audit engagement teams and its national office in connection with possible financial statement restatements. Additionally, Palbaum, Wong, Janeski, and Hori are denied the privilege of appearing or practicing before the Commission, with the right to reapply after periods of three years (Palbaum), one year (Wong and Janeski), and eighteen months (Hori).

The Commission's administrative order finds that from September 1999 through March 2002, the respondents' conduct resulted in repeated audit failures in connection with KPMG's audits of Gemstar's financial statements. The order also finds that the respondents reasonably should have known that Gemstar improperly recognized and reported in its public filings material amounts of licensing and advertising revenue. Despite indications of Gemstar's improper accounting and disclosure, the respondents issued unqualified audit reports representing that KPMG had conducted its audits in accordance with generally accepted auditing standards (GAAS) and that Gemstar's financial statements fairly presented its financial results in conformity with GAAP. In reaching these conclusions, the auditors unreasonably relied on representations by Gemstar's management and its inside or outside legal counsel or decided that the unsupported revenues were immaterial to Gemstar's financial statements.

The order also finds that in mid-August 2002, as part of Gemstar's audit committee's investigation into potential restatements of Gemstar's financial statements, certain information came to light that the local engagement team did not convey to KPMG's national office. KPMG did not have a policy that required that a local engagement team consult with the national office on all new significant issues that had come to the local engagement team's attention. Such a consultation should have led KPMG to consider the additional evidence that came to light during the audit committee's investigation and could have led KPMG to a more prompt decision to withdraw its previously issued audit report on Gemstar's 2001 financial statements. KPMG did not take that step until Nov. 22, 2002.

In the Matter of Grant Thornton LLP, Doeren Mayhew & Co. P.c., Peter M. Behrens, CPA, Marvin J. Morris, CPA, and Benedict P. Rybicki, CPA

Administrative Proceeding File No. 3-11377 (January 20, 2004)

<http://www.sec.gov/litigation/admin/33-8355.htm>

Grant Thornton and Doeren Mayhew Settle SEC Administrative Proceeding Relating to Audit of MCA Financial Corporation

Press Release No. 2004-106 (August 5, 2004)

<http://www.sec.gov/news/press/2004-106.htm>

On January 20, 2004, the Commission instituted public administrative proceedings pursuant to Commission Rule 102(e) and cease-and-desist proceedings against Grant Thornton LLP (a Chicago based accounting firm), Doeren Mayhew & Co. P.C. (a Michigan based accounting firm), Peter M. Behrens (a partner with Grant Thornton), and Marvin J. Morris and Benedict P. Rybicki (both directors at Doeren Mayhew) for misconduct in connection with their audit of MCA Financial Corporation's financial statements for the fiscal year ended January 31, 1998. At the time, MCA was a mortgage banking company based in Southfield, Michigan.

The Commission alleged that in connection with the 1998 MCA audit, the respondents caused and aided and abetted MCA's violations of the antifraud and reporting provisions of the federal securities laws, violated or caused and aided and abetted violations of the audit requirements of the Exchange Act and engaged in improper professional conduct. Specifically, among other things, the Commission alleged that despite knowing of MCA's failure to disclose several million dollars of material, related party transactions in its 1998 annual financial statements, Grant Thornton and Doeren Mayhew jointly issued a report containing an unqualified opinion on MCA's 1998 annual financial statements and consented to the inclusion of their report in MCA's debenture offering materials. The respondents failed to inform MCA's Board of Directors that MCA's 1998 annual financial statements did not disclose millions of dollars of material, related party transactions.

On August 5, 2004, the Commission accepted the offers of settlement of Grant Thornton LLP, Doeren Mayhew & Co. P.C., Peter M. Behrens, Marvin J. Morris and Benedict P. Rybicki. As part of the Order, Grant Thornton undertakes to: pay \$1.5 million as a penalty; require its entire professional staff to undergo fraud-detection training and provide at least \$1 million to fund such training; and suspend certain joint audits with other auditing firms for a period of five years. In addition, Grant Thornton is censured and required to pay disgorgement and prejudgment interest of \$59,749.41. Additionally, pursuant to the Order, Doeren Mayhew, which voluntarily discontinued conducting public audits as of March 19, 2003, undertakes not to accept new public company auditing engagements for six months. In addition, if Doeren Mayhew engages in audits of public companies after the expiration of six months, Doeren Mayhew undertakes to establish and implement certain policies and procedures specifically designed to improve the quality of its public company audit practice for a period of three years. Doeren Mayhew also is censured and required to pay disgorgement and

prejudgment interest of \$115,126.86. Further, pursuant to the Order, Morris, Behrens and Rybicki are denied the privilege of appearing or practicing before the Commission for periods of five years, three years and one year, respectively, from the entry of the Order. Accordingly, by the entry of this Order, this matter is resolved as to all respondents in this proceeding.

III. FOREIGN PAYMENT CASES

SEC v. The Titan Corporation

Litigation Release No. 19107 (March 1, 2005)

<http://www.sec.gov/litigation/litreleases/lr19107.htm>

Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934 and the Commission Statement on potential Exchange Act Section 10(b) and Section 14(a) liability

Release No. 51283 (March 1, 2005)

<http://www.sec.gov/litigation/investreport/34-51238.htm>

On March 1, 2005, the Commission announced the filing of a settled enforcement action charging The Titan Corporation, a San Diego, Calif. based military intelligence and communications company, with violating the anti-bribery, internal controls and books and records provisions of the Foreign Corrupt Practices Act (FCPA). Titan consented to the entry of a final judgment permanently enjoining it from future violations of the FCPA and requiring it to pay approximately \$15.5 million in disgorgement and prejudgment interest; pay a \$13 million penalty, which will be deemed satisfied by Titan's payment of criminal fines of that amount in parallel proceedings brought by the U.S. Attorney's Office for the Southern District of California and the U.S. Department of Justice, Fraud Section; and retain an independent consultant to review the company's FCPA compliance and procedures and to adopt and implement the consultant's recommendations. The Commission also issued a Report of Investigation to provide guidance concerning potential liability under the antifraud and proxy provisions of the federal securities laws for publication of materially false or misleading disclosures regarding provisions in merger and other contractual agreements.

The Commission's complaint alleges, among other things, that from 1999 to 2001, Titan paid more than \$3.5 million to its agent in Benin, Africa, who was known at the time by Titan to be the President of Benin's business advisor. In 2001, Titan funneled approximately \$2 million, via its agent in Benin, towards the election campaign of Benin's then-incumbent President. Titan made these payments to assist the company in its development of a telecommunications project in Benin and to obtain an increase in the percentage of project management fees for it. A former senior Titan officer directed that these payments be falsely invoiced by the agent as consulting services and that actual payment of the money be broken into smaller increments and spread out over time. The complaint does not allege that the then-incumbent President knew of the payments.

The Report of Investigation states, among other things, that Titan affirmatively represented in a merger agreement with Lockheed Martin Corporation, dated September 15, 2003, that to its knowledge, neither the company "nor any of its Subsidiaries, nor any director, officer, agent or employee of the Company or any of its Subsidiaries, has ... taken any action which would cause the Company or any of its Subsidiaries to be in violation of the FCPA[,]" which was disclosed in the proxy statement and the merger agreement. As the Report highlights, when an issuer makes a public disclosure of information, the issuer is required to consider whether additional disclosure is necessary in order to put the information contained in, or otherwise incorporated into that publication, into context so that such information is not misleading. The issuer cannot avoid this disclosure obligation simply because the information published was contained in an agreement or other document not prepared as a disclosure document. The Report also states that the Commission will consider bringing an action if it determines that the subject matter of representations or other contractual provisions is materially misleading to shareholders because material facts necessary to make that disclosure not misleading are omitted.

SEC v. GE In Vision, Inc.

Litigation Release No. 19078 (February 14, 2005)

<http://www.sec.gov/litigation/litreleases/lr19078.htm>

On February 14, 2005, the Commission charged InVision Technologies, Inc. (InVision), a Newark, California-based manufacturer of explosive detection machines used in airports, with authorizing improper payments to foreign government officials in violation of the Foreign Corrupt Practices Act (FCPA). Simultaneous with the filing of the Commission's charges InVision agreed, without admitting or denying the charges, to disgorge \$589,000 in profits from its FCPA violations plus prejudgment interest of approximately \$28,700, and pay a \$500,000 civil penalty. InVision also agreed to cease and desist from violations of the FCPA, and to comply with its undertakings to retain an independent consultant to ensure that InVision adheres to a corporate compliance program designed to detect and prevent violations of the FCPA. InVision was acquired in December 2004 by the General Electric Company, and now operates under the name GE InVision, Inc.; the conduct charged by the Commission occurred prior to the acquisition.

In both a federal court complaint and an administrative order, the Commission charged that from at least June 2002 through June 2004, InVision employees, sales agents and distributors pursued transactions to sell explosive detection machines to airports in China, the Philippines and Thailand. According to the Commission, in each of these transactions, InVision was aware of a high probability that its foreign sales agents or distributors made or offered to make improper payments to foreign government officials in order to obtain or retain business for InVision. Despite this, InVision allowed the agents or distributors to proceed on its behalf, in violation of the FCPA. The Commission also charged that InVision improperly accounted for certain payments to agents or distributors and failed to have an adequate system of internal controls to detect and prevent violations of the FCPA. The Commission's administrative order found that

InVision violated the anti-bribery, books and records and internal controls provisions of the FCPA.

SEC v. Monsanto Company

Litigation Release No. 19023 (January 6, 2005)

<http://www.sec.gov/litigation/litreleases/lr19023.htm>

In the Matter of Monsanto Company

Admin. Proc. File No. 3-11789 (January 6, 2005)

<http://www.sec.gov/litigation/admin/34-50978.htm>

On January 6, 2005, the Commission filed two settled enforcement proceedings charging Monsanto Company, a global producer of technology-based solutions and agricultural products headquartered in St. Louis, Missouri, with making illicit payments in violation of the Foreign Corrupt Practices Act ("FCPA"). Without admitting or denying the Commission's charges, Monsanto consented to the entry of a final judgment in the federal lawsuit requiring it to pay a \$500,000 civil penalty and consented to the Commission's issuance of its administrative order in which the Commission found that Monsanto violated the anti-bribery, books-and-records, and internal-controls provisions of the FCPA, ordered Monsanto to cease and desist from such violations, and required Monsanto to retain an independent consultant to review and make recommendations concerning the company's FCPA compliance policies and procedures. In determining to accept Monsanto's settlement offer, the Commission considered the cooperation that Monsanto provided the Commission staff during its investigation.

In both its federal court complaint and its administrative order, the Commission alleged that, in 2002, a senior Monsanto manager, based in the United States, authorized and directed an Indonesian consulting firm to make an illegal payment totaling \$50,000 to a senior Indonesian Ministry of Environment official ("the senior Environment Official"). The bribe was made to influence the senior Environment Official to repeal an unfavorable decree that was likely to have an adverse effect on Monsanto's business. Although the payment was made, the unfavorable decree was not repealed. The Commission further charged that the senior Monsanto manager devised a scheme whereby false invoices were submitted to Monsanto and the senior Monsanto manager approved the invoices for payment. In addition, the Commission charged that, from 1997 to 2002, Monsanto inaccurately recorded, or failed to record, in its books and records approximately \$700,000 of illegal or questionable payments made to at least 140 current and former Indonesian government officials and their family members. The Commission further charged that, in certain instances, entries were made in the books and records of the two Indonesian entities that concealed the source, use and true nature of these payments.

In a related proceeding, the United States Department of Justice entered into an agreement with Monsanto Company to defer prosecution on charges of violating the anti-bribery and books and records provisions of the FCPA. Under the Agreement, the Justice Department filed a criminal information charging the company; Monsanto will pay a \$1 million monetary penalty; and Monsanto will retain for a period of three years an

independent compliance expert to audit the company's compliance program and monitor its implementation of and compliance with new internal policies and procedures.

SEC v. ABB Ltd.

Litigation Release No. 18775, (July 6, 2004)

<http://www.sec.gov/litigation/litreleases/lr18775.htm>

On July 6, 2004, the Commission filed a settled enforcement action in the United States District Court for the District of Columbia charging ABB Ltd, a global provider of power and automation technologies headquartered in Zurich, Switzerland, with violating the anti-bribery, books-and-records, and internal-accounting-controls provisions of the Foreign Corrupt Practices Act (FCPA). Simultaneously with the filing of the complaint, and without admitting or denying its allegations, ABB consented to the entry of a final judgment enjoining it from future FCPA violations, and requiring it (i) to pay \$5.9 million in disgorgement and prejudgment interest, (ii) to pay a \$10.5 million penalty, which would be deemed satisfied by two of its affiliates' payments of criminal fines totaling the same amount in parallel criminal proceedings brought by the Department of Justice; and (iii) to retain an independent consultant to review the company's FCPA compliance policies and procedures.

In its complaint, the Commission charged that, from 1998 through early 2003, ABB's U.S. and foreign-based subsidiaries doing business in Nigeria, Angola and Kazakhstan, offered and made illicit payments totaling over \$1.1 million to government officials in these countries. According to the complaint, all of the payments were made to influence acts and decisions by the foreign officials receiving the payments, in order to assist ABB's subsidiaries in obtaining and retaining business. The complaint further alleged that the payments were made with the knowledge and approval of certain management level personnel of the relevant ABB subsidiaries, and that at least \$865,726 of the payments were made after ABB became a reporting company in the United States in April 2001. Finally, the complaint charged that ABB improperly recorded these payments in its accounting books and records, and lacked any meaningful internal controls to prevent or detect such illicit payments.

In determining to accept ABB's settlement offer, the Commission considered the full cooperation that ABB provided to the Commission staff during its investigation. The Commission also considered the fact that ABB brought this matter to the attention of the Commission's staff and the U.S. Department of Justice. Based in part upon ABB's cooperation, the Commission determined to allow ABB's \$10.5 million civil penalty obligation to be deemed satisfied by two of its affiliates' payments of criminal fines totaling \$10.5 million in a parallel criminal proceeding brought by the U.S. Department of Justice.

In that parallel proceeding, the U.S. Department of Justice filed criminal FCPA charges against two ABB subsidiaries, ABB Vetco Gray, Inc. and ABB Vetco Gray UK, Ltd. where each agreed to plead guilty to two felony counts of violating the anti-bribery provisions of the FCPA and to pay criminal fines that, between them, total \$10.5 million.

IV. BROKER-DEALER CASES

SEC v. Frank Furino

Litigation Release No. 19126 (March 9, 2005)

<http://www.sec.gov/litigation/litreleases/lr19126.html>

On March 9, 2005, the Commission charged Frank J. Furino, a former clerk for a New York Stock Exchange floor broker, for his role in a fraudulent “trading ahead” scheme. Furino is charged with disclosing large, pending block orders from institutional customers to a day trader in return for cash payments between August 2000 and December 2001. The Commission alleges that the day trader traded ahead of the customer orders and profited on short-term price movements when the block order was filled. Until his recent termination, Furino was employed on the floor of the New York Stock Exchange as a clerk for a floor broker, Jefferies Execution Services, Inc. and its predecessor, Lawrence Helfant LLC.

The Commission alleges that between August 2000 and December 2001, Furino frequently alerted the day trader when institutional customers placed large orders with Helfant. Large orders can affect the market price of a stock by affecting the supply or demand for the stock. The day trader then “traded ahead” of the customer order – that is, bought or sold short the same security before Helfant executed the customer order. The day trader then closed his position as Helfant filled the customer’s order, realizing a profit from the movement in the stock price caused by the large order. By means of this scheme, the day trader made over \$300,000 in trading profits on at least 58 trades. Helfant’s customers suffered losses because the scheme allowed the day trader to trade at more favorable prices than the customers were able to receive. Furino solicited and received from the day trader payments ranging from \$2,500 to \$10,000 per month over the course of the scheme. Furino’s conduct breached duties of confidentiality and trust that he owed to his employer and to his employer’s customers. Furino also violated his firm’s written policies requiring confidential treatment of customer information, forbidding the use of confidential client information for personal benefit or for the benefit of another client, and forbidding acceptance of undisclosed compensation from clients.

The New York Stock Exchange, Inc. is also filing a separate action against Furino charging him with securities fraud and violation of NYSE rules

SEC v. David S. Davidson, et al.

Litigation Release No. 19090 (February 17, 2005)

<http://www.sec.gov/litigation/litreleases/lr19090.htm>

On February 17, 2005, the Commission filed a civil action against David S. Davidson, Lloyd S. Beirne and Brandon T. Bush, all of Boca Raton, Florida. Davidson is the former chairman and chief executive officer of D.L. Cromwell Investments, Inc. (“Cromwell”), a defunct broker-dealer formerly located in Boca Raton, Beirne is Cromwell's former president, and Bush was a Cromwell trader.

The Commission's Complaint alleges a short selling scheme in which, from late October 2002 through March 2003, defendants fraudulently used non-existent trades to hide a burgeoning short position in the stock of Expedia, Inc. ("Expedia"), held in Cromwell's proprietary account at its clearing broker, which is located in Philadelphia, Pennsylvania. Davidson, Beirne, and Bush used the access that Cromwell, as an introducing broker, had to the clearing broker's system to falsely place Expedia buy orders, which they knew they would cancel the next day, claiming the orders were placed in error. The Complaint alleges that defendants entered and cancelled these fictitious buys almost daily for five months, concealing the size of the short position from the clearing broker, and avoiding serious financial consequences, including margin calls. The Complaint further alleges that the scheme unraveled on March 19, 2003, when the announcement of a tender offer for Expedia by its majority shareholder lifted Expedia's price from \$38 per share to more than \$47. Shortly thereafter, the clearing broker discovered the fraud. Cromwell could not cover its short position in Expedia, which had grown to approximately 660,000 shares, and the clearing broker was forced to pay \$18 million to cover the position.

SEC v. CIBC Mellon Trust Co.

Litigation Release No. 19081 (February 16, 2005)

<http://www.sec.gov/litigation/litreleases/lr19081.htm>

On February 16, 2005, the Commission filed settled enforcement proceedings against CIBC Mellon Trust Company, ("CIBC Mellon") headquartered in Toronto, Canada. In its complaint, the Commission charged that, between July 1998 and September 1999, CIBC Mellon participated in a fraudulent scheme to promote, distribute and sell the stock of Pay Pop, Inc. ("Pay Pop"), a now-defunct British Columbia-based telecommunications company. The complaint alleges that, during the period CIBC Mellon acted as Pay Pop's transfer agent, one of its senior managers was bribed by two of Pay Pop's officers and directors to assist them in obtaining a ready supply of Pay Pop stock for these officers and directors to illegally distribute to investors. By its failure to have sufficient policies, procedures and internal controls in place, CIBC Mellon failed to detect the bribes, and the illegal conduct, thereby allowing the scheme to succeed. The complaint further alleges that from 1998 through 2003, CIBC Mellon acted as a transfer agent for at least 113 companies whose securities were registered with the Commission and, from 1998 through the present, CIBC Mellon acted as a broker-dealer for at least 45 of those companies yet never registered with the Commission as a transfer agent, or as a broker-dealer as it was required to do. Subsequently, on February, 6, 2004, CIBC Mellon registered with the Commission as a transfer agent. CIBC Mellon Trust further requested that the Commission issue an order exempting it from the broker-dealer registration requirement of Section 15(a). The Commission has approved this request and will issue an order granting the exemption upon entry of the final judgment in these proceedings.

CIBC Mellon consented to the entry of a final judgment enjoining it from future violations of the antifraud, transfer agent registration, broker-dealer registration and securities registration provisions of the federal securities laws. CIBC Mellon has agreed

to pay a \$5 million civil penalty, \$889,773 in disgorgement, and \$140,270 in prejudgment interest. The civil penalty was assessed, in part, for CIBC Mellon's failure to cooperate in the investigation of this matter. In addition, based upon the court's anticipated entry of the final judgment, CIBC Mellon has agreed to the issuance of a settled administrative order finding that it violated the broker-dealer registration and transfer agent registration provisions of the Exchange Act for failing to register as a broker-dealer or as a transfer agent. The Commission Order will require CIBC Mellon to cease-and-desist from future violations of the broker-dealer and transfer agent provisions of the Exchange Act. In addition, CIBC Mellon will agree to maintain its registration as a transfer agent for as long as it continues to act as a transfer agent for any security registered with the Commission under Section 12 of the Exchange Act and, in anticipation of the entry of the Order requiring it to do so, CIBC Mellon has retained a qualified independent consultant to conduct a comprehensive review of all aspects of CIBC Mellon's business as a transfer agent and as a broker-dealer.

In the Matter of J.P. Morgan Securities, Inc.

Admin. Proc. File No. 3-11828 (February 14, 2005)

<http://www.sec.gov/litigation/admin/34-51200.htm>

On February 14, 2005 the Commission instituted and settled public administrative against J.P. Morgan Securities Inc. ("JPMSI"). The Commission found that JPMSI failed to preserve for three years, the first two of which in an easily accessible place, all electronic mail communications (including inter-office memoranda and communications) received and sent by its employees that related to its business as a member of an exchange, broker or dealer, and lacked adequate systems or procedures for the preservation of electronic mail communications. The Commission, NYSE, and NASD (collectively, "the regulators") discovered these deficiencies during an inquiry into the supervision of JPMSI's research and investment banking activities. In April 2003, the regulators initiated and settled enforcement actions against JPMSI and other broker-dealers for various violations involving their research and investment banking activities. In May 2003, the regulators focused their inquiry on the supervision of the research and investment banking activities of JPMSI and other broker-dealers. JPMSI produced certain e-mail in response to the regulators' request to produce email for various supervisory personnel and other employees and certified that e-mail productions for certain individuals were complete. In November 2003, the regulators requested that JPMSI provide information regarding its ability to locate and restore backup tapes containing e-mail responsive to the regulators' requests during the investigation. JPMSI subsequently advised the regulators that it had failed to retain or was unable to locate all responsive e-mail requested during those inquiries. Based on the foregoing and JPMSI's Offer of Settlement, the Commission found that JPMSI willfully violated Section 17(a) of the Exchange Act and Rule 17a-4 promulgated thereunder by failing to preserve electronic mail communications for three years, the first two of which in an easily accessible place.

In its Offer of Settlement, JPMSI agreed to pay penalties and fines totaling \$2.1 million to resolve this proceeding and related actions by NYSE and NASD. In addition,

JPMSI agreed to review its procedures regarding the preservation of electronic mail communications for compliance with the federal securities laws and regulations, and the rules of NYSE and NASD and establish systems and procedures reasonably designed to achieve such compliance.

SEC v. Morgan Stanley & Co., Incorporated

Litigation Release No. 19050 (January 25, 2005)

<http://www.sec.gov/litigation/litreleases/lr19050.htm>

On January 25, 2005, the Commission announced the filing in federal district court of a settled civil injunctive action against Morgan Stanley & Co. Incorporated (Morgan Stanley) relating to the firm's allocations of stock to institutional customers in initial public offerings (IPOs) underwritten by the firm during 1999 and 2000. In its complaint, the Commission alleged that Morgan Stanley violated Rule 101 of Regulation M under the Securities Exchange Act of 1934 by attempting to induce certain customers who received allocations of IPOs to place purchase orders for additional shares in the aftermarket.

In particular, the Commission alleged that during a restricted period, *i.e.*, prior to Morgan's Stanley's completion of participation in the distribution of IPO shares, Morgan Stanley attempted to induce certain customers to make aftermarket purchases in violation of Rule 101 of Regulation M by engaging in the following activities. The Commission further alleged that Morgan Stanley communicated to certain customers that expressing an interest in buying shares in the immediate aftermarket and buying shares in the immediate aftermarket would help them obtain good allocations of over-subscribed, hot IPOs. In addition, Morgan Stanley solicited aftermarket interest from certain customers who Morgan Stanley knew had no interest in owning the stock of the IPO companies long-term. The Commission also alleged that Morgan Stanley proposed to certain customers the aftermarket price limits they should give to obtain a good IPO allocation. According to the Commission's complaint, in some instances, Morgan Stanley encouraged customers to increase the prices they had originally told Morgan Stanley they were willing to pay in the aftermarket. In addition the Commission alleges that Morgan Stanley accepted customers' aftermarket interest that they would buy "1 for 1" (or some other ratio) in the aftermarket, meaning that the customers intended to buy in the aftermarket an amount of shares equal to (or greater than) their IPO allocation. According to the Commission, Morgan Stanley's conduct after the distribution of IPO shares was complete, taken as a whole, demonstrates that when Morgan Stanley had solicited aftermarket interest from customers during the restricted period, it was attempting to induce them to place aftermarket orders in the first few days of trading. The Commission also asserted that Morgan Stanley violated Rule 101 of Regulation M in the Martha Stewart Living Omnimedia IPO by soliciting a 350,000 share aftermarket order from a customer before all the IPO shares had been distributed.

Under the terms of the settlement, a judgment will be entered against Morgan Stanley enjoining it from violating Rule 101 of the Commission's Regulation M and

ordering it to pay a \$40 million civil penalty. The settlement terms are subject to court approval.

SEC v. Goldman Sachs & Co.

Litigation Release No. 19051 (January 25, 2005)

<http://www.sec.gov/litigation/litreleases/lr19051.htm>

On January 25, 2005, the Commission announced the filing a settled civil injunctive action against Goldman, Sachs & Co. (Goldman Sachs) relating to the firm's allocation of stock to institutional customers in initial public offerings (IPOs) underwritten by the firms during 1999 and 2000. In its complaint, the Commission alleges that Goldman Sachs Goldman Sachs violated Rule 101 of Regulation M under the Securities Exchange Act of 1934 by attempting to induce certain customers who received allocations of IPOs to place purchase orders for additional shares in the aftermarket. The Commission's complaint includes the following allegations. During the restricted period, Goldman Sachs attempted to induce, or induced, certain customers to make aftermarket purchases of IPO stock in violation of Rule 101 of Regulation M by engaging in the following activities: (1) Goldman Sachs communicated to certain customers that Goldman Sachs considered purchases in the immediate aftermarket to be significant in the determination of IPO allocations; (2) Goldman Sachs informed certain customers that it verified whether customers placed orders to purchase stock in the immediate aftermarket following an IPO; (3) Goldman Sachs sales representatives asked certain customers during restricted periods whether, and at what prices and in what quantities, they intended to place orders to purchase IPO stock in the immediate aftermarket; (4) Goldman Sachs encouraged certain customers that had provided "aftermarket interest to increase the prices they said that they would pay in the aftermarket; (5) Goldman Sachs sought and/or accepted aftermarket interest from customers based solely or in relevant part on the amount of their prospective allocations; and (6) through such questions and statements about aftermarket orders during restricted periods, Goldman Sachs communicated to certain customers hopeful of obtaining IPO allocations (including customers that did not have a genuine interest in long-term ownership of the stock being offered) that indications of intentions to place orders in the immediate aftermarket, and/or the aftermarket orders themselves, would increase their likelihood of receiving favorable allocations of IPO stock.

Under the terms of the settlement, a judgment will be entered against Goldman Sachs enjoining it from violating Rule 101 of the Commission's Regulation M and ordering each firm to pay a \$40 million civil penalty. The settlement terms are subject to court approval.

In the Matter of Knight Securities, L.P.

Admin. Proc. File No. 3-11771 (December 16, 2004)

<http://www.sec.gov/litigation/admin/34-50867.htm>

On Dec. 16, 2004, the Commission instituted settled administrative and cease-and-desist proceedings against Knight Securities, L.P., finding that Knight defrauded its institutional customers by extracting excessive profits out of its customers' orders while failing to meet the firm's duty to provide "best execution" to the institutions that placed those orders.

According to the Commission, between January 1999 and November 2000, Knight earned over \$41 million in illegal profits by failing to provide best execution to its institutional customers. Specifically, Knight defrauded its institutional customers by extracting excessive profits out of its customers' not-held orders while failing to meet the firm's duty to provide best execution to the institutions that placed those orders. By engaging in these trading practices, Knight extracted enormous profits - as high as \$9.00 per share - by executing transactions that involved effectively no risk to Knight. Consequently, Knight improperly realized tens of millions of dollars in excessive per share profits from its institutional customers. The Commission also found that Knight failed reasonably to supervise Knight's former leading sales trader and other institutional sales traders while they were systematically misusing Automated Confirmation Transaction Service (ACT) trade modifiers. Knight had no written procedures, no adequate systems in place and no supervisory personnel to prevent Knight's sales traders from consistently misusing the modifiers over a two-year period. Finally, the Commission found that Knight violated the books and records provisions of the federal securities laws by failing to (1) retain email communications relating to its business, (2) maintain a purchase and sales blotter that contained accurate information concerning the time of execution of certain trades, and (3) include required information on some order tickets and maintain certain order tickets for the time period required by the federal securities laws.

Knight, now known as Knight Equity Markets, L.P., agreed to pay more than \$41 million in disgorgement of illegal profits, over \$13 million in prejudgment interest and \$12.5 million in civil penalties. Knight will also pay an additional \$12.5 million in fines to settle a parallel NASD proceeding. Knight also voluntarily agreed to retain an Independent Compliance Consultant to conduct a comprehensive review of (1) Knight's policies and procedures with respect to best execution obligations, trade reporting requirements, limit order requirements and books and records requirements, and (2) Knight's supervisory and compliance structure. Knight also was required to cease and desist from committing or causing any future violations of the broker-dealer anti-fraud and books and records provisions of the Exchange Act, and was censured Knight for its failure to reasonably supervise its institutional sales traders.

In the Matter of TD Waterhouse Investor Services, Inc.

Admin. Proc. File No. 3-11669 (September 21, 2004)

<http://www.sec.gov/litigation/admin/34-50415.htm>

In the Matter of Brandt, Kelly & Simmons, LLC and Kenneth G. Brandt

Admin. Proc. File No. 3-11672 (September 21, 2004)

<http://www.sec.gov/litigation/admin/ia-2302.htm>

On September 21, 2004, the Commission filed settled civil charges against TD Waterhouse Investor Services, Inc., a national brokerage firm, for making undisclosed cash payments to three investment advisers to encourage them to use TD Waterhouse for their clients' brokerage business. TD Waterhouse made payments to the advisers from its profits on the advisory clients' brokerage business. The payments, however, did not directly benefit the advisers' clients. Instead, the advisers used the money for their own purposes. In settling the matter, TD Waterhouse agreed to pay a \$2 million penalty, among other remedies. The Commission also announced related fraud actions against the three investment advisers and their principals for their failures to disclose the cash payments.

The Commission's Order found that TD Waterhouse knew its payments created potential conflicts of interest between the advisers and their clients. Each adviser that received compensation from TD Waterhouse compromised its ability to evaluate independently whether to recommend that its clients use TD Waterhouse to handle the clients' brokerage business. TD Waterhouse, which recognized that the advisers were required by law to disclose these conflicts to their clients, adopted written procedures that required TD Waterhouse personnel to ensure that the advisers made the proper disclosures, yet the firm failed to follow these procedures.

In agreeing to settle the charges, Kiely Financial and its principal, Joseph K. Kiely, agreed to disgorge the money they received from TD Waterhouse, plus interest, totaling \$54,256 and pay a \$100,000 civil penalty. Additionally, Rudney Associates and its principal, Eric A. Rudney, agreed to disgorge the money they received from TD Waterhouse, plus interest, totaling \$22,331, and pay a \$40,000 penalty. Kiely Financial, Kiely, Rudney Associates and Rudney also agreed to cease and desist from committing or causing violations of the federal securities laws.

The Commission also instituted litigated administrative and cease-and-desist proceedings against Brandt, Kelly & Simmons and its principal, Kenneth G. Brandt. The Order Instituting Proceedings alleges that the firm agreed to distribute a \$7,500 cash payment from TD Waterhouse to its advisory clients to compensate them for fees they incurred when moving their accounts from another broker to TD Waterhouse. The Order alleges that the respondents did not inform their clients of the payment, but rather fraudulently misappropriated the money for their own uses.

SEC v. Thomas Weisel Partners LLC

Litigation Release No. 18855 (August 26, 2004)

<http://www.sec.gov/litigation/litreleases/lr18855.htm>

On August 26, 2004, the Commission announced that it settled charges against Thomas Weisel Partners LLC, a San Francisco, California-based brokerage firm and investment bank, arising from an investigation of research analyst conflicts of interest. This settlement is related to the global settlement that ten other firms reached with the Commission, NASD, Inc. the New York Stock Exchange, Inc. (NYSE), and state regulators in April 2003. In connection with this matter, the Commission filed a Complaint against Thomas Weisel Partners in the U.S. District Court for the Southern District of New York, alleging violations of the federal securities laws and NASD and NYSE rules.

In the Commission action, Thomas Weisel Partners agreed to a federal court order that enjoins the firm from future violations of the federal securities laws and NASD and NYSE rules and requires the firm to make changes in the operations of its equity research and investment banking departments. As part of the settlement, Thomas Weisel Partners agreed to pay \$5 million as disgorgement and an additional \$5 million in penalties. \$5 million of these payments will be placed into a distribution fund for the benefit of customers of the firm. The remainder will be paid to resolve related proceedings by state regulators. In addition, Thomas Weisel Partners will pay, over five years, \$2.5 million to provide the firm's clients with independent research.

According to the Commission's Complaint, from July 1999 through 2001, research analysts at Thomas Weisel Partners were subject to inappropriate influence by investment banking at the firm. The Complaint also alleges that, on several occasions, Thomas Weisel Partners' analysts published research that contained exaggerated or unwarranted claims, and/or opinions for which there was no reasonable basis, and that Thomas Weisel Partners received payment from another investment bank for providing research coverage of that firm's investment banking client without disclosing that payment in research reports, as federal law requires. Further, the Complaint alleged that Thomas Weisel Partners made payments to other firms for those firms to publish research on Thomas Weisel Partners' underwriting clients without ensuring that such payments were disclosed. Finally, the Complaint alleged that Thomas Weisel Partners failed to supervise its research analysts adequately and to establish policies to ensure their proper conduct.

The final judgment, in part, orders Thomas Weisel Partners to implement structural reforms and provide enhanced disclosure to investors, including a broad range of changes relating to the operations of its equity research and investment banking operations.

SEC v. Deutsche Bank Securities Inc.

Litigation Release No. 18854 (August 26, 2004)

<http://www.sec.gov/litigation/litreleases/lr18854.htm>

The Commission settled charges against Deutsche Bank Securities Inc. (DBS), a brokerage firm and investment bank headquartered in New York, New York, arising from an investigation of research analyst conflicts of interest. This settlement is also related to the global settlement that ten other firms reached with the Commission, NASD, Inc., the New York Stock Exchange, Inc. (NYSE), and state securities regulators in April 2003.

The Commission filed a complaint against DBS in the U.S. District Court for the Southern District of New York, alleging violations of the federal securities laws and NASD and NYSE rules. In the SEC action, DBS has agreed to a federal court order that will enjoin the firm from future violations of the federal securities laws and NASD and NYSE rules and requires the firm to make changes in the operations of its equity research and investment banking departments. As part of the settlement, DBS has agreed to pay \$25 million as disgorgement and \$25 million in penalties for the conflicts of interest. DBS has agreed to pay an additional penalty of \$7.5 million for failing to timely produce all e-mail during the investigation. One-half of the \$57.5 million total of these payments - \$28.75 million - will be paid in connection with the SEC action and related proceedings by the NASD and NYSE and will be placed into a distribution fund for the benefit of customers of the firm. The remainder will be paid to resolve related proceedings by state securities regulators. In addition, DBS will pay, over five years, \$25 million to provide the firm's clients with independent research, and \$5 million to be used for investor education.

According to the Commission's Complaint, from at least July 1999 through June 2001, DBS research analysts were subject to inappropriate influence by investment banking at the firm. The Complaint also alleged that DBS published exaggerated or unwarranted research or research that lacked a reasonable basis, received payments from other firms to publish research on certain companies without ensuring that such payments were disclosed, and made payments to other firms for those firms to publish research on DBS's underwriting clients. The firm also failed to maintain appropriate supervision over its research operations. Finally, during the investigation, DBS failed to timely produce all e-mail in response to regulatory requests and subpoenas.

In the Matter of Needham & Company, Inc.

Admin. Proc. File No. 3-11603 (August 25, 2004)

<http://www.sec.gov/litigation/admin/33-8474.pdf>

In the Matter of Janney Montgomery Scott LLC

Admin. Proc. File No. 3-11604 (August 25, 2004)

<http://www.sec.gov/litigation/admin/33-8475.pdf>

In the Matter of Morgan Keegan & Co., Inc.

Admin. Proc. File No. 3-11600 (August 25, 2004)

<http://www.sec.gov/litigation/admin/33-8466.htm>

In the Matter of Prudential Equity Group, LLC f/k/a Prudential Securities, Inc.

Admin. Proc. File No. 3-11601 (August 25, 2004)

<http://www/sec.gov/litigation/admin/33-8469.htm>

In the Matter of Adams Harkness, Inc. f/k/a Adams, Harkness & Hill, Inc.

Admin. Proc. File No. 3-11598 (August 25, 2004)

<http://www.sec.gov/litigation/admin/33-8460.htm>

In the Matter of Friedman, Billings, Ramsey & Co., Inc.

Admin. Proc. File No. 3-11599 (August 25, 2004)

<http://www.sec.gov/litigation/admin/33-8461.htm>

In the Matter of SG Cowen & Co., LLC f/k/a SG Cowen Securities Corporation

Admin. Proc. File No. 3-11602 (August 25, 2004)

<http://www.sec.gov/litigation/admin/33-8472.pdf>

On August 25, 2004, the Commission announced settled enforcement actions against seven broker-dealers for failing to disclose they had received payments for providing research coverage of certain public companies. The seven firms are: Needham & Company, Inc. (Needham), Janney Montgomery Scott LLC (Janney), Morgan Keegan & Co., Inc. (Morgan Keegan), Prudential Equity Group, LLC f/k/a Prudential Securities, Inc. (Prudential Equity), Adams Harkness & Hill, Inc. (Adams Harkness), Friedman, Billings, Ramsey & Co., Inc. (Friedman Billings), and SG Cowen & Co., LLC f/k/a SG Cowen Securities Corporation (SG Cowen). The Commission found that during the period 1999 through 2002, these firms received payments for research from other broker-dealers that were underwriting securities offerings for certain public, or soon-to-be public, companies. The underwriting broker-dealers paid the firms to issue research or “cover” their issuer clients. None of the firms disclosed in their published research reports the receipt and amount of the payments, as required.

The Commission fined four of the firms for violating the record-keeping requirements concerning business-related internal e-mail communications during the period July 1999 through June 2001. Each of the four firms – Adams Harkness, Janney, Morgan Keegan, and Needham – consented, without admitting or denying the findings, to a cease-and desist order. The firms also have consented to undertakings to ensure that they are in compliance with the record-keeping requirements. In addition, without admitting or denying the findings, the seven firms consented to orders that they cease-and-desist from committing any violations and any future violations and pay the following amounts: (1) Janney, \$875,000; Morgan Keen, \$875,000; Needham, \$700,000;

Adams Harkness, \$575,000; Prudential Equity, \$375,00; Friedman Billings, \$125,000; and SG Cowen, \$120,000 for a total of \$3,650,000.

In re Bear Wagner Specialists LLC

Exchange Act Release No. 34-49498, (March 30, 2004)
<http://www.sec.gov/litigation/admin/34-49498.htm>

In re Fleet Specialists, Inc.

Exchange Act Release No. 34-49499, (March 30, 2004)
<http://www.sec.gov/litigation/admin/34-49499.htm>;

In re LaBranche & Co. LLC

Exchange Act Release No. 34-49500, (March 30, 2004)
<http://www.sec.gov/litigation/admin/34-49500.htm>;

In re Spear, Leeds & Kellogg Specialists LLC

Exchange Act Release No. 34-49501, (March 30, 2004)
<http://www.sec.gov/litigation/admin/34-49501.htm>

In re Van der Moolen Specialists USA, LLC

Exchange Act Release No. 34-49502, (March 30, 2004)
<http://www.sec.gov/litigation/admin/34-49502.htm>

In the Matter of SIG Specialists, Inc.

Exchange Act Release, (July 26, 2004)
<http://www.sec.gov/news/press/2004-99.htm>

In the Matter of Performance Specialist Group, LLC

Exchange Act Release, (July 26, 2004)
<http://www.sec.gov/news/press/2004-99.htm>

On March 30, 2004, the SEC and NYSE settled enforcement actions against five NYSE specialist firms: Bear Wagner Specialists LLC; Fleet Specialist, Inc.; LaBranche & Co., LLC; Spear, Leeds & Kellogg Specialists LLC; and Van der Moolen Specialists USA, LLC. The firms agreed to pay a total of \$241,823,257 in penalties and disgorgement, consisting of \$87,735,635 in civil money penalties and \$154,087,622 in disgorgement, and implement steps to improve their compliance procedures and systems. On July 26, 2004, the SEC and NYSE settled enforcement actions against two NYSE specialist firms: SIG Specialists, Inc. and Performance Specialist Group LLC. The firms will pay a total of \$5.2 million in penalties and disgorgement, consisting of \$1.7 million in civil money penalties and \$3.5 million in disgorgement, and implement steps to improve their compliance procedures and systems.

In a joint investigation, the NYSE and SEC found that the firms, through particular transactions by certain of their registered specialists, violated federal securities laws and Exchange rules by executing orders for their dealer accounts ahead of executable public customer or "agency" orders. Through these transactions, the firms violated their basic obligation to match executable public customer buy and sell orders and not to fill customer orders through trades from the firm's own account when those customer orders could be matched with other customer orders. Through this conduct, the firms improperly profited from trading opportunities; disadvantaged customer orders, which either received inferior prices or went unexecuted altogether; and breached their

duty to serve as agents to public customer orders. In the settlements, the firms have neither admitted nor denied the allegations.

In the Matter of American Express Financial Advisors, Inc.

Admin. Proc. File No. 3-11395 (February 12, 2004)

<http://www.sec.gov/litigation/admin/33-8365.htm>

In the Matter of Legg Mason Wood Walker, Incorporated

Admin. Proc. File No. 3-11398 (February 12, 2004)

<http://www.sec.gov/litigation/admin/33-8368.htm>

In the Matter of Linsco/Private Ledger Corp.

Admin. Proc. File No. 3-11401 (February 12, 2004)

<http://www.sec.gov/litigation/admin/33-8371.htm>

In the Matter of Raymond James Financial Services, Inc.

Admin. Proc. File No. 3-11404 (February 12, 2004)

<http://www.sec.gov/litigation/admin/33-8374.htm>

In the Matter of UBS Financial Services Inc.

Admin. Proc. File No. 3-11407 (February 12, 2004)

<http://www.sec.gov/litigation/admin/33-8377.htm>

In the Matter of Wachovia Securities LLC

Admin. Proc. File No. 3-11410 (February 12, 2004)

<http://www.sec.gov/litigatin/admin/33-8380.htm>

In the Matter of H.D. Vest Investment Securities, Inc.

Admin. Proc. File No. 3-11413 (February 12, 2004)

<http://www.sec.gov/litigation/admin/33-8383.htm>

The Commission and NASD brought enforcement and disciplinary actions against a total of 15 firms for failure to deliver mutual fund breakpoint discounts during 2001 and 2002. Breakpoint discounts are volume discounts applicable to front-end sales charges on Class A mutual fund shares (front-end loads). The Commission's orders found that the firms, by failing to disclose to certain customers that they were not receiving the benefit of applicable breakpoint discounts, violated antifraud provisions of the Securities Act. The Commission and NASD each brought cases against a group of 7 firms, and the NASD separately brought actions against the other 8 firms. The 15 firms agreed to compensate customers for the overcharges, pay fines in an amount equal to their projected overcharges that total over \$21.5 million, and undertake other corrective measures.

In the Matter of Fidelity Brokerage Services LLC

Securities Exchange Act of 1934 Release No. 50138 (August 3, 2004)
<http://www.sec.gov/litigation/admin/34-50138.htm>

The Commission and the New York Stock Exchange initiated and settled enforcement actions against Fidelity Brokerage Services, LLC as a result of the alteration or destruction of documents in numerous Fidelity Brokerage branch offices. In settlement of these actions, Fidelity Brokerage will pay a total of \$2 million, consisting of a \$1 million civil penalty imposed by the SEC and a \$1 million fine imposed by the NYSE. In addition to these coordinated enforcement actions, the NYSE separately took disciplinary actions in related cases against seven individuals.

In a joint investigation, the SEC and the NYSE found that between January 2001 and July 2002, Fidelity Brokerage violated the broker-dealer record-keeping requirements of the federal securities laws because employees in at least 21 of its 88 branch offices altered or destroyed the firm's books and records. The violations related to Fidelity Brokerage's annual internal inspections, which were designed to determine whether branch offices were complying with the firm's policies and procedures, NYSE rules, and the federal securities laws. The firm's managers pressured branch office employees to obtain perfect inspections and gave advance notice of when the inspections would occur. Certain Fidelity employees took advantage of the advance notification and improperly prepared for the inspections.

In the Matter of Robertson Stephens, Inc.

Securities Exchange Act of 1934 Release No. 49077, (January 14, 2004)
<http://www.sec.gov/litigation/admin/34-49077.htm>

On January 9, 2004, the Commission issued an Order in which it found that Respondent Robertson Stephens, Inc. ("RSI") willfully violated the broker-dealer antifraud, record keeping and reporting provisions of the securities laws. In the Order, the Commission found that RSI and certain senior executives of the firm had formed a series of investment-limited partnerships referred to collectively as the "Bayview" partnerships. An entity controlled by RSI was the general partner of each of the limited partnerships. Two of the limited partnerships, Bayview 99 I and II, were formed to invest in a portfolio of companies that was chosen by an investment committee consisting of senior RSI executives. Another limited partnership, Bayview Corvis, also formed in 1999, invested solely in the securities of Corvis Corporation ("Corvis"), a telecommunications and Internet equipment company that, at the time of the Bayview investment, was privately-held. Among other things, the Commission's order found that the Research Analyst's statements regarding Corvis during the January 23, 2001 investment committee meeting - that he would not buy Corvis stock at the market price, but would buy it if it was trading at \$12 to \$14 per share - were inconsistent with the buy rating on Corvis included in the January 16, 2001 research report, which had been issued when Corvis stock was trading at about \$23 per share. On February 23, 2004, after no comments were received in response to the proposed distribution plan for disgorgement, the plan was approved.

SEC v. Daniel Calugar and Security Brokerage, Inc.

Litigation Release No. 18524, (December 24, 2003)

<http://www.sec.gov/litigation/litreleases/lr18524.htm>

On December 22, 2003, the Commission filed civil fraud charges against Security Brokerage, Inc. of Las Vegas and its president and majority owner, Daniel Calugar, for their participation in a scheme to defraud mutual fund shareholders through improper late trading and market timing. From at least 2001 to 2003, Calugar, trading through Security Brokerage, reaped profits of approximately \$175 million from improper late trading and market timing, principally through mutual funds managed by Alliance Capital Management and Massachusetts Financial Services (MFS).

Based on the Commission's application, United States District Judge Robert Clive Jones of the District of Nevada issued a temporary restraining order freezing the assets of the defendants, prohibiting the destruction of documents, and granting expedited discovery. The Commission applied for the emergency relief after learning that on December 18, 2003, Calugar had transferred \$50 million of proceeds from his scheme out of MFS. This transfer occurred on the same day that the Commission instituted an enforcement action against Alliance in connection with market timing activity. The Commission's action against Alliance identified Calugar as the largest market timer at Alliance.

Security Brokerage and Calugar are charged with violating the antifraud provisions of the federal securities laws. In addition to the emergency relief granted by the court, the Commission is seeking a judgment of permanent injunction, disgorgement of ill-gotten gains, and monetary penalties.

In the Matter of Raymond James Financial Services, Inc., J. Stephen Putnam and David Lee Ullom

Admin. Proc. File No. 3-11692 (September 30, 2004)

<http://www.sec.gov/litigation/admin/33-8499.htm>

On September 30, 2004, the Commission instituted enforcement proceedings against Raymond James Financial Services, Inc., a registered broker-dealer and investment adviser headquartered in St. Petersburg, Fla., based on the conduct of one of its former brokers, Dennis Herula. In the Order Instituting Proceedings, the Enforcement Division alleges that, in 1999 and 2000, Herula and others fraudulently solicited a number of investors to deposit approximately \$44.5 million in a Raymond James brokerage account held in the name of Brite Business, promising them astronomical returns with no risk if they did so. The Division alleges that Herula, acting in his capacity as a Raymond James registered representative, used Raymond James' facilities and letterhead to carry out the scheme. As alleged in the Order, approximately \$16.5 million of the investor funds raised - most of which were subsequently transferred to Herula's wife's brokerage account at Raymond James - were dissipated and never

returned to investors, and Herula and his wife misappropriated approximately \$8.7 million of those funds. The Order also alleges that Raymond James, J. Stephen Putnam, the firm's former president and chief operating officer, and David Ullom, Herula's former branch manager, failed reasonably to supervise Herula

The Commission previously brought fraud charges against Herula and others in connection with the Brite Business scheme on April 1, 2002. A Rhode Island federal court froze Herula's assets and subsequently granted the Commission's request for a default judgment against Herula on Oct. 17, 2002. See Commission Litigation Release Nos. 17461 (April 5, 2002) [emergency civil injunctive action filed and temporary restraining orders entered against Herula, Capalbo, and others]; 17800 (Oct. 23, 2002) [permanent injunction entered against Dennis Herula]; and 17957 (Jan. 29, 2003) [permanent injunction entered against Dennis Herula's wife, Mary Lee Capalbo].

Failure to Supervise Cases

In the Matter of Donaldson, Lufkin & Jenrette Securities Corp., Predecessor in Interest to Credit Suisse First Boston LLC

Exchange Act Release No. 50272 (August 26, 2004)
<http://www.sec.gov/litigation/admin/34-50272.htm>

On August 26, 2004, the Commission instituted settled administrative proceedings against Donaldson, Lufkin & Jenrette Securities Corp. (DLJ), predecessor in interest to Credit Suisse First Boston LLC (CSFB) (collectively, Respondent). The Commission's order found that Respondent failed reasonably to supervise R. Christopher Hanna (Hanna) with a view to preventing and detecting his violations of the federal securities laws during a portion of the twelve-year period that it employed him, from November 1989 to May 2001.

In order to perpetrate the misappropriations, Hanna created false letters of authorization (LOAs), purportedly by signed by the customers, directing transfers from customer accounts. Hanna also made unauthorized securities transactions in approximately sixty customer accounts.

The Commission's order found that Respondent failed reasonably to supervise Hanna with a view to preventing or detecting his violations. The Commission censured CSFB and ordered that CSFB pay a civil money penalty in the amount of \$1,000,000. In addition, the Commission ordered CSFB to comply with certain undertakings, including retaining an independent consultant to review and evaluate the effectiveness of CSFB's supervisory and compliance systems, policies and procedures designed to detect and prevent violations of the federal securities laws.

V. MUTUAL FUNDS AND INVESTMENT ADVISERS

SEC v. K.L. Group, LLC, et al.

Litigation Release No. 19117 (March 3, 2005)

<http://www.sec.gov/litigation/litreleases/lr19117.htm>

On March 2, 2005, the Commission announced the filing of an emergency enforcement action to halt an ongoing hedge fund fraud concerning three related hedge fund investment advisers, multiple hedge funds, a registered broker-dealer and the principals that control these entities. The Commission's complaint names as defendants the hedge funds, KL Group Fund, LLC, KL Financial Group Florida, LLC, KL Financial Group DB Fund, LLC, KL Financial Group DC Fund, LLC, KL Financial Group IR Fund, LLC and KL Triangulum Group Fund, LLC (collectively "the Funds"), the unregistered hedge fund investment advisers, K.L. Group, LLC, KL Florida, LLC and KL Triangulum Management, LLC (collectively "the Advisers"), the principals of the investment advisers and hedge funds, Won Sok Lee (Lee), John Kim and Yung Bae Kim (Yung Kim) and Shoreland Trading, LLC (Shoreland), an Irvine, California based broker-dealer that defendant Lee controlled and that conducted all of the trading for the various hedge funds.

The Commission's complaint alleges that from approximately 1999 to the present, the Defendants have raised at least \$81 million from investors nationwide by boasting annualized returns of 125 to 150% over the last several years and by sending false account statements to investors showing similar gains. According to the complaint, the hedge funds were suffering tremendous trading losses and only about \$11 million remains of the more than \$81 million that investors put into the hedge funds.

Acting on the Commission's request for emergency relief, Judge Kenneth L. Ryskamp of the United States District Court for the Southern District of Florida in West Palm Beach today issued temporary restraining orders, asset freezes and other relief against the defendants. The Court also appointed a receiver over all of the entities named in the Commission's action.

In the Matter of Brean Murray & Co, Inc.

Admin. Proc. File No. 3-11836 (February 17, 2005)

<http://www.sec.gov/litigation/admin/34-51219.htm>

On February 17, the Commission brought and settled an enforcement action against Brean Murray & Co., Inc., which is located in New York City and has been registered with the Commission as a broker-dealer since 1973.

The Order finds that, from August 2001 through September 2003, Brean Murray, on behalf of Canary Capital Partners LLC (Canary) and at least four other hedge fund customers, accepted and executed more than 3,500 trades in dozens of mutual funds after 4:00 p.m. Eastern Time, the time as of which those funds calculated their respective Net Asset Value (NAV). Brean Murray received and executed through its clearing

broker the overwhelming majority of these trades after 5:00 p.m. This practice, also known as “late trading,” violated Rule 22c-1 under the Investment Company Act. The Order also finds that in August 2001, at the request of Canary, Brean Murray began entering mutual fund trades directly into its clearing broker’s platform as late as 5:45 p.m., but almost always after 4:00 p.m. ET. Shortly thereafter Brean Murray started entering late trades on behalf of its other hedge fund customers.

The Commission censured Brean Murray, and ordered Brean Murray to cease and desist from committing or causing any violations and any future violations of Rule 22c-1 under the Investment Company Act, to pay a civil penalty in the amount of \$150,000, and to comply with certain specified undertakings.

SEC v. Northshore Asset Management et al.

Litigation Release No. 19084 (February 16, 2005)

<http://www.sec.gov/litigation/litreleases/lr19084.htm>

On February 16, 2005, the Commission announced that it filed an emergency enforcement action to halt fraudulent conduct concerning two hedge funds, Ardent Research Partners, L.P. ("Ardent Domestic") and Ardent Research Partners, Ltd. ("Ardent Offshore") (collectively, "the Ardent Funds"), against Northshore Asset Management, LLC ("Northshore"), Ardent Domestic, Ardent Offshore, Saldutti Capital Management, L.P. ("SCM"), Kevin Kelley ("Kelley"), Robert Wildeman ("Wildeman"), and Glenn Sherman ("Sherman") (collectively, the "Defendants").

The Complaint alleges that from April 2003 to the present, Northshore and its principals have diverted approximately \$37 million of the Ardent Funds' assets to their control and invested them in illiquid securities of, and made loans to, entities in which Northshore and its principals have an interest. The Commission alleges that the Defendants did not disclose to the Ardent Funds' investors that Northshore had purchased SCM and that Northshore was managing a significant portion of the Ardent Funds' assets. Additionally, the Defendants made numerous misrepresentations concerning (i) the nature of the investments, (ii) the liquidity of the investments, and (iii) the use of investor funds for undisclosed loans. For the last several months, the Defendants have refused to honor valid redemption requests from Ardent Domestic investors.

In the Matter of Banc of America Capital Management, LLC, BACAP Distributors, LLC, and Bank of America Securities, LLC

Admin. Proc. File No. 3-11818 (February 9, 2005)

<http://www.sec.gov/litigation/admin/33-8538.htm>

On February 9, 2005, the Commission brought and settled an enforcement action against Banc of America Capital Management, LLC (BACAP), BACAP Distributors, LLC (BACAP Distributors) and Banc of America Securities, LLC (BAS) for entering into improper and undisclosed agreements that allowed favored large investors to engage in rapid short-term securities trading known as market timing in certain Nations Funds mutual funds and for fraudulently facilitating market timing and late trading in Nations

Funds mutual funds as well as unaffiliated mutual funds. The Commission's Order detailed the conduct of Bank of America on three levels - as a mutual fund adviser, as a broker and as a clearing firm. As a fund adviser, BACAP permitted timing in its own funds. As a broker and clearing firm, BAS enabled late trading and market timing in many other mutual funds.

The Commission ordered BACAP, BACAP Distributors and BAS to pay \$375 million, consisting of \$250 million in disgorgement and \$125 million in penalties. The money will be distributed to the mutual funds and their shareholders that were harmed as a result of market timing and late trading in Nations Funds and other mutual funds. The Commission also censured BACAP, BACAP Distributors and BAS, ordered them to undertake certain remedial actions to strengthen their oversight of compliance with the federal securities laws, and ordered that they cease and desist from further violations.

In the Matter of Columbia Management Advisors, Inc. and Columbia Funds Distributor, Inc.

Admin Proc. File No. 3-11814 (February 9, 2005)
<http://www.sec.gov/litigation/admin/33-8534.htm>

On February 9, 2005, the Commission brought and settled an enforcement action against Columbia Management Advisors, Inc. (Columbia Advisors) which during the relevant period was a wholly owned subsidiary of Fleet National Bank, Columbia Funds Distributor, Inc. (Columbia Distributor), and three former Columbia executives in connection with undisclosed market timing arrangements in the Columbia Funds. In settling the matter, the Columbia entities will pay \$140 million, all of which will be distributed to investors harmed by the conduct. In separate orders, the SEC found that Peter Martin, former national sales manager, entered into several undisclosed timing arrangements that were inconsistent with the funds' prospectus disclosures, and that Erik Gustafson, formerly a Columbia portfolio manager, breached his fiduciary duty to the funds by approving four such arrangements. In addition, the SEC found that Joseph Palombo, formerly the chief operating officer of Columbia Advisors and chairman of the board of several Columbia funds, ignored indications of improper trading and failed to take appropriate action.

The Commission's administrative order against Columbia Advisors and Columbia Distributor found that, from at least 1998 through 2003, Columbia Distributor secretly entered into arrangements with at least nine companies and individuals allowing them to engage in frequent short-term trading in at least seven Columbia funds. In connection with certain of the arrangements, Columbia Distributor and Columbia Advisors accepted so-called "sticky assets"- long-term investments that were to remain in place in return for allowing the investors to actively trade in the funds. Columbia Advisors knew and approved of all but one of the arrangements and allowed them to continue despite knowing such short-term trading could be detrimental to long-term shareholders in the funds. The special arrangements were never disclosed to long-term shareholders or to the independent trustees of the Columbia funds. In addition to trading made pursuant to specific arrangements, the Commission's order found that Columbia allowed or failed to

prevent hundreds of other accounts from engaging in a practice of short-term or excessive trading.

SEC v. James Tambone and Robert Hussey

Litigation Release No. 19069 (February 9, 2005)

<http://www.sec.gov/litigation/litreleases/lr19069.htm>

On February 9, 2005, the Commission filed a civil fraud action in federal district court against two former executives of Columbia Funds Distributor Inc. in connection with undisclosed market timing arrangements in the Columbia complex of mutual funds. In its complaint, the Commission alleged that James Tambone, the former president of Columbia Funds Distributor, and Robert Hussey, a former senior sales executive, entered into or approved undisclosed timing arrangements with multiple investors that benefited the executives but were detrimental to long-term fund shareholders. According to the Commission, Tambone and Hussey acted improperly in entering and accepting the short-term trading arrangements, because the arrangements were never disclosed to long-term fund shareholders or the independent trustees of the funds and in most instances were directly contrary to the disclosures made in the prospectuses used to sell the mutual funds.

In the Matter of Southwest Securities, Inc., Daniel R. Leland, Kerry M. Rigdon and Kevin J. Marsh

Exchange Act Release No. 51002

<http://www.sec.gov/litigation/admin/34-51002.htm>

SEC v. Scott B. Gann and George B. Fasciano

Litigation Release No. 19027 (January 10, 2005)

<http://www.sec.gov/litigation/litreleases/lr19027.htm>

On January 10, 2005, the Commission and the NYSE brought settled enforcement proceedings against Southwest Securities, Inc., a Dallas, Texas based broker-dealer and investment adviser, and three of its managers. According to the Commission and NYSE, Southwest and the managers failed reasonably to supervise brokers in Southwest's downtown Dallas branch office who engaged in fraudulent mutual fund market timing schemes, late trading of mutual fund shares, or both. The Commission asserted that Southwest brokers used "masking activities," such as multiple customer accounts, multiple broker identification numbers, and multiple branch office numbers, to disguise their customers' market timing trades and trick the fund companies into accepting the trades. The Commission also filed a civil action in U.S. district court in Dallas against two former Southwest brokers, Scott B. Gann and George B. Fasciano, for allegedly engaging in a fraudulent market timing scheme.

Southwest agreed to pay a total of \$10 million, consisting of \$2 million in disgorgement and an \$8 million civil money penalty, and to undertake a number of measures to prevent future misconduct.

In the Matter of Edward D. Jones & Co., L.P.

Securities Act Release No. 8520 (December 22, 2004)

<http://www.sec.gov/litigation/admin/33-8520.htm>

On December 22, 2004, the Commission, NASD and the New York Stock Exchange brought settled enforcement proceedings against Edward D. Jones & Co., L.P., a registered broker-dealer headquartered in St. Louis, Missouri, related to allegations that Edward Jones failed to adequately disclose revenue sharing payments that it received from a select group of mutual fund families that Edward Jones recommended to its customers. As part of the settlement of all three proceedings, Edward Jones will pay \$75 million in disgorgement and civil penalties. All of that money will be placed in a Fair Fund for distribution to Edward Jones customers. Edward Jones also agreed to disclose on its public Web site information regarding revenue sharing payments and hire an independent consultant to review and make recommendations about the adequacy of Edward Jones' disclosures.

According to the Commission's Order, Edward Jones told the public and its clients that it was promoting the sale of certain mutual funds because of the funds' long-term investment objectives and performance. At the same time, Edward Jones failed to disclose that it received tens of millions of dollars from the funds or their affiliates each year, on top of commissions and other fees, for selling these mutual funds. Edward Jones also exclusively promoted the 529 college savings plans offered by its Preferred Families over all other 529 plans that it had available to sell.

In the Matter of Franklin Advisers, Inc. and Franklin/Templeton Distributors, Inc.

Exchange Act Release No. 50841 (December 13, 2004)

<http://www.sec.gov/litigation/admin/34-50841.htm>

On December 13, 2004, the Commission filed settled charges against Franklin Advisers, Inc. (FA) and Franklin Templeton Distributors, Inc. (FTDI) (collectively, Franklin), the investment adviser and principal underwriter and distributor affiliated with the Franklin Templeton mutual funds, alleging that Franklin, without proper disclosure, used fund assets to compensate brokerage firms for recommending the Franklin Templeton mutual funds over others to their clients. This practice is known as compensating brokerage firms for "shelf space." The Commission's order finds, and Franklin neither admits nor denies, that between 2001 and 2003, FTDI had shelf space agreements with 39 broker-dealers pursuant to which FTDI allocated \$52 million from brokerage commissions related to trades of fund shares (which were fund assets) to the broker-dealers in exchange for shelf space. Franklin did not adequately disclose these agreements to the fund boards or the fund shareholders. Franklin agreed to pay \$1 in disgorgement and a \$20 million penalty as well as undergo certain compliance reforms.

In the Matter of Gary L. Pilgrim

Admin. Proc. File No. 3-11739 (November 17, 2004)

<http://www.sec.gov/litigation/admin/33-8505.htm>

In the Matter of Harold J. Baxter

Admin. Proc. File No. 3-11740 (November 17, 2004)

<http://www.sec.gov/litigation/admin/33-8506.htm>

SEC v. Gary L. Pilgrim, Harold J. Baxter, and Pilgrim Baxter & Associates, Ltd.

Litigation Release No. 18474 (November 20, 2003)

<http://www.sec.gov/litigation/litreleases/lr18474.htm>

In the Matter of Pilgrim Baxter & Associates, LTD

Administrative Proceeding File No. 3-11524 (June 21, 2004)

<http://www.sec.gov/litigation/admin/ia-2251.htm>

On November 20, 2003, the Commission ultimately settled in administrative proceedings an action that was filed in federal district court against Gary L. Pilgrim, Harold J. Baxter, and Pilgrim Baxter & Associates, Ltd. (Pilgrim Baxter), a registered investment adviser. The Commission charged them with fraud and breach of fiduciary duty in connection with market timing of the PBHG Funds. Pilgrim was the President, Chief Investment Officer and Director of Pilgrim Baxter & Associates, and the President of the PBHG Funds. Baxter was the CEO and Chairman of Pilgrim Baxter & Associates, and the Chairman and trustee of the PBHG Funds and the PBHG Insurance Series Fund.

The Commission's complaint alleged that the defendants permitted a hedge fund in which Pilgrim and his wife had a substantial interest, Appalachian Trails, to engage in market timing of the high profile Growth Fund that Pilgrim himself managed. The complaint also alleges that Baxter provided non-public PBHG Fund portfolio information to a close friend at Wall Street Discount Corporation, who then passed this information to Wall Street Discount customers who used the portfolio information to market time the PBHG funds and to exercise hedging strategies through other financial and brokerage institutions. The Commission ordered Pilgrim Baxter to pay \$90 million - \$ 40 million in disgorgement and \$50 million in civil penalties. Pilgrim Baxter further agreed to undertake a series of compliance and mutual fund governance reforms.

Under the terms of the Commission's order, Baxter and Pilgrim must each pay \$80 million – \$60 million in disgorgement and \$20 million in civil penalties. This \$160 million will be combined with the \$90 million paid by Pilgrim, Baxter & Associates, Ltd. (PBA) in July 2004 and ultimately will be distributed to injured investors.

In the Matter of Fremont Investment Advisors, Inc.

Admin. Proc. File No. 3-11726 (November 4, 2004)

<http://www.sec.gov/litigation/admin/ia-2317.htm>

On November 4, 2004, the Commission charged San Francisco-based mutual fund adviser Fremont Investment Advisors with entering into improper and undisclosed agreements that allowed favored large investors to engage in rapid short-term securities trading known as market timing. Also charged by the Commission for their role in

Fremont's improper market timing arrangements were former President and CEO Nancy Tengler, and former Vice President of Institutional Sales Larry Adams. In addition to the market timing charges, the Commission charged Fremont for allowing mutual fund trades to be placed after the 4:00 p.m. market close.

Fremont agreed to pay \$4.146 million to settle the Commission's fraud charges. Tengler has also agreed to settle the Commission's action, agreeing to pay \$127,000 in disgorgement and penalties and to be suspended from the industry for six months. The Commission is litigating the action against Adams.

In the Matter of RS Investment, Inc., RS Investment Management, L.P., G. Randall Hecht and Steven M. Cohen

Admin. Proc. File No. 3-11696 (October 6, 2004)
<http://www.sec.gov/litigation/admin/ia-2130.htm>

On October 6, 2004, the Commission charged investment adviser RS Investment Management LP (RS), CEO G. Randall Hecht, and former CFO Steven M. Cohen with favoring certain mutual fund investors by allowing them to engage in frequent short-term trading (market timing). According to the Commission, RS entered into secret agreements that permitted select investors to generate millions of dollars in trading profits at the potential expense of other shareholders, and allowed RS to reap substantial advisory fees.

RS, a San Francisco-based investment adviser for ten mutual funds, has agreed to pay \$25 million to settle the Commission's fraud charges, including disgorgement of \$11.5 million and a civil penalty of \$13.5 million. These amounts will be distributed to investors of mutual funds affected by the market timing. RS will also undertake significant compliance measures designed to protect against future violations. Hecht and Cohen have also agreed to pay monetary penalties and to other remedial actions.

In the Matter of PA Fund Management LLC, PEA Capital LLC, and PA Distributors LLC

Admin. Proc. File No. 3-11661 (September 15, 2004)
<http://www.sec.gov/litigation/admin/34-50384.pdf>

On September 15, 2004, the Commission instituted a settled enforcement action against the investment adviser, sub-adviser, and principal underwriter and distributor for the PIMCO Funds and Multi-Manager Series funds (the PIMCO MMS Funds). The suit charged the entities with failing to disclose to the PIMCO MMS Funds' Board of Trustees and shareholders material facts and conflicts of interest that arose from their use of directed brokerage on the PIMCO MMS Funds' portfolio transactions to pay for "shelf space" arrangements with selected broker-dealers. The entities, PA Fund Management LLC (PAFM), PEA Capital LLC (PEA) and PA Distributors LLC (PAD), agreed to pay over \$11.6 million in disgorgement and penalties and to undertake significant disclosure and compliance reforms.

In the Matter of Charles Schwab & Co., Inc.

Admin. Proc. File No. 3-11648 (September 14, 2004)

<http://www.sec.gov/litigation/admin/34-50360.htm>

On September 14, 2004, the Commission instituted settled public administrative and cease-and-desist proceedings against Charles Schwab & Co., Inc. The Commission charged that Schwab allowed investment adviser customers to change mutual fund orders after the 4:00 p.m. Eastern Time market close, creating the risk that such customers could unfairly capitalize on late-breaking news at the expense of other mutual fund investors. Schwab consented to the entry of an order that it cease and desist from such violations and pay a \$350,000 civil penalty, and is censured for its misconduct.

The Commission found that, since at least January 2001, Schwab engaged in a practice of allowing its investment adviser customers to change mutual fund orders after market close under certain circumstances and still receive that day's fund price. This occurred when a customer's original pre-4:00 p.m. mutual fund order was rejected by Schwab's computer system (such as when the customer had been banned from trading in a particular mutual fund or the mutual fund was closed to new investors). Schwab permitted the adviser to submit a substitute order in a different mutual fund. According to the Commission's Order, on hundreds of occasions since 2001, Schwab personnel contacted customers after the 4:00 p.m. market close and allowed the customer to submit a substitute order in a different fund while still receiving the current day's price. Schwab's practice of processing the substitute purchase order at the current day's price violated Rule 22c-1(a) under the Investment Company Act, which requires orders for mutual fund shares placed after 4:00 p.m. to receive the next day's fund price.

The Commission's Order does not find that Schwab personnel entered into any improper agreements with customers allowing the substitute orders, or that Schwab's customers engaged in any scheme to exploit Schwab's order entry process or circumvent its controls. However, Schwab's practice of allowing investment advisers to substitute mutual fund orders created a risk that investment advisers and their clients could capitalize on post-market close information by trading after hours based on stale fund prices. Schwab ceased the practice in October 2003, following an inquiry by the Commission staff and the initiation of an internal investigation by Schwab.

In the Matter of Bridgeway Capital Management, Inc. and John Noland Ryan Montgomery

Admin. Proc. File No. 3-11659 (September 15, 2004)

<http://www.sec.gov/litigation/admin/ia-2294.htm>

On September 15, 2004, the Commission instituted settled enforcement proceedings against Bridgeway Capital Management (Bridgeway), and its president, John Noland Ryan Montgomery, in connection with more than \$4.4 million in illegal performance-based fees that Bridgeway charged to three of its mutual funds. The settlement requires that Bridgeway undertake certain compliance reforms and reimburse

the affected fund shareholders \$4,407,700, plus prejudgment interest of \$458,764, and that Bridgeway and Montgomery pay penalties of \$250,000 and \$50,000, respectively.

In the Matter of Garrett Van Wagoner and Van Wagoner Capital Management, Inc.

Admin. Proc. File No. 3-11611 (August 26, 2004)
<http://www.sec.gov/litigation/admin/ia-2281.htm>

On August 26, 2004, the Commission instituted settled fraud proceedings against Van Wagoner Capital Management, Inc. (VWCM), the investment adviser to the Van Wagoner Funds, Inc. (the Funds), and Garrett Van Wagoner, the president of VWCM, relating to their misstatement of the valuations of certain securities held by the Funds. The Commission's Order found that Van Wagoner and VWCM misled the Funds' shareholders about the size and value of the Funds' investments in illiquid securities (securities that were not publicly traded or could not be sold readily), which obscured the fact that the Funds' holdings in those securities exceeded the limits promised in the Funds' shareholder disclosures. The settlement includes an \$800,000 penalty from Van Wagoner and VWCM, a seven-year prohibition on Van Wagoner serving as an officer or director of a mutual fund, and a seven-year restriction on certain of Van Wagoner's activities with the investment adviser and compliance reforms by VWCM.

The Commission also announced actions against and settlements with: a former director of the Funds, Robert Colman, who purchased private equity securities in transactions at the same time as the Funds without first obtaining an order from the Commission permitting such joint investments; and a former private equity analyst of VWCM, Audrey L. Buchner, for prohibited, personal trading in the same public securities that the Funds also held or purchased, and omissions she made that concealed the overlap with the Funds' trading.

In the Matter of Janus Capital Management LLC

Admin. Proc. File No. 3-11590 (August 18, 2004)
<http://www.sec.gov/litigation/admin/ia-2277.htm>

On August 18, 2004, the Commission settled an enforcement action against Janus Capital Management LLC (JCM), a registered investment adviser based in Denver, Colorado, for entering into undisclosed market timing agreements with certain investors. JCM negotiated market timing agreements with 12 entities pursuant to which these entities were permitted to market time certain Janus mutual funds. At the same time JCM entered into these agreements, the prospectuses for the funds being timed stated, or at least strongly implied, that JCM did not permit frequent trading or market timing in these funds. Some of JCM's market timing agreements were entered into with the understanding that the market timer would make long term investments, so-called "sticky assets," in certain Janus mutual funds. In addition, JCM waived all redemption fees that would have otherwise been assessed against the market timers for their frequent trading activity.

The Commission ordered JCM to pay disgorgement of \$50 million and civil penalties of \$50 million, for a total payment of \$100 million. JCM also consented to a cease-and-desist order and a censure, and agreed to undertake certain compliance and mutual-fund governance reforms.

SEC v. William A. DiBella and North Cove Ventures, LLC

Litigation Release No. 18829 (August 12, 2004)

<http://www.sec.gov/litigation/lr18829.htm>

In the Matter of Thayer Capital Partners, TC Equity Partners IV, LLC, TC Management Partners IV, LLC, and Frederic V. Malek

Admin. Proc. File No. 3-11585 (August 12, 2004)

<http://www.sec.gov/litigation/admin/33-8457.htm>

On August 12, 2004, the Commission filed a civil fraud action against William A. DiBella, the former Majority Leader of the Connecticut State Senate, and his consulting firm, North Cove Ventures, LLC., in Connecticut federal district court. The complaint alleged that, beginning in November 1998, DiBella and North Cove participated in a fraudulent scheme with the then Treasurer of the State of Connecticut, Paul J. Silvester, concerning Silvester's investment of \$75 million of the state pension funds with Thayer Capital Partners, a Washington, DC-based private equity firm. According to the complaint, Silvester used the investment to reward DiBella, his friend and political supporter, for past and anticipated future services. In connection with the investment, Silvester requested that Thayer, through its chairman, Frederic V. Malek, hire DiBella. Thayer agreed to retain DiBella and to pay him a percentage of the state pension fund's total investment with Thayer, even though DiBella had no prior involvement with the transaction and ultimately performed no meaningful work related to the investment. DiBella understood from Silvester that there was no work to be done on the deal.

The Commission also instituted separate, but related, settled administrative and cease-and-desist proceedings against Thayer, Malek, and two Thayer affiliates, TC Equity Partners IV, LLC and TC Management Partners IV, LLC, concerning their failure to disclose to the state pension fund that, at the request of Silvester, they retained and paid DiBella nearly \$375,000 in connection with the state pension fund's investment with a Thayer private equity fund, Thayer Equity Investors IV, LP. Without admitting or denying the Commission's findings, Thayer, Malek, and the two Thayer affiliates consented to the issuance of an order censuring them and requiring them to cease and desist from violating certain provisions of the federal securities laws. The Commission also ordered Thayer to pay a civil penalty of \$150,000 and Malek to pay a civil penalty of \$100,000.

In the Matter of CIHC, Inc., Conseco Services, LLC, and Conseco Equity Sales, Inc.

Administrative Proceeding File No. 3-11578 (August 9, 2004)

<http://www.sec.gov/litigation/admin/33-8455.pdf>

In the Matter of Inviva Inc., and Jefferson National Life Insurance Company

Administrative Proceeding File No. 3-11579 (August 9, 2004)

<http://www.sec.gov/litigation/admin/33-8456.pdf>

On August 9, 2004, the Commission brought and settled the first enforcement action charging insurance companies with securities fraud for facilitating market timing of mutual funds through the sale of variable annuities. The insurance companies were subsidiaries of Conseco, Inc. (CIHC, Inc., Conseco Services, LLC, and Conseco Equity Sales, Inc.), and the company to which Conseco sold its variable annuity business in 2002, Inviva, Inc., and its subsidiary Jefferson National Life Insurance Company. The Commission's Orders found that the prospectuses through which the insurance companies sold the variable annuities misleadingly represented, among other things, that the annuities were "not designed for professional market timing organizations." In fact, the insurance companies affirmatively marketed and sold the annuities to professional market timers. Eventually, market timing assets constituted the majority of assets invested in the variable annuity products. The insurance companies profited by the fees earned from the sales of the annuities to the market timers.

Under the settlements, CIHC, Conseco Services, and CES agreed to pay \$15 million, including disgorgement of \$7.5 million and civil penalties of \$7.5 million. Inviva and Jefferson National paid \$5 million, including disgorgement of \$3.5 million and a civil penalty of \$1.5 million. These amounts were distributed to shareholders of mutual funds affected by the market timing. Inviva and Jefferson National also undertook compliance measures to protect against future violations.

In the Matter of Franklin Advisors Inc.

Administrative Proceeding File No. 3-11572 (August 2, 2004)

<http://www.sec.gov/litigation/admin/ia-2271.pdf>

On August 2, 2004, Franklin Advisers, Inc., an investment adviser firm in the fourth largest mutual fund complex in the U.S., agreed to pay \$50 million dollars and undergo compliance reforms to settle charges by the Commission that it allowed rapid in-and-out trading, known as market timing, in mutual funds it managed, contrary to fund prospectus language. Franklin failed to disclose that over 30 identified market timers were allowed to freely market time for several months in 2000, contrary to prospectus language that indicated market timing would be monitored and restricted.

Under the settlement, Franklin paid \$50 million, including disgorgement of \$30 million and a civil penalty of \$20 million. These amounts were distributed to shareholders of mutual funds affected by the market timing. Franklin also undertook compliance measures designed to protect against future violations.

In the Matter of Banc One Investment Advisors Corporation and Mark A. Beeson

Administrative Proceeding File No. 3-11530 (June 29, 2004)

<http://www.sec.gov/litigation/admin/ia-2254.htm>

In June of 2004, the Commission settled an enforcement action against Banc One Investment Advisors Corporation (BOIA), a registered investment adviser based in Columbus, Ohio, and Mark A. Beeson, former President and CEO of One Group Mutual Funds (One Group) and Senior Managing Director of BOIA. Among other things, the Commission found that BOIA violated, and Beeson aided and abetted and caused violations of, the federal securities laws by: (1) allowing excessive short-term trading in One Group funds by hedge-fund manager Edward J. Stern in the hope of attracting additional business, which created a conflict of interest because the trading increased BOIA's advisory fees but was potentially harmful to One Group funds; (2) failing to charge Stern redemption fees as required by One Group's international-fund prospectuses when other investors were charged the redemption fees; (3) having no written procedures in place to prevent the nonpublic disclosure of One Group portfolio holdings and improperly providing confidential portfolio holdings to Stern when other shareholders were not provided the same information; and (4) causing One Group funds to participate in joint transactions (a BOIA affiliate loaned money to Stern for the purpose of market-timing), raising a conflict of interest.

The Commission ordered BOIA to pay disgorgement of \$10 million and a civil penalty of \$40 million and ordered Beeson to pay a civil penalty of \$100,000. BOIA also consented to a cease-and-desist order and a censure, and agreed to undertake certain compliance and mutual-fund governance reforms. In addition, Beeson consented to a two-year bar from the mutual-fund industry and a three-year prohibition on serving as an officer or director of a mutual fund or investment adviser.

In the Matter of Strong Capital Management, Inc., Strong Investor Services, Inc., Strong Investments, Inc., Richard S. Strong, Thomas A. Hooker, Jr. and Anthony J. D'Amato

Administrative Proceeding No. 3-11498 (May 20, 2004)

<http://www.sec.gov/litigation/admin/34-49741.htm>

In May of 2004, the Commission brought and settled an enforcement action against Strong Capital Management, Inc. (SCM), its founder and majority owner, Richard S. Strong, two affiliated entities and two other SCM executives, for allowing and, in the case of Strong, engaging in undisclosed frequent trading in Strong mutual funds in violation of their fiduciary duties to the Strong funds and their investors. According to the Order, SCM entered into an express agreement with hedge fund manager Edward Stern allowing his hedge funds (the Canary hedge funds) to market time certain Strong funds, in order to obtain non-mutual fund business from Stern and his family. Under SCM's policies and procedures, other shareholders would have been ejected from the Strong funds for engaging in similar trading.

The Order further found that Richard Strong also engaged in frequent trading in several Strong funds, including one fund he managed. Between 1998 and 2003, he engaged in several hundred such trades, making gross profits of \$4.1 million and net profits of \$1.6 million. SCM failed to disclose the arrangement with Stern, and Strong and SCM failed to disclose Strong's personal trading, to the Strong funds' Boards of Directors or shareholders.

Based on these findings, the Commission ordered SCM to pay \$40 million in disgorgement and \$40 million in civil penalties and Strong to pay \$30 million in disgorgement and \$30 million in civil penalties. In addition, the Commission barred Strong from association with any investment adviser, investment company, broker, dealer, municipal securities dealer or transfer agent. The other two SCM executives also received sanctions.

SEC v. PIMCO Advisors Fund Management LLC, PIMCO Advisors Fund Management LLC, PEA Capital LLC f/k/a/ PIMCO Equity Advisors LLC, PIMCO Advisors Distributors LLC, Stephen J. Treadway, and Kenneth W. Corba

Litigation Release No. 18697 (May 6, 2004)

<http://www.sec.gov/litigation/litreleases/lr18697.htm>

PIMCO Equity Mutual Funds' Adviser, Sub-Adviser, and Distributor to Pay \$50 Million to Settle Fraud Charges for Undisclosed Market Timing

Press Release No. 2004-127 (September 13, 2004)

<http://www.sec.gov/news/press/2004-127.htm>

During May of 2004, the Commission ultimately settled certain aspects of an enforcement action it filed in federal district court against PIMCO Advisors Fund Management LLC (PAFM), PEA Capital LLC (PEA), PIMCO Advisors Distributors LLC (PAD), Stephen J. Treadway (the chief executive officer of PAFM and PAD as well as the chairman of the board of trustees for the PIMCO Funds: Multi-Manager Series), and Kenneth W. Corba (PEA's former CEO) for their defrauding of PIMCO mutual fund investors, in connection with an undisclosed market timing arrangement with Canary Capital Partners LLC. From February 2002 to April 2003, Canary engaged in approximately 108 round-trip exchanges in an aggregate amount of over \$4 billion in several PIMCO Funds pursuant to its special market timing arrangement.

PAFM, PEA, and PAD (collectively, the PIMCO Entities) ultimately agreed to settle these charges. Under the settlement, the PIMCO Entities have been ordered to pay \$50 million, consisting of \$10 million in disgorgement and a civil penalty of \$40 million. Without admitting or denying the Commission's findings, the PIMCO Entities also consented to cease-and-desist orders, censures, and to undertake certain compliance and mutual fund governance reforms. The Commission's litigation in federal court continues against Stephen J. Treadway and Kenneth W. Corba.

In the Matter of Putnam Investment Management, LLC

Administrative Proceeding File No. 3-11317 (April 8, 2004)

<http://www.sec.gov/litigation/admin/ia-2226.htm>

In April 2004, the Commission brought and settled an enforcement action against Putnam Investment Management LLC (Putnam), pursuant to which the Commission ordered Putnam to pay a \$50 million civil penalty and \$5 million in disgorgement for violating federal securities laws by failing to disclose improper market timing trading by Putnam portfolio managers. All of the money obtained by the Commission was distributed to investors harmed by the market timing trading.

The Commission's Order called for the appointment of an Independent Distribution Consultant who is charged with developing a plan for distributing the \$55 million in disgorgement and penalties to harmed investors. The \$55 million was to be distributed to investors in order of priority: first, as compensation to investors for losses attributable to excessive short-term trading and market timing trading activity by Putnam employees and, second, as compensation for advisory fees paid by mutual fund clients who suffered such losses. This Order supplemented a Commission Order entered on Nov. 13, 2003 pursuant to which Putnam agreed to undertake significant and far-reaching corporate governance, compliance, and ethics reforms.

The Commission's previously filed civil injunctive action charging two Putnam employees, portfolio managers Justin M. Scott and Omid Kamshad, with securities fraud for engaging in excessive short-term trading of Putnam funds in their personal accounts, is pending.

The Securities Division for the Commonwealth of Massachusetts has also settled related charges against Putnam calling for the payment of an additional \$55 million.

In the Matter of Massachusetts Financial Services Company

Administrative Proceeding File No. 3-11450 (March 31, 2004)

<http://www.sec.gov/litigation/admin/ia-2224.htm>

On March 31, 2004, the Commission brought and settled an enforcement action against Massachusetts Financial Services Company (MFS) related to the company's use of mutual fund assets - namely, brokerage commissions on mutual fund transactions - to pay for the marketing and distribution of mutual funds in the MFS Fund Complex (MFS Funds). The Commission issued an order that found MFS failed to adequately disclose to the Boards of Trustees and to shareholders of the MFS Funds the specifics of its "shelf-space" arrangements with brokerage firms and the conflicts created by those arrangements

The Commission found that from at least Jan. 1, 2000, through Nov. 7, 2003, MFS negotiated bilateral arrangements, known as "Strategic Alliances," with approximately 100 broker-dealers. Under these arrangements, MFS directed brokerage

commissions on fund portfolio transactions to the brokerage firms in exchange for heightened visibility within the brokerage firms' distribution networks.

MFS agreed to settle this matter, without admitting or denying the Commission's findings. The Commission's Order censured MFS and ordered it to cease-and-desist from providing false reports and records and from engaging in prohibited transactions. MFS was to make a nominal disgorgement payment and will pay \$50 million in civil penalties. MFS was to distribute the penalty to the MFS Funds in accordance with a distribution plan approved by the Commission. MFS has also undertaken to direct an independent consultant to conduct a review of, and to provide recommendations concerning, MFS's policies and procedures with respect to its Strategic Alliances including its disclosures to the Boards and shareholders, and to adopt the recommendations of the independent consultant.

In the Matter of Massachusetts Financial Services Co., John W. Ballen, and Kevin R. Parke

Investment Advisers Act of 1940 Release No. 2213 (Feb. 5, 2004)
<http://www.sec.gov/litigation/admin/ia-2213.htm>

On February 5, 2004, the Commission brought and settled an enforcement action against Massachusetts Financial Services Co. (MFS), its chief executive officer John W. Ballen, and its president and chief equity officer Kevin R. Parke, for violating federal securities laws by allowing widespread market timing trading in certain MFS mutual funds in contravention of those funds' public disclosures.

The Commission censured MFS and ordered it to pay \$225 million, consisting of \$175 million in disgorgement and \$50 million in penalties. The Commission's Order further required MFS to undertake certain compliance and mutual fund governance reforms designed to enhance the independence of mutual fund boards of trustees and strengthen oversight of MFS's compliance with the federal securities laws. For their roles in the misconduct, the Commission prohibited Ballen and Parke from serving as an officer or director of any investment adviser and from serving as an employee, officer, or trustee of any registered investment company for three years. In addition, the Commission's Order placed certain restrictions on the duties Ballen and Parke can perform during that period. The Commission also suspended Ballen and Parke from association with any investment adviser or registered investment company for nine months and six months, respectively, and ordered each to pay a penalty of \$250,000 and disgorge over \$50,000 in ill-gotten gains derived from MFS's market timing practices. All of the money paid by MFS, Ballen, and Parke was to be distributed to harmed shareholders.

Invesco Cases

SEC v. Invesco Funds Group, Inc. and Raymond R. Cunningham

Litigation Release No. 18482 (December 2, 2003)

<http://www.sec.gov/litigation/litreleases/lr18482.htm>

In the Matter of Invesco Funds Group, Inc., AIM Advisors, Inc., and AIM Distributors, Inc.

Admin. Proc. File No. 3-11701 (October 8, 2004)

<http://www.sec.gov/litigation/admin/34-50506.htm>

In the Matter of Raymond Cunningham

Admin. Proc. File No. 3-11702 (October 8, 2004)

<http://www.sec.gov/litigation/admin/34-50507.htm>

On December 2, 2003, the Commission filed suit in the United States District Court for the District of Colorado against Invesco Funds Group, Inc. (IFG), and Raymond R. Cunningham, alleging that the defendants fraudulently accepted investments by market timers in Invesco mutual funds to enhance the management fees earned by IFG.

On October 8, 2004, the Commission instituted settled enforcement actions against IFG, AIM Advisors, Inc. (AIM Advisors), and AIM Distributors, Inc. (ADI). The Commission issued an order finding that IFG, AIM Advisors, and ADI violated the federal securities laws by facilitating widespread market timing trading in mutual funds with which each entity was affiliated. The settlements required IFG to pay \$215 million in disgorgement and \$110 million in civil penalties, and require AIM Advisors and ADI to pay, jointly and severally, \$20 million in disgorgement and an aggregate \$30 million in civil penalties. By a separate order, the Commission also announced a settled enforcement action against Raymond R. Cunningham, the former president and chief executive officer of IFG and a former member of the Invesco funds' board of directors, for his role in IFG's market timing program. That settlement required Cunningham to pay \$1 in disgorgement and \$500,000 in civil penalties.

From at least 2001 through July 2003, IFG entered into undisclosed market timing agreements with over 40 individuals and entities, which allowed them to market time certain Invesco funds. Some of the timing agreements were entered into with the understanding that the market timer would maintain long-term investments, so-called "sticky assets," in certain non-timed Invesco funds. At their height, the market timers held over \$1 billion of the assets invested in the Invesco funds and made excessive exchanges and redemptions totaling approximately \$58 billion. In the aggregate, the market timing trades made under the agreements were detrimental to the Invesco funds' shareholders.

Between January 2001 and September 2003 AIM Advisors entered into 10 negotiated, but undisclosed, market timing agreements with individuals and entities, allowing the timers to exceed AIM Funds' per-year 10-exchange limit, and to make trades, valued collectively at tens of millions of dollars, within AIM Funds. One of the

timing agreements was entered into with the understanding that the market timer would make a long-term investment, or invest so-called “sticky assets,” in certain AIM Funds.

In the Matter of Timothy J. Miller

Admin. Proc. File No. 3-11619 (August 30, 2004)

<http://www.sec.gov/litigation/admin/ia-2289.htm>

In the Matter of Thomas A. Kolbe

Admin. Proc. File No. 3-11618 (August 30, 2004)

<http://www.sec.gov/litigation/admin/ia-2288.htm>

In the Matter of Michael D. Legoski

Admin. Proc. File No. 3-11620 (August 30, 2004)

<http://www.sec.gov/litigation/admin/34-50289.htm>

On August 31, 2004, the Commission announced settled enforcement actions against Timothy J. Miller, the former chief investment officer and a portfolio manager for Invesco Funds Group, Inc. (IFG); Thomas A. Kolbe, the former national sales manager of IFG; and Michael D. Legoski, a former assistant vice president in IFG’s sales department. The Commission issued orders alleging that Miller, Kolbe and Legoski violated federal securities laws by facilitating widespread market timing trading in certain Invesco funds in contravention of those funds’ public disclosures.

The Commission ordered Miller, Kolbe and Legoski to pay \$1 in disgorgement each, and penalties in the amounts of \$150,000, \$150,000 and \$40,000, respectively. In addition, for their roles in the misconduct, the Commission prohibited Miller, Kolbe and Legoski from associating with an investment adviser or investment company for a period of one year, and further prohibited Miller and Kolbe from serving as an officer or director of an investment adviser or an investment company for three years and two years, respectively. The Commission also barred Legoski from associating with any broker or dealer for a period of one year.

The Commission’s Orders found that Miller, Kolbe and Legoski aided and abetted IFG’s violations of the Investment Advisers Act of 1940, and that Miller caused IFG’s violation of the Investment Company Act of 1940. The Orders required each of them to cease and desist from violating or causing future violations of these provisions.

VI. INSIDER TRADING

SEC v. Robert Goehring

Litigation Release No. 19105 (February 28, 2005)

<http://www.sec.gov/litigation/litreleases/lr19105.htm>

On February 28, 2005, announced the filing of a contested insider trading case in the United States District Court for the District of Connecticut against Robert Goehring. In its Complaint, the Commission alleged that Goehring, age 64, was the director of corporate communications of Gerber Scientific, Inc. (“Gerber”). Goehring's duties included helping prepare company press releases – including those announcing earnings and other material corporate developments – and serving as the company's investor relations contact. In this position, Goehring regularly obtained material, non-public information about Gerber. The Commission alleges that, between July 1998 and April 2000, Goehring traded in the Gerber stock nine times on the basis of material, nonpublic information he obtained in the course of his employment as Gerber's director of corporate communications. Goehring allegedly enjoyed profits and avoided losses from these illicit trades of \$94,016. In addition, the Commission alleges that Goehring tipped his close friend, Armund Ek, who was not employed at Gerber, with material, non-public information about Gerber on three occasions. Ek allegedly bought and sold Gerber stock based on these tips and had profits and avoided losses totaling \$11,453 as a result of his trading.

The Commission complaint alleges that because of his position with Gerber, Goehring owed a fiduciary duty, or other duty of trust or confidence owed directly, indirectly or derivatively to Gerber and its shareholders. This included a duty to not trade Gerber shares on the basis of material, non-public information and to not communicate such information improperly to others. By engaging in insider trading and by tipping his friend Ek with material non-public information about Gerber, Goehring violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”). Also, on February 28, 2005, the Office of the United States Attorney for the Southern District of New York announced the unsealing of an indictment against Goehring on related insider trading charges.

SEC v. Armund Ek

Litigation Release No. 19104 (February 28, 2005)

<http://www.sec.gov/litigation/litreleases/lr19104.htm>

The Securities and Exchange Commission announced the filing of a settled insider trading case in the United States District Court for the Southern District of New York against Armund Ek (“Ek”). In its Complaint, the Commission alleged that Ek was a close friend of Robert Goehring (“Goehring”), Gerber’s director of corporate communications. In his capacity as director of corporate communications, Goehring received material, nonpublic information about earnings results and other significant corporate developments at Gerber. Ek both bought and sold Gerber stock on three

occasions based on tips of material, nonpublic information about Gerber that Goehring provided. Ek had profits and avoided losses totaling \$11,438.

The Commission alleged that on each of the three occasions, Goehring knowingly or recklessly communicated the material, nonpublic information to Ek in breach of the duty of trust and confidence that he owed to Gerber and its shareholders. Ek knew or should have known that he was trading on the basis of material, nonpublic information that Goehring communicated to him in breach of that duty of trust and confidence.

As a result of his conduct, Ek violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Exchange Act Rule 10b-5. Without admitting or denying the allegations in the Commission's Complaint, Ek consented to the entry of a judgment (i) permanently enjoining him from future violations of antifraud provisions of the federal securities laws, (ii) ordering disgorgement of profits and losses avoided of \$11,438 plus prejudgment interest of \$3,511, and (iii) imposing a civil penalty of \$10,798.

SEC v. Patricia B. Rocklage, William M. Beaver and David G. Jones

Litigation Release No. 19032 (January 13, 2005)

<http://www.sec.gov/litigation/litreleases/lr19032.htm>

On January 12, 2005, the Commission filed an insider trading action involving trading in the common stock of Massachusetts-based Cubist Pharmaceuticals, Inc. against Patricia B. Rocklage, the wife of Scott M. Rocklage, Cubist's former Chairman and CEO, William M. Beaver, Patricia Rocklage's brother, and David G. Jones, Beaver's best friend and neighbor.

In its complaint, the Commission alleges that, on December 31, 2001, Scott Rocklage informed Patricia B. Rocklage of the negative results of a clinical trial involving one of Cubist's most important products, Cidecin. The complaint also alleges that, unbeknownst to her husband, Ms. Rocklage had a pre-existing understanding with her brother whereby she would give him "a wink and a nod" if she ever became aware of any bad news about Cubist that might affect its stock price. According to the complaint, shortly after learning about the trial results, Ms. Rocklage told her husband that she intended to signal Beaver to sell his Cubist stock. The complaint states that Scott Rocklage urged his wife not to take this action. The complaint asserts that, notwithstanding her husband's entreaties, by no later than the morning of January 2, 2002, Ms. Rocklage provided "a wink and a nod" to Beaver, who, at approximately 10 a.m. that day, sold all 5,583 shares of Cubist stock that he owned or controlled. The complaint further contends that, after receiving the signal from his sister, Beaver tipped his best friend and neighbor, Jones, who proceeded to sell all 7,500 shares of Cubist stock that he owned on the morning of January 3, 2002. Following the post market close announcement of the trial results on January 16, 2002, Cubist's stock price dropped by 46%, from a closing price of \$31.75 that day to a closing price of \$17.02 on January 17, 2002. By selling when they did, Beaver and Jones avoided losses of \$99,527 and \$133,222, respectively.

SEC v. Eric I. Tsao

Litigation Release No. 18889 (September 17, 2004)
<http://www.sec.gov/litigation/litreleases/lr18889.htm>

On September 17, 2004, the Commission announced that it has reached a settlement of its pending insider trading charges against Eric I. Tsao, a former executive at MedImmune, Inc., a biotechnology company based in Gaithersburg, Maryland. The Commission's complaint, originally filed on June 2, 2003, alleged that Tsao engaged in three separate episodes of insider trading between September 1999 and December 2001, from which he realized aggregate illicit profits of \$146,850. The Commission's Complaint also alleged that when Tsao testified before the SEC staff during the investigation of this matter, he falsely denied having placed or authorized any of the relevant trades in two of the three separate instances of insider trading – and provided a false alternative explanation for the trading.

Without admitting or denying the allegations of the Complaint, Tsao consented to the entry of a Final Judgment against him that (1) permanently enjoins him from future violations of the federal securities laws; (2) bars him from acting as an officer or director of a public company; (3) requires him to disgorge \$146,850 in illicit profits, and \$24,758.30 in pre-judgment interest thereon, and (4) orders him to pay civil money penalties in the amount of \$220,275 and a Remedies Act penalty of \$110,000. The Final Judgment allows Tsao to offset his payment of disgorgement and civil penalty by the corresponding amounts, if any, of restitution and criminal fine, respectively, he pays in connection with the parallel criminal proceeding, where Tsao has pled guilty to one felony count of criminal insider trading and one felony count of perjury arising from false statements that Tsao made to the SEC staff during the investigation.

SEC v. Derrick S. McKinley

Litigation Release No. 18832 (August 13, 2004)
<http://www.sec.gov/litigation/litreleases/lr18832.htm>

On August 13, 2004, the Commission announced that it filed a complaint against Derrick S. McKinley (McKinley), a former vice president and medical director of Gliatech, Inc. (Gliatech). Gliatech was a pharmaceutical company located in suburban Cleveland. The complaint alleges that McKinley sold Gliatech stock while in possession of material, non-public information concerning problems with Gliatech's primary product, Adcon-L Adhesion Barrier Gel (Adcon-L), a gel used to reduce scarring in patients following back surgery.

From August 1999 to August 2000, McKinley sold short 221,000 shares of Gliatech stock in a series of transactions, reaping profits of approximately \$1.6 million. From the outset of his trading, McKinley was aware of three major problems involving Adcon-L. By August 1999, McKinley (1) knew that a study of Adcon-L clinical trials (Adcon-L Study) submitted by Gliatech to the U.S. Food and Drug Administration (FDA) suffered from defects that undermined its reliability; (2) knew of sterility problems resulting from defective packaging by the overseas contractor Gliatech hired to

manufacture Adcon-L; and (3) knew of complaints of cerebral spinal fluid leaks (CSF leaks) in patients following surgeries in which Adcon-L had been used. In October 1999, the FDA issued an import ban that prevented shipments of Adcon-L from entering the U.S. The ban resulted from unresolved FDA concerns that included the defective packaging and sterility problems. In March 2000, news of complaints about the CSF leaks became public. In August 2000, news of an FDA investigation challenging the integrity and results of the Adcon-L Study became public. When each of these adverse developments became publicly known, the price of Gliatech stock dropped. McKinley profited from each of these three declines in the price of Gliatech stock.

SEC v. Guillermo Garcia Simon, et al.

Litigation Release No. 18763 (June 24, 2004)

<http://www.sec.gov/litigation/litreleases/lr18763.htm>

A Massachusetts federal court has entered a final judgment against Guillermo Garcia Simon, a former FleetBoston Financial Group employee residing in Buenos Aires, Argentina, in connection with his trading in the securities of FleetBoston in advance of the announcement of its acquisition by Bank of America Corporation. Under the terms of the final judgment, entered by consent, Simon was ordered to pay approximately \$525,000 in disgorgement, interest, and a penalty. He was also enjoined from further violations of Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder.

The Commission filed an emergency enforcement action against Simon on Monday, October 28, 2003, only hours after Bank of America announced its acquisition of FleetBoston, and less than three days after Simon purchased FleetBoston securities. In its complaint, the Commission alleged that Simon engaged in illegal insider trading when he bought FleetBoston securities late on Friday, October 24, while in possession of material, non-public information about the acquisition that was announced the next trading day. The day it filed its complaint, the Commission also sought, and was granted, a temporary restraining order and asset freeze against Simon. The Commission obtained the order before the transaction was concluded and as a result, was able to freeze Simon's trading account before any profits could be removed or dissipated.

VII. CASES INVOLVING MARKET MANIPULATION

SEC v. Concorde America, Inc., Absolute Health and Fitness, Inc., et al.,

Litigation Release No. 19085 (February 16, 2005)

<http://www.sec.gov/litigation/litreleases/lr19085.htm>

The Commission announced that on February 15, 2005, Judge William J. Zloch, U.S. District Judge for the Southern District of Florida, issued emergency asset freeze orders, among other relief, against Donald Oehmke, Bryan Kos, and five related relief defendants in connection with the manipulation of two small-cap companies traded nationwide on the Pink Sheets, Boca Raton, Florida-based Concorde America, Inc. ("Concorde America"), and Greensboro, North Carolina-based Absolute Health and

Fitness, Inc. ("Absolute Health"). The relief defendants are five off-shore entities: Da Silva, SA, Vanderlip Holdings, NV, Chiang Ze Capital, AVV, Ryzcek Investments, GMBH, and Barranquilla Holdings, SA. Concorde America claims to recruit Latin American workers for employment in Europe, and Absolute Health claims to own and operate several fitness centers. On February 14, 2005, the Commission filed a civil injunctive action, alleging that Oehmke, Kos, and others defrauded investors through two classic "pump and dump" schemes.

The Commission's Complaint alleges that Oehmke and Kos instigated both schemes, artificially creating demand for stock they owned in Concorde America and Absolute Health through unauthorized and false press releases, facsimile and e-mail spams, Internet websites, promotional videos, and automatic voice-mail messages since approximately June 2004. According to the Commission's Complaint, Oehmke realized a net profit of over \$11.3 million from his sales of Concorde America stock and more than \$9.4 million from his sales of Absolute Health. The Commission's Complaint also alleges that Kos realized net profits of nearly \$1.7 million from his sales of Concorde America stock, and more than \$5 million from his sales of Absolute Health stock. The Commission also sued Concorde America and its president, Hartley Lord, alleging that they participated in the stock manipulation scheme, and sued Absolute Health alleging that it did not own any fitness centers. In addition, the Commission sued Thomas M. Heysek, Andrew M. Kline, and Paul A. Spreadbury alleging that they prepared false and misleading analyst reports, tout sheets, and press releases, among other things.

SEC v. Courtney D. Smith

Litigation Release No. 19064 (February 7, 2005)

<http://www.sec.gov/litigation/litreleases/lr19064.htm>

On February 7, 2005, the Commission filed a complaint in the United States District Court for the Central District of California charging Courtney D. Smith, a well-known financial commentator, for his role in an unlawful scheme to manipulate the stock price of GenesisIntermedia, Inc. (GENI), a now defunct public company that was based in Van Nuys, California. After the scheme collapsed in September 2001, GENI's stock price plunged to pennies per share, leading to the bankruptcy of three brokerage firms and the largest bailout in the history of the Securities Investor Protection Corporation.

The Commission alleged that Smith assisted GENI's Chief Executive Officer and his accomplice (a Saudi Arabian national reputed to be an international arms dealer and financier) in a fraudulent stock manipulation and lending scheme that occurred between September 1999 and September 2001. According to the complaint, GENI's CEO secretly paid Smith approximately \$1.1 million in cash and GENI stock to tout GENI shares on television. Smith's public statements, many of which were false or misleading, artificially inflated the price of GENI shares and facilitated the misappropriation of approximately \$130 million by GENI's CEO and his accomplice. Also according to the complaint, the manipulation of GENI's stock price began shortly after the company's June 1999 public offering. To benefit from the manipulation, GENI's CEO and his accomplice, with the assistance of Kenneth P. D'Angelo (a stock loan broker previously

charged by the SEC and criminal authorities), developed a stock lending scheme in which they could profit from lending GENI shares (rather than selling them). The complaint alleged that the CEO and his accomplice, through an offshore entity called Ultimate Holdings, loaned approximately 15 million shares of GENI stock to more than a dozen broker-dealers in exchange for cash (based upon the market value of the shares). As the price of GENI shares increased from the efforts of Smith and others, Ultimate Holdings received additional funds when the GENI stock loans were marked-to-market by the broker-dealers involved. By lending the shares in this manner, Ultimate Holdings and GENI's CEO raised approximately \$130 million without giving up control of the stock or depressing the market. GENI's CEO and his accomplice, however, defaulted on the stock loans and failed to repay the \$130 million they had borrowed. As alleged in the complaint, the manipulation caused GENI's stock price to increase approximately 1,400%, from a low of \$1.67 per share (split adjusted) on September 1, 1999 to a high of \$25 per share on June 29, 2001

The Commission charged Smith with violating the antifraud provisions of the federal securities laws as well as the anti-touting provision. The United States Attorney's Office for the Central District of California announced related criminal charges against Smith.

SEC v. Robert J. Cassandro, Michael C. Cardascia, and Stephen E. Apolant, Defendants, and Joan Cardascia, Relief Defendant

Litigation Release No. 18909 (September 29, 2004)

<http://www.sec.gov/litigation/litreleases/lr18909.htm>

On September 29, 2004, the Commission filed a civil action against an attorney, Robert J. Cassandro, and two stock promoters, Michael C. Cardascia and Stephen E. Apolant, in a case that arose out of a fraudulent scheme to manipulate the price of Spectrum Brands Corporation's stock by exploiting the fear of bio-terrorism following September 11, 2001. Specifically, the complaint alleges that Spectrum Brands was secretly managed and controlled by a group of stock promoters in Hicksville, New York, some of whom were convicted felons. The complaint further alleges that to conceal its true ownership from the investing public, Spectrum Brands stated in a Form 8-K filed with the Commission on or about October 31, 2001, that a Michael J. Burns was the sole officer and director of the company and that the corporate address was in Hauppauge, New York. In truth, Burns had little or no management responsibility for Spectrum Brands and the Hauppauge address was a mail drop. The complaint alleges that Cassandro participated in drafting the false and misleading statements in the Form 8-K while knowing that the statements were false and misleading. Also, according to the complaint, Michael Cardascia and Apolant helped promote Spectrum Brands stock via Internet, radio, bulk e-mail, and fax while knowing that these communications contained false and misleading statements regarding the identity of the persons controlling and managing Spectrum Brands. The complaint also alleges that Michael Cardascia bought Spectrum Brands stock privately at a discount and that his wife Joan Cardascia, who was named as a relief defendant, was unjustly enriched when she sold it at inflated prices.

VIII. CASES INVOLVING SECURITIES OFFERINGS

SEC v. Mobile Billboards of America, Inc., International Payphone Company, Reserve Guaranty Trust, Michael A. Lomas and Michael L. Young

Litigation Release No. 18893 (September 23, 2004)

<http://www.sec.gov/litigation/litreleases/lr18893.htm>

On September 21, 2004, the Commission filed a complaint in the United States District Court for the Northern District of Georgia against Mobile Billboards of America, Inc. (Mobile Billboards), International Payphone Company (International Payphone) itself and doing business as Outdoor Media Industries (Outdoor Media), Reserve Guaranty Trust (RGT), Michael A. Lomas (Lomas) and Michael L. Young (Young). Lomas, who resides in Long Beach, California, is the chairman of Mobile Billboards. Young is the president and a director of Mobile Billboards and resides in Bridgeton, Missouri.

The complaint alleged that from 2001 through the present, defendants Lomas, Young, Mobile Billboards, Outdoor Media, and RGT operated a Ponzi scheme involving the sale and leaseback of mobile billboards, selling more than \$60.5 million of mobile billboard investments to more than 700 investors nationwide. The complaint charged the defendants with violations of the federal securities laws, and Lomas and Young with aiding and abetting the violations of federal securities laws. The complaint seeks, among other relief, injunctions against future violations, disgorgement of all ill-gotten gains with prejudgment interest, and the imposition of civil penalties against defendants. On the same day the complaint was filed, the defendants consented to orders permanently enjoining the defendants from future violations, freezing the assets of defendants, ordering accountings by Lomas and Young, and appointing a Receiver for the assets of Mobile Billboards, International Payphone, itself and doing business as Outdoor Media, and RGT.

SEC v. Colin Nathanson, Individually and Doing Business as Nathanson Investment Trust, Giant Golf Company, Play Big Enterprises, Inc., Starquest Management Inc., Whitehawk Consulting Group, Inc., Leafhead Consultants, Inc., Nettel Consulting Corp., YRMAC Consulting Services, Inc., and Millennium Technical Group, Inc.

Litigation Release No. 18861 (August 31, 2004)

<http://www.sec.gov/litigation/litreleases/lr18861.htm>

On August 26, 2004, the Honorable Gary L. Taylor, United States District Judge for the Central District of North Carolina, entered final consent judgments against defendants Colin Nathanson and eight of the business entities Nathanson founded. The Commission's complaint alleged that the defendants, based on Orange County, perpetrated a \$29.5 million securities fraud. As part of the settlement, Nathanson and the defendant entities, controlled by a court-appointed receiver, consented to permanent injunctions, without admitting or denying the allegations in the Commission's complaint. Additionally, the defendant entities agreed to disgorge all of their funds and assets

pursuant to one or more plans of distribution approved by the court, less any court-approved receivership fees and expenses. Nathanson consented to disgorge \$4.7 million. In satisfaction of this debt, Nathanson agreed to disgorge to the receiver all of his real property, including three parcels of land he owns in Orange County, as well as certain personal property that he owns. Payment of the remainder of the \$4.7 million is waived, based upon Nathanson's demonstrated inability to pay.

The Commission alleged that in four related schemes, the defendants lied to investors regarding how they would use the investor funds. The complaint alleged that without the investors' knowledge or consent, Nathanson commingled the investors' monies, and used the commingled funds to operate both the unprofitable defendant businesses and his other various unprofitable businesses. Additionally, the Commission's complaint alleged that since February 2001, Nathanson used at least \$1 million of investor funds to support his extravagant lifestyle, including three homes and payment of \$346,500 in gambling-related debts. Finally, the Commission alleged that, in Ponzi-like fashion, Nathanson caused over \$5 million of the \$29.5 million raised to be paid to certain investors either as purported "returns" on their investments when, in fact, their investments were not profitable, or as purported returns of their principal.

IX. SELF REGULATORY ORGANIZATIONS

Report of Investigation Regarding NASDAQ, as Overseen by Its Parent, NASD, Arising Out of Investigation of Suspicious Trading Activity and Net Capital Violations By MarketXT

Press Release 2005-14 (February 9, 2005)
<http://www.sec.gov/news/press/2005-14.htm>

In the Matter of MarketXT and Irfan Amanat

Admin Proc. File No. 3-11813 (February 9, 2005)
<http://www.sec.gov/litigation/admin/33-8533.htm>

The Commission issued a Report of Investigation concerning Nasdaq, as overseen by its parent, the NASD, in connection with an investigation and inspection of wash trades and net capital violations by MarketXT, a NASD member firm. The Report finds, among other things, that Nasdaq employees observed suspicious trading by MarketXT and did not communicate their observations to NASD Regulation, Inc. In response to the Commission's investigation and the inspection from which it stemmed, NASD and Nasdaq have implemented a number of remedial steps, all designed to strengthen the self-regulatory oversight of their market. NASD and Nasdaq have consented to the issuance of the report, but neither admit nor deny the findings or conclusions therein.

The Commission also instituted public administrative proceedings against MarketXT, Inc. (MarketXT), an Electronic Communications Network ("ECN") registered as a broker-dealer, and public administrative and cease-and-desist proceedings against Irfan Amanat (Amanat), MarketXT's de facto Chief Technology Officer. In the Order, the Division of Enforcement alleges that Amanat executed thousands of wash trades and matched orders over a three-day period in March 2002 in order improperly to qualify

MarketXT for a tape revenue rebate program offered by Nasdaq. MarketXT improperly received approximately \$50,000 in rebates from Nasdaq. In the Order, the Division also alleges that for the year ended December 31, 2001, and quarter ended June 30, 2002, MarketXT was operating without adequate net capital and did not maintain and preserve accurate books and records disclosing its true liabilities.

As a result of executing the fraudulent wash trades and matched orders, the Division alleged that MarketXT willfully violated Sections 10(b) and 15(c)(1)(A) of the Exchange Act, and Rule 10b-5 thereunder. The Division also alleged that Amanat willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and willfully aided and abetted MarketXT's violation of Section 15(c)(1)(A) of the Exchange Act. The Division further alleged that MarketXT willfully violated Sections 15(c)(3) and 17(a)(1) of the Exchange Act, and Rules 15c3-1, 17a-3(a)(2), 17a-3(a)(11), and 17a-5 by failing to maintain adequate net capital and by failing to maintain and preserve adequate books and records. The Division sought disgorgement plus prejudgment interest and a civil penalty against MarketXT, and a cease-and-desist order and civil penalty against Amanat, in addition to any remedial sanctions appropriate in the public interest.