

# SEC NEWS DIGEST

Issue 2001-185

September 25, 2001

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## COMMISSION ANNOUNCEMENTS

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### COMMISSION MEETINGS

Following is a schedule of Commission meetings which will be conducted under provisions of the Government in the Sunshine Act. Meetings will be scheduled according to the requirements of agenda items under consideration.

Open meetings will be held in the Commission Meeting Room, Room 1C30, at the Commission's headquarters building, 450 Fifth Street, N.W., Washington, D.C. Visitors are welcome at all open meetings, insofar as space is available. Persons wishing to photograph or videotape Commission meetings must obtain permission in advance from the Secretary of the Commission. Persons wishing to tape record a Commission meeting should notify the Secretary's office 48 hours in advance of the meeting.

Any member of the public who requires auxiliary aids such as a sign language interpreter or material on tape to attend a public meeting should contact Rochelle Franks, Office of Administrative and Personnel Management, to make arrangements. Ms. Franks can be reached at TTY number (202) 942-9558. If you are calling from a non-TTY number, please call the Relay Service at 1-800-877-8339.

### **CLOSED MEETING – TUESDAY, SEPTEMBER 25, 2001 – 10:45 A.M.**

The subject matter of the closed meeting held on Tuesday, September 25, 2001, was: Institution of an administrative proceedings of an enforcement nature.

### **CLOSED MEETINGS – TUESDAY, OCTOBER 2, 2001 – 10:30 A.M. AND THURSDAY, OCTOBER 4, 2001 – 10:00 A.M.**

The subject matter of the closed meetings scheduled for Tuesday, October 2, 2001 and Thursday, October 4, 2001, will be: Institution and settlement of injunctive actions; and Institution and settlement of administrative proceedings of an enforcement nature.

**OPEN MEETING – WEDNESDAY, OCTOBER 3, 2001 – 10:00 A.M.**

The subject matter of the open meeting scheduled for Wednesday, October 3, 2001, will be:

1. The Commission will consider a recommendation to adopt final amendments to its broker-dealer books and records rules, Rule 17a-3 and Rule 17a-4 under the Securities Exchange Act of 1934. The amendments to Rule 17a-3 would clarify and expand recordkeeping requirements with respect to purchase and sale documents, customer records, associated person records, customer complaints, and certain other matters. The amendments to Rule 17a-4 would expand the types of records that broker-dealers must maintain and require broker-dealers to maintain or promptly produce certain records at each office to which those records relate. These amendments are designed to assist securities regulators, particularly state securities regulators, when conducting sales practice examinations of broker-dealers. These amendments were originally proposed on October 22, 1996 (see Exchange Act Release No. 37850, 61 FR 55593 (Oct. 28, 1996)), and were repropoed on October 2, 1998 (see Exchange Act Release No. 40518, 63 FR 54404 (Oct. 9, 1998)).

For further information, please contact Michael Macchiaroli, Associate Director, Division of Market Regulation at (202) 942-0132, Thomas McGowan, Assistant Director, Division of Market Regulation at (202) 942-4886, or Bonnie Gauch, Attorney, Division of Market Regulation at (202) 942-0765.

2. The Commission will consider a recommendation to propose amendments to Rule 17f-4 under the Investment Company Act of 1940, the rule that governs investment companies' use of securities depositories. The proposed amendments would permit additional types of organizations to operate as depositories under the rule, allow depositories to perform additional functions, and expand the types of investment companies that can rely on the rule.

For further information, please contact Hugh P. Lutz, Attorney, Division of Investment Management, at (202) 942-0690.

3. The Commission will consider approving proposed amendments to its debt collection rules to conform to the Debt Collection Act, as amended, and the Federal Claims Collection Standards, as amended; the rule amendments would facilitate offset of unpaid debts against amounts owed by the government to the debtor, and permit administrative garnishment of non-federal wages.

For further information contact, please contact Kenneth H. Hall, Division of Enforcement at (202) 942-4635.

## **CHANGE IN THE MEETING: ADDITIONAL ITEM**

The following item was added to the closed meeting held on Monday, September 24, 2001: Regulatory matter regarding financial institutions.

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

## **PUBLIC WORKSHOP ON FINANCIAL PRIVACY NOTICES**

The Commission will co-sponsor a public workshop on Gramm-Leach-Bliley (GLB) Act privacy notices, together with seven other federal agencies that have adopted privacy rules under the GLB Act. The workshop will be held on Tuesday, December 4, 2001 from 9:00 a.m. to 5:00 p.m. at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580. The workshop will provide a forum to identify successful GLB Act privacy notices, discuss strategies for communicating complex information, and encourage industry self-regulatory efforts and consumer and business education. FOR FURTHER INFORMATION, CONTACT Penelope W. Saltzman at (202) 942-0690. (Press Rel. 2001-98)

## **SEC, STATE REGULATORS LAUNCH INVESTMENT ADVISER INFORMATION WEBSITE**

On September 25, the U.S. Securities and Exchange Commission and the North American Securities Administrators Association (NASAA) announced the launch of a website that will allow investors to electronically access information about money managers, financial planners and other investment advisers.

The Investment Adviser Public Disclosure (IAPD) website provides instant access to registration documents filed by more than 9,000 registered investment advisers. The documents, filed electronically with the SEC or state securities administrators, provide information about each adviser's business, advisory services and fees. The registration documents also disclose any disciplinary problems an adviser or its employees may have had during the last ten years.

SEC Chairman Harvey L. Pitt said, "The IAPD website underscores the SEC's commitment to full public disclosure by giving investors a valuable new tool to help them compare the qualifications and services of thousands of investment advisers."

NASAA President Joseph Borg concurred. "Investors need to know who they're dealing with and IAPD will help them do just that, with just a click of a mouse. IAPD will become an increasingly useful tool for investors as more and more state investment advisers come on the system in the months ahead."

Currently more than 9,000 investment advisers nationwide file and update their registration documents electronically, including all 7,300 SEC-registered advisers and more than 1,700 state-registered advisers. Additional state-registered advisers are joining the system daily.

The IAPD website, [www.adviserinfo.sec.gov](http://www.adviserinfo.sec.gov), will be available 24 hours a day, free of charge. Investors without Internet access can get copies of investment adviser registration statements by calling the SEC Public Reference Room at (202) 942-8090 or their state securities regulator.

For further information, contact the SEC Office of Public Affairs at (202) 942-0020 or contact Ashley Baker of NASAA at (202) 737-0901, ext. 105. (Press Rel. 2001-99)

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## **RULES AND RELATED MATTERS**

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### **ORDER REGARDING GOVERNMENT SECURITIES RECONCILIATIONS**

On September 24, the Commission issued an order that broker-dealers need not consider the 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup>, 20<sup>th</sup> and 21<sup>st</sup> of September 2001, as business or calendar days for purposes of taking deductions when computing net capital under Exchange Act Rule 15c3-1 or for the purposes of determining the amount of cash and/or qualified securities required to be maintained in a "Special Reserve Bank Account for the Exclusive Benefit of Customers" in accordance with the formula set forth in Exhibit A to Exchange Act Rule 15c3-3 arising from aged fail transactions in government securities and unresolved reconciliation differences with accounts or clearing corporations or depositories involving government securities. The Commission further ordered that broker-dealers subject to paragraph (e) of Rule 15c3-3 that must maintain with a bank a "Special Reserve Bank Account for the Exclusive Benefit of Customers" and perform the computation specified in paragraph (e)(1) of Rule 15c3-3 as of Friday, September 21, 2001, need not deposit until 1:00 pm on Tuesday, September 25, 2001, the amount of cash and/or qualified securities required to be maintained in such an account, rather than one hour after the opening of banking business on that day. (Rel. 34-44839)

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## **ENFORCEMENT PROCEEDINGS**

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### **ADMINISTRATIVE PROCEEDINGS INSTITUTED AGAINST JEROME WENGER**

On September 24, the Commission has entered an Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 (Order) against Jerome M. Wenger (Wenger) of Bethesda, Maryland. The Order alleges that on March 15, 2000, a final judgment of permanent injunction was entered against Wenger in

the United States District Court for the Southern District of Florida, *SEC v. Omnigene Development, Inc. f.k.a Omnigene Diagnostics, Inc., et al.*, Case No. 98-8672-CIV-RYSKAMP (S.D. Fla.). The final judgment permanently enjoined Wenger from further violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The Order further alleges that Wenger participated in a classic "pump-and-dump" scheme by touting the stock of Omnigene on his radio talk show, *The Next SuperStock*, but did not disclose that he received 66,000 shares of Omnigene stock to do so. A hearing will be scheduled to determine what remedial sanctions, if any, are appropriate in the public interest. (Initial Decision No. 192; File No. 3-10444)

## **GUNTHER INTERNATIONAL, LTD. CONSENTS TO THE ENTRY OF AN ADMINISTRATIVE CEASE AND DESIST ORDER FOR VIOLATIONS OF THE PERIODIC REPORTING, BOOKS AND RECORDS AND INTERNAL ACCOUNTING CONTROLS PROVISIONS OF THE SECURITIES EXCHANGE ACT**

On September 25, the Commission instituted and settled administrative proceedings, pursuant to Section 21C of the Securities Exchange Act of 1934 (Exchange Act), against Connecticut based Gunther International, Ltd. The Commission found that, during fiscal year 1997, Gunther overstated its net income when it improperly recognized service revenue, that should have been deferred, improperly recorded accounts receivables in its assets when contracts for the sale of systems had not been signed by the end of the fiscal year, failed to record a significant invoice from its largest vendor at year-end and improperly reversed another invoice from that same vendor. The Commission also found that, during fiscal year 1998, Gunther overstated its assets and earnings by failing to reduce assets and increase expenses when certain machine components were completed and by failing to record certain machine deposits. The Commission found that Gunther violated Exchange Act Sections 13(a), 13(b)(2)(A) and (B), and Exchange Act Rules 12b-20, 13a-1 and 13a-13.

Without admitting or denying the Commission's findings, Gunther consented to the entry of an order which requires it to cease and desist from committing or causing any violation, and any future violations, of Sections 13(a), 13(b)(2)(A) and (B) of the Exchange Act, and Exchange Act Rules 12b-20, 13a-1 and 13a-13. (Rel. 34-44842; AAE Rel. 1454; File No. 3-10584)

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## **SELF-REGULATORY ORGANIZATIONS**

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### **PROPOSED RULE CHANGE**

The Commission issued a notice of filing of a proposed rule change (SR-Phlx-2001-30) by the Philadelphia Stock Exchange pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934. The proposed rule change would establish a six-month pilot

program in which specialists may elect to be subject to a new order assignment model, called the Alternative Wheel Allocation Model, for orders delivered via AUTOM and automatically executed via AUTO-X. Publication of the notice in the Federal Register is expected during the week of September 24. (Rel. 34-44829)

## IMMEDIATE EFFECTIVENESS OF PROPOSED RULE CHANGE

A proposed rule change (SR-PCX-2001-37) filed by the Pacific Exchange to adopt a new schedule of marketing fees and to change its rebate program has become immediately effective under Section 19(b)(3)(A) of the Securities Exchange Act of 1934. Publication is expected in the Federal Register during the week of September 24. (Rel. 34-44830)

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## SECURITIES ACT REGISTRATIONS

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

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

F-3 MTR CORP LTD, MTR TOWER TELFORD PLAZA 33 WAI YIP ST,  
KOWLOON BAY HONG KONG, K3 00000 (852) 299-3211 - STRAIGHT BONDS. (FILE  
333-13904 - SEP. 10) (BR. 5 - NEW ISSUE)

F-6 HARDIE JAMES INDUSTRIES NV /ADR/,  
TIMOTHY F KEANEY 101 BARCLAY ST 22ND FL, NEW YORK, NY 10286 (212) 815-  
2129  
- 20,000,000 (\$1,000,000) DEPOSITARY RECEIPTS FOR COMMON STOCK. (FILE  
333-13914 - SEP. 12) (BR. 99)