

sec news digest

Issue 96-79

April 29, 1996

ENFORCEMENT PROCEEDINGS

COMPLAINT AGAINST KENDALL SQUARE RESEARCH CORP., HENRY BURKHARDT III, PETER JONES AND KARL WASSMANN III

The Commission announced the filing of a complaint in the United States District Court for the District of Massachusetts against Kendall Square Research Corporation (KSR), a Massachusetts-based manufacturer of high performance computer systems; Henry Burkhardt III, KSR's former president and chief executive officer; Peter Appleton Jones, KSR's former highest ranking sales executive, and Karl G. Wassmann III, KSR's former chief financial and accounting officer.

The Commission's complaint alleges that the Defendants violated the antifraud, periodic reporting, books and records, and internal accounting controls provisions of the federal securities laws. The complaint further alleges that the individual Defendants caused KSR to issue materially false and misleading financial statements for fiscal 1992 and the first two quarters of 1993, which overstated the Company's sales revenues. Defendants Burkhardt, Appleton Jones and Wassmann are also alleged to have sold KSR stock while in possession of material nonpublic information regarding the Company's true financial condition.

This matter was resolved with respect to Burkhardt and Wassmann through the entry of Final Judgments, consented to by Burkhardt and Wassmann, without admitting or denying the allegations contained in the complaint. The Final Judgments grant injunctive relief as to Burkhardt and Wassmann; bar Burkhardt from acting as an officer or director of any public company for a period of ten years; order Burkhardt to pay a total of \$1.1 million in disgorgement and civil penalties, and order Wassmann to pay \$197,994 in disgorgement, plus

\$43,554 in prejudgment interest thereon, but waive payment of all but \$40,000 of that amount based on Wassmann's demonstrated inability to pay a greater amount. In conjunction with this proceeding, Wassmann has also consented to the entry of an administrative Order permanently denying him the privilege of appearing or practicing as an accountant before the Commission, with the right to apply for readmission after five years.

In a related matter, the Commission instituted and simultaneously settled a public administrative proceeding as to Thomas J. MacCormack, KSR's former director of contract administration. The settlement resulted in an Order requiring that MacCormack cease and desist from violating the anti-fraud provisions of the federal securities laws, and pay \$31,672.75, representing losses avoided from his sales of Kendall Square common stock while in possession of material nonpublic information and prejudgment interest thereon. [SEC v. Kendall Square Research Corporation, Henry Burkhardt III, Peter Appleton Jones and Karl G. Wassmann III, Civil Action No. 96-10869, MLW, D. Mass.] (LR-14895, AAE Rel. 777); Administrative Proceeding (Rel. 34-37147, AAE Rel. 776)

INVESTMENT COMPANY ACT RELEASES

YEN PERFORMANCE PORTFOLIO L.P.

A notice has been issued giving interested persons until May 21 to request a hearing on an application filed by Yen Performance Portfolio L.P. for an order under Section 8(f) of the Investment Company Act declaring that applicant has ceased to be an investment company. (Rel. IC-21917 - April 26)

SCHWAB ADVANTAGE TRUST

A notice has been issued giving interested persons until May 21 to request a hearing on an application filed by Schwab Advantage Trust for an order under Section 8(f) of the Investment Company Act declaring that applicant has ceased to be an investment company. (Rel. IC-21918 - April 26)

POUND STERLING PERFORMANCE PORTFOLIO L.P.

A notice has been issued giving interested persons until May 21 to request a hearing on an application filed by Pound Sterling Performance Portfolio L.P. for an order under Section 8(f) of the Investment Company Act declaring that applicant has ceased to be an investment company. (Rel. IC-21919 - April 26)

SELF REGULATORY ORGANIZATIONS

PROPOSED RULE CHANGES

The New York Stock Exchange filed a proposed rule change (SR-NYSE-96-09) relating to amendments to Rule 80B (Trading Halts Due to Extraordinary Market Volatility) and Rule 51 (Hours for Business). (Rel. 34-37145)

The American Stock Exchange filed a proposed rule change (SR-Amex-96-13) relating to amendments to Rule 117 (Trading Halts Due to Extraordinary Market Volatility) and Rule 1 (Hours for Business). (Rel. 34-37146)

SIGNIFICANT NO-ACTION, EXEMPTIVE AND INTERPRETIVE LETTERS

INTERPRETATION OF NEW RULES UNDER SECTION 16 OF THE EXCHANGE ACT

The Division of Corporation Finance has announced the publication of significant staff correspondence interpreting the new Section 16 rules. Copies of the letter may be obtained by writing to, or by making a request in person at, the Public Reference Room, Securities and Exchange Commission, 450 5th Street, N.W., Room 1024, Washington, D.C. 20549. Each request must state the name of the subject company, the Act and the Section of the Act to which it relates, and the public availability date.

<u>Letter</u>	<u>Availability Date</u>	<u>Subject</u>
Electronic Data Systems Holding Corporation	April 29, 1996	Rule 16b-7 (and non-Section 16 provisions)

SECURITIES ACT REGISTRATIONS

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.

REGISTRATIONS

- SB-2 DELTAPOINT INC, 22 LOWER RAGSDALE DRIVE, MONTEREY, CA 93940
(408) 648-4000 - 250,000 (\$2,406,250) COMMON STOCK. 125,000
WARRANTS, OPTIONS OR RIGHTS. 125,000 (\$900,000) COMMON STOCK. (FILE
333-3784 - APR. 17) (BR. 10)
- S-3 CONSOLIDATED STAINLESS INC, 2170 W STATE RD 434, STE 330, LONGWOOD, FL
32779 (407) 682-4999 - 695,800 (\$7,653,800) COMMON STOCK. (FILE 333-3788 -
APR. 19) (BR. 1)
- S-3 CHATCOM INC, 9600 TOPANGA CANYON BLVD, CHATSWORTH, CA 91311
(818) 709-1778 - 2,000,000 (\$4,040,000) COMMON STOCK. (FILE 333-3792 -
APR. 19) (BR. 9)
- S-8 BIOMUNE SYSTEMS INC, 540 ARAPEEN DR STE 202, SALT LAKE CITY, UT 84108
(801) 364-5850 - 973,622 (\$2,312,352.25) COMMON STOCK. (FILE 333-3794 -
APR. 19) (BR. 4)
- S-3 PRINS RECYCLING CORP, 400 KELBY ST 6TH FLR, FORT LEE, NJ 07024
(201) 886-1600 - 839,234 (\$3,461,840.25) COMMON STOCK. (FILE 333-3796 -
APR. 19) (BR. 8)
- S-3 CYTEC INDUSTRIES INC/DE/, FIVE GARRET MOUNTAIN PLAZA, WEST PATERSON, NJ
07414 (201) 357-3100 (FILE 333-3808 - APR. 19) (BR. 2)
- S-1 WCD INVESTORS INC \DE\, 34 MAPLE ST, MILFORD, MA 01757 (508) 478-2000 -
11,500,000 (\$330,625,000) COMMON STOCK. (FILE 333-3810 - APR. 19) (BR. 8)
- S-4 AGCO CORP /DE, 4830 RIVER GREEN PKWAY, DULUTH, GA 30136 (770) 813-9200
- 250,000,000 (\$250,000,000) STRAIGHT BONDS. (FILE 333-3812 - APR. 19)
(BR. 3)
- S-1 UNITED PAYORS & UNITED PROVIDERS INC, 2275 RESEARCH BLVD, SIXTH FL,
ROCKVILLE, MD 20850 (301) 548-1000 - 2,530,000 (\$43,010,000) COMMON STOCK.
(FILE 333-3814 - APR. 19) (BR. 5 - NEW ISSUE)
- S-1 WORLD OMNI DEALER FUNDING INC, 120 NW 12TH AVE, P O BOX 1160,
DEERFIELD BEACH, FL 33442 (305) 429-2200 - 1,000,000 (\$1,000,000)
FLOATING RATE NOTES. (FILE 333-3816 - APR. 19) (BR. 12)
- S-3 CHROMATICS COLOR SCIENCES INTERNATIONAL INC, 5 EAST 80TH ST, NEW YORK,
NY 10021 (212) 717-6544 - 3,830,000 (\$39,257,500) COMMON STOCK. (FILE
333-3818 - APR. 19) (BR. 8)
- S-3 CHROMATICS COLOR SCIENCES INTERNATIONAL INC, 5 EAST 80TH ST, NEW YORK,
NY 10021 (212) 717-6544 - 595,240 (\$6,101,210) COMMON STOCK. (FILE
333-3820 - APR. 19) (BR. 8)
- S-1 DIAMOND HOME SERVICES INC, 222 CHURCH ST, DIAMOND PLAZA, WOODSTOCK, IL
60098 (815) 334-1414 - 3,933,000 (\$51,129,000) COMMON STOCK. (FILE
333-3822 - APR. 19) (BR. 10 - NEW ISSUE)
- S-8 PREFERRED NETWORKS INC, 5300 OAKBROOK PARKWAY, SUITE 320, ATLANTA, GA
30093 (770) 806-6970 - 150,000 (\$1,190,625) COMMON STOCK. (FILE 333-3824 -
APR. 19) (BR. 8)
- S-8 PREFERRED NETWORKS INC, 5300 OAKBROOK PARKWAY, SUITE 320, ATLANTA, GA
30093 (770) 806-6970 - 240,000 (\$1,905,000) COMMON STOCK. (FILE 333-3826 -
APR. 19) (BR. 8)
- F-10 ALGOMA STEEL INC, 105 WEST ST, PO BOX 1400,
SAULT STE MARIE ONTARIO CANADA, A6 (705) 945-2351 - 44,000,000
(\$44,000,000) MORTGAGE BONDS. (FILE 333-3828 - APR. 19) (BR. 6)

REGISTRATIONS CONT.

- S-8 FIRST SOUTHERN BANCSHARES INC, 102 SOUTH COURT ST, FLORENCE, AL 35630
(205) 764-7131 - 286,988 (\$4,629,116.44) COMMON STOCK. (FILE 333-3832 -
APR. 19) (BR. 2)
- S-1 UNIFY CORP, 181 METRO DR, 3RD FL, SAN JOSE, CA 95110 (408) 467-4500 -
2,415,000 (\$28,980,000) COMMON STOCK. (FILE 333-3834 - APR. 19) (BR. 10
- NEW ISSUE)
- S-3 EMCARE HOLDINGS INC, 1717 MAIN STREET, SUITE 5200, DALLAS, TX 75201
(214) 712-2000 - 219,509 (\$5,845,524.67) COMMON STOCK. (FILE 333-3838 -
APR. 19) (BR. 6)
- S-1 USCS INTERNATIONAL INC, 2969 PROSPECT PARK DR, RANCHO CORDOVA, CA 95670
(916) 636-4500 - 4,312,500 (\$73,312,500) COMMON STOCK. (FILE 333-3842 -
APR. 19) (BR. 9 - NEW ISSUE)
- S-1 BROADVISION INC, 333 DISTEL CIRCLE, LOS ALTOS, CA 94022 - 4,600,000
(\$46,000,000) COMMON STOCK. (FILE 333-3844 - APR. 19) (BR. 9 - NEW ISSUE)
- S-3 GENTA INCORPORATED /DE/, 3550 GENERAL ATOMICS COURT, SAN DIEGO, CA 92121
(619) 455-2700 - 4,800,000 (\$10,200,000) PREFERRED STOCK. (FILE 333-3846 -
APR. 19) (BR. 4)
- S-8 REGENCY BANCORP, 7060 N FRESNO, FRESNO, CA 93720 (209) 438-2600 -
202,097 (\$1,616,776) COMMON STOCK. (FILE 333-3848 - APR. 19) (BR. 2)
- S-1 PHYSICIANS RESOURCE GROUP INC, THREE LINCOLN CENTER SUITE 1540,
5430 LBJ FREEWAY, DALLAS, TX 75240 (713) 964-2734 - 5,750,000
(\$157,406,250) COMMON STOCK. (FILE 333-3852 - APR. 19) (BR. 5)

RECENT 8-K FILINGS

Form 8-K is used by companies to file current reports on the following events:

- Item 1. Changes in Control of Registrant.
- Item 2. Acquisition or Disposition of Assets.
- Item 3. Bankruptcy or Receivership.
- Item 4. Changes in Registrant's Certifying Accountant.
- Item 5. Other Materially Important Events.
- Item 6. Resignations of Registrant's Directors.
- Item 7. Financial Statements and Exhibits.
- Item 8. Change in Fiscal Year.

The companies listed below have filed 8-K reports for the date indicated and/or amendments to 8-K reports previously filed, responding to the item(s) of the form specified. Copies of the reports may be purchased from the Commission's Public Reference Room (when ordering, please give the date of the report). An invoice will be included with the requested material when mailed.

NAME OF ISSUER	STATE CODE	8-K ITEM NO.								DATE	COMMENT	
		1	2	3	4	5	6	7	8			
AAMES FINANCIAL CORP/DE	DE					X					04/23/96	
ACUSON CORP	DE					X					04/29/96	
ADAPTIVE SOLUTIONS INC	OR					X					04/23/96	
ADVANTA CREDIT CARD MASTER TRUST I	NY					X	X				04/10/96	
ADVANTA CREDIT CARD MASTER TRUST II	DE					X	X				04/09/96	

8K REPORTS CONT.

NAME OF ISSUER	STATE CODE	8K ITEM NO.								DATE	COMMENT
		1	2	3	4	5	6	7	8		
AEI NET LEASE INCOME & GROWTH FUND XX LI	MN	X					X			04/10/96	
AIRTOUCH COMMUNICATIONS	CA			X		X				04/25/96	
ALLIEDSIGNAL INC	DE	X								04/12/96	
AMERICAN WHITE CROSS INC	DE			X		X				04/22/96	
BANC ONE AUTO GRANTOR TRUST 1996-A	NY			X		X				04/25/96	
BELLSOUTH CORP	GA			X						04/18/96	
BROADWAY FINANCIAL CORP \DE\	DE			X		X				04/18/96	
CARDINAL BANCSHARES INC	KY			X		X				04/19/96	
CAREER HORIZONS INC	DE			X						04/24/96	
CENTURY INDUSTRIES INC /DC/	DC			X						04/24/96	
CHEMICAL MASTER CREDIT CARD TRUST I SERI				X		X				04/15/96	
CHEMICAL MASTER CREDIT CARD TRUST I SERI				X		X				04/15/96	
CHEMICAL MASTER CREDIT CARD TRUST I SERI				X		X				04/15/96	
CHEMICAL MASTER CREDIT CARD TRUST I SERI				X		X				04/15/96	
CHEMICAL MASTER CREDIT CARD TRUST I SERI				X		X				04/15/96	
CIT GROUP SECURITIZATION CORP II	DE			X		X				04/15/96	
COLONIAL CREDIT CARD TRUST 1992-A	NY			X		X				04/05/96	
COMPAQ COMPUTER CORP	DE			X						04/24/96	
COMPUTRON SOFTWARE INC	DE			X						04/10/96	
COMSAT CORP	DC	X								04/26/96	
CONECTISYS CORP	DE	X	X							11/01/95	
CONTINENTAL AMERICAN TRANSPORTATION INC	CO			X						04/22/96	
CONTINENTAL AMERICAN TRANSPORTATION INC	CO	X								04/22/96	AMEND
CONTINENTAL INFORMATION SYSTEMS CORP	NY			X		X				04/22/96	
CONTISECURITIES ASSET FUNDING CORP IMC H						X				04/17/96	
CONTISECURITIES ASSET FUNDING CORP IMC H				X		X				04/17/96	
DEERE JOHN OWNER TRUST 1995-A	DE			X		X				04/15/96	
DEPOSIT GUARANTY CORP	MS			X		X				04/23/96	
DMI FURNITURE INC	DE			X		X				04/22/96	
ECO2 INC	DE	X				X				04/24/96	
ENTERACTIVE INC /DE/	DE			X		X				04/25/96	
FBS MORTGAGE CORP MORT PAS THR CERT SERI	NV	NO ITEMS								04/15/96	
FBS MORTGAGE CORP MORT PASS THRO CERT SE	NV	NO ITEMS								04/15/96	
FBS MORTGAGE CORP MORTGAGE PAS THR CERT	NV	NO ITEMS								04/15/96	
FBS MORTGAGE CORP MORTGAGE PASS THR CERT	NV	NO ITEMS								04/15/96	
FBS MORTGAGE CORP MORTGAGE PASS THR CERT	NV	NO ITEMS								04/15/96	
FBS MORTGAGE CORP MORTGAGE PASS THR CERT	NV	NO ITEMS								04/15/96	
FBS MORTGAGE CORP MORTGAGE PASS THR CERT	NV	NO ITEMS								04/15/96	
FBS MORTGAGE CORP MORTGAGE PASS THR CERT	NV	NO ITEMS								04/15/96	
FBS MORTGAGE CORP MORTGAGE PASS THR CERT	NV	NO ITEMS								04/15/96	
FBS MORTGAGE CORP MORTGAGE PASS THR CERT	NV	NO ITEMS								04/15/96	
FIRST OF AMERICA BANK-MICHIGAN NA				X						03/31/96	
FLEET MORTGAGE GROUP INC	RI			X						04/23/96	
FLEETWOOD ENTERPRISES INC/DE/	DE			X						04/23/96	
FRANKFORT FIRST BANCORP INC	DE			X		X				04/23/96	
GENERAL PARAMETRICS CORP /DE/	DE	X	X			X				04/11/96	
GREAT WESTERN BANK MORTGAGE PASS THROUGH	DE	NO ITEMS								03/31/96	
GREAT WESTERN BANK MORTGAGE PASS THROUGH	DE	NO ITEMS								03/31/96	
GREAT WESTERN BANK MORTGAGE PASS THROUGH	DE	NO ITEMS								03/31/96	
GREAT WESTERN BANK MORTGAGE PASS THROUGH	DE	NO ITEMS								03/31/96	
GREAT WESTERN BANK MORTGAGE PASS THROUGH	DE	NO ITEMS								03/31/96	
GREAT WESTERN BANK MORTGAGE PASS THROUGH	DE	NO ITEMS								03/31/96	
GREAT WESTERN BANK MORTGAGE PASS THROUGH	DE	NO ITEMS								03/31/96	
GREENFIELD INDUSTRIES INC /DE/	DE			X		X				04/24/96	

8K REPORTS CONT.

NAME OF ISSUER	STATE CODE	8K ITEM NO.								DATE	COMMENT
		1	2	3	4	5	6	7	8		
HARRIS BANKCORP INC	DE				X	X				04/19/96	
HART INDUSTRIES INC	UT		X		X					02/19/96	
HEARTLAND WIRELESS COMMUNICATIONS INC	DE	X			X					02/23/96AMEND	
HERITAGE FINANCIAL CORP /DE/	DE			X	X					04/23/96	
HUNGARIAN BROADCASTING CORP	DE		X							04/11/96	
IATROS HEALTH NETWORK INC	DE			X						09/30/95	
IATROS HEALTH NETWORK INC	DE			X	X					04/10/96	
INCO LTD				X	X					04/22/96	
JONES SPACELINK INCOME GROWTH FUND 1-A L	CO	X			X					04/11/96	
KUHLMAN CORP	DE	X								02/16/96AMEND	
MARINE DRILLING COMPANIES INC	TX			X	X					04/26/96	
MCM CORP	MI			X						04/22/96	
MELLOW BANK NA MELLOW BANK HOME EQUITY L	MA			X	X					04/10/96	
MENTAL HEALTH MANAGEMENT INC /VA/	DE			X						04/11/96	
MENTOR GRAPHICS CORP	OR	X			X					01/31/96AMEND	
METALCLAD CORP	DE			X						05/31/96AMEND	
MICHAELS J INC	NY			X						04/24/96	
MID IOWA SAVING BANK FSB	DE			X						04/24/96	
MORGAN JP COMMERCIAL MORTGAGE FINANCE CO	DE			X	X					04/24/96	
NATIONSBANK AUTO GRANTOR TRUST 1995-A				X	X					04/16/96	
NORD RESOURCES CORP	DE			X						04/15/96	
NUCLEAR METALS INC	MA	X								04/24/96	
OAKWOOD MORTGAGE INVESTORS INC OMI TRUST				X	X					04/15/96	
ONCOGENE SCIENCE INC	DE	X		X	X					04/01/96	
PARACELSUS HEALTHCARE CORP	CA			X	X					04/12/96	
PHARMACEUTICAL FORMULATIONS INC	DE			X	X					04/04/96	
PHP HEALTHCARE CORP	DE			X	X					04/16/96	
PIPER JAFFRAY COMPANIES INC	DE			X	X					04/23/96	
PRIME RECEIVABLES CORP	DE				X					04/15/96	
QUALITY SEMICONDUCTOR INC	CA				X					03/01/96AMEND	
QUINTILES TRANSNATIONAL CORP	NC	X		X	X					04/16/96	
RESIDENTIAL FUNDING MORTGAGE SECURITIES	DE			X	X					04/25/96	
REVCO D S INC	DE			X	X					04/24/96	
RIO GRANDE INC /DE/	DE	X			X					04/29/96	
ROADMASTER INDUSTRIES INC	DE	X			X					01/19/96AMEND	
ROBINSON NUGENT INC	IN	X								03/31/95	
SEAHAWK DEEP OCEAN TECHNOLOGY INC	CO	X								04/05/96	
SILVER DINER DEVELOPMENT INC/MD	DE				X					03/27/96AMEND	
SOURCE ONE MORTGAGE SERVICES CORP	DE				X					04/23/96	
SOURCE ONE MORTGAGE SERVICES CORP	DE				X					04/25/96	
ST JOHN KNITS INC	CA			X						04/19/96	
STERLING CHEMICALS INC	DE	X		X						04/24/96	
STRUCTURED ASSET SECURITIES CORPORATION	DE			X	X					04/25/96	
SUNAMERICA INC	MD	X			X					03/31/96	
SYMIX SYSTEMS INC	OH			X	X					04/18/96	
TREADOR ROYALTY CORP	DE			X	X					04/22/96	
TRAVELERS AETNA PROPERTY CASUALTY CORP	DE				X					04/24/96	
TROY HILL BANCORP INC	PA				X					04/10/96AMEND	
UCI MEDICAL AFFILIATES INC	DE	X			X					04/12/96	
UNIFI INC	NY			X	X					04/15/96	
UNION TEXAS PETROLEUM HOLDINGS INC	DE			X	X					04/26/96	
UNITED BANKSHARES INC/WV	WV	X		X	X					04/12/96	
WALT DISNEY CO/	DE			X	X					03/30/96	

8K REPORTS CONT.

NAME OF ISSUER	STATE CODE	8K ITEM NO.								DATE	COMMENT
		1	2	3	4	5	6	7	8		
WASHINGTON BANCORPORATION	DE					X	X			02/11/96	
WESTCOTT COMMUNICATIONS INC	TX					X	X			04/22/96	
WESTERN RESOURCES INC /KS	KS					X				04/25/96	
360 DEGREE COMMUNICATIONS CO	DE					X	X			04/23/96	

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 37147 / April 29, 1996

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 776 / April 29, 1996

Administrative Proceeding
File No. 3-8993

_____)	
In the Matter of)	ORDER INSTITUTING PROCEEDINGS
)	PURSUANT TO SECTION 21C OF THE
THOMAS J. MACCORMACK,)	SECURITIES EXCHANGE ACT OF 1934.
)	AND FINDINGS AND ORDER OF THE
Respondent)	COMMISSION
_____)	

I.

The Commission deems it appropriate and in the public interest that proceedings be and they hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") to determine whether Thomas J. MacCormack violated Section 10(b) of the Exchange Act and Rules 10b-5 and 13b2-1 thereunder in connection with the filing by Kendall Square Research Corporation ("Kendall Square" or "the Company") of an annual report on Form 10-K for the year ended December 26, 1992, quarterly reports on Form 10-Q for the first two quarters of 1993, and a registration statement on Form S-1, which was declared effective in March 1993, and whether MacCormack violated Section 10(b) of the Exchange Act and Rule 10b-5 in connection with his sales of Kendall Square common stock in August 1993.

II.

In anticipation of the institution of these administrative proceedings, MacCormack has submitted an Offer of Settlement which the Commission has determined to accept. Under the terms of the Offer of Settlement, MacCormack, solely for the purposes of these proceedings and any other proceeding brought by or on behalf of the Commission or in which the Commission is a party, prior to a hearing pursuant to the Commission's Rules of Practice, and without admitting or denying the matters set forth herein, except as to jurisdiction, which MacCormack admits, consents to the issuance of this Order Instituting Proceedings Pursuant to Section 21C of the Exchange Act, and Findings and Order of the Commission.

III.

The Commission makes the following findings:^{1/}

A. RESPONDENT AND RELEVANT ENTITY

Thomas J. MacCormack, 41, was employed in the Company's purchasing department from 1988 until August 1992, when he was appointed director of contract administration. MacCormack ceased employment with the Company in early 1994. On August 17, 1993, MacCormack sold 1,636 shares of the Company's common stock for approximately \$34,000.

Kendall Square Research Corporation, which is not a respondent in this proceeding,^{2/} is a Delaware corporation with its principal executive offices in Waltham, Massachusetts. Kendall Square designed, manufactured and marketed a family of high performance computer systems. The Company's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act, and traded on the NASDAQ national market system until April 1994, when it was delisted by the NASD. The Company is presently in a proceeding under the United States Bankruptcy Code.

B. FACTUAL BACKGROUND

1. Kendall Square's False and Misleading Financial Statements

This proceeding concerns violations of the anti-fraud and books and records provisions of the federal securities laws in connection with certain public filings of Kendall Square Research Corporation. These violations resulted from, among other things, the Company's recognition, in 1992 and during the first two quarters of 1993,^{3/} of revenue from sales subject to a variety of contingencies that made such recognition improper under Generally Accepted Accounting Principles ("GAAP").

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- ^{1/} The findings herein are solely for the purposes of this proceeding and are not binding on any other person or entity named as a respondent in this or any other proceeding.
- ^{2/} On April 29, 1996, the Commission filed a civil injunctive action against Kendall Square and its former officers Henry Burkhardt III, Karl G. Wassmann III and Peter Appleton Jones in the United States District Court for the District of Massachusetts. Civ. No. []. The Commission's Complaint alleges, among other things, that all defendants violated the reporting and anti-fraud provisions of the federal securities laws in connection with Kendall Square's periodic and other filings with the Commission.
- ^{3/} Kendall Square's 1992 fiscal year ended December 26, 1992. Its first and second quarters for fiscal 1993 ended March 27, 1993, and June 26, 1993, respectively.

Many of Kendall Square's customers were universities and research institutions which were dependant on other parties for financial support. Certain of these customers sought and obtained from Kendall Square "side letter" agreements providing that they would not be obligated to pay for their computer systems if they did not receive anticipated funding. Kendall Square senior management failed to inform their independent auditors, as well as Kendall Square's Finance Department, that transactions upon which the Company had recognized revenue were subject to such side agreements. With respect to other transactions, Company personnel did not conceal the existence of funding contingencies in the sales contracts, but misrepresented to their auditors the status of the customers' funding.^{4/} As a result of its improper revenue recognition practices, Kendall Square's financial statements, as incorporated in its annual report on Form 10-K for 1992, its quarterly reports on Form 10-Q for the first two quarters of 1993 and a registration statement on Form S-1 for a March 1993 secondary offering, were materially false and misleading.

After management changes and other factors brought its improper revenue recognition practices to light, the Company determined to reverse approximately 50% of its previously reported revenue for 1992 and the first two quarters of 1993. From its October 1993 price of approximately \$24 per share, Kendall Square common stock lost essentially all of its value.

2. MacCormack's Conduct

As director of contract administration, MacCormack signed agreements with certain Kendall Square customers which rendered recognition of revenue on purported sales to those customers inconsistent with GAAP. With respect to a purported sale of a Kendall Square computer to Expertsoft Corporation in the fourth quarter of 1992, MacCormack was the author of a December 23, 1992 letter to Expertsoft stating that \$650,000 of the total \$1.15 million purchase price was contingent on Expertsoft's receipt of government funding. Neither the invoice nor the sales contract contained any such funding provision. As another example, Kendall Square originally recognized revenue of \$397,000 in the first quarter and \$979,000 in the second quarter of 1993 from the purported sale of a computer system to the Beckman Institute, an entity affiliated with the California Institute of Technology ("Caltech"). The purchase orders issued by Caltech for each of these transactions state that "Caltech will not assume any financial responsibility if [the director of the Beckman Institute] is unable to raise funds for the purposes stated herein." MacCormack signed the purchase orders to acknowledge receipt by Kendall Square.

MacCormack, as director of contract administration, was responsible for providing the Company's Finance Department with a complete set of sales documents to support the Company's revenue recognition decisions. However, as MacCormack knew or was reckless

^{4/} As described below, MacCormack was involved with a limited number of the transactions upon which Kendall Square improperly recognized revenue.

in not knowing, certain material documents were never forwarded to the Company's Finance Department, including those described above. Hence, these documents were not considered by the Company's controller as part of the Company's initial decision to recognize revenue on these transactions and were not provided to the Company's independent auditors to inform their consultation on revenue issues. This resulted in the Company reporting revenue in the financial statements contained in its public filings that was not in conformity with GAAP 5/

In addition to the foregoing, MacCormack sold 1,636 shares of the Company's common stock, representing 100% of his holdings, for approximately \$34,000 on August 17, 1993. At the time of his sale of the Company's common stock, MacCormack knew or was reckless in not knowing that the Company's financial statements were false and misleading in that they included revenue from purported sales of the Company's product that was not in conformity with GAAP. At the close of the market on March 28, 1994, the first full trading day after the Company released its restated financial results, the share price of Kendall Square stock was \$4.375. Consequently, MacCormack avoided losses of approximately \$26,800 by selling his Kendall Square stock while in possession of material nonpublic information.

C. LEGAL ANALYSIS

Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit material misstatements or omissions, made with scienter, in connection with the purchase or sale of securities. See, e.g., SEC v. Texas Gulf Sulphur Co., 401 F.2d 833 (2d Cir. 1968), cert. denied, 394 U.S. 976 (1969). Financial statements incorporated in periodic reports filed with the Commission which are not prepared in accordance with GAAP "are presumed to be misleading." Regulation S-X, Rule 4-01(a)(1). In the financial statements incorporated in its Form 10-K for 1992 and in its Forms 10-Q for the first and second quarters of 1993, Kendall Square reported substantial revenue from sales transactions which did not conform to GAAP requirements.6/

As described above, MacCormack contributed to Kendall Square's revenue recognition practices that resulted in Kendall Square's fraudulent filings with the

5/ In the case of both the Expersoft and Caltech transactions, for example, the Company originally recognized revenue that, because of the funding contingencies described above, was not in conformity with GAAP. The Company never received the contingent payments for these computer systems, and subsequently reversed all purported revenue from this source when it restated the financial statements incorporated in its 1992 Form 10-K, and Forms 10-Q for the first two quarters of 1993.

6/ The financial statements incorporated in Kendall Square's 1992 Form 10-K were also incorporated in the Form S-1 registration statement for its March 1993 public offering.

Commission. MacCormack knew or was reckless in not knowing that he was doing so. Hence, he acted with scienter for purposes of Section 10(b) and Rule 10b-5.

Violations of Section 10(b) and Rule 10b-5 also occur when an officer or director or other corporate fiduciary buys or sells securities while in possession of material nonpublic information. Dirks v. SEC, 463 U.S. 646, 653-54 (1983). At the time of his sale of 1,636 shares of Kendall Square common stock, MacCormack, as he knew or was reckless in not knowing, was in possession of material nonpublic information relating to the Company's true financial condition, results of operation and prospects for the future.

Rule 13b2-1 provides that: "No person shall, directly or indirectly, falsely or cause to be falsified, any book, record or account subject to Section 13(b)(2)(A) of the Securities Exchange Act." MacCormack, through his acts and omissions with respect to the failure of Kendall Square's Contract Administration Department to provide the Company's Finance Department with material documents concerning purported sales of Kendall Square's products, caused Kendall Square's books and records to be falsified in violation of Rule 13b2-1.

V.

Based upon the foregoing, the Commission finds that:

- A. Thomas J. MacCormack violated Section 10(b) of the Exchange Act and Rules 10b-5 and 13b2-1 thereunder.

VI.

In view of the foregoing, the Commission deems it appropriate and in the public interest to accept the Respondent's Offer of Settlement.

Accordingly, IT IS HEREBY ORDERED, pursuant to Section 21C of the Exchange Act, that:

- A. Thomas J. MacCormack cease and desist from committing or causing violations and any future violations of Section 10(b) of the Exchange Act and Rules 10b-5 and 13b2-1; and

- B. MacCormack shall, pursuant to Section 21C(e) of the Exchange Act, pay to the United States Treasury disgorgement in the amount of \$26,800, plus prejudgment interest in the amount of \$4,872.75, pursuant to Rule 600 of the Commission's Rules of Practice, 17 C.F.R. 201.600, with payment of \$7,500 due thirty days after the date of this Order and the remaining \$24,172.75 due one year after the date of this Order. Interest on amounts not timely paid shall continue to accrue until they are paid. Such payment shall be (1) made by United States postal money order, certified check, bank cashier's check or bank money order; (2) made payable to the Securities and Exchange Commission; (3) hand-delivered to the Comptroller, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549; and (4) submitted under cover letter which identifies MacCormack as a Respondent in these proceedings, the file number of these proceedings and the Commission case number (HO-2810), a copy of which cover letter and form of payment shall be sent to Gary N. Sundick, Associate Director, Division of Enforcement, Securities and Exchange Commission, Mail stop 4-1, 450 Fifth Street, N.W., Washington, D.C. 20549.

By the Commission.

Jonathan G. Katz
Secretary

SECURITIES AND EXCHANGE COMMISSION
Washington, D C.

Litigation Release No. 14895 / April 29, 1996

Accounting and Auditing Enforcement Release No. 777 / April 29, 1996

SECURITIES AND EXCHANGE COMMISSION v. KENDALL SQUARE RESEARCH CORPORATION, HENRY BURKHARDT III, PETER APPLETON JONES, AND KARL G. WASSMANN III, Civil Action No. 96-10869(MLW) (D. Mass.); IN THE MATTER OF THOMAS J. MACCORMACK, Admin. Proc. File No. 3-8993

The Securities and Exchange Commission announced the filing of a Complaint, in the United States District Court for the District of Massachusetts, against Kendall Square Research Corporation ("KSR" or the "Company"); Henry Burkhardt III, KSR's former president and chief executive officer; Peter Appleton Jones, KSR's former highest ranking sales executive; and Karl G. Wassmann III, KSR's former chief financial and accounting officer. KSR, a Massachusetts-based manufacturer of high performance computer systems, is presently in a bankruptcy proceeding.

The Complaint, filed on April 29, 1996, alleges that the defendants violated the anti-fraud, periodic reporting, books and records, and internal accounting controls provisions of the federal securities laws. The individual defendants are alleged to have caused KSR to issue materially false and misleading financial statements for fiscal year 1992 and the first two quarters of 1993, which overstated the Company's revenues and earnings. In addition, the Complaint alleges that Burkhardt, Appleton Jones and Wassmann sold KSR stock while in possession of material nonpublic information regarding the Company's true financial condition.

The Complaint alleges that the individual defendants repeatedly caused KSR to recognize revenue from purported "sales" of its computers that were subject to material contingencies rendering revenue recognition improper under Generally Accepted Accounting Principles ("GAAP"). In a number of instances, payment by KSR's customers was contingent on the buyers' receipt of outside funding from third parties. Certain of these contingencies were contained in side letters to the purported sales contracts. The Complaint alleges that Burkhardt, Appleton Jones and Wassmann failed to inform KSR's independent auditors, Price Waterhouse & Co., as well as the Company's finance department, that transactions upon which the Company had recognized sales revenue were subject to such material contingencies, or misrepresented the status of the customer's funding arrangements. As a result of these improper revenue recognition practices, KSR's financial statements, as included in the Company's annual report on Form 10-K for fiscal year 1992, its quarterly reports on Form 10-Q for the first two fiscal quarters of 1993 and a registration statement on Form S-1 for a March 1993 secondary offering, were materially false and misleading.

The Complaint also alleges that Burkhardt, Appleton Jones and Wassmann sold shares of the Company's common stock during August 1993 while in possession of material non-public information concerning the Company's true financial condition and results of operations. Specifically, the Complaint alleges that these individuals knew or were reckless in not knowing, at the time of their trades, that a substantial portion of KSR's reported revenue during 1992 and the first two quarters of 1993 did not conform with GAAP requirements for revenue recognition and that the Company's controller had deemed a substantial portion of KSR's receivables to be uncollectible.

With respect to KSR, the Complaint seeks a permanent injunction against further violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 10b-5, 13a-1, 13a-13, and 12b-20 thereunder. The Complaint seeks the following from the individual defendants: (i) a permanent injunction from future violations of anti-fraud, periodic reporting, books and records and internal accounting controls provisions of the federal securities laws; (ii) disgorgement of a sum equivalent to losses avoided from the sale of KSR common stock and prejudgment interest thereon; (iii) payment of civil penalties; and (iv), with respect to Burkhardt and Appleton Jones, an Order that they be prohibited from serving as officers or directors of any public company.

Simultaneously with the filing of the Complaint, the Commission submitted to the Court a proposed Final Judgment as to Henry Burkhardt III, consented to by Burkhardt, without admitting or denying the allegations contained in the Commission's Complaint. The Final Judgment: (i) permanently enjoins Burkhardt from future violations of Section 17(a) of the Securities Act and Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5) of the Exchange Act and Rules 10b-5, 13a-1, 13a-13, 12b-20, 13b2-1, and 13b2-2 thereunder; (ii) bars him from acting as an officer or director of any public company for a period of ten years; and (iii) orders Burkhardt to pay a total of \$1.1 million representing (a) disgorgement of losses avoided from his sales of KSR common stock, as alleged in the Complaint, in the amount of \$804,000, with credit for \$750,000, which amount Burkhardt previously paid to plaintiffs in a previous shareholder action; (b) an Insider Trading Sanctions Act penalty of \$804,000; and (c) a civil penalty of \$242,000.

In addition, simultaneously with the filing of the Complaint, the Commission submitted to the Court a proposed Final Judgment as to Karl G. Wassmann III, consented to by Wassmann, without admitting or denying the allegations contained in the Commission's Complaint. The Final Judgment: (i) permanently enjoins Wassmann from future violations of Section 17(a) of the Securities Act and Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5) of the Exchange Act and Rules 10b-5, 13a-1, 13a-13, 12b-20, 13b2-1, and 13b2-2 thereunder, and (ii) orders Wassmann to pay disgorgement of \$197,994, representing his losses avoided through his sale of KSR common stock, plus prejudgment interest thereon in the amount of \$43,554, but waives payment of all but \$40,000 of that amount based on Wassmann's demonstrated inability to pay a greater amount. In conjunction with this injunctive proceeding, Wassmann has consented to the entry of an Order, pursuant to Rule 102(2)(3)(i) of the Commission's Rules of Practice, permanently denying him the privilege of

appearing or practicing as an accountant before the Commission, with the right to apply for readmission after five years from the date of entry of the Order.

In a related matter, on April 29, 1996, the Commission instituted and simultaneously settled a public administrative proceeding pursuant to Section 21C of the Securities Exchange Act of 1934 as to Thomas J. MacCormack, KSR's former director of contract administration See Admin. Proc. File No.3-8993. The settlement resulted in an Order requiring that MacCormack: (i) cease and desist from committing or causing violations of Section 10(b) of the Exchange Act and Rules 10b-5 and 13b2-1 thereunder; and (ii) pay \$31,672.75 representing losses avoided from his sales of Kendall Square common stock while in possession of material nonpublic information and prejudgment interest thereon.