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# SEC NEWS DIGEST

Issue 2001-153

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## RULES AND RELATED MATTERS

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### EDGAR FILER MANUAL UPDATE ADOPTED

On August 7, the Commission issued a release adopting an updated version of the EDGAR Filer Manual. Volume I has been eliminated, since it described the outmoded Legacy version of the system which has been retired by the Commission. The remaining two volumes have been renumbered. Volume I-Modernized EDGARLink describes the technical formatting requirements for the preparation and submission of electronic filings through the modernized Electronic Data Gathering, Analysis and Retrieval (EDGAR) system. Volume II – N-SAR Supplement discusses the filing of N-SAR documents. EDGAR Release 7.5.b was the most recent step in the Commission's modernization project and was implemented on July 30, 2001. For further information about the update to the Filer Manual, please contact Peggy Favor, (202) 942-8900, in the Office of Filings and Information Services. (Rel. 33-7999; 34-44660; and IC-25102)

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## ENFORCEMENT PROCEEDINGS

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### IN THE MATTER OF JOSEPH GALLUZZI

On August 7, an Administrative Law Judge issued an initial decision in Administrative Proceeding 3-10209, Joseph P. Galluzzi. The initial decision held that Galluzzi, a person associated with a registered broker-dealer, had been convicted of twenty-six felony counts of mail fraud, wire fraud, bribery, and using facilities in interstate commerce to commit bribery. Galluzzi had also been enjoined from violating Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. Both the criminal indictment and the injunctive action involved claims that Galluzzi abused various employment positions for personal gain by receiving bribes and kickbacks from brokers and dealers involved in underwriting municipal securities. The initial decision granted the Division of Enforcement's motion for summary disposition and barred Galluzzi from association with any broker or dealer. (Initial Decision Rel. 187; File No. 3-10209)

## **SEC SETTLES CHARGES AGAINST CHRISTOPHER WOLF FOR FRAUD IN SELLING AUXER STOCK**

The Commission announced that on July 17, 2001 the United States District Court for the Eastern District of New York entered a Final Judgment of Disgorgement as to Christopher Wolf, which provided that the Commission's claim for disgorgement against Wolf is satisfied by the \$20 million in restitution ordered in a related criminal proceeding, U.S. v. Christopher Wolf, 99 CR 139, E.D.N.Y., NG. The Final Judgment of Disgorgement did not impose a civil penalty, based upon Wolf's demonstrated inability to pay. Previously, on March 28, 1999, the Court entered a Partial Judgment by Default against Wolf which enjoined him from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. In the related criminal proceeding, Wolf was convicted on one count of securities fraud, five counts of conspiracy to commit securities fraud, and two counts of conspiracy to commit money laundering, and sentenced to serve a term of incarceration of 10 years and 8 months and to pay \$20 million in restitution.

The Commission's complaint, filed on June 16, 1999, alleged that Wolf orchestrated the fraudulent sale of stock in Auxer Industries, Inc., from a New York City branch office of Vision Investment Group, Inc., a now defunct, registered broker-dealer. The complaint alleged that from approximately July through December 1995, Wolf, who owned and operated the New York City branch office even though he was never registered with Vision in any capacity, and other salespeople under his direction, defrauded customers of Vision in connection with their purchase of stock in Auxer by making material misrepresentations to customers about Auxer and its future prospects and through baseless predictions about its stock price, and by purchasing Auxer stock for customer accounts without authorization. Wolf and others also failed to disclose that they received cash compensation for selling Auxer stock and that customer orders were being filled with Wolf's stock held in Vision accounts. [SEC v. Christopher Wolf, U.S.D.C. - E.D.N.Y., 99 Civ. 3377, NG] (LR-17093)

## **DEFENDANT IN EMULEX HOAX SENTENCED**

The Commission announced that on August 6, the Honorable Dickran M. Tevrizian, Jr., United States District Judge, sentenced Mark S. Jakob (Jakob), the defendant in the Emulex stock hoax, to 44 months in prison for his role in disseminating a false press release that, on August 25, 2000, wreaked havoc with the stock price of Emulex, a high technology company based in Costa Mesa, California. Jakob earlier pleaded guilty to two counts of securities fraud and one count of wire fraud.

Previously, on August 31, 2000, the Commission brought an emergency enforcement action against Jakob. The Commission's complaint alleged, that on August 24, 2000, Jakob, utilizing an alias and purporting to act on Emulex's behalf, used a personal computer at El Camino Community College to send an e-mail message, instructing his former employer, Internet Wire, Inc., to issue an attached press release. The press release appeared to come from Emulex and falsely stated that the SEC was investigating Emulex,

that the company's CEO had resigned, and that the company was revising and lowering its earnings for the preceding quarter. The next day, on August 25, 2000, several news organizations republished the press release. In a 16-minute period following the republication of the fake press release, 2.3 million shares of Emulex stock were traded and the price plummeted almost \$61.00, from \$103.94 to \$43.00, resulting in Emulex losing \$2.2 billion in market capitalization. Following a trading halt by Nasdaq, Emulex resumed trading later that day, after the hoax was discovered, and the price rebounded to close at \$105.75. Last month, a federal judge in the SEC's civil action entered an injunction against Jakob prohibiting him from violating the antifraud provisions of the federal securities laws in the future. The court further ordered Jakob to disgorge all of his gains and losses avoided from his scheme, plus interest, in an amount of approximately \$353,000 and pay a civil penalty of \$102,642. Jakob consented to the court order without admitting or denying the allegations in the Commission's complaint. Prior litigation releases dealing with this case: LR-16671, 16697, 16747, 16857, and 17079. [SEC v. Mark S. Jakob, EDCV-00-687 VAP, Mcx, C.D. Cal.; U.S. v. Mark Simeon Jakob, CR-00-1002-DT, C.D. Cal.] (LR-17094)

### **SEC SETTLES SECURITIES FRAUD CHARGES AGAINST FRED MOLDOFSKY**

The Commission announced today that it has reached a settlement with Fred Moldofsky to resolve a civil action alleging violations of the antifraud provisions of the Securities Exchange Act of 1934. Moldofsky, a Canadian citizen and a resident of Texas, is a day trader.

The complaint, filed in the United States District Court for the Southern District of New York on March 30, 2000, alleges that on March 22 and 23, 2000, Moldofsky made a series of materially false and misleading statements about Lucent Technologies, Inc. on a Yahoo! Finance message board. According to the complaint, he did so by posting at least twenty fraudulent press releases announcing that Lucent would not meet analysts' earnings estimates for its fiscal quarter ended March 31, 2000.

Moldofsky consented, without admitting or denying the allegations in the complaint, to the entry of a final judgment permanently enjoining him from violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. A civil penalty was not imposed based on Moldofsky's sworn representation in his Statement of Financial Condition submitted to the Commission. In a related criminal proceeding, on March 8, 2001, Moldofsky was convicted by a jury of securities fraud for his false postings relating to Lucent. Moldofsky is scheduled to be sentenced in September 2001.

The SEC acknowledges the assistance provided by the U.S. Postal Inspection Service and the U.S. Attorney's Office for the Southern District of New York in connection with this matter. See LR-16493. [SEC v. Fred Moldofsky, U.S.D.C. for the Southern District of New York, Civil Action No. 00 Civ. 2425, LTS] (LR-17095)

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## INVESTMENT ADVISERS ACT RELEASE

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### CAPITAL GUARDIAN TRUST COMPANY AND THE HIRTLE CALLAGHAN TRUST

A notice has been issued giving interested persons until September 4, 2001, to request a hearing on an application filed by Capital Guardian Trust Company (CGTC) and the Hirtle Callaghan Trust for an order under Section 206A of the Investment Advisers Act. The order would permit CGTC to charge a performance fee based on the performance of that portion of a Trust portfolio managed by CGTC (CGTC Account). The order further would permit applicants to compute the performance-related portion of the fee using changes in the CGTC Account's gross asset value rather than net asset value. (Rel IA-1960 – August 7)

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## SELF-REGULATORY ORGANIZATIONS

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### PROPOSED RULE CHANGE

The International Securities Exchange filed a proposed rule change under Rule 19b-4 (SR-ISE-2001-18) to establish priority and order handling principles for complex orders, such as spreads, straddles, and other multi-legged transactions. Publication of the notice is expected in the Federal Register during the week of August 6. (Rel. 34-44659)

### APPROVAL OF PROPOSED RULE CHANGES

The Commission approved a proposed rule change (SR-NASD-2001-38) submitted under Rule 19b-4 by the National Association of Securities Dealers relating to the listing of additional shares. Publication of the notice in the Federal Register is expected during the week of August 6. (Rel. 34-44651)

The Commission has approved a proposed rule change filed by The Options Clearing Corporation (SR-OCC-00-04) under Section 19(b)(1) of the Securities Exchange Act. The rule change will amend OCC's price determination rules by conforming the definition of "marking price" to the definition of "closing price." The rule change also revises both definitions to clarify that OCC will normally determine underlying stock prices based on the last reported sale price during regular business hours. Publication of the proposal is expected in the Federal Register during the week of August 6. (Rel. 34-44652)

The Commission approved a proposed rule change submitted by the New York Stock Exchange (SR-NYSE-2001-12) under Rule 19b-4 of the Exchange Act amending sections 102.01 C, 103.01 B, and 802.01 C of the Listed Company Manual and NYSE

Rule 499 dealing with cash flow revenue original listing standard. Publication of the proposal is expected to be made in the Federal Register during the week of August 6. (Rel. 34-44658)

### **IMMEDIATE EFFECTIVENESS OF PROPOSED RULE CHANGE**

A proposed rule change filed by the Chicago Board Options Exchange (SR-CBOE-2001-42) under Section 19(b)(1) of the Securities Exchange Act of 1934 relating to exchange fees has become effective under Section 19(b)(3)(A) of the Exchange Act. Publication of the proposal is expected to be made in the Federal Register during the week of August 6. (Rel. 34-44654)

### **ACCELERATED APPROVAL TO PROPOSED RULE CHANGE AND AMENDMENT NO. 1**

The Commission granted accelerated approval to a proposed rule change (SR-BSE-2001-04) and Amendment No. 1 submitted under Rule 19b-4 of the Securities Exchange Act of 1934 by the Boston Stock Exchange that reduces the capital requirement for specialists and competing specialists trading portfolio depositary receipts from \$1,000,000 to \$200,000. Publication of the order is expected to appear in the Federal Register during the week of August 6. (Rel. 34-44657)

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### **SECURITIES ACT REGISTRATIONS**

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

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

S-8 SUN LIFE FINANCIAL SERVICES OF CANADA INC, 150 KING STREET WEST,  
TORONTO ONTARIO, CANADA M5H 1J9, A6 00000 - 10,000,000 (\$213,735,505)  
FOREIGN COMMON STOCK. (FILE 333-13748 - JUL. 23) (BR. 9)

S-B EUROPEAN INVESTMENT BANK, 100 BD KONRAD ADENAUER, L 2900 LUXEMBURG,  
N4 - 3,000,000,000 (\$1,807,779,701) STRAIGHT BONDS. (FILE 333-13756 -  
JUL. 27) (BR. 99)

S-8 NORTH AMERICAN PALLADIUM LTD, 111 RICHMOND ST W STE 916,  
TORONTO ONTARIO CANADA M5H 2G4, A6 - 500,000 (\$3,139,567)  
FOREIGN COMMON STOCK. (FILE 333-13766 - JUL. 27) (BR. 4)

S-8 DESCARTES SYSTEMS GROUP INC, 120 RANDALL ST, WATERLOO ONTARIO CAN,  
A6  
(519) 746-8110 - 176,067 (\$2,641,005) FOREIGN COMMON STOCK. (FILE  
333-13768 - JUL. 30) (BR. 3)

S-8 CRYSTAL SYSTEMS SOLUTIONS LTD, 6 MASKIT STREET, HERZLIA 46733,  
ISRAEL,  
L3 - 1,421,233 (\$10,078,694.80) FOREIGN COMMON STOCK. (FILE 333-13770  
-  
JUL. 27) (BR. 3)