

# SEC NEWS DIGEST

Issue 2001-61

March 29, 2001

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## ENFORCEMENT PROCEEDINGS

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### **KENZIE, INC., THREE OAKS FUND, L.P., THREE OAKS ADVANCED FUND, L.L.C., ALFRED GEREBIZZA AND DANIEL SPITZER**

On March 28, the Commission entered an Order Instituting Cease and Desist Proceedings, Making Findings and Ordering Respondents to Cease and Desist Pursuant to Section 8A of the Securities Act of 1933 (Order) against Kenzie, Inc., the Three Oaks Fund, L.P., the Three Oaks Advanced Fund, L.L.C., Alfred R. Gerebizza and Daniel H. Spitzer (collectively, Respondents). Respondents, while neither admitting nor denying the Order's findings, consented to the entry of the Order and the imposition of sanctions against them. The Order finds that Respondents offered and sold more than \$17,300,000 of unregistered Three Oaks Fund, L.P. and Three Oaks Advanced Fund, L.L.C. (collectively, Three Oaks Funds) securities to the public via general solicitations. The Order further finds that Respondents' failure to register the Three Oaks Funds securities with the Commission constituted violations of Sections 5(a) and 5(c) of the Securities Act of 1933 since no exemptions from registration were available.

The Order requires Respondents to cease and desist from committing or causing any current or future violations of Section 5 of the Securities Act, and to provide all current Three Oaks Funds shareholders with a copy of the Order. (Rels. 33-7965, File No. 3-10445)

### **MAURICIO GUTIERREZ, FORMER PRESIDENT OF INVESTMENT ADVISER SHARP CAPITAL, INDICTED FOR FRAUD**

On March 6, Mauricio Gutierrez (Gutierrez) was indicted by a Dallas grand jury on 10 counts of fraud, including violations of the antifraud provisions of the Investment Advisers Act. Gutierrez was formerly president of Sharp Capital, Inc (Sharp), an investment adviser formerly registered with the Commission.

The indictment charged that Gutierrez deceived Sharp's clients through false claims that

- I. Client funds would be invested in safe, non-speculative investments;
- II. Client's principal would remain at low risk;
- III. Clients would receive annual returns of between 7 percent and 11 percent; and
- IV. Trade confirmations and statements sent to clients accurately reflected their account.

Instead, the indictment charges that Gutierrez and Sharp invested client funds in high risk, speculative investments and also misappropriated client funds.

The indictment is based upon the same conduct alleged in the Commission's civil complaint against Gutierrez and Sharp, filed November 30, 2000. In the Commission's prior civil fraud action, Gutierrez and Sharp were enjoined from further violations of the securities laws, and subjected to an asset freeze and the appointment of a Special Master. In this action, the Commission alleged that Sharp and Gutierrez lost as much as \$80 million of client funds in unauthorized, highly leveraged investments in speculative securities of volatile emerging markets, including Russian debt instruments. The Commission charged Gutierrez and Sharp with violating the antifraud provisions of Section 17(a) of the Securities Act of 1933 (Securities Act) and Section 10(b) of the Securities and Exchange Act of 1934, and Rule 10b-5 thereunder, as well as Section 206 of the Investment Advisers Act of 1940. Since the filing of the Commission's complaint in November 1998, the Commission has revoked Sharp's registration as an investment adviser and has barred Gutierrez from association with any investment adviser. For further information see Lit. Rel. 15988, November 30, 1998; Ad. Rel. No. 3-10218, June 8, 2000 [U.S. v. Mauricio A. Gutierrez, Criminal Action No. 301-CR-072-D, SEC v. Sharp Capital, Inc., et al., Civil Action No. 3-98-CV2792-G] (LR-16946).

## **SEC SUES SEAN ST. HEART FOR INTERNET FRAUD**

On March 29, the Commission filed a complaint in the United States District Court for the District of Columbia alleging that Sean E. St. Heart, age 25, engaged in an illegal cyber smear by posting a false message about NCO Group, Inc. on the Yahoo! Finance Internet message board. St. Heart's message had a dramatic impact on NCO's stock price, causing its market capitalization to drop by over \$200 million.

The Commission's complaint specifically alleges that on Friday night, December 3, 1999, St. Heart posted a false message on Yahoo! in which he claimed that he, as the President and CEO of St. Heart Productions, together with twelve other companies, had prepared a \$20 million lawsuit against NCO for its "business practices." The message was false in that St. Heart (1) had not prepared such a lawsuit, (2) had not joined with any other company in connection with such a lawsuit, and (3) had no basis to claim that he had been damaged in the amount of \$20 million.

The complaint alleges that on the same day, St. Heart received a telephone call about an unpaid debt from someone engaged by NCO, a public company engaged in accounts

receivable management services. Several hours after he received that call, St. Heart posted his fraudulent message with the knowledge, or reckless disregard of the fact, that the message would materially impact NCO's stock price

The complaint alleges that St. Heart's message had a dramatic impact on NCO's stock price. Over the next two trading days, NCO's stock price dropped \$12 3/16, or 28 percent, to \$34 5/16 from its closing price of \$49 9/16 on Friday, December 3, 1999, representing a loss of over \$200 million of NCO's market capitalization. NCO's trading volume also surged to 2.9 million shares on December 7, 1999 – representing a ninefold increase relative to the average three-month daily volume.

Simultaneously with the filing of the Commission's complaint, St. Heart, without admitting or denying the Commission's allegations, consented to the entry of a judgment permanently enjoining him from violating the antifraud provisions of the federal securities laws – Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. St. Heart further consented to the entry of a judgment that waives the imposition of a monetary penalty based on his demonstrated inability to pay. [SEC v. Sean Edward St. Heart, Civ. Action No. 01-CV-00695, TPJ, D D C ] (LR-16947)

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## INVESTMENT COMPANY ACT RELEASES

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### ADVANTUS BOND FUND, INC., ET AL.

An order has been issued on an application filed by Advantus Bond Fund, Inc., et al., under Section 17(d) of the Investment Company Act and Rule 17d-1 under the Act. The order permits certain registered open-end investment companies to deposit their uninvested cash balances and their cash collateral in one or more joint accounts to be used to enter into short-term investments. (Rel. IC-24918 – March 28)

### GLOBAL HIGH INCOME DOLLAR FUND INC.

An order has been issued on an application filed by Global High Income Dollar Fund Inc. (Fund) exempting applicant from Section 19(b) of the Investment Company Act and Rule 19b-1 under the Act. The order permits the Fund to make up to twelve distributions of net long-term capital gains in any one taxable year, so long as the Fund maintains in effect a distribution policy with respect to its common stock calling for monthly distributions of a fixed percentage of its net asset value. (Rel. IC-24919 – March 28)

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## HOLDING COMPANY ACT RELEASES

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## GPU, INC.

An order has been issued approving a proposal by GPU, Inc. (GPU), a registered public-utility holding company, to guarantee the obligations of MYR, GPU's wholly owned nonutility subsidiary, under a revolving credit facility between MYR and Bank One, N.A. (Rel. 35-27366)

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## SELF-REGULATORY ORGANIZATIONS

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### DELISTINGS GRANTED

An order has been issued granting the application of the New York Stock Exchange to strike from listing and registration the Common Stock, \$.01 par value, of TB Wood's Corporation, effective at the opening of business on March 28, 2001. (Rel. 34-44107)

An order has been issued granting the application of the New York Stock Exchange to strike from listing and registration the Common Stock, \$.01 par value, of Sunbeam Corporation, effective at the opening of business on March 28, 2001. (Rel. 34-44108)

An order has been issued granting the application of the New York Stock Exchange to strike from listing and registration the Common Stock, \$.01 par value, of Global Vacation Group, Inc., effective at the opening of business on March 28, 2001. (Rel. 34-44109)

An order has been issued granting the application of the New York Stock Exchange to strike from listing and registration the American Depositary Shares (each representing forty Shares of Common Stock); Series L American Depositary Shares (each representing forty Shares of Series L Common Stock), and 8% Convertible Subordinated Debentures, due August 8, 2004 of Consorcio G Grupo Dina, S.A. de C.V., effective at the opening of business on March 28, 2001. (Rel. 34-44110)

An order has been issued granting the application of the New York Stock Exchange to strike from listing and registration the Common Stock, \$.01 par value, of Sport Supply Group, Inc., effective at the opening of business on March 28, 2001. (Rel. 34-44111)

An order has been issued granting the application of the New York Stock Exchange to strike from listing and registration the American Depositary Shares (each representing 68 shares of Common Stock) of Gener S.A., effective at the opening of business on March 28, 2001. (Rel. 34-44112)

An order has been issued granting the application of the New York Stock Exchange to strike from listing and registration the Common Stock, \$.01 par value, of Loews Cineplex Entertainment Corporation, effective at the opening of business on March 28, 2001. (Rel. 34-44113)

An order has been issued granting the application of the New York Stock Exchange to strike from listing and registration the Common Stock, \$.01 par value, of Apex Mortgage Capital, Inc , effective at the opening of business on March 28, 2001. (Rel. 34-44114)

An order has been issued granting the application of the New York Stock Exchange to strike from listing and registration the Class A Common Stock, \$.03 par value, of Carmike Cinemas, Inc., effective at the opening of business on March 28, 2001. (Rel. 34-44115)

An order has been issued granting the application of the New York Stock Exchange to strike from listing and registration the Common Stock, no par value, of The Thai Capital Fund, Inc , effective at the opening of business on March 28, 2001. (Rel. 34-44116)

An order has been issued granting the application of the New York Stock Exchange to strike from listing and registration the 7% Convertible Subordinated Debentures, due July 1, 2002, of Outboard Marine Corporation, effective at the opening of business on March 28, 2001 (Rel 34-44117)

An order has been issued granting the application of the New York Stock Exchange to strike from listing and registration the Common Stock, no par value, of Vlasic Foods International Inc , effective at the opening of business on March 28, 2001 (Rel 34-44118)

An order has been issued granting the application of the New York Stock Exchange to strike from listing and registration the Common Units Representing Limited Partner Interests of Genesis Energy, L P., effective at the opening of business on March 28, 2001 (Rel 34-44119)

An order has been issued granting the application of the New York Stock Exchange to strike from listing and registration the Common Stock, \$ 50 par value, of The LTV Corporation, effective at the opening of business on March 28, 2001 (Rel. 34-44120)

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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 BLACK WARRIOR WIRELINE CORP, 3748 HWY 45 N, COLUMBUS, MS 38701  
(601) 329-1047 - 300,000 (\$476,930) COMMON STOCK. (FILE 333-57390 -  
MAR. 22) (BR. 4)
- S-8 BLACK WARRIOR WIRELINE CORP, 3748 HWY 45 N, COLUMBUS, MS 38701  
(601) 329-1047 - 900,000 (\$4,839,790) COMMON STOCK. (FILE 333-57392 -  
MAR. 22) (BR. 4)
- S-8 BLACK WARRIOR WIRELINE CORP, 3748 HWY 45 N, COLUMBUS, MS 38701  
(601) 329-1047 - 17,500,000 (\$12,367,320) COMMON STOCK. (FILE 333-  
57396 -  
MAR. 22) (BR. 4)
- S-1 CHUGACH ELECTRIC ASSOCIATION INC, 5601 MINNESOTA DR, PO BOX 196300,  
ANCHORAGE, AK 99518 (907) 563-7494 - \$150,000,000 STRAIGHT BONDS.  
FILE  
333-57400 - MAR. 22) (BR. 2)
- S-8 CAMBREX CORP, ONE MEADOWLANDS PLZ, E RUTHERFORD, NJ 07073 (201) 804-  
3000  
- 1,100,000 (\$47,927,000) COMMON STOCK. (FILE 333-57404 - MAR. 22)  
(BR. 1)
- S-8 GRAND SLAM TREASURES INC, PO BOX 1400, EAGLE, ID 83616 (208) 463-  
1300 -  
1,650,000 (\$462,000) COMMON STOCK (FILE 333-57408 - MAR. 22) (BR. 4)
- S-8 DARDEN RESTAURANTS INC, 5900 LAKE ELLENOR DR, ORLANDO, FL 32809  
(407) 245-4000 - 3,900,000 (\$89,797,500) COMMON STOCK. (FILE 333-57410  
-  
MAR. 22) (BR. 5)
- S-8 RED BELL BREWING CO, 3100 WEST JEFFERSON STREET, PHILADELPHIA, PA  
19121  
(215) 235-2460 - 832,992 (\$3,748,464) COMMON STOCK. (FILE 333-57412 -  
MAR. 22) (BR. 5)
- S-4 WILLIAMS COMPANIES INC, ONE WILLIAMS CTR, TULSA, OK 74172 (918) 573-  
2000  
- 700,000,000 (\$700,000,000) STRAIGHT BONDS. 400,000,000  
(\$400,000,000)  
EQUIPMENT TRUST CERTIFICATES. (FILE 333-57416 - MAR. 22) (BR. 2)
- S-3 V I TECHNOLOGIES INC, 155 DURYEY RD, MELVILLE, NY 11747 (516) 752-  
7314  
- 1,666,667 (\$11,601,669) COMMON STOCK. (FILE 333-57418 - MAR. 22)  
(BR. 1)

S-8 NESS ENERGY INTERNATIONAL INC /NV/, 4201 EAST INTERSTATE 20,  
WILLOW PARK, TX 76087 (254) 442-3968 - 100,000 (\$63,000) COMMON STOCK.  
(FILE 333-57420 - MAR. 22) (BR. 4)

S-4 IDACORP INC, 1221 WEST IDAHO STREET, BOISE, ID 83702 (208) 388-2200  
350,000 (\$3,558,167) COMMON STOCK. (FILE 333-57422 - MAR. 22) (BR. 2)

S-8 ARTISOFT INC, 5 CAMBRIDGE CENTER, 3RD FLOOR, CAMBRIDGE, MA 02142  
(617) 354-0600 - 200,000 (\$600,000) COMMON STOCK. (FILE 333-57424 -  
MAR. 22) (BR. 3)

S-8 LITTLE CREEK INC, 5525 SOUTH 900 E, SUITE 110, SALT LAKE CITY, UT  
84117  
(801) 262-8844 - 140,000 (\$1,400) COMMON STOCK. (FILE 333-57426 - MAR.  
22.  
(BR. 9)

S-4 SOUTHERN COMMUNITY BANCORP, 250 NORTH ORANGE AVENUE, ORLANDO, FL  
32801  
(407) 648-1844 - 1,093,130 (\$10,398,945) COMMON STOCK. (FILE 333-57428  
MAR. 22) (BR. 7)

SE-2 DBDH INTERNET INC, 450 CAMINO MONTE VISTA, SANTA FE, NM 87501  
(505) 820-6171 - 5,000,000 (\$50,000) COMMON STOCK. (FILE 333-57430 -  
MAR. 22) (NEW ISSUE)

S-8 MONRO MUFFLER BRAKE INC, 200 HOLLEDER PKWY, ROCHESTER, NY 14615  
(716) 647-6400 - 750,000 (\$7,593,750) COMMON STOCK. (FILE 333-57432 -  
MAR. 22) (BR. 5)

S-8 MONRO MUFFLER BRAKE INC, 200 HOLLEDER PKWY, ROCHESTER, NY 14615  
(716) 647-6400 - 200,102 (\$2,026,032.75) COMMON STOCK. (FILE 333-57438  
MAR. 22) (BR. 5)

S-1 BLACK HILLS CORP /SD/, 625 9TH STREET, PO BOX 1400, RAPID CITY, SD  
57709  
(605) 721-2343 - 3,450,000 (\$149,454,000) COMMON STOCK. (FILE 333-  
57440 -  
MAR. 22) (BR. 2)

S-3 WEBB INTERACTIVE SERVICES INC, 1899 WYNKOOP SUITE 600, DENVER, CO  
80202  
(303) 296-9200 - 5,166,979 (\$9,042,213.20) COMMON STOCK. (FILE 333-  
57442 -  
MAR. 22) (BR. 3)

S-8 ANALOG DEVICES INC, ONE TECHNOLOGY WAY, NORWOOD, MA 02062 (718) 329-  
4700  
- 120,000 (\$4,611,600) COMMON STOCK. (FILE 333-57444 - MAR. 22) (BR.  
5)

S-8 LANDACORP INC, 900 FORTRESS ST, SUITE 100, CHICO, CA 95973  
(404) 531-9956 - \$6,562,500 UNIT INVESTMENT TRUST. (FILE 333-57446 -  
MAR. 22) (BR. 8)

- S-8 AMERICAN RESOURCES & DEVELOPMENT CO, 102 WEST 500 SOUTH STE 318,  
SALT LAKE CITY, UT 84101 (801) 363-8961 - 1,560,000 (\$390,000)  
COMMON STOCK. (FILE 333-57448 - MAR. 22) (BR. 3)
- S-8 MONRO MUFFLER BRAKE INC, 200 HOLLEDER PKWY, ROCHESTER, NY 14615  
(716) 647-6400 - 577,783 (\$5,850,052.88) COMMON STOCK. (FILE 333-57450  
-  
MAR. 22) (BR. 5)
- S-8 RAVENSWOOD WINERY INC, 18701 GEHRICKE RD, SUITE 308, SONOMA, CA  
95476 -  
250,000 (\$3,968,750) COMMON STOCK. (FILE 333-57452 - MAR. 22) (BR. 2)
- S-3 MAI SYSTEMS CORP, 9600 JERONIMO RD, IRVINE, CA 92718 (714) 580-0700  
-  
3,231,333 (\$1,551,398) COMMON STOCK. (FILE 333-57454 - MAR. 23) (BR.  
3.
- S-3 REMINGTON OIL & GAS CORP, 8201 PRESTON RD, SUITE 600, DALLAS, TX  
75225  
(214) 890-8000 - \$110,000,000 COMMON STOCK. (FILE 333-57456 - MAR. 23)  
(BR. 4)