

SEC NEWS DIGEST

Issue 2001-237

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COMMISSION ANNOUNCEMENTS

ROBERT HERDMAN TO TESTIFY

Robert K. Herdman, Chief Accountant of the Commission, is scheduled to testify on Wednesday, December 12, before a joint hearing of the House Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises and the House Subcommittee on Oversight and Investigations. Mr. Herdman's testimony will concern Recent Events Relative to Enron Corporation and Their Potential Implications for Financial Reporting and Investors. The hearing will begin at 10:00 a.m. in Room 2128 of the Rayburn House Office Building.

COMMISSIONER ISAAC HUNT TO TESTIFY

Commissioner Isaac C. Hunt is scheduled to testify on Thursday, December 13, before a hearing of the House Subcommittee on Energy and Air Quality. Commissioner Hunt's testimony will concern HR 3406 and possible repeal of the Public Utility Holding Company Act of 1935. The hearing will begin at 9:30 a.m. in Room 2123 of the Rayburn House Office Building.

ENFORCEMENT PROCEEDINGS

ADMINISTRATIVE PROCEEDINGS INSTITUTED AND SIMULTANEOUSLY SETTLED AGAINST KENNETH GROSSFELD

On December 10, the Commission has entered an Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions against Kenneth R. Grossfeld (Grossfeld). The Commission simultaneously accepted Grossfeld's Offer of Settlement, barring him from association with any broker or dealer. On December 28, 2000, the Commission filed a complaint in the United States District Court for the Southern District of Florida against Grossfeld, among others, charging Grossfeld with violating the securities registration, broker-dealer registration, and antifraud provisions of the federal securities laws in connection with the unregistered offering of partnership units issued by Web Hosting Headquarters Partnership, SEC v. Web Hosting Headquarters Partnership, et al., Civil Action No. 00-4975-CIV-HIGHSMITH (S.D. Fla. Dec. 28, 2000).

On October 15, 2001, a Final Judgment of Permanent Injunction and Other Relief was entered, by consent, against Grossfeld enjoining him from future violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933, Sections 10(b) and 15(a)(1) of the Exchange Act of 1934 and Rule 10b-5 thereunder. (Rel. 34-45142; File No. 3-10649)

SEC INSTITUTES ADMINISTRATIVE PROCEEDINGS AGAINST NOLAN WADE

On December 10, the Commission issued an Order Instituting Proceedings (Order) against Nolan W. Wade of Moselle, MS. In the Order, the Division of Enforcement (Division) alleges that the Commission filed a civil injunctive action entitled SEC v. Nolan W. Wade, et al., Case No. No. 98-1857 "S" (W.D. La.) against Wade in September 1998, alleging violations of the federal securities laws. The Division further alleges that Wade was enjoined from future violations by a court order issued in February 2000. The Order seeks to determine whether these allegations are true and what, if any, administrative remedies are appropriate. (Rel. 34-45143; File No. 3-10650)

SEC CHARGES INVESTMENT ADVISERS WITH CREATING FALSE ACCOUNT STATEMENTS THAT OVERSTATED THE VALUE OF CLIENTS' ASSETS BY OVER \$139 MILLION

On December 10, the Commission filed an injunctive action in the United States District Court for the Southern District of New York alleging that from approximately 1995 through 2001, Yehuda Shiv (Shiv), and two registered investment advisers that Shiv controls, Sagam Capital Management Co. (Sagam Corp.) and Sagam Capital LLC (Sagam Capital), created and sent false account statements to clients that overstated the net value of assets in their accounts by at least \$139 million.

The Commission filed the action against the following defendants:

- * **Yehuda Shiv**, age 71, is an Israeli citizen and a resident of New York, New York. Shiv is the President of Sagam Corp. and Sagam Capital and makes investment decisions for all Sagam Corp. and Sagam Capital client accounts.
- * **Sagam Corp.** is an investment adviser with its principal place of business in New York, New York.
- * **Sagam Capital** is an investment adviser with its principal place of business in New York, New York.

In this action, the Commission alleged the following. Until late 1994, Shiv utilized a trading strategy in clients' accounts that involved borrowing foreign currencies to purchase mortgage-backed securities, which provided clients with sizeable returns. In late 1994, Shiv's trading strategy became unprofitable and clients suffered substantial

losses. Because Shiv did not want to disclose the losses to his clients, Shiv began creating false account statements to clients. Shiv sent false account statements to approximately ten clients from 1995 through 2001, which showed that the trading in their accounts had been, and was continuing to be, profitable. By October 31, 2001, Shiv had overstated the net value of clients' assets by over \$139 million.

Shiv, Sagam Corp. and Sagam Capital profited from their fraudulent conduct. Shiv charged his clients management and performance fees based upon the artificially inflated value of the clients' portfolios.

Additionally, to conceal his fraud, Shiv made unauthorized transfers of assets between clients' accounts. For instance, if a client requested a withdrawal from his account and there were insufficient funds, Shiv would withdraw funds from another client's account and transfer the funds to the client who had originally requested the withdrawal.

The Commission charged Shiv, Sagam Corp. and Sagam Capital with violating Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1) and (2) of the Investment Advisers Act of 1940. The Commission is seeking injunctive relief, disgorgement of ill-gotten gains, civil penalties.

Additionally, today the Court granted the Commission's application for a preliminary injunction and other emergency relief, including an asset freeze and the appointment of a receiver to take control of the two corporations. The defendants consented to the entry of the preliminary injunction and other relief. [SEC v. Yehuda Shiv, Sagam Capital Management Corporation and Sagam Capital LLC, Civil Action No. 01 Civ. 11282] (LR-17264)

SEC SUES COMPANY, COMPANY PRESIDENT, AND THREE PROMOTERS FOR FRAUDULENT ANTHRAX PROTECTION CLAIMS

The Commission today filed a civil action against a New York firm and four individuals involved in an ongoing fraudulent scheme to exploit the nation's fear of anthrax and bioterrorism.

The Commission's complaint, filed in the United States District Court for the Eastern District of New York, alleges manipulation of the stock of a publicly traded shell company, Spectrum Brands Corp. Also today, the United States Attorney's Office for the Eastern District of New York brought criminal charges.

Thomas C. Newkirk, Associate Director of the Division of Enforcement, said: "Using bogus anti-terrorism claims to defraud investors is unconscionable. This case gives clear warning that we and the Department of Justice will act promptly and decisively to halt these schemes and punish the schemers."

According to the complaint, on or before November 5, 2001, Spectrum Brands posted on its website that it had a hand-held device called the "DeGERMinator" capable of "WIP[ING] OUT SURFACE GERMS IN LESS THAN 5 SECONDS, INCLUDING ANTHRAX." The closing price of Spectrum Brands' common stock tripled on this news, shooting up from approximately \$4 on November 1, to \$7 on November 2, to \$11.75 on November 5, with an intra-day high of \$14 on November 5.

The complaint alleges that Spectrum Brands, nominally of Hauppauge, New York, is secretly owned and controlled by a group of stock promoters located in Hicksville, New York. Unbeknownst to the investing public, Spectrum Brands continues to be owned and operated in secret by convicted felons.

These undisclosed principals include two individuals—Saverio (Sammy) Galasso III and David Hutter (a/k/a David Green)—who recently pled guilty to unrelated felony charges and are awaiting sentencing, and an associate, Charlie Dilluvio. Also charged was the sole officer and director of Spectrum Brands, Michael J. Burns. All four individuals (Galasso III, Hutter, Dilluvio and Burns) were arrested today on criminal charges relating to the Spectrum Brands stock fraud.

According to the complaint, the Hicksville promoters engaged in a series of transactions designed to create artificial volume in the market for Spectrum Brands securities and sold stock into the inflated market. The company has made certain corrective disclosures on its website, but continues to tout in recent press releases and spam e-mails its supposed progress in combating "bio-terrorism" and "cyber-terrorism." These include a spam e-mail dated November 29 touting the company's management and predicting a "\$15.00 stock price! Over a 10 fold move!"

The Commission charges Spectrum Brands, Saverio (Sammy) Galasso III, David Hutter (a/k/a David Green), Charlie Dilluvio and Michael J. Burns with violations of Section 17(a) of the Securities Act of 1933 (Securities Act) and Sections 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder, and seeks permanent injunctions, restitution, disgorgement of ill-gotten gains with prejudgment interest, and civil penalties from all defendants and an officer and director bar against Burns.

The Commission acknowledges assistance provided by NASD Regulation Inc., the United States Attorney's Office for the Eastern District of New York and the United States Postal Inspection Service in this matter. The Commission's investigation is ongoing.

For tips on how to avoid Internet "pump-and-dump" stock manipulation schemes, visit <http://www.sec.gov/investor/online/pump.htm>. For more information about Internet fraud, visit <http://www.sec.gov/divisions/enforce/internetenforce.htm>. To report suspicious activity involving possible Internet fraud, visit <http://www.sec.gov/complaint.shtml>. [SEC v. Spectrum Brands Corp., Saverio (Sammy)]

Galasso III, David Hutter (a/k/a David Green), Charlie Dilluvio and Michael J. Burns, Civil Case No. CV-01-8257, Seybert, J.; Boyle, M.J., EDNY] (LR-17265; Press Rel. 2001-146)

INVESTMENT COMPANY ACT RELEASES

JOHN HANCOCK VARIABLE SERIES TRUST I, ET AL.

An order has been issued pursuant to Section 17(b) of the Investment Company Act, permitting two series of John Hancock Variable Series Trust I (Trust I) each to acquire all of the assets and liabilities of one of two series of John Hancock Declaration Trust and four other series of Trust I each to acquire all of the assets and liabilities of one of four additional series of Trust I. (Rel. IC-25314 – December 7)

HOLDING COMPANY ACT RELEASES

CAROLINA POWER & LIGHT COMPANY

An order has been issued authorizing a proposal by Carolina Power & Light Company (CP&L), to transfer its interests in certain electric generation assets and a related generation facility site located in Rowan County, North Carolina, to Rowan County Power, LLC, an exempt wholesale generator. (Rel. 35-27474)

SELF-REGULATORY ORGANIZATIONS

APPROVAL OF PROPOSED RULE CHANGE

The Commission approved a proposed rule change (SR-NYSE-2001-42) submitted by the New York Stock Exchange pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 establishing the fees for NYSE OpenBook™. (Rel. 34-45138)

IMMEDIATE EFFECTIVENESS OF PROPOSED RULE CHANGE

A proposed rule change (SR-NYSE-2001-48) filed by the National Association of Securities Dealers to clarify that the Nasdaq limited partnership qualitative listing requirements are applicable to limited partnerships listed on both the National Market and the SmallCap Market has become immediately effective. Publication of the proposal is expected in the Federal Register during the week of December 10. (Rel. 34-45137)

DELISTING GRANTED

An order has been issued granting the application of the Pacific Stock Exchange to strike from listing and registration the Common Stock, \$1.00 par value, of Polaroid Corporation, Inc., effective at the opening of business on December 7, 2001. (Rel. 34-45141)

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.

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-6 TOKIO MARINE & FIRE INSURANCE CO LTD /ADR, 1 2 1 MARUNOUCHI CHIYODA
KU,
C/O CITIBANK NA, TOKYO, MO 00000 (212) 657-5100 - 100,000,000
(\$5,000,000)
DEPOSITARY RECEIPTS FOR COMMON STOCK. (FILE 333-14154 - DEC. 03) (BR.
99)

F-6 VODAFONE TELECEL COMUNICACOES P. JOAIS SA/ADR,
620 AVENUE OF THE AMERICAS, NEW YORK, NY 10011 (212) 462-6682 -
10,000,000
(\$500,000) DEPOSITARY RECEIPTS FOR COMMON STOCK. (FILE 333-14160 -
DEC. 03) (BR. 99)

F-6 SAMMY CORP/ADR, 620 AVENUE OF THE AMERICAS 6TH FLOOR, NEW YORK, NY
10286
(212) 462-6682 - 20,000,000 (\$1,000,000)
DEPOSITARY RECEIPTS FOR COMMON STOCK. (FILE 333-14162 - DEC. 03) (BR.
99
- NEW ISSUE)

S-8 CYPOST CORP, 900 1281 WEST GEORGIA STREET, VANCOUVER B C V6E 3J7,
(604) 904-4422 - 200,000 (\$40,000) COMMON STOCK. (FILE 333-74446 -
DEC. 04) (BR. 2)

- S-3 IDENTIX INC, 510 N PASTORIA AVE, SUNNYVALE, CA 94086 (408) 731-2000
-
7,390,000 (\$58,824,400) COMMON STOCK. (FILE 333-74522 - DEC. 04) (BR.
3)
- S-8 TRAVELPORT SYSTEMS INC, 16055 FRASER HIGHWAY SUITE 205, V3S 2W9,
SURREY BC, A1 V3S2W (604) 597-0036 100,000 (\$25,000) COMMON STOCK.
(FILE 333-74530 - DEC. 05) (BR. 4)
- S-8 PHOENIX TECHNOLOGIES LTD, 411 E. PLUMERIA DRIVE, SAN JOSE, CA 95134
(408) 570-1000 - 1,950,000 (\$20,455,230) COMMON STOCK. (FILE 333-74532
-
DEC. 05) (BR. 3)
- S-3 SEACHANGE INTERNATIONAL INC, 124 ACTON ST, 2ND FLOOR, MAYNARD, MA
01754
(978) 897-0100 - 1,000,000 (\$1,000,000)
PASS-THROUGH MORTGAGE-BACKED CERTIFICATE. (FILE 333-74534 - DEC. 05)
(BR. 7)