

# SEC NEWS DIGEST

Issue 2000-122

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## COMMISSION ANNOUNCEMENTS

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### COMMISSION STAFF ISSUES SAB 101B TO PROVIDE REGISTRANTS WITH ADDITIONAL TIME TO IMPLEMENT GUIDANCE ON REVENUE RECOGNITION

On June 26, the staff of the Commission issued Staff Accounting Bulletin No (SAB) 101B, which allows registrants to wait until the fourth quarter of their fiscal year beginning after December 15, 1999 to implement SAB No. 101. SAB 101 provides guidance on the recognition, presentation, and disclosure of revenue in financial statements filed with the Commission.

Although SAB 101A was issued in March to provide additional time for many companies to implement SAB 101, the staff has continued to receive questions and requests for additional guidance. In response to those requests, members of the SEC staff have been working with representatives of both industry and audit firms to develop a Frequently Asked Questions (FAQ) document that provides the requested guidance. The FAQ will be available in the near future.

Both industry and audit firm representatives have indicated that, although the issuance of the FAQ will provide useful and helpful guidance in applying the concepts in SAB 101, an additional delay in the required implementation date would still be prudent, solely to provide registrants with more time to assess the impact of the SAB on their financial statements. The delay until the fourth quarter of fiscal years beginning after December 15, 1999 provides registrants with an additional six to nine months to complete their assessment of the impact of SAB 101. In accordance with generally accepted accounting principles, registrants who implement the guidance of SAB 101 in the fourth quarter of their fiscal year will adjust the previously reported quarterly information for that fiscal year to conform to the new presentation.

Lynn E. Turner, the Commission's Chief Accountant, stated, "Members of the accounting profession and industry have noted that they need additional time to properly implement SAB 101. The FAQ that working groups of the accounting profession, industry, and the SEC staff are developing should provide useful guidance during the deferral period."

Registrants and their auditors are reminded of their disclosure obligations pursuant to SAB Topic 11M, *Disclosure of the Impact that Recently Issued Accounting Standards Will Have on the Financial Statements of a Registrant When Adopted in a Future Period*; AICPA professional standards Section AU 9410.3, *The Impact on an Auditor's Report of an FASB Statement Prior to the Statement's Effective Date*; and Management's Discussion and Analysis. The disclosure should notify investors that guidance has been issued and assist the investor in assessing the

significance of the impact that the guidance will have on the financial statements when implemented.

SAB 101B is available on the SEC website at [www.sec.gov](http://www.sec.gov). SABs are not rules or interpretations of the Commission; they represent interpretations of existing rules, standards, and practices followed by staff of the Office of the Chief Accountant and the Division of Corporation Finance in administering the disclosure requirements of the federal securities laws.

For further information contact: Richard Rodgers, Scott Taub, or Eric Jacobsen in the Office of the Chief Accountant at (202) 942-4400 or Robert Bayless in the Division of Corporation Finance at (202) 942-2960. (Press Rel. 2000-87)

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## **ENFORCEMENT PROCEEDINGS**

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### **ORDER ISSUED DENYING GREGORY ALBA C.P.A. THE PRIVILEGE OF PRACTICING BEFORE THE COMMISSION**

The Commission announced that on June 26 it issued an Order Instituting Public Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice (Order), Making Findings and Imposing Remedial Sanction against Gregory A. Alba, C.P.A. of Norristown, PA. Alba was, during relevant periods, the controller and chief financial officer of Computone Corporation of Alpharetta, GA. The Order denies Alba the privilege of appearing or practicing before the Commission, provided that, after five years, he can request that the Commission consider his reinstatement. The Order finds that a permanent injunction was entered against Alba in a civil action filed by the Commission. The Commission's complaint alleged that during 1995, 1996 and 1997, Alba prepared or assisted in the preparation of financial statements contained in certain periodic reports filed on behalf of Computone with the Commission and numerous press releases issued by Computone. The reports materially misrepresented the operations and financial condition of Computone in violation of generally accepted accounting principles. (Rel. 34-42981; AAE Rel. 1280; File No. 3-10243)

### **CIVIL ACTION AGAINST THOMAS KEARNS, ET AL.**

On June 23, Judge Sidney Fitzwater, United States District Judge for the Northern District of Texas, granted the Commission's Application for Temporary Restraining Order against Thomas J. Kearns, individually and doing business as Financial Associated Service (FAS), and Kearns Financial Services, Inc. (KFS). He also entered an Order appointing a Receiver for Kearns, FAS and KFS and an Order freezing assets, requiring an accounting, preserving documents and permitting expedited discovery.

- **Thomas J. Kearns**, age 55 and a resident of Dallas, has conducted business as FAS since 1990. FAS is not incorporated in any state and is merely an assumed name filed in Dallas County, Texas. Kearns is currently registered as an insurance agent with the

Texas Department of Insurance, holding a Texas Group I insurance license (life, health and HMO products). He has also proclaimed himself to be an investment adviser.

- **Kearns Financial Services, Inc.**, which was incorporated in Texas on September 18, 1998, has its principal place of business in Dallas, Texas. KFS is wholly owned by Kearns and is currently being used by him to enter into investment advisory agreements with elderly investors.

Kearns preyed upon senior citizens and bilked them out of at least \$1.5 million. Initially, Kearns would sell insurance and insurance-related products to seniors, establishing a relationship of trust with them and gaining access to information regarding their assets and financial condition. He then solicited them to entrust him with their funds to invest in promissory notes, annuities, viaticals and other investments. Kearns required most of his clients to sign powers-of-attorney and/or advisory agreements giving him complete authority over their money, while repeatedly representing to clients that he was investing their money in safe investments, and guaranteeing them fixed returns from his management of their funds. However, after obtaining the funds, he did not invest the funds as he had represented and instead loaned \$325,000 to a friend to start a ginseng vitamin company and expended other monies to acquire a vacation home, to improve that home, to improve his residence and to acquire fifteen (15) automobiles. No evidence has been uncovered indicating that Kearns has made any legitimate investments on behalf of his clients.

In closing down this fraud on seniors, the Commission partnered with the Texas State Securities Board, the Dallas Police Department and the FBI's North Texas Regional Computer Forensic Lab. This action was brought in conjunction with the issuance and execution of search warrants on Kearns' residence and the office of FAS and KFS. This cooperative effort on the part of state, local and federal authorities is just part of the effort to protect investors, especially senior citizens. The other parts of the effort are education/alert initiatives and criminal enforcement with stiff criminal sentences. Seniors, as do all investors, need to be vigilant.

In its complaint, the Commission alleges defendants violated the antifraud provisions of the Investment Advisers Act and it seeks a preliminary and permanent injunction, disgorgement and civil penalties. As regards the preliminary injunction sought by the Commission, it will be addressed by separate Order to be issued by Judge Barbara M. G. Lynn. [SEC v. Thomas Kearns, individually and doing business as Financial Associated Service, and Kearns Financial Services, Inc., Civil Action No. 4:00-CV-1358-M, USDC, NDTX, Dallas Division] (LR-16610)

### **TAMARACK FUNDING CORP. AND GARRY ISAACS PRELIMINARILY ENJOINED**

The Commission announced that on June 21 the United States District Court for the Southern District of Florida entered a preliminary injunction against Tamarack Funding Corporation, a Texas corporation (TFC of Texas), Tamarack Funding Corporation, a Florida corporation (TFC of Florida) (collectively, TFC), and Garry P. Isaacs (Isaacs),

their president, for fraud and for selling unregistered securities. TFC and Isaacs, without admitting or denying the SEC's allegations, consented to the Court Order that preliminarily enjoins them from violating Sections 5(a), 5(c), and 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 Commission filed a complaint (complaint) on May 31, 2000 alleging that the defendants fraudulently raised approximately \$4.7 million from investors nationwide by offering and selling unregistered securities in the form of interest-bearing "promissory notes." According to the complaint, investors were told that their funds would be used to purchase retail automobile installment loan contracts (vehicle loans) and that their investment would be 100% collateralized. Contrary to these representations, the complaint alleges that only \$1.4 million was actually used by TFC to purchase vehicle loans. According to the SEC, the remaining portion of investor funds was used to pay TFC's operating costs and unrelated expenses. The complaint further alleges that TFC used some investor funds to repay interest to existing investors and was thereby engaged in a Ponzi scheme. In addition, the Complaint alleges that investors funds were not 100% collateralized.

As a result, the Commission charges TFC of Texas, TFC of Florida, and Isaacs with violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. For relief, the Commission continues to seek permanent injunctions, accountings, disgorgement of ill-gotten gains with prejudgment interest, civil penalties, and the appointment of a receiver. Also named in the lawsuit as relief defendants are two companies, controlled and owned by Isaacs, that received over \$4 million in investor funds. These entities are Tamarack Lender's Trust and Tamarack Capital Management Corp [SEC v. Tamarack Funding Corporation and Garry P. Isaacs, Civil Action No. 00-6730, S.D. Florida] (LR-16611)

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## **HOLDING COMPANY ACT RELEASES**

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### **CINERGY CORP., ET AL.**

An order has been issued authorizing Cinergy Corp. (Cinergy), a registered holding company under the Public Utility Holding Company Act of 1935 (Act), and its nonutility subsidiaries, Cinergy Global Resources, Inc. and Cinergy Investments, Inc., to: (1) increase Cinergy's aggregate investment as defined in rule 53(a)(1) under the Act in exempt wholesale generators and foreign utility companies to an amount not to exceed Cinergy's current aggregate investment plus an additional \$1 billion; and (2) allow Cinergy, either directly or through certain subsidiaries, to issue and sell various types of debt and equity securities, to issue guarantees and to enter into related financing transactions, subject to an aggregate limit of \$5 billion (Financing Limit). The Commission has reserved jurisdiction, pending completion of the record, over: (1) an increase of \$2 billion over the authorized \$5 billion Financing Limit; and (2) any

increase in Cinergy's aggregate investment by an amount greater than Cinergy's aggregate investment as of the date of this order plus \$1 billion. (Rel. 35-27190)

## NEW CENTURY ENERGIES, INC., ET AL.

A notice has been issued giving interested persons until July 18, 2000, to request a hearing on a proposal by New Century Energies, Inc. (NCE), a registered holding company, Northern States Power Company (NSP), a holding company exempt from registration under the Public Utility Holding Company Act (Act), and their subsidiaries to engage in various external and intrasystem financing transactions subsequent to the merger of NCE with and into NSP, to be renamed Xcel Energy Inc (Rel. 35-27191)

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## SELF-REGULATORY ORGANIZATIONS

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### DELISTING GRANTED

An order has been issued granting the application of the American Stock Exchange to strike listing and registration Malibu Entertainment Worldwide, Inc , Common Stock, no par value. (Rel. 34-42980)

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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>. In most cases, this information is also available on the Commission's website: <www.sec.gov>.

S-8 SATX INC, 4710 EISENHOWER BLVD, SUITE E-1, TAMPA, FL 33634  
(813) 886-6452 - 2,000,000 (\$1,380,000) COMMON STOCK. (FILE 333-39670  
- JUN. 20) (BR. 9)

S-1 SKY GLOBAL NETWORKS INC, 1211 AVENUE OF THE AMERICAS, NEW YORK, NY  
10036  
- \$100,000,000 COMMON STOCK. (FILE 333-39672 - JUN. 20) (BR. 37  
- NEW ISSUE)

S-8 COVOL TECHNOLOGIES INC, 3280 N FRONTAGE RD, LEHI, UT 84043  
(801) 768-4481 - 1,194,250 (\$7,117,730) COMMON STOCK. (FILE 333-39674  
- JUN. 20) (BR. 4)

S-8 COVOL TECHNOLOGIES INC, 3280 N FRONTAGE RD, LEHI, UT 84043  
(801) 768-4481 - 2,232,748 (\$4,398,514) COMMON STOCK. (FILE 333-39676  
- JUN. 20) (BR. 4)

S-8 COVOL TECHNOLOGIES INC, 3280 N FRONTAGE RD, LEHI, UT 84043  
(801) 768-4481 - 500,000 (\$985,000) COMMON STOCK. (FILE 333-39678 -  
JUN. 20) (BR. 4)

S-8 IONICS INC, 65 GROVE ST, WATERTOWN, MA 02172 (617) 926-2500 - 99,998  
(\$2,903,000) COMMON STOCK. (FILE 333-39684 - JUN. 20) (BR. 5)

S-4 ZIONS BANCORPORATION /UT/, ONE SOUTH MAIN STREET, SUITE 1380,  
SALT LAKE CITY, UT 84111 (801) 524-4787 - 1,260,000 (\$21,621,256)  
COMMON STOCK. (FILE 333-39688 - JUN. 20) (BR. 7)

S-8 DATASCOPE CORP, 14 PHILLIPS PKWY, MONTVALE, NJ 07645 (201) 391-8100  
- 66,600 (\$1,535,341) COMMON STOCK. (FILE 333-39690 - JUN. 20) (BR. 5)

S-3 REDBACK NETWORKS INC, 1195 BORREGAS AVE, SUNNYVALE, CA 94089  
(408) 548-3500 - 500,000,000 (\$500,000,000)  
CONVERTIBLE DEBENTURES AND NOTES. (FILE 333-39692 - JUN. 20) (BR. 8)

S-3 FORTUNE NATURAL RESOURCES CORP, 515 WEST GREENS ROAD, SUITE 720,  
HOUSTON, TX 77067 (713) 872-1170 - 2,030,463 (\$2,702,219) COMMON STOCK.  
(FILE 333-39694 - JUN. 20) (BR. 4)

S-8 OSWEGO COUNTY BANCORP INC, 44 E BRIDGE ST, OSWEGO, NY 13126  
(315) 343-4100 - 51,935 (\$473,907) COMMON STOCK. (FILE 333-39696 -  
JUN. 20) (BR. 7)

S-3 AASTROM BIOSCIENCES INC, 24 FRANKL LLOYD WRIGHT DR, PO BOX 376,  
ANN ARBOR, MI 48106 (734) 930-5555 - 6,159,220 (\$17,430,593) COMMON  
STOCK.  
(FILE 333-39698 - JUN. 20) (BR. 1)

S-8 BULL RUN CORP, 4370 PEACHTREE RD NE, ATLANTA, GA 30319 (404) 266-  
8333 -  
3,700,000 (\$9,018,750) COMMON STOCK. (FILE 333-39700 - JUN. 20) (BR.  
3)

S-3 SHIRE PHARMACEUTICALS GROUP PLC, EAST ANTON ANDOVER, HAMPSHIRE  
ENGLAND,  
ENGLAND SP10 5RG, X0 (126) 433-3455 - 21,214,628 (\$320,977,321.64)  
FOREIGN COMMON STOCK. (FILE 333-39702 - JUN. 20) (BR. 1)

S-3 CTN MEDIA GROUP INC, 5784 LAKE FORREST DRIVE, SUITE 275, ATLANTA, GA  
30328 (404) 256-4444 - 209,883 (\$1,133,368.20) COMMON STOCK. (FILE  
333-39704 - JUN. 20) (BR. 7)

S-3 ALPNET INC, 4460 SOUTH HIGHLAND DRIVE, SUITE #100, SALT LAKE CITY,  
UT  
84124 (801) 273-6600 - 1,152,714 (\$3,836,232) COMMON STOCK. (FILE  
333-39706 - JUN. 20) (BR. 8)

S-8 ALCOA INC, 201 ISABELLA ST, ALCOA CORPORATE CTR, PITTSBURGH, PA  
15212  
(412) 553-2576 - 2,609,766 (\$73,971,207.50) COMMON STOCK. (FILE 333-  
39708  
- JUN. 20) (BR. 6)

S-8 EARTHSHELL CORP, 9020 JUNCTION DRIVE, SUITE D, ANNAPOLIS JUNCTION,  
MD  
20701 (301) 957-1330 - 10,000,000 (\$45,705,172) COMMON STOCK. (FILE  
333-39710 - JUN. 20) (BR. 4)

N-2 FRANKLIN FLOATING RATE TRUST, 777 MARINERS ISLAND BLVD, SAN MATEO,  
CA  
94404 - 200,000,000 (\$1,972,000,000) COMMON STOCK. (FILE 333-39712 -  
JUN. 20) (BR. 18)

S-8 KANSAS CITY LIFE INSURANCE CO, 3520 BROADWAY, KANSAS CITY, MO 64111  
(816) 753-7000 - 400,000 (\$11,212,500) COMMON STOCK. (FILE 333-39714 -  
JUN. 20) (BR. 1)

S-8 CELGENE CORP /DE/, 7 POWDER HORN DR, WARREN, NJ 07059 (732) 271-1001  
-  
2,000,000 (\$103,625,000) COMMON STOCK. (FILE 333-39716 - JUN. 20) (BR.  
1)

S-4 IBT BANCORP INC /MI/, 200 E BROADWAY, MT PLEASANT, MI 48858  
(517) 772-9471 - 409,649 (\$10,806,540.62) COMMON STOCK. (FILE 333-  
39718 -  
JUN. 20) (BR. 7)

S-3 KANSAS CITY LIFE INSURANCE CO, 3520 BROADWAY, KANSAS CITY, MO 64111  
(816) 753-7000 - 3,072,940 (\$3,977,866) COMMON STOCK. (FILE 333-39720  
-  
JUN. 20) (BR. 1)

SB-2 POWERNOMICS ENTERPRISE CORP, 200 HIGHPOINT DRIVE SUITE 215,  
CHALFONT, PA  
18914 (215) 822-1550 - 4,000,000 (\$20,000,000) COMMON STOCK. (FILE  
333-39722 - JUN. 20) (BR. 9 - NEW ISSUE)

S-8 CTN MEDIA GROUP INC, 5784 LAKE FORREST DRIVE, SUITE 275, ATLANTA, GA  
30328 (404) 256-4444 - 1,800,000 (\$7,800,000) COMMON STOCK. (FILE  
333-39724 - JUN. 20) (BR. 7)

S-3 SILICON VALLEY BANCSHARES, 3003 TASMAN DR, SANTA CLARA, CA 95054  
(408) 654-7400 - 2,300,000 (\$87,630,000) COMMON STOCK. (FILE 333-39728  
-  
JUN. 20) (BR. 7)

S-8 TRIQUINT SEMICONDUCTOR INC, 2300 NE BROOKWOOD PARKWAY, HILLSBORO, OR  
97124 (503) 615-9000 - 1,900,000 (\$196,293,750) COMMON STOCK. (FILE  
333-39730 - JUN. 20) (BR. 5)

- S-8 TRIQUINT SEMICONDUCTOR INC, 2300 NE BROOKWOOD PARKWAY, HILLSBORO, OR 97124 (503) 615-9000 - 641,801 (\$56,360,155.94) COMMON STOCK. (FILE 333-39732 - JUN. 20) (BR. 5)
- S-8 KRAMONT REALTY TRUST, 580 WEST GERMANTOWN PIKE, PLYMOUTH MEETING, PA 19462 (610) 825-7100 - 1,245,000 (\$12,644,531.25) COMMON STOCK. (FILE 333-39734 - JUN. 20) (BR. 8)
- S-8 IDENTIX INC, 510 N PASTORIA AVE, SUNNYVALE, CA 94086 (408) 731-2000  
-  
1,500,000 (\$23,062,500) COMMON STOCK. (FILE 333-39736 - JUN. 20) (BR. 3)
- S-8 PUBLIC SERVICE ENTERPRISE GROUP INC, 80 PARK PLZ, P O BOX 1171, NEWARK, NJ 07101 (973) 430-7000 - 15,000,000 (\$537,600,000) COMMON STOCK. (FILE 333-39738 - JUN. 20) (BR. 2)
- S-8 HYDROGIENE CORP/NV, 12335 WORLD TRADE DRIVE, SUITE 8, SAN DIEGO, CA 92128 (202) 387-5400 - 7,471,674 (\$5,454,322) COMMON STOCK. (FILE 333-39742 - JUN. 20) (BR. 9)
- S-3 QUANTA SERVICES INC, 1360 POST OAK BLVD, SUITE 2100, HOUSTON, TX 77056 (713) 350-6000 (FILE 333-39744 - JUN. 20) (BR. 6)
- S-1 IWO HOLDINGS INC, 319 GREAT OAKS BLVD, ALBANY, NY 12203 (518) 862-6000 - \$172,500,000 COMMON STOCK. (FILE 333-39746 - JUN. 21) (NEW ISSUE)
- S-1 PROTON ENERGY SYSTEMS INC, 50 INWOOD RD, ROCKY HILL, CT 06067 (860) 571-6533 - \$86,250,000 COMMON STOCK. (FILE 333-39748 - JUN. 21) (NEW ISSUE)
- S-8 COBALT NETWORKS INC, 555 ELLIS AVENUE, MOUNTAIN VIEW, CA 94043 (650) 930-2500 - 110,000 (\$356,400) COMMON STOCK. (FILE 333-39750 - JUN. 21) (BR. 5)