

Outline of Recent SEC Enforcement Actions

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FINANCIAL FRAUD & OTHER DISCLOSURE AND REPORTING VIOLATIONS

SEC v. Philip G. Barry, Leverage Group, Leverage Option Management Co., Inc., and North American Financial Services

Lit. Rel. No. 21199 (September 8, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21199.htm>

The SEC charged Philip G. Barry, a Brooklyn money manager, for running a \$40 million Ponzi scheme in which he promised approximately 800 investors guaranteed high returns from safe, liquid investments, but instead spent their money on real estate, his pornography mail order business, and other interests.

The SEC alleges that Barry and his firms Leverage Group, Leverage Option Management Co., Inc, and North American Financial Services defrauded investors, including senior citizens and retirees, by selling securities in Leverage investment funds and falsely promising that he would use the investors' funds to trade in options or other securities. According to the Commission's complaint, Barry provided fake account statements to investors that recorded growing account balances and concealed that Barry had not been trading securities at all for several years. Further, Barry's purportedly guaranteed rates of return were simply numbers arbitrarily selected by Barry. Barry also misrepresented to some investors that their investments in Leverage would be protected from loss by privately obtained insurance and/or by the Securities Investors Protection Corporation (SIPC). Neither Barry nor any of his related firms is registered with the SEC in any capacity.

The SEC's complaint alleges that, by approximately 1999, Barry had ceased investing any of his investors' funds in options or other securities. Instead, the Commission alleges that Barry ran a Ponzi scheme in which he used incoming investor money to repay other existing investors and diverted the remaining investor funds for his own personal use.

The SEC's complaint charges Barry, Leverage Group, Leverage Option Management Co., Inc, and North American Financial Services with violating Section 17(a) of the Securities Act of 1933, Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934, and Sections 206(1), 206(2), 206(4) and Rule 206(4)-8 of the Investment Advisers Act of 1940. The complaint seeks permanent injunctions, disgorgement of ill-gotten gains plus prejudgment interest, and financial penalties against all defendants.

SEC v. Brantley Capital Management, LLC, Robert Pinkas, and Tab Keplinger

Lit. Rel. No. 21178 (August 13, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21178.htm>

The SEC charged investment advisers Robert Pinkas and his firm Brantley Capital Management (BCM) with securities fraud for overvaluing assets in an investment portfolio they managed to generate higher investment advisory fees. The SEC also charged another BCM official.

The SEC alleges that BCM, Pinkas, and its former part-time CFO Tab Keplinger substantially overstated the value of equity and debt investments in two failing private companies that represented more than half of the investment portfolio of Brantley Capital Corporation, a New York-based investment company. The SEC further alleges that BCM, Pinkas, and Keplinger made material misrepresentations and failed to make required disclosures about the two companies to Brantley Capital's board of directors, independent auditors, and investors. During the alleged misconduct from 2002 to 2005, BCM was the investment advisory firm that managed the investment portfolio of Brantley Capital. According to the SEC's complaint, Pinkas was the CEO of both Brantley Capital and BCM, and directed all of BCM's investment decisions and valuation recommendations. Keplinger was the part-time CFO of both entities and generally acted at the direction of Pinkas.

The SEC specifically alleges that BCM violated Exchange Act Sections 10(b) and 13(b)(5) and Rules 10b-5 and 13b2-1 thereunder; Investment Advisers Act Sections 206(1) and 206(2); and that he aided and abetted violations of Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) and Rules 13a-1 and 13a-13 thereunder.

The SEC specifically alleges that Pinkas violated Exchange Act Sections 10(b) and 13(b)(5) and Rules 10b-5, 13a-14, 13b2-1, and 13b2-2 thereunder; Investment Advisers Act Sections 206(1) and 206(2); and that he aided and abetted violations of Exchange Act Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) and Rules 13a-1 and 13a-13 thereunder; and Investment Advisers Act Sections 206(1) and 206(2).

The SEC specifically alleges that Keplinger violated Exchange Act Sections 10(b) and 13(b)(5) and Rules 10b-5, 13a-14, 13b2-1, and 13b2-2 thereunder; and that he aided and abetted violations of Exchange Act Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) and Rules 13a-1 and 13a-13 thereunder; and Investment Advisers Act Sections 206(1) and 206(2).

SEC v. Terex Corporation

Lit. Rel. No. 21177 (August 12, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21177.htm>

The SEC charged Terex Corporation with accounting fraud for making material misstatements in its own financial reports to investors, as well as aiding and abetting a fraudulent accounting scheme at United Rentals, Inc. (URI).

The SEC's complaint alleges that Terex aided and abetted the fraudulent accounting by URI for two year-end transactions that were undertaken to allow URI to meet its earnings forecasts. These fraudulent transactions also allowed Terex to prematurely recognize revenue from its sales to URI. The fraud occurred through URI's sales of used equipment to a financing company and its lease-back of that equipment for a short period. As part of the scheme, Terex agreed to sell the equipment at the end of the lease period and guarantee the financing company against any losses. URI separately guaranteed Terex against losses it might incur under the guarantee it had extended to the financing company.

The SEC's complaint also alleges that from 2000 through June 2004, Terex's accounting staff failed to resolve imbalances arising from certain intercompany transactions. Instead of investigating and correcting the imbalances, Terex offset the imbalances with unsupported and improper entries. As a result, costs were not recorded as expenses, and, on a consolidated basis, Terex appeared to be more profitable than it was.

Without admitting or denying the SEC's charges, Terex agreed to settle the SEC's action by consenting to be permanently enjoined from violating Section 17(a) of the Securities Act of 1933, and from violating and aiding and abetting any violation of Sections 10(b), 13(a), and 13(b)(2)(A) of the Securities Exchange Act of 1934 and Rules 10b-5, 12b-20, 13a-1, and 13a-13 thereunder, and by paying the \$8 million penalty.

SEC v. Frank DiPascali, Jr.

Lit. Rel. No. 21174 (August 11, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21174.htm>

The SEC charged Bernard L. Madoff's chief financial officer, Frank DiPascali, with securities fraud for overseeing the mechanics of Madoff's entirely fictitious investment strategy and creating millions of phony documents and trading records to conceal the fraud from regulators and investors.

According to the SEC's complaint, DiPascali helped generate bogus annual returns of 10 to 17 percent by fabricating backdated and fictitious trades that never occurred. A specific computer was used to simulate phantom trading in advisory accounts, and to generate phony books and records reflecting that trading. This fake set of books and records was kept separate and distinct from the books and records for the market-making and proprietary trading operation at Bernard L. Madoff Investment Securities LLC (BMIS). When investors sent in funds to BMIS for investment, the funds were deposited or wired into a bank account at JPMorgan Chase that was not in any way reflected on the books and records (including the ledger) of the BMIS broker-dealer operation.

The SEC further alleges that DiPascali helped Madoff cover up the fraud by preparing fake trade blotters, stock records, customer confirmations, Depository Trust Corporation (DTC) reports and other phantom books and records to substantiate the non-existent trading.

The SEC also alleges that DiPascali misappropriated investor funds for personal gain. DiPascali's withdrawals were funded directly from money deposited by investors with BMIS. Investor money being used to fund the overall operations of BMIS also contributed to the more than \$2 million in salary and bonus that DiPascali received each year.

The SEC's complaint specifically alleges that DiPascali violated Section 17(a) of the Securities Act; violated, and aided and abetted violations of, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder; and aided and abetted violations of Sections 204, 206(1) and 206(2) of the Advisers Act and Rule 204-2 thereunder and Sections 15(c) and 17(a) of the Exchange Act and Rules 10b-3 and 17a-3 thereunder. Among other things, the SEC's complaint seeks financial penalties and a court order requiring DiPascali to disgorge his ill-gotten gains.

Without admitting or denying the allegations of the SEC's complaint, DiPascali has consented to a proposed partial judgment, which if entered by the court would impose a permanent injunction against DiPascali and leave the issues of disgorgement and a financial penalty to be decided at a later time.

SEC v. Maurice R. Greenberg and Howard I. Smith

Lit. Rel. No. 21170 (August 6, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21170.htm>

The SEC charged former American International Group Chairman and CEO Maurice "Hank" Greenberg and former Vice Chairman and CFO Howard Smith for their involvement in numerous improper accounting transactions that inflated AIG's reported financial results between 2000 and 2005. The complaint alleges that Greenberg and Smith are liable as control persons for AIG's violations of the antifraud and other provisions of the securities laws. Smith is also charged with direct violations of the antifraud and other provisions of the securities laws.

The complaint alleges that Greenberg and Smith were responsible for material misstatements that enabled AIG to create the false impression that the company consistently met or exceeded key earnings and growth targets. According to the complaint, Greenberg publicly described AIG as the leader in the insurance and financial services industry with a history of delivering consistent double-digit growth. However, AIG faced numerous financial challenges under Greenberg's leadership that were disguised through improper accounting.

Without admitting or denying the allegations in the complaint, Greenberg has consented to a judgment enjoining him from violating Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 and from controlling any person who violates Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13, and directing him to pay a penalty of \$7.5 million and disgorgement of \$7.5 million.

Without admitting or denying the allegations in the complaint, Smith has consented to a judgment enjoining him from violating Section 17(a) of the Securities Act of 1933, and Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13a-14, 13b2-1, and 13b2-2, and from controlling any person who violates Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13, directing him to pay a penalty of \$750,000 and disgorgement of \$750,000, and prohibiting him from acting as an officer or director of any public company for three years. Smith also consented to the entry of a Commission order that will suspend him from appearing or practicing before the Commission as an accountant, with the right to reapply after five years.

SEC v. General Electric Company

Lit. Rel. No. 21166 (August 4, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21166.htm>

The SEC filed a civil injunctive action alleging civil fraud and other charges against General Electric Company ("GE"). The suit alleges that GE misled investors by reporting materially false and misleading results in its financial statements. The SEC alleges that GE used

improper accounting methods to increase its reported earnings or revenues and avoid reporting negative financial results. GE has agreed to pay a \$50 million penalty to settle the SEC's charges.

According to the SEC's complaint, GE met or exceeded final consensus analyst earnings per share (EPS) expectations every quarter from 1995 through filing of its 2004 annual report. However, on four separate occasions in 2002 and 2003, high-level GE accounting executives or other finance personnel approved accounting that was not in compliance with Generally Accepted Accounting Principles ("GAAP"). In one instance, the improper accounting allowed GE to avoid missing analysts' final consensus EPS expectations. The four accounting violations were (1) beginning in January 2003, an improper application of the accounting standards to GE's commercial paper funding program to avoid unfavorable disclosures and an estimated approximately \$200 million pre-tax charge to earnings; (2) a 2003 failure to correct a misapplication of financial accounting standards to certain GE interest-rate swaps; (3) in 2002 and 2003, reported end-of-year sales of locomotives that had not yet occurred in order to accelerate more than \$370 million in revenue; and (4) in 2002, an improper change to GE's accounting for sales of commercial aircraft engines' spare parts that increased GE's 2002 net earnings by \$585 million.

Without admitting or denying the SEC's allegations, GE agreed to the financial penalty and consented to the entry of an order permanently enjoining it from violating Section 17(a) of the Securities Act of 1933 and Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934 and Rules 10b-5, 12b-20, 13a-1, 13a-11 and 13a-13 thereunder.

SEC v. Radical Bunny, LLC, Tom Hirsch, Berta Walder, Howard Walder, and Harish Shah

Lit. Rel. No. 21157 (July 28, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21157.htm>

The SEC charged four promoters and Radical Bunny LLC with securities fraud for orchestrating a mortgage lending scheme that attracted hundreds of investors by making false and misleading statements about the safety and performance of the investments.

The SEC alleges that the foursome—which includes two certified public accountants, a pharmacist, and a grade school principal—raised more than \$197 million from investors nationwide primarily through word of mouth between their friends and relatives. Through Radical Bunny LLC, they pooled investor funds to make loans to Mortgages Ltd.

According to the SEC's complaint, the four promoters misrepresented how Mortgages Ltd. could use money loaned by Radical Bunny LLC by falsely telling investors that their funds could only be used for commercial development when there were no such restrictions. They also misrepresented to investors that they were closely monitoring Mortgages Ltd.'s financial condition, but they were caught completely unaware of the circumstances that ultimately led to its bankruptcy. Furthermore, they misrepresented to investors that the offering was not subject to the federal securities laws when, in fact, legal counsel had advised them otherwise on at least three separate occasions.

Radical Bunny was not registered with the Commission in any capacity and did not register any offering under the securities laws. Therefore, in addition to the securities fraud charges, Tom Hirsch, Harish Shah, Howard Walder, and Berta Walder—Radical Bunny’s four managing members—were charged by the SEC with offering and selling unregistered securities and for acting as unregistered broker-dealers in violation of the federal securities laws. Radical Bunny also was charged with offering and selling unregistered securities.

In its federal court action, the SEC seeks permanent injunctions, disgorgement of ill-gotten gains plus prejudgment interest, and financial penalties against all of the defendants.

SEC v. Sean Nathan Healy, Defendant, and Shalese Rania Healy and Sand Dollar Investing Partners, LLC, Relief Defendants

Lit. Rel. No. 21127 (July 14, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21127.htm>

The SEC brought fraud charges and an asset freeze against Sean Nathan Healy who stole more than \$15 million in investor funds to purchase a multi-million dollar home, luxury vehicles, and millions of dollars in jewelry and home furnishings.

The SEC alleges that Healy promised investors that he would use their money to trade in securities and commodities futures on their behalf. Despite repeated assurances that his purported trading was earning excellent returns, Healy did not invest any of the money he received in securities or commodities futures and instead made personal purchases as well as Ponzi-like payments to investors he defrauded. When Healy was questioned about his trading, he provided falsified bank and trading records to investors and to the U.S. Attorney’s Office for the Middle District of Pennsylvania.

The SEC’s complaint charges Healy with 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. The SEC seeks entry of a court order of temporary and permanent injunction against Healy, as well as an order directing Healy and the relief defendants to disgorge ill-gotten gains, and directing Healy to pay prejudgment interest and civil penalties. The SEC also seeks an order freezing the assets of Healy and the assets of the relief defendants that are traceable to the fraud, and requiring Healy and the relief defendants to account for the ill-gotten investor funds they received, expediting discovery, preventing the destruction or alteration of documents, and the appointment of a temporary receiver to oversee the assets of the Healys and Sand Dollar.

SEC v. Angelo Mozilo, David Sambol, and Eric Sieracki

Lit. Rel. No. 21068 (June 4, 2009)

<http://sec.gov/litigation/litreleases/2009/lr21068.htm>

The SEC filed fraud charges against former Countrywide Financial CEO Angelo Mozilo, former chief operating officer and president David Sambol, and former chief financial officer Eric Sieracki. They are charged with deliberately misleading investors about the significant credit risks being taken in efforts to build and maintain the company’s market share.

The SEC has additionally charged Mozilo with insider trading for selling his Countrywide stock based on non-public information for nearly \$140 million in profits.

In its complaint, the SEC alleges that Mozilo, Sambol, and Sieracki misled the market by falsely assuring investors that Countrywide was primarily a prime quality mortgage lender that had avoided the excesses of its competitors.

According to the SEC's complaint, Countrywide's credit risks were so alarming that Mozilo internally issued a series of increasingly dire assessments of various Countrywide loan products and the resulting risks to the company. In one internal e-mail, Mozilo referred to a profitable subprime product as "toxic." In another internal e-mail regarding the performance of its heralded Pay-Option ARM loan, he acknowledged that the company was "flying blind."

The SEC's complaint alleges that Countrywide's annual reports for 2005, 2006, and 2007 misled investors in claiming that Countrywide "manage[d] credit risk through credit policy, underwriting, quality control and surveillance activities." Its annual reports for 2005 and 2006 falsely stated that the company ensured its "access to the secondary mortgage market by consistently producing quality mortgages." The annual report for 2006 also falsely claimed that Countrywide had "prudently underwritten" its Pay-Option ARM loans.

The SEC alleges that Mozilo, Sambol, and Sieracki actually knew, and acknowledged internally, that Countrywide was writing increasingly risky loans and that defaults and delinquencies would rise as a result, both in loans that Countrywide serviced and loans that the company packaged and sold as mortgage-backed securities.

According to the SEC's complaint, Countrywide developed what was internally referred to as a "supermarket" strategy that widened underwriting guidelines to match any product offered by its competitors. By the end of 2006, Countrywide's underwriting guidelines were as wide as they had ever been, and Countrywide made an increasing number of loans based on exceptions to those already wide guidelines, even though exception loans had a higher rate of default.

The SEC's complaint alleges that Mozilo believed that the risk was so high that he repeatedly urged that Countrywide sell its entire portfolio of Pay-Option loans. Despite these severe concerns about the increasing risks that Countrywide was undertaking, Mozilo, Sambol, and Sieracki hid these risks from the investing public.

The SEC further alleges that Mozilo engaged in insider trading of Countrywide stock that he owned. Mozilo established four executive stock sale plans for himself in October, November, and December 2006 while he was aware of material, non-public information concerning Countrywide's increasing credit risk and the expected poor performance of Countrywide-originated loans. From November 2006 through August 2007, Mozilo exercised more than 5.1 million stock options and sold the underlying shares for total proceeds of nearly \$140 million, pursuant to written trading plans adopted in late 2006 and early 2007.

The SEC's complaint alleges that each of the defendants violated 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 aided and abetted violations of Sections 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder. The complaint further alleges that Mozilo and Sieracki violated Rule 13a-14 under the Exchange Act. The SEC's complaint seeks permanent injunctive relief, officer and director bars, and financial penalties against all of the defendants and the disgorgement of ill-gotten gains with prejudgment interest against Mozilo and Sambol.

SEC v. WellCare Health Plans, Inc.

Lit. Rel. No. 21044 (May 18, 2009)

Accounting and Auditing Rel. No. 2971 (May 18, 2009)

<http://sec.gov/litigation/litreleases/2009/lr21044.htm>

The SEC filed a settled civil charges action against WellCare Health Plans, Inc. ("WellCare"), a managed care services company that administers federal government-sponsored health care programs. According to the complaint, from at least November 2003 to October 2007, WellCare fraudulently retained over \$40 million it was required to return to Florida state agencies under programs that provided mental health services to Medicaid recipients and health care services to uninsured children. As a result, WellCare materially overstated its publicly reported net income and diluted earnings per share in periodic filings made with the SEC.

As alleged in the complaint, WellCare executed its scheme by intentionally underpaying refunds it owed to two Florida state health care entities, the Florida Agency for Health Care Administration ("AHCA"), and the Florida Healthy Kids Corporation ("Healthy Kids"). Under these contracts, WellCare received funds, or "premiums," from the state to be used to provide medical and health benefits. To ensure a proper balance between cost savings and quality health care, the state required WellCare to spend a certain percentage of the premiums on eligible medical expenses. If WellCare spent less than the minimum amounts on eligible expenses, it was required to refund some or all of the difference to the state.

According to the SEC complaint, WellCare did not follow the state's guidelines and regulatory framework governing how the company was required to calculate the refunds under each program. Instead, the company evaded the statutory requirements and fraudulently included ineligible payments to a subsidiary and administrative expenses as legitimate medical expenses. In addition, for certain refunds, WellCare considered a range of arbitrary amounts to refund to AHCA, and then reverse-engineered a methodology to arrive at a particular refund target. WellCare also engaged in a rate-swapping scheme whereby it inflated reimbursement rates for its Healthy Kids plan in exchange for lower Medicaid and Medicare rates at two Florida hospitals. In total, through its fraudulent conduct, WellCare reduced the refunds it paid to AHCA by approximately \$35 million and to Healthy Kids by approximately \$6 million.

WellCare's fraudulent retention of over \$40 million materially inflated its net income and earnings per share by essentially the same amounts — 14% for fiscal year ("FY") 2004, 9% for FY 2005, 13% for FY 2006, and 9% for the first quarter of FY 2007. On January 26, 2009, WellCare filed its Form 10-K for FY 2007 and restated its financial results for its FYs 2004 through 2006 and the first two quarters of FY 2007.

Without admitting or denying the allegations in the SEC's complaint, WellCare has consented to the entry of a final judgment for violations of Section 17(a) of the Securities Act of 1933, Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934 ("Exchange Act") and Exchange Act Rules 10b-5, 12b-20, 13a-1 and 13a-13. In addition, the company has agreed to pay \$1 in disgorgement and a \$10 million civil penalty.

SEC v. Michael Strauss, Stephen Hozie and Robert Bernstein

Lit. Rel. No. 21014 (April 28, 2009)

Accounting and Auditing Enforcement Release No. 2967 / April 28, 2009

<http://sec.gov/litigation/litreleases/2009/lr21014.htm>

The SEC filed a civil action against former senior officers at American Home Mortgage Investment Corp., Michael Strauss, Stephen Hozie and Robert Bernstein. The SEC alleges that Strauss and Hozie engaged in accounting fraud and made false and misleading disclosures that were designed to conceal from investors that American Home Mortgage's financial condition and prospects had significantly worsened in the first four months of 2007.

The complaint alleges that Strauss and Hozie fraudulently understated American Home Mortgage's first quarter 2007 loan loss reserves by tens of millions of dollars, converting the company's loss into a fictional profit. In fact, as Strauss and Hozie knew, the company's own analysis showed that American Home Mortgage needed significant additional reserves. The analysis also showed that the company's losses on its delinquent second liens were mounting quickly and that American Home Mortgage would lose at least 72% of the value of these loans after the properties went through foreclosure. Strauss and Hozie knowingly failed to reserve adequately for the expected losses caused by these delinquent loans.

According to the SEC's complaint, Strauss and Hozie made misleading disclosures concerning, among other things, the riskiness of the mortgages the company originated and held and the company's liquidity. Strauss and Hozie also failed to disclose the fact that, during the month of April 2007, American Home Mortgage was forced to sell the majority of its multi-billion dollar mortgage-backed securities portfolio to meet pressing liquidity demands. The complaint further alleges that Strauss, Hozie and Bernstein misled American Home Mortgage's auditor about the adequacy of the reserves.

The complaint alleges:

- Strauss and Hozie violated the antifraud provisions of the federal securities laws, specifically Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder;
- Strauss and Hozie aided and abetted American Home Mortgage's violations of Section 10(b) and Rules 10b-5 and 13a-11 of the Exchange Act;
- Strauss, Hozie and Bernstein aided and abetted American Home Mortgage's violations of the reporting, books and records, and internal control provisions under Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder;

- Strauss, Hozie and Bernstein with direct violations of Section 13(b)(5) of the Exchange Act and Rules 13b2-1 and 13b2-2 thereunder; and
- Strauss and Hozie with violations of the officer certification provisions under Rule 13a-14 of the Exchange Act.

The SEC is seeking permanent injunctions against future violations, disgorgement of ill-gotten gains plus prejudgment interest and the imposition of civil penalties, and officer and director bars against Strauss and Hozie.

Strauss has agreed to settle the SEC's charges without admitting or denying the allegations. He will be permanently enjoined from violating the antifraud, reporting, record-keeping, and internal controls provisions of the federal securities laws and will pay approximately \$2.2 million in disgorgement and prejudgment interest and a \$250,000 penalty. Strauss will also be barred from serving as an officer or director of a public company for five years. The litigation is ongoing with respect to the other defendants.

SEC v. Escala Group, Inc., Gregory Manning, and Larry Lee Crawford, CPA

Lit. Rel. No. 20965 (March 23, 2009)

Civil Action No. 09 CV 2646 (DLC) (S.D.N.Y., March 23, 2009)

<http://sec.gov/litigation/litreleases/2009/lr20965.htm>

The SEC filed a disclosure and accounting fraud case against then-NASDAQ National Market issuer Escala Group, Inc.; its founder and former CEO Gregory Manning, 62; and its former CFO Larry Lee Crawford, 60, alleging fraudulent related party transactions between Escala and its parent company, Afinsa Bienes Tangibles, S.A. ("Afinsa"). Escala is a network of companies in the collectibles market specializing in stamps, among other things. Afinsa was a privately held Spanish company that sold investments in portfolios of stamps in Europe. According to the complaint, the fraudulent related-party transactions ceased after May 2006, when Spanish authorities raided Afinsa's offices and charged Afinsa and certain individuals with engaging in a massive unlawful pyramid scheme.

The complaint alleges a fraudulent business scheme based upon the secret and dramatic manipulation of collectible stamp values, in which Escala, Manning, and Crawford violated the antifraud and reporting provisions of the federal securities laws by:

- failing to disclose the related party status of Barrett & Worthen, Inc., resulting in control of the Brookman Catalogue, and failing to disclose the revenues obtained by virtue of Afinsa and Manning's control of the prices in the Brookman Catalogue;
- falsely representing that Escala sold Afinsa several large stamp archives at prices determined by reference to independent stamp catalogues and appraisals when in fact Manning set the catalogue prices and influenced and edited the appraisals; and
- falsely reporting a payment for business combination-related expenses as the "sale" of certain antiques. The complaint alleges that Escala and Manning also violated the antifraud provisions by selling back to Afinsa in a round-trip transaction inventory acquired from Afinsa in direct contravention of Escala's public promise not to do so.

The complaint alleges that these false and misleading disclosures and omissions were material in that the related-party transactions contributed over \$80 million to Escala's revenues and allowed Escala to meet its forecasts for either revenue or pre-tax net income for the third quarter and for year-end of fiscal year 2004, and for the first quarter and year-end in fiscal 2005. According to the complaint, as a result of these transactions, Escala went from trading at \$1.47 per share on January 23, 2003, to a \$32-per-share company with a purported market cap of \$898 million in the span of a few years.

Without admitting or denying guilt, Escala consented to a permanent injunction against future violations of Sections 10(b), 13(a), 13(b)(2)(A) and (B) of the Securities Exchange Act of 1934 ("Exchange Act") and Exchange Act Rules 10b-5, 12b-20, 13a-1, and 13a-13.

Litigation against defendants Manning and Crawford is ongoing. They are charged with direct violations of Sections 10(b) and 13(b)(5) of the Exchange Act and Exchange Act Rules 10b-5, 13b2-1, 13b2-2, and 13a-14, aiding and abetting Escala's violations of Sections 13(a), and 13(b)(2)(A) and (B) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, and 13a-13. The SEC is seeking permanent injunctions against future violations, disgorgement of ill-gotten gains, prejudgment interest, civil penalties, and officer and director bars.

The SEC's investigation in this matter is ongoing as to the role of others.

SEC v. Zurich Financial Services

Litigation Release No. 20825 (December 11, 2008)

<http://sec.gov/litigation/litreleases/2008/lr20825.htm>

Press Release (December 11, 2008)

<http://sec.gov/news/press/2008/2008-292.htm>

On December 11, 2008 the Securities and Exchange Commission announced settled civil securities fraud charges against Zurich Financial Services and Converium Holding AG, now known as SCOR Holding (Switzerland) AG, relating to finite reinsurance transactions. The SEC's orders find that Zurich's former reinsurance group, which operated under the name Zurich Re and was later spun off in 2001 as Converium, designed three reinsurance transactions to make it appear that risk had been transferred to third-party entities when, in fact, the risk remained with Zurich-controlled entities.

According to the SEC's orders, Zurich Re — and later Converium — improperly used reinsurance accounting for the transactions enabling them to artificially inflate their performance figures. This misconduct allowed Zurich to receive a significant windfall when it spun off Converium in a December 2001 initial public offering. Converium continued the fraudulent scheme following the IPO. Zurich and Converium agreed to settle the SEC's charges without admitting or denying the SEC's findings, and Zurich will pay a \$25 million penalty.

The SEC's orders against Zurich and Converium find that beginning in 1999, Zurich Re's management developed three reinsurance transactions which improperly obtained the financial benefits of reinsurance accounting because the transactions appeared to transfer risk to third-party reinsurers, when, in fact, no risk was transferred from Zurich-owned entities. For two of

the transactions, Zurich Re ceded risk to third-party reinsurers, but it returned the risk through reinsurance agreements — known as retrocessions — to another Zurich entity. For the third transaction, Zurich Re ceded the risk to a third-party reinsurer but simultaneously entered into an undisclosed side agreement in which Zurich Re agreed to hold the reinsurer harmless for any losses realized under the reinsurance contracts. Because the ultimate risk under the reinsurance contracts remained with Zurich-owned entities, these transactions should not have been accounted for as reinsurance.

The SEC's orders further find that as a result of the improper accounting treatment of reinsurance transactions, the historical financial statements in Converium's IPO documents, including the Form F-1 it filed with the Commission, were materially misleading. Among other things, Converium understated its reported loss before taxes by approximately \$100 million (67 percent) in 2000. For certain periods, the transactions had the effect of artificially decreasing Converium's reported loss ratios — the ratio between losses paid by an insurer and premiums earned, a key performance metric for insurance companies — for certain reporting segments. The SEC's orders find that Zurich raised significantly more in the Converium IPO than it would have raised had Zurich and Converium not improperly inflated Converium's financial performance.

The SEC's order against Converium also finds that following the IPO, Converium entered into two additional reinsurance agreements for which risk transfer was negated by undisclosed side agreements. As a result, Converium overstated its income before taxes in 2003 by approximately \$21.67 million (11.06 percent), in addition to continuing to account improperly for the pre-IPO transactions.

Without admitting or denying the SEC's findings, Zurich and Converium agreed to the entry of cease-and-desist orders. The SEC's order against Converium finds that Converium violated Section 17(a) of the Securities Act of 1933 and Sections 10(b), 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934 and Rules 10b-5, 12b-20, and 13a-1 thereunder, and orders Converium to cease and desist from committing or causing any violations or future violations of those provisions. The SEC's order against Zurich finds that Zurich aided and abetted Converium's violation of Section 10(b) and Rule 10b-5 and orders Zurich to cease and desist from committing or causing any violations or future violations of Section 10(b) and Rule 10b-5. In a related action, also filed on December 11, 2008, in the U.S. District Court for the Southern District of New York, Zurich consented to pay \$1 in disgorgement and a \$25 million penalty.

SEC v. David Lee, et al.

Lit. Rel. No. 20811 (Nov. 18, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20811.htm>

Press Rel. No. 2008-274 (Nov. 18, 2008)

<http://www.sec.gov/news/press/2008/2008-274.htm>

The SEC charged four individuals for engaging in a fraudulent scheme to overvalue the commodity derivatives trading portfolio at Bank of Montreal (BMO), and thereby inflate BMO's publicly reported financial results. The defendants include a former senior derivatives trader at

BMO and the top two senior executive officers of Optionable, Inc., a publicly traded commodities brokerage firm.

The SEC's complaint alleges that David Lee, formerly the Managing Director of BMO's Commodity Derivatives Group, fraudulently overvalued BMO's portfolio of natural gas options by deliberately "mismarking" trading positions for which market prices were unavailable. Lee recorded inflated values that were then purportedly validated by Optionable, which held itself out to BMO and the public as a legitimate provider of independent derivatives valuation services. The SEC's complaint also alleges that Lee schemed with Optionable's CEO Kevin Cassidy, Optionable's president Edward O'Connor, and Optionable broker Connor to have Optionable simply rubber-stamp whatever inflated values Lee recorded. After the scheme was discovered, BMO restated its financial results by reducing net income for the first quarter of its 2007 fiscal year by approximately \$237 million Canadian dollars (\$204 million U.S. dollars), which reflects a 68 percent overstatement of BMO's net income for that quarter.

According to the SEC's complaint, filed in federal district court in New York, BMO was Optionable's largest customer, and BMO trades accounted for as much as 60 percent of Optionable's commodity brokerage business. Lee's trading accounted for virtually all of BMO's business with Optionable. As a result, Optionable's management, led by Cassidy, allegedly was willing to do whatever it took to keep Lee satisfied. When market prices were unavailable, BMO's risk management personnel sought to verify the accuracy of BMO's commodity derivatives traders' valuations of their positions, or their "marks," by obtaining supposedly independent valuations, or "quotes," for those positions from one or more third parties.

The SEC's complaint alleges that during the relevant period, Optionable was the primary source of the third-party quotes that BMO used to validate Lee's marks. The SEC alleges that Lee provided his marks directly to Cassidy, O'Connor, or Connor, who then simply forwarded Lee's marks virtually unchanged to BMO's risk management department as if they were Optionable's independent quotes. At first, Lee allegedly used this "u-turn" scheme to boost his trading profits and incentive compensation, but in 2006, the market turned against Lee and he used the scheme to hide substantial trading losses. In May 2007, BMO concluded that due to the Optionable scheme and other positions that Lee had also mismarked, Lee's trading book was overvalued by an aggregate total of \$680 million (Canadian dollars) since the beginning of BMO's fiscal year ended Oct. 31, 2006.

The SEC alleges that Cassidy and O'Connor also defrauded Optionable's public shareholders by concealing Optionable's role in the scheme. Optionable's periodic reports touted the synergistic benefits of the derivatives valuation services that Optionable purportedly provided to multiple brokerage clients, but those reports, which Cassidy and O'Connor signed, never disclosed that BMO was the principal client for whom those "services" were performed and that the "valuation services" provided to BMO were a sham designed to defraud BMO.

The SEC further alleges that Cassidy and O'Connor defrauded the New York Mercantile Exchange (NYMEX) by selling more than \$10 million of their own Optionable stock to NYMEX in April 2007. Both Cassidy and O'Connor represented to NYMEX that Optionable's periodic reports were materially accurate, but they never disclosed anything about their scheme with Lee

to defraud the shareholders of BMO, Optionable's largest customer. On May 9, 2007, one day after BMO announced that it had placed Lee on leave and suspended its business relationship with Optionable, Optionable issued an announcement stating that the suspension would have an adverse effect on Optionable's business. Optionable's stock price fell almost 40 percent that day, from \$4.64 to \$2.81 per share, and dropped to below 50 cents per share one week later after Cassidy's prior criminal record was disclosed in press reports.

All four defendants are charged in the Commission's complaint with committing and/or aiding and abetting violations of Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5, as well as various corporate reporting, recordkeeping and internal controls provisions of the Exchange Act. Cassidy and O'Connor also are charged with violating Section 17(a) of the Securities Act of 1933. As to each defendant, the complaint seeks a permanent injunction against future violations, disgorgement of ill-gotten gains plus prejudgment interest, and civil monetary penalties. The complaint also seeks an order barring Cassidy and O'Connor from acting as officers or directors of a public company.

The U.S. Attorney's Office for the Southern District of New York (USAO), the New York County District Attorney's Office (NYCDA), and the United States Commodity Futures Trading Commission (CFTC) also filed parallel criminal and regulatory charges today arising from the same conduct that is alleged in the Commission's complaint. Lee pled guilty to parallel criminal charges filed by the USAO and the NYCDA. In connection with his guilty plea, Lee agreed to pay a total of \$4.41 million in forfeiture.

Lee has agreed to settle the SEC charges by consenting, without admitting or denying the SEC's allegations, to the entry of a permanent injunction against future violations of various provisions of the federal securities laws. The Commission's claims for disgorgement and civil penalties against Lee, and all of its claims against the other three defendants, remain pending.

SEC v. Anthony J. Cuti and William J. Tennant.

Lit. Rel. No. 20778 (Oct. 9, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20778.htm>

The SEC charged two former senior executives of Duane Reade with fraud for orchestrating multi-million dollar accounting schemes that caused the Duane Reade to inflate its reported earnings and overstate its net income. Duane Reade is the operator of the largest chain of drug stores in the New York Metropolitan area. The complaint alleges that the former Duane Reade executives entered into a series of fraudulent transactions designed to boost reported income, and enable the company to meet quarterly and annual earnings guidance. According to the SEC's complaint, the fraudulent transactions were designed by the company's former CEO, Anthony J. Cuti, and primarily implemented by its former Real Estate Administrator and one-time CFO, William J. Tennant.

The SEC's complaint alleges that the earnings inflation scheme lasted from 2000 through 2004, and involved two kinds of transactions: The "Real Estate Concession" transactions and the "Credit and Rebilling" transactions. The Real Estate Concession transactions involved payments to Duane Reade for its agreement to relinquish purportedly valuable leases or other real-estate

rights. The complaint alleges that these agreements were in reality a sham and that most transactions involved round-trip payments in which Cuti persuaded counter-parties to make payments to Duane Reade in exchange for his promise to repay them through other fictitious transactions.

According to the complaint, these schemes together caused Duane Reade to overstate its pre-tax income by a total of approximately \$17.5 million. To assure the success of the Real Estate Concession scheme in inflating reported income, Cuti and Tennant are alleged to have intentionally deceived the company's CFO and other members of management. Cuti also allegedly made false statements and omitted material facts in conversations with and written representations to the company's independent auditors as to the true nature of the Real Estate Concession and Credit and Rebilling transactions.

The SEC seeks a final judgment permanently enjoining both defendants from committing future violations of Section 17(a) of the Securities Act of 1933, and from committing future violations of Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 (Exchange Act), and Rules 10b-5, 13b2-1, and 13b2-2, and from aiding and abetting future violations of Sections 13(a), 13(b)(2)(A), and 15(d) of the Exchange Act, and Rules 12b-20, 13a-1, 13a-11, 13a-13, 15d-1, 15d-11, and 15d-13; and Cuti from committing future violations of Rules 13a-14 and 15d-14 of the Exchange Act, and from aiding and abetting future violations of Section 13(b)(2)(B); and ordering defendants to pay civil penalties and disgorgement of any ill-gotten gains with prejudgment interest.

SEC v. American Italian Pasta Company

SEC v. Timothy S. Webster

SEC v. Warren B. Schmidgall and David E. Watson

SEC v. Stephanie S. Ruskey

Lit. Rel. No. 20715 (Sept. 15, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20715.htm>

On September 15, 2008, the SEC filed several actions charging Kansas City-based American Italian Pasta Company ("AIPC"), and its senior executives with securities fraud and other violations of the federal securities laws. The SEC's complaints allege that AIPC, AIPC's former chief executive officer Timothy S. Webster, former chief financial officer Warren B. Schmidgall, and former executive vice president of corporate development and strategy David E. Watson, engaged in a fraudulent scheme to mislead the investing public about the growth of the company's earnings and to increase artificially the company's stock price. According to the SEC's complaints, the fraudulent accounting and other errors arising from inadequate internal controls, resulted in the overstatement of AIPC's pre-tax income for the relevant period by approximately \$59 million, or 66 percent.

The SEC additionally charged AIPC's former controller Stephanie S. Ruskey in a civil action in federal court. The SEC alleges that Ruskey knew or was reckless in not knowing that AIPC's quarterly and annual financial statements were misleading, and alleges that she signed representation letters to AIPC's auditor that falsely stated that the financial statements were prepared in accordance with generally accepted accounting principles.

Without admitting or denying the allegations, AIPC, Webster, and Ruskey agreed to settle the matters. AIPC consented to a final judgment enjoining it from violations of 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, 12b-20, 13a-1, 13a-11, and 13a-13.

Webster consented to a final judgment enjoining him from violations of Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13a-14, 13b2-1, and 13b2-2, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13, imposing disgorgement of \$751,978, plus prejudgment interest of \$32,610; imposing a \$250,000 civil money penalty; and barring him from serving as an officer or director of a public company.

Ruskey consented to a final judgment enjoining her from violations of Rule 13b2-1 and 13b2-2 under the Exchange Act, and for her aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13, and imposing a \$25,000 civil money penalty.

The Commission's case against Schmidgall and Watson is ongoing.

SEC v. El Paso Corporation

Lit. Rel. 20642 (Jul. 11, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20642.htm>

On July 11, 2008, the SEC filed a civil action against El Paso Corporation (El Paso), its subsidiaries El Paso CGP Company LLC (CGP) and El Paso Exploration & Production Co. (EPPH), and several former employees alleging that they inflated, or participated in the inflation of, the companies' proved natural gas and oil reserves in violation of the federal securities laws. The complaint names Rodney D. Erskine, the former president of El Paso's Exploration and Production Business Segment, Randy L. Bartley, the former senior vice president of El Paso's Exploration and Production Business Segment, and Steven L. Hochstein, John D. Perry, and Bryan T. Simmons, former vice presidents of El Paso's Exploration and Production Business Segment. According to the complaint, the defendants violated the antifraud provisions of the federal securities laws. The SEC also alleges that El Paso, CGP, and EPPH violated, and Erskine, Bartley, Hochstein, Simmons, and Perry aided and abetted violations of, the reporting, books and records, and internal controls provisions of the Exchange Act. All defendants have agreed to settle the charges against them, without admitting or denying the Commission's allegations.

In 2004, El Paso restated its financial statements for years 1999 through 2002, and for the first nine months of 2003, reducing its previously reported proved natural gas and oil reserves at December 31, 2002, 2001, and 2000 by 2.2 trillion cubic feet equivalent of natural gas (TCFe), 3.3 TCFe, and 3.3 TCFe, respectively, and materially reducing its previously reported standardized measures of future cash flows. The total cumulative impact of the restatements reduced El Paso's stockholders' equity as of September 30, 2003 by \$1.7 billion. CGP and EPPH also restated their previously issued financial statements to correct their material overstatements of proved natural gas and oil reserves, standardized measures of future cash flows, and

capitalized costs relating to their natural gas and oil producing activities. The Commission's complaint alleges that, between 1998 and the quarter ended September 30, 2003, El Paso and its subsidiaries, with the assistance of the individual defendants, inflated its proved natural gas and oil reserves, overstated its standardized measure of future cash flows, and overstated its capitalized costs relating to its natural gas and oil producing activities.

Specifically, the Commission alleges that El Paso violated Section 17(a)(2) of the Securities Act, and Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder. El Paso consented to a judgment that permanently enjoins it from future violations of these provisions.

The Commission alleges that CGP violated Section 17(a) of the Securities Act, and Sections 10(b), 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, and 13a-13 thereunder. CGP consented to a judgment that permanently enjoins it from future violations of these provisions.

The Commission alleges that EPPH violated Section 17(a) of the Securities Act, and Sections 10(b), 13(b)(2)(A), 13(b)(2)(B), and 15(d) of the Exchange Act and Rules 10b-5, 12b-20, 15d-1, and 15d-13 thereunder. EPPH consented to a judgment that permanently enjoins it from future violations of these provisions.

The Commission alleges that Erskine and Bartley violated Section 17(a)(2) of the Securities Act, and Exchange Act Rules 13b2-1 and 13b2-2, and aided and abetted: i) El Paso and CGP's violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20, 13a-1, and 13a-13 thereunder; and ii) EPPH's violations of Sections 13(b)(2)(A), 13(b)(2)(B), and 15(d) of the Exchange Act and Rules 12b-20, 15d-1, and 15d-13 thereunder. Erskine and Bartley consented to judgments that permanently enjoin them from future violations of these provisions and order them to pay civil penalties of \$75,000 and \$40,000, respectively.

The Commission alleges that Hochstein violated Section 17(a) of the Securities Act, and Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5, 13b2-1, and 13b2-2 thereunder, and aided and abetted: i) El Paso and CGP's violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20, 13a-1, and 13a-13 thereunder; and ii) EPPH's violations of Sections 13(b)(2)(A), 13(b)(2)(B), and 15(d) of the Exchange Act and Rules 12b-20, 15d-1, and 15d-13 thereunder. Hochstein consented to a judgment that permanently enjoins him from future violations of these provisions and orders him to pay a \$40,000 civil penalty.

The Commission alleges that Perry violated Section 17(a) of the Securities Act, and Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5, 13b2-1, and 13b2-2 thereunder, and aided and abetted: i) El Paso and CGP's violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20, 13a-1, and 13a-13 thereunder; and ii) EPPH's violations of Sections 13(b)(2)(A), 13(b)(2)(B), and 15(d) of the Exchange Act and Rules 12b-20, 15d-1, and 15d-13 thereunder, and iii) CGP and EPPH's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Perry consented to a

judgment that permanently enjoins him from future violations of these provisions and orders him to pay a \$40,000 civil penalty.

The Commission alleges that Simmons violated Section 17(a) of the Securities Act, and Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5, 13b2-1, and 13b2-2 thereunder, and aided and abetted El Paso and CGP's violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act, and Rules 12b-20, 13a-1, and 13a-13 thereunder. Simmons consented to a judgment that permanently enjoins him from future violations of these provisions and orders him to pay a \$40,000 civil penalty.

SEC v. John Michael Kelly, Steven E. Rindner, Joseph A. Ripp, and Mark Wovsaniker

SEC v. David M. Colburn, Eric L. Keller, James F. MacGuidwin, and Jay B. Rappaport

Lit. Rel. No. 20586 (May 19, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20586.htm>

On May 19, 2008, the Securities and Exchange Commission filed civil fraud charges against eight former executives of AOL Time Warner Inc. for their roles in a fraudulent scheme that caused the company to overstate its advertising revenue by more than \$1 billion.

The SEC alleges that four former AOL officers, John Michael Kelly, Steven E. Rindner, Joseph A. Ripp, and Mark Wovsaniker, engineered, oversaw, and executed fraudulent round-trip transactions in which AOL Time Warner effectively funded its own advertising revenue by giving purchasers the money to buy online advertising that they did not want or need. Online advertising revenue was a key measure by which analysts and investors evaluated the company. The defendants made or substantially contributed to statements to investors that included the company's fraudulent financial results. Kelly and Wovsaniker, both certified public accountants, also are charged with misleading the company's external auditor about the fraudulent transactions.

The complaint charges Kelly, Wovsaniker, Ripp, and Rindner with violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), Exchange Act Rules 10b-5 and 13b2-1, and with aiding and abetting AOL Time Warner's violations of Sections 10(b), 13(a), and 13(b)(2)(A) of the Exchange Act and Exchange Act Rules 10b-5, 12b-20, 13a-1, 13a-11, 13a-13, and 13b2-1 and charges Kelly and Wovsaniker with violations of Section 13(b)(5) of the Exchange Act and Exchange Act Rule 13b2-2. The complaint seeks injunctive relief, disgorgement of ill-gotten gains plus prejudgment interest, civil monetary penalties, and officer and director bars against each of them.

The Commission also filed a complaint against four former AOL Time Warner executives, David M. Colburn, Eric L. Keller, James F. MacGuidwin, and Jay B. Rappaport, who participated in the scheme to artificially inflate the company's reported online advertising revenue. The four defendants have agreed to settle that action, without admitting or denying the allegations in the complaint. The four have agreed to permanent injunctions against future violations of Section 17(a) of the Securities Act, Section 10(b) the Exchange Act and Exchange Act Rules 10b-5 and 13b2-1, and from aiding and abetting violations of Sections 10(b), 13(a),

and 13(b)(2)(A) of the Exchange Act and Exchange Act Rules 10b-5, 12b-20, 13a-1, 13a-11, and 13a-13. MacGuidwin also agreed to be enjoined from future violations of Exchange Act Rule 13b2-2. All of them have agreed to pay disgorgement and prejudgment interest and civil penalties. Colburn will pay disgorgement and prejudgment interest of \$3,222,107 and a penalty of \$750,000; MacGuidwin will pay disgorgement and prejudgment interest of \$2,100,000 and a penalty of \$300,000; Rappaport will pay disgorgement and prejudgment interest of \$493,629 and a penalty of \$250,000; and Keller will pay disgorgement and prejudgment interest of \$699,868 and a penalty of \$250,000. Colburn and MacGuidwin have agreed to be barred from serving as officers or directors of a public company for ten years and seven years, respectively. The settlements are subject to court approval.

SEC v. Conrad M. Black, F. David Radler and Hollinger Inc.

Lit. Rel. No. 20510 (Mar. 25, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20510.htm>

Lit. Rel. No. 20043 (Mar. 16, 2007)

<http://www.sec.gov/litigation/litreleases/2007/lr20043.htm>

The SEC announced on March 25, 2008, that it settled its federal district court action against Hollinger Inc., a Canadian corporation and the controlling shareholder of Sun-Times Media Group, Inc., formerly known as Hollinger International, Inc.

Hollinger Inc., without admitting or denying the allegations in the complaint, has consented to the entry of a final judgment which permanently enjoins it from violations of the antifraud, reporting, books and records, and proxy provisions of the securities laws. The Final Judgment also orders Hollinger Inc. to pay a total of \$21,279,471.84, representing \$16,550,000 in alleged non-competition payments received by Hollinger Inc., plus prejudgment interest of \$4,729,471.84. The \$21,279,471.84 paid to Hollinger International in satisfaction of the judgment against Hollinger, Inc. and Conrad Black in the action captioned *Hollinger International, Inc. v. Black, et al.*, 844 A.2d 1022 (Del. Ch. C.A. No. 183-N), shall be credited dollar-for-dollar toward the disgorgement in this action. The settlement is subject to approval of U.S. District Judge William T. Hart.

On March 16, 2007, the SEC announced that it settled its enforcement action against F. David Radler, the former Deputy Chairman and COO of Hollinger International, Inc. Under the terms of the settlement, Radler was ordered to pay approximately \$23.7 million in disgorgement and prejudgment interest; ordered to pay a \$5 million civil penalty; barred from serving as an officer or director of a public company; and enjoined from violations of the antifraud, proxy, books and records, reporting, and internal control provisions of the federal securities laws.

On November 15, 2004, the SEC filed its action against Radler, Conrad M. Black, Hollinger International's former Chairman and CEO, and Hollinger, Inc., Hollinger International's controlling shareholder, alleging that from approximately 1999 to 2003, the defendants engaged in a fraudulent and deceptive scheme to divert cash and assets from Hollinger International, Inc. through a series of related party transactions.

The SEC's complaint alleged, among other things, that Black and Radler diverted to themselves, other corporate insiders, and Hollinger, Inc. approximately \$85 million of the proceeds from Hollinger International's sale of newspaper publications through purported "non-competition" payments. The complaint also alleged that Black and Radler orchestrated the sale of certain of Hollinger International's newspaper publications at below-market prices to another privately-held company owned and controlled by Black and Radler, including the sale of one publication for \$1.00. The complaint further alleged that in order to perpetrate their fraudulent scheme, Black and Radler misled Hollinger International's Audit Committee and Board of Directors concerning the related party transactions and also misrepresented and omitted to state material facts regarding these transactions in Hollinger International's filings with the SEC and during shareholder meetings.

Radler, without admitting or denying the allegations in the complaint, consented to the entry of a final judgment which permanently enjoined him from violations of the antifraud, internal controls, and books and records provisions of the federal securities laws. The Final Judgment also barred Radler from acting as an officer and director of a public company and ordered Radler to pay a total of \$23,695,227 in disgorgement and prejudgment interest and a \$5,000,000 civil penalty. The \$28,695,227 shall be distributed to The Sun-Times Media Group, Inc., formerly known as Hollinger International, Inc., pursuant to the Fair Funds provisions of Section 308 of the Sarbanes-Oxley Act of 2002.

SEC v. W.P. Carey & Co. LLC et al.

Lit. Rel. No. 20501 (Mar. 18, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20501.htm>

Admin. Proc. No. 3-13018

<http://www.sec.gov/litigation/admin/2008/34-57705.pdf>

The Securities and Exchange Commission filed settled securities fraud charges against W.P. Carey & Co., a manager of real estate investment trusts (REITs), and two of W.P. Carey's senior executives for paying undisclosed compensation to a brokerage firm that sold the REITs to investors. W.P. Carey did not disclose the payments to the broker-dealer, as it was required to do in the REITs' offering documents, and misrepresented the payments in the REITs' periodic filings.

The SEC complaint names as defendants W.P. Carey & Co.; John J. Park, formerly the chief financial officer of W.P. Carey, a managing director of strategic planning at W.P. Carey and currently an employee in charge of strategic planning; Claude Fernandez, formerly the chief accounting officer and currently a managing director of W.P. Carey; and Carey Financial, LLC, a broker-dealer subsidiary of W.P. Carey.

To settle the SEC's charges, W.P. Carey agreed to pay approximately \$30 million — approximately \$20 million in disgorgement and interest and \$10 million in penalties. Park's settlement includes a five-year bar from serving as an officer or director of a public company, and a \$240,000 penalty. Fernandez's settlement includes a two-year suspension from appearing before the Commission as an accountant and a \$75,000 penalty.

The SEC's complaint, filed in the U.S. District Court for the Southern District of New York, makes several allegations. The SEC alleges W.P. Carey paid nearly \$10 million in undisclosed compensation to a broker-dealer that sold shares of W.P. Carey's REITs to the public. The SEC further alleges W.P. Carey proposed to merge two of its affiliated REITs, subject to approval by shareholders of the REITs, W.P. Carey caused the two REITs to pay \$100,000 to a broker-dealer, which had sold the REITs' shares to investors, to solicit shareholder votes in favor of the merger, and that W.P. Carey failed to disclose the \$100,000 payment to the broker-dealer. The complaint alleges that W.P. Carey and Carey Financial offered and sold more than \$235 million of one of the affiliated REIT's shares without a registration statement being in effect, and that W.P. Carey failed to disclose all material information in its filings

The defendants agreed to settle the Commission's charges without admitting or denying the allegations of the complaint. W.P. Carey agreed to be permanently enjoined from violating the antifraud, reporting, proxy, books and records, and registration provisions of the federal securities laws — namely, Sections 5 and 17(a) of the Securities Act, Sections 10(b), 13(a), 13(b)(2)(A), and 14(a) of the Exchange Act, and Exchange Act Rules 10b-5, 12b-20, 13a-1, 13a-13, and 14a-9. W.P. Carey also agreed to pay a \$10 million civil penalty and to pay \$19,978,612.37 in disgorgement and prejudgment interest. The entire disgorgement and prejudgment interest will be distributed to the affected REITs. Carey Financial agreed to be permanently enjoined from violating Section 5(a) of the Securities Act.

Park agreed to be permanently enjoined from violating Section 17(a) of the Securities Act, Sections 10(b), 13(b)(5), and 14(a) of the Exchange Act, and Exchange Act Rules 10b-5, 13a-14, 13b2-1, and 14a-9, and from aiding and abetting violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Exchange Rules 12b-20, 13a-1, and 13a-13. Park also agreed to consent to a bar from acting as an officer or director of any public company for two years, and to pay a civil penalty of \$240,000. Fernandez agreed to be permanently enjoined from violating Sections 17(a)(2) and 17(a)(3) of the Securities Act, Section 13(b)(5) of the Exchange Act, and Exchange Act Rule 13b2-1, and from aiding and abetting violations of Sections 13(a) and 13(b)(2)(A) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, and 13a-13. Fernandez also agreed to pay a civil penalty of \$75,000. Fernandez has also consented to the issuance of an SEC Order based on the entry of the injunctions that will suspend him from appearing or practicing before the SEC as an accountant for two years.

CASES INVOLVING STOCK OPTION BACKDATING

SEC v. Ulticom, Inc.

SEC v. Lisa M. Roberts

Lit. Rel. No. 21091 (June 18, 2009)

Accounting and Auditing Rel. No. 2995 (June 18, 2009)

<http://sec.gov/litigation/litreleases/2009/lr21091.htm>

SEC v. Comverse Technology, Inc.

Lit. Rel. No. 21090 (June 18, 2009)

Accounting and Auditing Rel. No. 2994 (June 18, 2009)

<http://sec.gov/litigation/litreleases/2009/lr21090.htm>

The SEC filed settled civil actions in against Comverse Technology, Inc. ("Comverse"), Ulticom, Inc. ("Ulticom"), Comverse's subsidiary, and Lisa M. Roberts, Ulticom's former Chief Financial Officer. The complaint alleges that the defendants engaged in four separate fraudulent schemes, during the course of more than a decade, to materially misstate its financial condition and performance metrics.

Ulticom and Roberts

Between April 2000 and April 2004, Ulticom is accused of improperly recorded the grant dates of eight company-wide grants of employee stock options. The complaint alleges:

- Ulticom backdated four of these option grants to coincide with near-term lows in the company's stock price. The options in these four grants were "in-the-money," meaning the exercise prices of the backdated Ulticom options were less than the company's stock price on the date the grants were formally approved by Ulticom's Stock Option Committee.
- The backdating allowed Ulticom to award employees disguised in-the-money options, without recording a corresponding non-cash compensation expense for the in-the-money portion of the option grant in conformity with U.S. Generally Accepted Accounting Principles (GAAP).

Ulticom's second scheme allegedly involved certain long-standing and improper accounting practices that were not in conformity with GAAP. Specifically, the SEC alleges:

- From 1996 until its initial public offering in April 2000, Ulticom made improper adjustments to its reserve accounts in order to stockpile reserves. In its first fiscal year following its IPO, Ulticom released some of these improper excess reserves into income.
- Without these improper releases, the company would not have met Wall Street analysts' earnings estimates.

- In addition, from 1998 to April 2001 Ulticom improperly deferred to subsequent periods the recognition of revenues from certain shipments and service contracts between itself and another subsidiary of Comverse.

Without admitting or denying the allegations of the SEC's Complaint, both Ulticom and Roberts have consented to the entry of final judgments. The proposed final judgment against Ulticom would permanently enjoin it from violating Section 17(a) of the Securities Act of 1933 ("Securities Act"), Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Securities Exchange Act of 1934 ("Exchange Act"), and Exchange Act Rules 13a-1, 13a-11, 13a-13, and 14a-9.

The proposed final judgment against Roberts would permanently enjoin her from violating Section 17(a) of the Securities Act, Sections 10(b) and 13(b)(5) of the Exchange Act, Exchange Act Rules 10b-5, 13b2-1, and 13b2-2, and for aiding and abetting Ulticom's violations of Exchange Act Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) and Exchange Act Rules 13a-1, 13a-11, 13a-13, and 14a-9. In addition, Roberts has agreed to pay a \$25,000 civil monetary penalty and has consented to a permanent Officer and Director Bar and a 5-year suspension from appearing or practicing before the SEC as an accountant. .

Comverse

According to the complaint, the first scheme involved improper backdating of Comverse stock options granted between 1991 and 2001. The SEC alleges:

- Comverse backdated at least 26 stock options grants to employees, to coincide with historically low closing prices for the Company's common stock.
- Comverse awarded employees these disguised in-the-money options without recording a corresponding compensation expense for the in-the-money portion of the option grant. The failure to record the expense did not conform to U.S. GAAP.
- Comverse also made grants to fictitious employees in order to establish an illegal pool of options thereby creating a slush fund of "in-the-money" stock options to later use in circumvention of the approved stock option grant process.

Comverse's second alleged fraudulent scheme involved several improper accounting practices. According to the complaint:

- Comverse improperly built up, and subsequently improperly released, certain reserves to meet earnings targets, improperly reclassified certain expenses to manipulate other performance metrics, and made false disclosures about its backlog of sales orders.
- The manipulation of earnings allowed Comverse to meet or exceed Wall Street analysts' consensus earnings estimates in every quarter between 1996 and the first quarter of 2001.
- As a result of the accounting fraud, Comverse understated its pre-tax income in fiscal years 1996 through 1999, overstated its pre-tax income in fiscal years 2000 to 2003, and

made materially false and misleading disclosures about its operating margins and sales backlog.

Without admitting or denying the allegations of the SEC's Complaint, Comverse has consented to the entry of a final judgment. The proposed final judgment would permanently enjoin Comverse from violating Section 17(a) of the Securities Act of 1933, Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Securities Exchange Act of 1934 ("Exchange Act"), and Exchange Act Rules 10b-5, 12b-20, 13a-1, 13a-11, 13a-13, and 14a-9.

The SEC previously charged former Comverse Chairman and CEO Jacob "Kobi" Alexander, former Comverse Chief Financial Officer David Kreinberg, and former Comverse General Counsel William F. Sorin. Kreinberg and Sorin each settled with the SEC.

SEC v. Monster Worldwide, Inc.

Lit. Rel. No. 21042 (May 18, 2009)

Accounting and Auditing Rel. No. 2970 (May 18, 2009)

<http://sec.gov/litigation/litreleases/2009/lr21042.htm>

The SEC charged Monster Worldwide, Inc., for its multi-year scheme to secretly backdate stock options granted to thousands of Monster officers, directors and employees. Monster agreed to pay a \$2.5 million penalty to settle the SEC's charges that the company defrauded investors by granting backdated, undisclosed "in-the-money" stock options while failing to record required non-cash charges for option-related compensation expenses. As a result of this scheme, Monster overstated its 1997-2005 cumulative pre-tax earnings by approximately \$339.5 million.

Without admitting or denying liability, Monster agreed to be permanently enjoined from violations of Section 17(a) of the Securities Act, Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act, and Rules 10b-5, 12b-20, 13a-1, 13a-11, 13a-13, and 14a-9 thereunder.

SEC v. Gary A. Ray

Lit. Rel. No. 21039 (May 15, 2009)

Accounting and Auditing Rel. No. 2969 (May 15, 2009)

<http://sec.gov/litigation/litreleases/2009/lr21042.htm>

The SEC's complaint alleges that Gary A. Ray, former vice president of human resources at KB Home, Inc., used hindsight to pick advantageous grant dates for KB Home's annual stock option grants in order to enrich himself and others at KB Home. On many occasions, the grant dates coincided with dates of low monthly closing prices for the company's common stock.

The SEC's complaint further alleges that Ray continued to use hindsight for stock option grant dates even after the Sarbanes-Oxley Act of 2002 imposed stricter reporting requirements. The complaint alleges that, because of the backdating scheme, KB Home filed inaccurate proxy statements as well as a false and misleading quarterly report with the SEC. Ray profited by more

than \$480,000 from this scheme. Neither the company nor any other officer was charged in the complaint.

Without admitting or denying guilt, Ray consented to the entry of an order that (i) permanently enjoins him from future violations of Sections 10(b), 13(b)(5), and 16(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rules 10b-5, 13b2-1, and 16a-3 thereunder, and aiding and abetting violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act and Rules 12b-20, 13a-13, and 14a-9 thereunder; (ii) requires him to pay \$540,651.58 in disgorgement and interest and a civil penalty of \$50,000; and (iii) bars him from serving as an officer or director of a public company for five years.

SEC v. Take-Two Interactive Software, Inc.

Lit. Rel. No. 20982 (April 1, 2009)

Accounting and Auditing Rel. No. 2957 (April 1, 2009)

<http://sec.gov/litigation/litreleases/2009/lr20982.htm>

The SEC filed of a civil action against video and computer game publisher and distributor Take-Two Interactive Software, Inc. ("Take-Two"), alleging that during a seven year period, Take-Two defrauded investors by granting backdated, undisclosed "in the money" stock options to officers, directors, and key employees while failing to record required non-cash charges for option-related compensation expenses.

The complaint alleges that on over 100 occasions from 1997 through September 2003, Take-Two looked back and picked grant dates for the Company's incentive stock options, resulting in grants of "in-the-money" options. According to the Complaint, Take-Two used several means to backdate options, including pre-priced option pools, backdating of employment agreements, and "pick-a-date" backdating, whereby a set exercise price for the grants was chosen, and then a past grant date was selected when Take-Two's stock price most closely corresponded to the set exercise price. On at least 26 occasions, the backdated grant dates coincided with dates of historically low annual and quarterly closing prices for Take-Two's common stock. These "fortuitous" grant dates, the complaint alleges, could not have been selected so consistently without the benefit of hindsight. According to the complaint, Take-Two granted these options without complying with its own stock option plans and, generally, without the Board or a Committee thereof approving the grant dates or exercise prices. Take-Two officers and employees allegedly prepared documents falsely indicating that the option grants had been made on earlier dates when Take-Two's stock price had closed lower.

Without admitting or denying the allegations, Take-Two consented to the entry of an order: (1) permanently enjoining it from violating Section 17(a) of the Securities Act of 1933, Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B) and 14(a) of the Securities Exchange Act of 1934 (Exchange Act) and Exchange Act Rules 10b-5, 12b-20, 13a-1, 13a-11, 13a-13 and 14a-9; and (2) requiring it to pay a \$3 million civil penalty.

The SEC previously settled with former Chief Executive Officer and Chairman Ryan Brant for his alleged role as the architect of the fraudulent options backdating scheme. In that action, Brant was permanently enjoined from violating and/or aiding and abetting violations of

the antifraud, reporting, record-keeping, internal controls and securities ownership reporting provisions of the federal securities laws; permanently barred from serving as an officer or director of any public company; and ordered to pay disgorgement of \$4,118,093, prejudgment interest of \$1,143,000, and a civil penalty of \$1 million. Brant also pled guilty to felony criminal charges of Falsifying Business Records in the First Degree and paid \$1 million in lieu of fines and forfeiture to state and local New York authorities.

SEC v. Quest Software, Inc., Vincent C. Smith, John J. Laskey, and Kevin E. Brooks

Litigation Release No. 20950 (March 12, 2009)

<http://sec.gov/litigation/litreleases/2009/lr20950.htm>

Press Release (March 12, 2009)

<http://sec.gov/news/press/2009/2009-57.htm>

The Securities and Exchange Commission, on March 12, 2009, charged Aliso Viejo, Calif.-based software manufacturer Quest Software, Inc. and three current or former officers for stock option backdating.

The SEC's complaint alleges that Quest, its executive chairman Vincent Smith, its former chief financial officer John Laskey, and former controller and principal accounting officer Kevin Brooks improperly granted undisclosed in-the-money stock options to executives and employees by backdating millions of options from 1999 through 2002. As a result of this misconduct, Quest reported a \$113.6 million restatement of its operating income in September 2007. Quest has agreed to settle the SEC's charges, and the three executives have agreed to pay more than \$300,000 combined to settle the allegations against them.

According to the SEC's complaint, filed in federal court in Santa Ana, Calif., Quest failed to accurately describe its stock option practices in its public filings and failed to properly account for the backdated options in its financial statements. This resulted in false and misleading disclosures to Quest's shareholders in filings with the SEC from 1999 through 2005.

The SEC further alleges that Quest backdated 28 separate grants involving more than 11 million shares of common stock. Quest's failure to properly record compensation expenses in connection with the backdated options resulted in the overstatement of Quest's operating income by 4 percent to 963.1 percent and the understatement of its operating loss by 26.12 percent to 154 percent from 1999 through 2005.

Specifically, the SEC's complaint alleges that Smith and Laskey approved a policy by which Quest would pool stock option grants each month and backdate the grants to coincide with the lowest stock price of the month. The complaint alleges that the backdated grant dates bore no relation to when the grant was actually approved, resulting in artificially low exercise prices for the stock options. According to the complaint, although he knew about the use of hindsight to date stock option grants, Brooks failed to ensure the accuracy of Quest's financial statements and disclosures. The complaint also alleges that Smith, Laskey, and Brooks took steps to prevent Quest's independent auditors from discovering the backdating, including the use of false written consents by Quest's board of directors.

All defendants have agreed to settle the SEC's charges without admitting or denying the allegations in the SEC's complaint.

Quest consented to the entry of an order permanently enjoining it from violating certain antifraud provisions, as well as the record-keeping, financial reporting, internal controls, and proxy provisions of the federal securities laws.

Smith consented to the entry of an order permanently enjoining him from violating or aiding and abetting violations of certain antifraud provisions, as well as the record-keeping, financial reporting, internal controls, proxy, false statements to auditors, Sarbanes-Oxley certification, and securities ownership reporting provisions of the federal securities laws. Smith also agreed to pay a \$150,000 penalty.

Laskey and Brooks each consented to the entry of orders permanently enjoining them from violating or aiding and abetting violations of certain antifraud provisions, as well as the record-keeping, financial reporting, internal controls, false statements to auditors, and securities ownership reporting provisions of the federal securities laws. Brooks and Laskey agreed to pay penalties of \$60,000 and \$50,000 respectively. Brooks also agreed to pay disgorgement of \$34,775, representing half of the in-the-money value of backdated options he had exercised (the other half was previously repaid to the company), and prejudgment interest of \$5,808.29. In addition, Brooks, a certified public accountant, agreed to a five-year suspension from appearing or practicing as an accountant before the SEC.

SEC v. Research in Motion Limited, Dennis Kavelman, Arcangelo Loberto, James Balsillie and Mihal Lazaridis

Litigation Release No. 20902 (February 17, 2009)

<http://sec.gov/litigation/litreleases/2009/lr20902.htm>

Press Release (February 17, 2009)

<http://sec.gov/news/press/2009/2009-27.htm>

On February 17, 2009, the Securities and Exchange Commission charged BlackBerry maker Research in Motion Limited (RIM) and four of its senior executives for stock option backdating.

The SEC's complaint alleges that Ontario, Canada-based RIM, its former Chief Financial Officer Dennis Kavelman, former Vice President of Finance Angelo Loberto, and Co-Chief Executive Officers James Balsillie and Mike Lazaridis illegally granted undisclosed, in-the-money options to RIM executives and employees by backdating millions of stock options over an eight-year period from 1998 through 2006.

The SEC's complaint alleges that the defendants made false and misleading disclosures about how RIM priced and accounted for options. In addition, according to the complaint, the backdating violated the terms of RIM's stock option plan and a listing requirement of the Toronto Stock Exchange. RIM's stock is listed on both the NASDAQ Stock Market and the Toronto Stock Exchange.

Specifically, the SEC's complaint alleges that Kavelman, Loberto, Balsillie and Lazaridis backdated option agreements and offer letters, which concealed the fact that the options were granted in-the-money. The complaint also alleges that Kavelman and Loberto took steps to hide the backdating from regulators, RIM's independent auditor and outside lawyer. For instance, Kavelman and Loberto usually picked low strike prices within reporting periods and in some instances avoided the lowest price so regulators would not detect the backdating. On one occasion, Kavelman asked a manager not to document improper pricing in e-mails. Kavelman wrote, "FYI, it is a major breach of protocol to be discussing (and documenting via email) using option pricing other than that allowable by the Ontario Securities Commission and the SEC in the US."

The complaint further alleges that after all four executives were aware of backdating issues that had come to light at other companies, they attended RIM's July 2006 annual shareholder meeting where Kavelman misled investors by denying that RIM was backdating options.

All defendants have agreed to settle this matter, without admitting or denying the allegations in the SEC's complaint, on the following terms:

RIM consented to the entry of an order permanently enjoining it from violating the antifraud, reporting, books and records and internal controls provisions of the federal securities laws. The settlement with RIM takes into account RIM's cooperation during the SEC's investigation.

Kavelman and Loberto consented to an order permanently enjoining them from violating the antifraud, internal controls, books and records and misrepresentation to auditors provisions and from aiding and abetting RIM's violations of the reporting, books and records and internal controls provisions of the federal securities laws. Kavelman also consented to an order permanently enjoining him from violating the certification provision of the federal securities laws. Kavelman and Loberto agreed to be barred for a period of five years from serving as officers or directors of any issuer that has a class of securities registered with the SEC or that is required to file reports with the SEC. In addition, Kavelman and Loberto agreed to resolve an anticipated administrative proceeding by consenting to an SEC order prohibiting them from appearing or practicing before the SEC as accountants for five years.

Balsillie and Lazaridis consented to the entry of an order permanently enjoining them from violating certain antifraud provisions (specifically Sections 17(a)(2) and (3) of the Securities Act of 1933), and the internal controls and books and records provisions and from aiding and abetting RIM's violations of the reporting, books and records and internal controls provisions of the federal securities laws.

The individual defendants will pay penalties in the following amounts: \$500,000 for Kavelman; \$425,000 for Loberto; \$350,000 for Balsillie; and \$150,000 for Lazaridis. The individual defendants also agreed to disgorge the in-the-money value of backdated options they had exercised (\$132,914.60 for Kavelman, \$47,950.56 for Loberto, \$334,250 for Balsillie and

\$328,300 for Lazaridis) plus interest. Their disgorgement will be deemed satisfied by their previous payment of these amounts to RIM.

The settlements in the civil injunctive action are subject to the approval of the U.S. District Court for the District of Columbia.

On Feb. 5, 2009, the Ontario Securities Commission brought a related settled action against RIM, Balsillie, Lazaridis, Kavelman, Loberto and certain other directors which included the total payment in Canadian dollars of \$76.85 million and other sanctions. The SEC acknowledges the assistance of the Ontario Securities Commission in this matter.

SEC v. UnitedHealth Group Inc.

SEC v. David J. Lubben

Litigation Release No. 20836 (December 22, 2008)

<http://sec.gov/litigation/litreleases/2008/lr20836.htm>

Press Release (December 22, 2008)

<http://sec.gov/news/press/2008/2008-302.htm>

The Securities and Exchange Commission, on December 22, 2008, filed a civil injunctive action against UnitedHealth Group Inc., a Minnetonka, Minnesota, health insurance company, alleging that it engaged in a scheme to backdate stock options. Without admitting or denying the allegations, UnitedHealth agreed to settle charges that it violated the reporting, books and records, and internal controls provisions of the federal securities laws.

In a separate complaint, the Commission charged former UnitedHealth General Counsel David J. Lubben with participating in the stock option backdating scheme. Without admitting or denying the allegations, Lubben consented to, among other things, an antifraud injunction, a \$575,000 penalty, and a five-year officer and director bar.

The Commission alleges that between 1994 and 2005, UnitedHealth concealed more than \$1 billion in stock option compensation by providing senior executives and other employees with “in-the-money” options while secretly backdating the grants to avoid reporting the expenses to investors.

According to the Commission’s complaint, certain UnitedHealth officers used hindsight to pick advantageous grant dates for the company’s nonqualified stock options that on many occasions coincided with, or were close to, dates of historically low annual and quarterly closing prices for UnitedHealth’s common stock. Although pricing the options below current prices required the company to report a compensation expense under well-settled accounting principles, UnitedHealth avoided reporting the charges by creating inaccurate and misleading documents indicating that the options had been granted on the earlier date. The backdated grants resulted in materially misleading disclosures, with the company overstating its net income in fiscal years 1994 through 2005 by as much as \$1.526 billion.

The Commission declined to charge the company with fraud or seek a monetary penalty, based on the company’s extraordinary cooperation in the Commission’s investigation, as well as

its extensive remedial measures. UnitedHealth's cooperation included an independent internal investigation, the company's release in a Form 8-K of a report detailing the investigation's findings and conclusions, and the sharing of the facts uncovered in the internal investigation with the government. The company also took significant remedial actions in response to the findings of its internal investigation, including the implementation of new controls designed to prevent the recurrence of fraudulent conduct, removal of certain senior executives and board members, and the recoupment of nearly \$1.8 billion in cash, options value and other benefits from several former and current officers, through, among other things, derivative litigation and the voluntary re-pricing and cancellation of retroactively-priced options.

According to the Commission's complaint, Lubben or others acting at his direction created false or misleading company records indicating that the grants had occurred on dates when the company's stock price had been at a low. Lubben personally received numerous backdated grants of options, representing as many as 3.8 million shares of UnitedHealth stock on a split adjusted basis. He exercised approximately 1.8 million of those options for approximately \$1.1 million in gains attributable to improper backdating.

Lubben consented to the entry of an order permanently enjoining him from violating or aiding and abetting violations of the antifraud, reporting, record-keeping, internal controls, proxy statement, and securities ownership reporting provisions of the federal securities laws, and barring him from serving as an officer or director of a public company for a period of five years. Lubben will disgorge ill-gotten gains of \$1,403,310 with \$347,211 in prejudgment interest and pay a \$575,000 penalty.

Under the terms of the settlement, Lubben's disgorgement and prejudgment interest would be deemed satisfied by his voluntary repricing of his UnitedHealth stock options, which reduced the value of those options by approximately \$2.7 million, and his payment of approximately \$630,000 in pending settlements to resolve derivative and shareholder lawsuits related to options backdating filed against Lubben in state and federal courts in Minnesota.

In addition, Lubben agreed to resolve a separate administrative proceeding against him by consenting to a Commission order that suspends him from appearing or practicing before the Commission as an attorney for three years.

The Commission's settlements with UnitedHealth and Lubben in the civil actions are subject to the approval of the U.S. District Court for the District of Minnesota.

In December 2007, the Commission announced a record \$468 million settled enforcement action against William W. McGuire, M.D., the former Chief Executive Officer and Chairman of the Board of UnitedHealth. The settlement, which is pending before U.S. District Judge James M. Rosenbaum, was the first with an individual to deprive corporate executives of their stock sale profits and bonuses earned while their companies were misleading investors pursuant to the "clawback" provision (Section 304) of the Sarbanes-Oxley Act. McGuire consented to anti-fraud and other injunctions; disgorgement plus prejudgment interest of approximately \$12.7 million; a \$7 million penalty (the largest penalty against an individual in a stock option backdating case); and reimbursement to UnitedHealth under Section 304 of the

Sarbanes-Oxley Act of approximately \$448 million in cash bonuses, profits from the exercise and sale of UnitedHealth stock and unexercised UnitedHealth options. McGuire also agreed to be barred from serving as an officer or director of a public company for ten years. Litigation Release No. 20387 (Dec. 6, 2007).

SEC v. Blue Coat Systems, Inc. and Robert P. Verheecke

Lit. Rel. No. 20801 (Nov. 12, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20801.htm>

Press Rel. No. 2008-266 (Nov. 12, 2008)

<http://www.sec.gov/news/press/2008/2008-266.htm>

The SEC charged Sunnyvale, California, network security company Blue Coat Systems, Inc. and its former chief financial officer Robert P. Verheecke, alleging that they backdated stock option grants to executives and employees and reported false financial information to shareholders.

The SEC's complaint alleges that from approximately 2000 through 2005, Blue Coat concealed nearly \$50 million in compensation expenses associated with valuable "in-the-money" options by backdating paperwork to make it appear as if the options had been granted on earlier dates. Blue Coat and Verheecke have agreed to settle the SEC's charges without admitting or denying the allegations. Verheecke will pay more than \$185,000 in disgorgement, penalties, and prejudgment interest.

Without admitting or denying the SEC's allegations, Verheecke consented to a permanent injunction against violations of Section 17(a) of the Securities Act of 1933, Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), 13(b)(5), and 14(a) of the Securities Exchange Act of 1934, and Rules 10b-5, 12b-20, 13a-1, 13a-11, 13a-13, 13a-14, 13b2-1, 13b2-2, and 14a-9 thereunder. Verheecke also consented to disgorgement and prejudgment interest of \$35,946, a financial penalty of \$150,000, and five-year bars from serving as an officer or director of a public company and appearing or practicing as an accountant before the SEC.

Blue Coat consented to be enjoined from violating Section 17(a) of the Securities Act, Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act, and Rules 10b-5, 12b 20, 13a-1, 13a-11, 13a-13, and 14a-9. The Commission took into account the cooperation that Blue Coat provided Commission staff during its investigation.

SEC v. Sycamore Networks, Inc., Frances M. Jewels, Cheryl E. Kalinen, and Robin A. Friedman

Lit. Rel. No. 20638 (Jul. 9, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20638.htm>

Press Rel. No. 2008-136 (Jul. 9, 2008)

<http://www.sec.gov/news/press/2008/2008-136.htm>

The SEC filed a settled civil enforcement action against Sycamore Networks, Inc., an optical networking company based in Chelmsford, Massachusetts, as well as its former Chief Financial Officer Frances M. Jewels, former Director of Financial Operations Cheryl E. Kalinen,

and former Director of Human Resources Robin A. Friedman in connection with the backdating of stock options to employees over several years and the failure to disclose options-related expenses to the company's auditors and investors.

The Commission's complaint, filed in federal district court in Massachusetts, alleges that Sycamore's unreported options-related expenses during its fiscal years 2000 through 2005 totaled nearly \$250 million. The Commission's complaint further alleges that Jewels and Kalinen repeatedly backdated options grants between October 1999 and July 2002 to prices at or near monthly or quarterly low points for the company's stock, providing employees with options with prices at which they could purchase shares that were lower than the market price at the time the options actually were granted. The Commission also alleges that Jewels and Kalinen falsified grant approval documentation and that they personally benefited from grants of below-market options.

The Commission's complaint describes an internal memorandum that outlines a plan to grant options at below-market prices to five company employees and keep the company's outside auditors from discovering these grants. The memo, drafted by Kalinen and provided to Jewels and Friedman, analyzed the risk that the company's outside auditors would uncover the conduct. Friedman participated in the plan by altering or creating, or causing others to alter or create, company personnel and payroll records so that they would reflect inaccurate start dates for the employees, according to the Commission's complaint.

All defendants have agreed to settle this matter, without admitting or denying the allegations in the Commission's complaint, on the following terms:

Jewels has consented to the entry of a permanent injunction prohibiting her from violating Section 17(a) of the Securities Act of 1933 (Securities Act) and Sections 10(b), 13(b)(5), 14(a), and 16(a) of the Securities Exchange Act of 1934 (Exchange Act) and Rules 10b-5, 13a-14, 13b2-1, 13b2-2, 14a-9, and 16a-3 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder. Jewels will disgorge ill-gotten gains of \$30,000 (plus prejudgment interest on that amount of \$4,980.04), reimburse Sycamore (pursuant to Section 304 of the Sarbanes-Oxley Act of 2002) for \$190,000 in cash bonuses she received during the period of the fraud, and pay a civil monetary penalty of \$230,000. Jewels also will be barred from serving as an officer or director of any public company for a period of five years, and, in a related administrative proceeding, will be prohibited from appearing or practicing before the Commission as an attorney or accountant for a period of five years.

Kalinen has consented to the entry of a permanent injunction prohibiting her from violating Sections 10(b), 13(b)(5), and 14(a) of the Exchange Act and Rules 10b-5, 13b2-1, 13b2-2, and 14a-9 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder. Kalinen also will disgorge ill-gotten gains of \$28,000 (plus prejudgment interest on that amount of \$7,060.71) and pay a penalty of \$150,000.

Friedman has consented to the entry of a permanent injunction prohibiting her from violating Section 13(b)(5) of the Exchange Act and Rules 13b2-1 and 13b2-2 thereunder, and from aiding and abetting violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act. Friedman also will pay a penalty of \$40,000.

Sycamore has consented to the entry of a permanent injunction against 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 14(a) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-11, 13a-13, and 14a-9 thereunder.

The settlement with Sycamore takes into account the company's cooperation during the Commission's investigation.

SEC v. Henry T. Nicholas III, Henry Samueli, William J. Ruele, and David Dull

Lit. Rel. No. 20574 (May 14, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20574.htm>

SEC v. Broadcom Corp.

Lit. Rel. No. 20532 (Apr. 22, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20532.htm>

SEC v. Nancy M. Tullos

Lit. Rel. No. 20476 (Mar. 4, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20476.htm>

On May 14, 2008, the Securities and Exchange Commission charged two current and two former top officers of Irvine, Calif.-based Broadcom Corporation for their alleged participation in a five-year systematic scheme to secretly backdate stock options granted to virtually all Broadcom officers and employees.

The SEC's complaint alleges that Broadcom's former chief executive officer Henry T. Nicholas, chairman and chief technology officer Henry Samueli, former chief financial officer William J. Ruele, and general counsel David Dull perpetrated a scheme from 1998 to 2003 to fraudulently backdate stock option grants, failing to record billions of dollars of compensation expenses and falsifying documents to further the fraud. As a result of the scheme, Broadcom restated its financial results in January 2007 and reported more than \$2 billion in additional compensation expenses.

In addition, the SEC alleges that Nicholas, Samueli, and Ruele - not the compensation committee - decided on option grants to Broadcom's senior officers and used hindsight to select the dates for them. The SEC is alleging that Ruele and Dull each personally benefited from the backdating scheme by receiving and exercising backdated grants that were in-the-money by more than \$100,000 for Ruele and \$1.8 million for Dull.

The SEC's complaint alleges that Nicholas, Samueli, Ruele and Dull violated Section 17(a) of the Securities Act, Sections 10(b) and 13(b)(5) of the Exchange Act, and Rules 10b-5 and 13b2-1 thereunder, and aided and abetted Broadcom's violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13

thereunder. In addition, the SEC alleges that: (i) Nicholas, Ruehle, and Dull violated Section 14(a) of the Exchange Act and Rule 14a-9 thereunder; (ii) Nicholas and Ruehle violated Rules 13a-14 and 13b2-2 of the Exchange Act; (iii) Ruehle and Dull violated Section 16(a) and Rules 13a-11 and 16a-3 of the Exchange Act; and (iv) Dull aided and abetted Broadcom's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The SEC is seeking permanent injunctions, civil monetary penalties, and officer-and-director bars against each of the individuals, disgorgement with prejudgment interest against Ruehle and Dull, and reimbursement of bonuses and profits from stock sales from Nicholas and Ruehle pursuant to Section 304 of the Sarbanes-Oxley Act of 2002.

On April 22, 2008, the Securities and Exchange Commission filed a civil fraud action against California-based semiconductor maker Broadcom Corporation for falsifying its reported income by backdating stock option grants from 1998 to 2003. The SEC further alleges that, as a result of the backdating scheme, Broadcom avoided reporting \$2.22 billion in compensation expenses during the relevant period. As a result of the fraud, Broadcom restated its financial results and reported more than \$2 billion in additional compensation expenses. Broadcom has agreed to settle the matter by consenting to pay a \$12 million civil penalty and be permanently enjoined.

Without admitting or denying the SEC's allegations, Broadcom has agreed to settle the charges by consenting to a permanent injunction against further violations of Section 17(a) of the Securities Act and Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act and Rules 10b-5, 12b-20, 13a-1, 13a-11, 13a-13, and 14a-9 thereunder. Broadcom also has agreed to pay a civil monetary penalty of \$12 million. Broadcom's settlement is subject to approval by the court.

On March 4, 2008 the SEC filed an enforcement action against Nancy M. Tullos, the former vice president of human resources at Broadcom Corporation, for her participation in a five-year scheme to backdate stock options granted to Broadcom employees and officers. Tullos settled with the SEC without admitting or denying the allegations in the complaint.

The SEC charged Tullos with participating in a scheme at Broadcom from 1998 to 2003 to backdate stock option grants. The SEC's complaint alleges that Tullos communicated false grant dates within the company and provided spreadsheets of stock option allocations for the backdated grants to Broadcom's finance and shareholder services departments, knowing that they would use this information to prepare Broadcom's books and records and periodic filings with the SEC. The SEC alleges she personally benefited from the backdating scheme because she received and exercised backdated stock options that were in-the-money by more than \$1.2 million.

Under the settlement, Tullos agreed to pay more than \$1.3 million in disgorgement and prejudgment interest, which will be offset by the value of her exercisable stock options that Broadcom cancelled, and a civil penalty of \$100,000.

CASES INVOLVING ACCOUNTANTS AND AUDITORS

SEC v. Michael J. Moore and Moore & Associates Chartered

Lit. Rel. No. 21189A (August 27, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21189a.htm>

The SEC charged Michael J. Moore ("Moore"), a Las Vegas-based CPA, and his public accounting firm, Moore & Associates Chartered ("M&A"), with securities fraud for issuing false audit reports that failed to comply with Public Company Accounting Oversight Board ("PCAOB") Standards and were often the product of high school graduates hired with little or no education or experience in accounting or auditing.

According to the SEC's complaint, Moore and M&A issued audit reports for more than 300 clients who consist of primarily shell or developmental stage companies with public stock quoted on the OTCBB or the Pink Sheets. The SEC alleges that Moore and M&A violated numerous auditing standards, including a failure to hire employees with adequate technical training and proficiency. The SEC further alleges that Moore and M&A did not adequately plan and supervise the audits, failed to exercise due professional care, and did not obtain sufficient competent evidence. Despite the audit failures, M&A issued and Moore signed audit reports falsely stating that the audits were conducted in accordance with PCAOB Standards. By issuing and signing these false audit reports, Moore and M&A violated the antifraud provisions of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder and Regulation S-X Rule 2-02(b)(1).

The SEC's complaint also alleges that Moore and M&A violated Sections 10A(a)(1) and 10A(b)(1) of the Exchange Act by failing to include audit procedures designed to detect and report likely illegal acts. The complaint further alleges that Moore and M&A improperly modified audit documentation in violation of Regulation S-X Rule 2-06.

To settle the Commission's charges, Moore and M&A consented to the entry of a final judgment permanently enjoining them from future violations of Sections 10(b), 10A(a)(1), and 10A(b)(1) of the Exchange Act and Rule 10b-5 thereunder and Regulation S-X Rules 2-02(b)(1) and 2-06 and ordering them to disgorge \$179,750 plus prejudgment interest of \$10,151.59. Moore separately agreed to pay a \$130,000 penalty. Moore and M&A also consented to the entry of an administrative order that makes findings and suspends them from appearing or practicing before the Commission as an accountant pursuant to Rule 102(e)(3) of the Commission's Rules of Practice.

SEC v. Michael T. Rand

Lit. Rel. No. 21114 (July 1, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21114.htm>

The SEC charged Michael T. Rand, the former chief accounting officer of Atlanta-based home builder Beazer Homes, USA, Inc., for conducting a multi-year fraudulent earnings management scheme and misleading Beazer's outside auditors and internal Beazer accountants to conceal his wrongdoing.

The SEC alleges that Rand fraudulently decreased Beazer's reported net income by recording improper accounting reserves during certain periods between 2000 and 2005 to meet or exceed analysts' expectations for Beazer's diluted earnings per share (EPS) and maximize yearly officer and senior employee bonuses. Regan began reversing these improper reserves beginning in the first quarter of fiscal year 2006 to offset Beazer's declining financial performance.

The SEC further alleges that in fiscal year 2006 and the first two quarters of fiscal year 2007, Rand improperly recognized revenue from the sale and leaseback of certain model homes on Beazer's financial statements and used secret side agreements to hide his misconduct from Beazer's outside auditors, causing Beazer to understate its income in SEC filings by around \$63 million during fiscal years 2000 to 2005. Rand's fraudulent actions caused Beazer to overstate its income and understate its loss by a total of \$47 million during fiscal 2006.

The SEC charges Rand with violating Section 17(a) of the Securities Act of 1933, Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 and Rules 10b-5, 13b2-1, and 13b2-2 thereunder, and, with aiding and abetting violations of Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, and seeks a permanent injunction, disgorgement of Rand's ill-gotten gains plus prejudgment interest, and a financial penalty.

SEC v. Stanford International Bank, Ltd., et al.

Lit. Rel. No. 21092 (June 19, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21092.htm>

The SEC charged two accountants who produced bogus financial statements and an Antiguan regulator who took bribes to look the other way as Robert Allen Stanford conducted an alleged \$8 billion Ponzi scheme.

In its complaint, the SEC alleges that Mark Kuhrt and Gilberto Lopez, accountants for Stanford-affiliated companies, fabricated financial statements to give investors the false illusion that their investments were sold, safe, and secure. The SEC also alleges that Leroy King, the administrator and chief executive officer of Antigua's Financial Services Regulatory Commission (FSRC), accepted thousands of dollars per month in bribes to ignore the Stanford Ponzi scheme and supply Stanford himself with confidential information about the SEC's investigation.

The SEC's complaint charges the defendants with violating and/or aiding and abetting 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; Sections 206(1) and 206(2) of the Investment Advisers Act of 1940; and Section 7(d) of the Investment Company Act of 1940. The SEC's action seeks permanent injunctions, financial penalties, and disgorgement of ill-gotten proceeds plus prejudgment interest.

SEC v. Whispering Winds Properties, LLC; LM Beagle Properties, LLC; Karlena, Inc.; Axis International, Inc.; and Dan Wise aka Danny Wise

Lit. Rel. No. 20987 (April 6, 2009)

<http://sec.gov/litigation/litreleases/2009/lr20987.htm>

The SEC obtained emergency relief against a former Arizona certified public accountant for targeting his accounting clients in a multi-million dollar real estate investment scheme. The complaint alleges Wise solicited his tax and accounting clients, and their friends and family, encouraging them to borrow money to invest with him. The complaint further alleges that, from July 2001 to January 2009, Wise raised more than \$67 million from approximately 125 investors by touting his 10 to 15 years of experience in real estate investments and luring investors with promises of lucrative annual returns ranging from 12% to 22%.

According to the SEC, Wise claimed to use investor funds to make short-term real estate loans that would be fully collateralized and assured investors that they could obtain their principal anytime on 24 to 48 hours notice. However, Wise apparently never funded real estate loans, never paid the promised returns to investors, and never honored investors' redemption requests.

The defendants are charged with violating the antifraud provisions 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. The SEC is seeking, in addition to the emergency relief, preliminary and permanent injunctions, disgorgement with prejudgment interest, and civil penalties.

SEC V. David G. Friebling, C.P.A and Friebling & Horowitz, CPA's, P.C.

Lit. Rel. No. 20959 (March 18, 2009)

Accounting and Auditing Rel. No. 2992 (March 18, 2009)

<http://sec.gov/litigation/litreleases/2009/lr20959.htm>

The SEC charged the auditors of Bernard Madoff's broker-dealer firm with committing securities fraud by falsely representing that they had conducted legitimate audits, when in fact they had not. The complaint alleges that from 1991 through 2008, the defendants enabled Madoff's Ponzi scheme by falsely stating, in annual audit reports, that financial statement audits were conducted pursuant to Generally Accepted Auditing Standards (GAAS), including the requirements to maintain auditor independence and perform audit procedures regarding custody of securities.

Through their audit opinions, the defendants made representations that Bernard L. Madoff Investment Securities LLC (BMIS) financial statements were presented in conformity with Generally Accepted Accounting Principles (GAAP) and that there were no material deficiencies in BMIS' internal control procedures. According to the complaint, the defendants knew that BMIS regularly distributed the annual audit reports to its customers and that the reports were filed with the SEC and other regulators.

The complaint alleges that all of these statements were materially false because the defendants failed to perform meaningful audits of BMIS and never even confirmed that the

securities BMIS purportedly held on behalf of its customers existed. Further, the defendants allegedly failed to conduct any tests of BMIS' internal control procedures. If the audits had been performed in compliance with GAAS, BMIS' financial statements would have shown that BMIS owed tens of billions of dollars in additional liabilities to its customers and was therefore insolvent.

The defendants are charged with violating Section 17(a) of the Securities Act, violating and aiding and abetting violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and aiding and abetting violations of Sections 206(1) and 206(2) of the Advisers Act, Section 15(c) of the Exchange Act and Rule 10b-3 thereunder, and Section 17 of the Exchange Act and Rule 17a-5 thereunder. The SEC is seeking permanent injunctions, civil penalties and a court order requiring disgorgement of ill-gotten gains.

SEC v. Stanford International Bank, Ltd., et al.

Lit. Rel. No. 21092 (June 19, 2009)

<http://sec.gov/litigation/litreleases/2009/lr21092.htm>

The SEC charged two accountants, Mark Kuhrt and Gilberto Lopez, with securities fraud for their roles in Robert Allen Stanford's alleged \$8 billion Ponzi scheme. Stanford, his companies, and several others were charged with securities fraud in an enforcement action filed on February 17, 2009. These additional charges are in coordination with criminal authorities. The U.S. Department of Justice (DOJ) simultaneously announced charges of federal fraud and conspiracy to obstruct the SEC's investigation.

The amended complaint alleges that Kuhrt and Lopez fabricated financial statements to give investors the false illusion that their investments were solid, safe and secure. It is also alleged that Kuhrt and Lopez used a pre-determined return on investment number to reverse-engineer fictitious financial statements.

Kuhrt and Lopez are charged with violating and/or aiding and abetting 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; Sections 206(1) and 206(2) of the Investment Advisers Act of 1940; and Section 7(d) of the Investment Company Act of 1940. The SEC seeks permanent injunctions, financial penalties, and disgorgement of ill-gotten gains plus prejudgment interest.

SEC v. Scott Hirth et al.

Lit. Rel. No. 20650 (Jul. 22, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20650.htm>

Press Rel. No. 2008-147 (Jul. 22, 2008)

<http://www.sec.gov/news/press/2008/2008-147.htm>

The SEC charged an Ann Arbor, Mich.-based company and a former executive in an accounting fraud scheme that ultimately cost the company more than \$437 million in market capitalization and caused its stock price to drop by more than half its value during a two-month period in early 2006.

The SEC alleges that Scott Hirth of Carleton, Mich., the former Vice President of Finance and CFO for ProQuest Company's Information and Learning Division, made fraudulent manual journal entries at the end of monthly and quarterly reporting periods in order to favorably alter ProQuest's financial results over a five-year period. ProQuest, which produces electronic databases of archived information, is now known as Voyager Learning Company. The company has agreed to settle the SEC's charges, and Hirth will pay more than \$400,000 to settle the charges against him.

The SEC also alleged that ProQuest failed to devise and maintain a system of internal accounting controls that could have prevented Hirth's scheme and failed to properly apply other basic accounting principles.

ProQuest and Hirth settled the charges without admitting or denying the allegations of the SEC's complaint. Under the settlement, Hirth is permanently enjoined from committing future violations of the federal securities laws, and will pay \$233,676 in disgorgement, \$54,474.25 in prejudgment interest, and a penalty of \$130,000. Hirth also consented to be permanently barred from serving as an officer and director of a public company and from practicing as an accountant before the Commission. ProQuest is permanently enjoined from future violations of the internal controls, books and records, and reporting provisions of the federal securities laws.

CASES INVOLVING FOREIGN PAYMENTS

SEC v. AGCO Corporation

Lit. Rel. No. 21229 (September 30, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21229.htm>

The SEC filed Foreign Corrupt Practices Act books and records and internal controls charges against AGCO Corporation in the U.S. District Court for the District of Columbia. AGCO Corporation, headquartered in Duluth, Georgia, is a manufacturer and supplier of agricultural equipment. The SEC's complaint alleges that from 2000 through 2003, certain AGCO subsidiaries made approximately \$5.9 million in kickback payments in connection with their sales of equipment to Iraq under the United Nations Oil for Food Program (the "Program"). The kickbacks were characterized as "after sales service fees" ("ASSFs"), but no bona fide services were performed. The Program was intended to provide humanitarian relief for the Iraqi population, which faced severe hardship under international trade sanctions. The Program required the Iraqi government to purchase humanitarian goods through a U.N. escrow account; however, AGCO's subsidiaries' kickbacks diverted funds out of the escrow account and into Iraqi-controlled accounts at banks in Jordan.

AGCO, without admitting or denying the allegations in the SEC's complaint, consented to the entry of a final judgment permanently enjoining AGCO from future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934 and ordering AGCO to disgorge \$13,907,393 in profits plus \$2,000,000 in pre-judgment interest plus a civil penalty of \$2,400,000. AGCO will also pay a \$1,600,000 penalty pursuant to a deferred prosecution agreement with the U.S. Department of Justice, Fraud Section. AGCO will also enter into a criminal disposition in which the Danish State Prosecutor for Serious Economic Crime will confiscate over \$600,000.

In the Matter of Helmerich & Payne, Inc.

A.P. Rel. No. 34-60400 (July 30, 2009)

<http://www.sec.gov/litigation/admin/2009/34-60400.pdf>

The SEC brought an enforcement action against Helmerich & Payne, Inc. ("H&P"), ordering it to cease-and-desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934. The SEC also ordered H&P to pay \$320,604 in disgorgement and \$55,077.22 in prejudgment interest.

The SEC's order finds that H&P violated the books and records and internal controls provisions of the Foreign Corrupt Practices Act ("FCPA") through two of its second-tier wholly-owned subsidiaries, Helmerich & Payne (Argentina) Drilling Company and Helmerich & Payne de Venezuela, C.A. From 2003 through 2008, H&P Argentina and H&P Venezuela made approximately \$185,673 in improper payments directly—or indirectly through third-party customs brokers—to foreign customs authorities in connection with the international passage of drilling equipment parts into and out of Latin American drilling sites. These payments were made with the purpose and effect of avoiding potential delays typically associated with the international transport of drilling parts. H&P avoided costs in the estimated amount of

approximately \$320,604, as a direct result of the improper payments by its subsidiaries. None of the improper payments was accurately reflected in H&P's books and records, nor was H&P's system of internal accounting controls adequate at the time to prevent and detect the improper payments.

SEC v. Avery Dennison Corporation

Lit. Rel. No. 21156 (July 28, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21156.htm>

The SEC filed two settled enforcement proceedings against Avery Dennison Corporation ("Avery"), a Pasadena, California-based multinational corporation, alleging violations of the Foreign Corrupt Practices Act ("FCPA") in connection with improper payments and promises of improper payments to foreign officials by Avery's Chinese subsidiary and several entities Avery acquired.

The SEC charged Avery with violations of the books and records and internal controls provisions of the FCPA and seeking a civil penalty. The SEC also issued an administrative order finding that Avery violated the same provisions of the FCPA. In the administrative proceeding, the SEC ordered Avery to cease and desist from such violations, and to disgorge \$273,213, together with \$45,257 in prejudgment interest. In the federal civil action, Avery agreed to the entry of a final judgment requiring it to pay a civil penalty in the amount of \$200,000.

The SEC's complaint and administrative order charge that, from 2002 through 2005, the Reflectives Division of Avery (China) Co. Ltd. ("Avery China") paid or authorized the payments of kickbacks, sightseeing trips, and gifts to Chinese government officials. The amount of illegal payments actually paid amounted to approximately \$30,000. In one transaction, Avery China secured a sale to a state-owned end user by agreeing to pay a Chinese official a kickback of nearly \$25,000 through a distributor. Avery China realized \$273,213 in profit from this transaction, which it inaccurately booked as a sale to the distributor rather than to the end user. In addition, after Avery acquired a company in June 2007, employees of the acquired company continued their pre-acquisition practice of making illegal petty cash payments to customs or other officials in several foreign countries, resulting in illegal payments of approximately \$51,000. Avery failed to accurately record these payments and gifts in the company's books and records, and failed to implement or maintain a system of internal accounting controls sufficient to detect and prevent such illegal payments or promises of illegal payments.

As a result of the conduct described above, the SEC charged that Avery violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934. Avery consented to the ordered relief without admitting or denying either the findings contained in the SEC's administrative order, or the allegations of the SEC's complaint.

OIL FOR FOOD CASES

SEC v. Novo Nordisk A/S

Lit. Rel. No. 21033 (May 11, 2009)

<http://sec.gov/litigation/litreleases/2009/lr21033.htm>

Settled charges against Novo Nordisk were filed for violations of Foreign Corrupt Practices Act books and records and internal controls laws. Novo Nordisk, a Danish company, specializes in the manufacture and development of pharmaceutical products and is a leading supplier of insulin worldwide.

The complaint alleges that from 2000 through 2003, Novo Nordisk paid \$1,437,946 in kickbacks and agreed to pay an additional \$1,315,454 in kickbacks in connection with its sale of humanitarian goods to Iraq under the United Nations Oil for Food Program (the "Program"). The kickbacks were characterized as "after-sales service fees" ("ASSFs"), but no bona fide services were performed.

According to the Commission's Complaint:

Novo Nordisk engaged its long-time Jordan-based agent to submit bids on Novo Nordisk's behalf to Kimadia, the Iraq State Company for the Importation and Distribution of Drugs and Medical Appliances, under the Program. Two branches of Novo Nordisk — RONE, based in Athens, Greece, and NEO, based in Amman, Jordan — handled the sales to Iraq and supplied the agent with bid prices for each contract. In late 2000 or early 2001, a Kimadia import manager advised the agent that Kimadia required Novo Nordisk to pay a ten percent kickback in order to obtain a contract under the Program. The Kimadia import manager told the agent that Novo Nordisk should increase its prices by ten percent and pay that amount to Kimadia. By doing so, Novo Nordisk would recover the secret kickback from the U.N. escrow account when the contract, with the inflated price, was subsequently approved for disbursement and paid by the U.N.

A Novo Nordisk officer rejected the request to pay Kimadia a ten percent kickback, and instead suggested that Novo Nordisk find another way. Novo Nordisk offered to reduce the price of its medicines by ten percent, but the Kimadia import manager angrily refused the offer. A Novo Nordisk Senior Vice President, along with RONE and NEO managers authorized the kickbacks to Kimadia despite the other officer's refusal to do so. On or about April 2001 and August 2001, respectively, Novo Nordisk paid increased commissions to its agent to pay the kickbacks to Kimadia. The agent's commission was increased under the guise that the payment was used to cover the agent's increased distribution and marketing costs. Various e-mails discussed the scheme to conceal the conduct, and the U.N. contracts were artificially inflated by ten percent. According to the RONE managers, subsequent kickbacks were also approved by Novo Nordisk. Altogether, Novo Nordisk made a total of \$1,437,946 in improper kickback payments on eleven contracts through the agent. Novo Nordisk also agreed to pay approximately \$1,315,454 in ASSFs on two additional contracts. Novo Nordisk recorded the kickbacks as legitimate commission payments on its books and records.

Novo Nordisk failed to maintain adequate systems of internal controls to detect and prevent the payments and their accounting for these transactions failed properly to record the nature of the payments. Novo Nordisk, without admitting or denying the allegations in the Commission's complaint, consented to the entry of a final judgment permanently enjoining it from future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934 and ordering Novo Nordisk to disgorge \$4,321,523 in profits plus \$1,683,556 in pre-judgment interest, and a civil penalty of \$3,025,066. Novo Nordisk will also pay a \$9,000,000 penalty pursuant to a deferred prosecution agreement with the U.S. Department of Justice, Fraud Section. The Commission considered remedial acts promptly undertaken by Novo Nordisk and the cooperation the company afforded the Commission staff in its investigation.

The Commission's monetary relief in its Oil for Food investigation is now over \$135 million. The investigation is continuing.

SEC v. Fiat S.p.A. and CNH Global N.V.

Litigation Release No. 20835 (December 22, 2008)
<http://sec.gov/litigation/litreleases/2008/lr20835.htm>

On December 22, 2008, the Securities and Exchange Commission filed Foreign Corrupt Practices Act books and records and internal controls charges against Fiat S.p.A. and CNH Global N.V. in the U.S. District Court for the District of Columbia. Fiat S.p.A., an Italian company, provides automobiles, trucks and commercial vehicles. CNH Global N.V., a majority-owned subsidiary of Fiat, provides agricultural and construction equipment. The Commission's complaint alleges that from 2000 through 2003, certain Fiat and CNH Global subsidiaries made approximately \$4.3 million in kickback payments in connection with their sales of humanitarian goods to Iraq under the United Nations Oil for Food Program (the "Program"). The kickbacks were characterized as "after sales service fees" ("ASSFs"), but no bona fide services were performed. The Program was intended to provide humanitarian relief for the Iraqi population, which faced severe hardship under international trade sanctions. The Program required the Iraqi government to purchase humanitarian goods through a U.N. escrow account. The kickbacks paid by Fiat's and CNH Global's subsidiaries diverted funds out of the escrow account and into Iraqi-controlled accounts at banks in countries such as Jordan.

According to the Commission's Complaint:

During the Oil for Food Program, Fiat's subsidiary, IVECO S.p.A., used its IVECO Egypt office to enter into four direct contracts with Iraqi ministries in which \$1,803,880 in kickbacks were made on the sales of commercial vehicles and parts. After agreeing to pay the ASSFs, IVECO Egypt increased its agent's commissions from five percent to between fifteen and twenty percent of the total U.N. contract price, which the agent funneled to Iraq as kickbacks. The agent submitted invoices for the inflated commissions, and IVECO financial documents show line items for "contract pay-back" due to the agent. IVECO and the agent secretly inflated the U.N. contracts by ten to fifteen percent. Despite the agent's invoices being held for one year and the unusually large commissions, IVECO paid the invoices. In one instance, IVECO set up a bank guarantee in the amount of the ASSF in favor of a Dubai-based firm that operated as a front company for Iraq. IVECO's bank guarantee was canceled and,

instead, the agent established an identical bank guarantee to conceal IVECO's role. A line item identified as "pay-back" on IVECO documents corresponded to the amount of the agent's bank guarantee. The ASSFs were incorrectly recorded as legitimate commissions on the company's books and records.

Beginning in November 2000, IVECO changed its method of doing business for future contracts by making the agent its distributor. As a distributor, the agent purchased equipment directly from IVECO for its own account, and in turn, the agent sold IVECO trucks and parts to Iraq under its own inflated contracts to the U.N. With IVECO's knowledge, the agent facilitated \$1,364,080 in ASSFs on twelve additional contracts. Through this mechanism, IVECO was able to move its goods into Iraq, but keep itself distanced from any involvement in the ASSF scheme. IVECO knew or should have known from its direct sales to Iraq that the agent's sales of IVECO products included ASSFs. In correspondence with the U.N., the agent conceded that it paid ASSFs on the contracts and confirmed that the payments were made through Al Rafidain Bank.

In mid-2001, CNH Global subsidiary Case France engaged in three direct transactions with Iraqi ministries in which \$187,720 in kickbacks were made on the sale of construction equipment. Armed Iraqi officials approached Case France's Baghdad facility reiterating its request for kickbacks. Case France then entered into a side letter agreeing to pay kickbacks. The side letter was not disclosed to the U.N. To generate funds to pay the kickbacks and to conceal the ASSFs, Case France and its agent secretly inflated the U.N. contracts by approximately ten percent. Case France inflated its commission payments to its distributor, who then forwarded the excess funds to Iraq as kickbacks. Case France did not record the kickbacks on its books and records.

Between December 2000 and May 2001, CNH Global subsidiary New Holland engaged in two direct transactions with Iraqi ministries in which \$447,116 in kickbacks were made on the sale of tractors. To generate funds to pay the kickbacks and to conceal the ASSFs, New Holland secretly inflated the U.N. contracts by approximately ten percent. On one contract, New Holland obtained a bank guarantee in favor of the Iraqi ministry in the amount of the ASSF. The ASSFs were recorded as cost of goods sold in New Holland's books and records. Soon after the two direct contracts were negotiated, New Holland ceased entering into direct sales to Iraq. After an Iraqi official inquired why the company no longer conducted business in Iraq, New Holland resumed its business but in a manner that distanced itself from the ASSFs. New Holland made its dealer a distributor, which allowed the dealer to purchase New Holland goods for the dealer's own account. The dealer, in turn, then sold New Holland products to Iraq under the dealer's own secretly inflated U.N. contracts. A November 2001, correspondence from the dealer to New Holland discussed the fact that New Holland's direct sales to Iraq remain impracticable as long as the "famous 10" (a reference to the ten percent kickback) was required, and showed the dealer could make the payment rather than New Holland. With New Holland's knowledge, the dealer facilitated ASSF payments totaling \$576,861 to Iraq on three U.N. contracts. An additional \$312,198 ASSF payment on a fourth contract was authorized, but never received by Iraq.

Fiat and CNH Global failed to maintain adequate systems of internal controls to detect and prevent the payments and their accounting for these transactions failed properly to record the nature of the payments. Fiat and CNH Global, without admitting or denying the allegations in the

Commission's complaint, consented to the entry of a final judgment permanently enjoining Fiat and CNH Global from future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934 and ordering Fiat to disgorge \$5,309,632 in profits plus \$1,899,510 in pre-judgment interest plus a civil penalty of \$3,600,000. Fiat will also pay a \$7,000,000 penalty pursuant to a deferred prosecution agreement with the U.S. Department of Justice, Fraud Section. The Commission considered remedial acts promptly undertaken by Fiat and CNH Global and the cooperation the companies afforded the Commission staff in its investigation. The Commission acknowledges the assistance of the Department of Justice, Fraud Section and the United Nations Independent Inquiry Committee.

SEC v. Siemens Aktiengesellschaft

Litigation Release No. 20829 (December 15, 2008)
<http://sec.gov/litigation/litreleases/2008/lr20829.htm>
Press Release (December 15, 2008)
<http://sec.gov/news/press/2008/2008-294.htm>

The Securities and Exchange Commission filed a settled enforcement action on December 12, 2008, in the U.S. District Court for the District of Columbia charging Siemens Aktiengesellschaft ("Siemens"), a Munich, Germany-based manufacturer of industrial and consumer products, with violations of the anti-bribery, books and records, and internal controls provisions of the Foreign Corrupt Practices Act ("FCPA"). Siemens has offered to pay a total of \$1.6 billion in disgorgement and fines, which is the largest amount a company has ever paid to resolve corruption-related charges. Siemens has agreed to pay \$350 million in disgorgement to the SEC. In related actions, Siemens will pay a \$450 million criminal fine to the U.S. Department of Justice and a fine of €395 million (approximately \$569 million) to the Office of the Prosecutor General in Munich, Germany. Siemens previously paid a fine of €201 million (approximately \$285 million) to the Munich Prosecutor in October 2007.

The SEC's complaint alleges that:

Between March 12, 2001 and September 30, 2007, Siemens violated the FCPA by engaging in a widespread and systematic practice of paying bribes to foreign government officials to obtain business. Siemens created elaborate payment schemes to conceal the nature of its corrupt payments, and the company's inadequate internal controls allowed the conduct to flourish. The misconduct involved employees at all levels, including former senior management, and revealed a corporate culture long at odds with the FCPA.

During this period, Siemens made thousands of payments to third parties in ways that obscured the purpose for, and the ultimate recipients of, the money. At least 4,283 of those payments, totaling approximately \$1.4 billion, were used to bribe government officials in return for business to Siemens around the world. Among others, Siemens paid bribes on transactions to design and build metro transit lines in Venezuela; metro trains and signaling devices in China; power plants in Israel; high voltage transmission lines in China; mobile telephone networks in Bangladesh; telecommunications projects in Nigeria; national identity cards in Argentina; medical devices in Vietnam, China, and Russia; traffic control systems in Russia; refineries in Mexico; and mobile communications networks in Vietnam. Siemens also paid kickbacks to Iraqi

ministries in connection with sales of power stations and equipment to Iraq under the United Nations Oil for Food Program. Siemens earned over \$1.1 billion in profits on these transactions.

An additional approximately 1,185 separate payments to third parties totaling approximately \$391 million were not properly controlled and were used, at least in part, for illicit purposes, including commercial bribery and embezzlement.

From 1999 to 2003, Siemens' Managing Board or "Vorstand" was ineffective in implementing controls to address constraints imposed by Germany's 1999 adoption of the Organization for Economic Cooperation and Development ("OECD") anti-bribery convention that outlawed foreign bribery. The Vorstand was also ineffective in meeting the U.S. regulatory and anti-bribery requirements that Siemens was subject to following its March 12, 2001, listing on the New York Stock Exchange. Despite knowledge of bribery at two of its largest groups — Communications and Power Generation — the company's tone at the top was inconsistent with an effective FCPA compliance program and created a corporate culture in which bribery was tolerated and even rewarded at the highest levels of the company. Employees obtained large amounts of cash from cash desks, which were sometimes transported in suitcases across international borders for bribery. Authorizations for payments were placed on post-it notes and later removed to eradicate any permanent record. Siemens used numerous slush funds, off-books accounts maintained at unconsolidated entities, and a system of business consultants and intermediaries to facilitate the corrupt payments.

Siemens failed to implement adequate internal controls to detect and prevent violations of the FCPA. Elaborate payment mechanisms were used to conceal the fact that bribe payments were made around the globe to obtain business. False invoices and payment documentation was created to make payments to business consultants under false business consultant agreements that identified services that were never intended to be rendered. Illicit payments were falsely recorded as expenses for management fees, consulting fees, supply contracts, room preparation fees, and commissions. Siemens inflated U.N. contracts, signed side agreements with Iraqi ministries that were not disclosed to the U.N., and recorded the ASSF payments as legitimate commissions despite U.N., U.S., and international sanctions against such payments.

In November 2006, Siemens' current management began to implement reforms to the company's internal controls. These reforms substantially reduced, but did not entirely eliminate, corrupt payments. All but \$27.5 million of the corrupt payments occurred before November 15, 2006. The company conducted a massive internal investigation and implemented an amnesty program to its employees to gather information.

Siemens violated Section 30A of the Securities Exchange Act of 1934 (Exchange Act) by making illicit payments to foreign government officials in order to obtain or retain business. Siemens violated Section 13(b)(2)(B) of the Exchange Act by failing to have adequate internal controls to detect and prevent the payments. Siemens violated Section 13(b)(2)(A) of the Exchange Act by improperly recording the payments in its books.

Without admitting or denying the Commission's allegations, Siemens has consented to the entry of a court order permanently enjoining it from future violations of Sections 30A,

13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act; ordering it to pay \$350 million in disgorgement of wrongful profits, which does not include profits factored into Munich's fine; and ordering it to comply with certain undertakings regarding its FCPA compliance program, including an independent monitor for a period of four years. On December 15, 2008, the court entered the final judgment. Since being approached by SEC staff, Siemens has cooperated fully with the ongoing investigation, and the SEC considered the remedial acts promptly undertaken by Siemens. Siemens' massive internal investigation and lower level employee amnesty program was essential in gathering facts regarding the full extent of Siemens' FCPA violations.

OTHER CASES

SEC v. Maynard L. Jenkins

Lit. Rel. No. 21149A (July 23, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21149a.htm>

The SEC charges Maynard L. Jenkins with violations of Section 304 of the Sarbanes-Oxley Act of 2002. It is the first action seeking reimbursement under Section 304 from an individual who is not alleged to have otherwise violated the securities laws. Section 304 deprives corporate executives of money that they earned while their companies were misleading investors.

According to the SEC's complaint, Jenkins made \$2,091,020 in bonuses and \$2,018,893 in company stock sales that should have been reimbursed to CSK pursuant to Section 304. The complaint alleges that CSK was required to prepare an accounting restatement due to its fraudulent conduct. While Jenkins served as CEO, CSK filed two such restatements related to its overstated vendor allowances. The complaint further alleges that, in violation of Section 304, Jenkins failed to reimburse CSK for bonuses, or other incentive-based or equity-based compensation, and profits from the sale of CSK stock he received during the 12-month periods following the filing of each of CSK's fraudulent financial statements. The SEC's complaint does not allege that Jenkins engaged in the fraudulent conduct.

SEC v. Thomas Wurzel

Lit. Rel. No. 21063 (May 29, 2009)

Accounting and Auditing Rel. No. 2980 / May 29, 2009

<http://sec.gov/litigation/litreleases/2009/lr21063.htm>

On May 29, 2009, a settled enforcement action was filed against Thomas Wurzel, the former President of ACL Technologies, Inc. (ACL), formerly a subsidiary of United Industrial Corporation (UIC), a manufacturer of aerospace and defense systems. The complaint alleges that Wurzel authorized illicit payments to an Egyptian-based agent while he knew or consciously disregarded the high probability that the agent would offer, provide, or promise at least a portion of such payments to Egyptian Air Force officials for the purpose of influencing these officials to award business to UIC related to a military aircraft depot in Cairo, Egypt. Wurzel is charged with violations of the anti-bribery, books and records and internal controls provisions of the Foreign Corrupt Practices Act (FCPA), and with aiding and abetting UIC's violations of the anti-bribery and books and records provisions of the FCPA.

The complaint alleges that in late 2001 to 2002, Wurzel authorized three forms of illicit payments to the agent: (1) payments to the agent ostensibly for labor subcontracting work; (2) a \$100,000 advance payment to the agent in June 2002 for “equipment and materials;” and (3) a \$50,000 payment to the agent in November 2002 for “marketing services.” Furthermore, Wurzel allegedly later directed his subordinates to create false invoices to conceal the fact that the \$100,000 “advance payment” in June 2002 was never repaid. As a result, UIC, through ACL, was awarded a contract with gross revenues and net profits of approximately \$5.3 million and \$267,000, respectively.

Without admitting or denying the allegations in the complaint, Wurzel consented to the entry of a final judgment permanently enjoining him from future violations of Sections 30A and 13(b)(5) of the Securities Exchange Act of 1934 (“Exchange Act”) and Exchange Act Rule 13b2-1 and from aiding and abetting violations of Exchange Act Sections 30A and 13(b)(2)(A) and ordering him to pay a \$35,000 civil penalty.

In a related action, the Commission also instituted, on May 29, 2009, a settled administrative proceeding against UIC. The Commission’s Cease-and-Desist Order finds that beginning in late 2001, and continuing through 2002, UIC violated Sections 30A, 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act. Without admitting or denying the Commission’s findings, UIC agreed to a Commission order requiring it to cease and desist from committing or causing violations and any future violations of the foregoing provisions and ordered UIC to pay \$337,679.42 in disgorgement and prejudgment interest.

SEC v. Halliburton Company and KBR, Inc.

Litigation Release No. 20897A (February 11, 2009)

<http://sec.gov/litigation/litreleases/2009/lr20897a.htm>

Press Release (February 11, 2009)

<http://sec.gov/news/press/2009/2009-23.htm>

The Securities and Exchange Commission, on February 11, 2009, announced settlements with KBR, Inc. and Halliburton Co. to resolve SEC charges that KBR subsidiary Kellogg Brown & Root LLC bribed Nigerian government officials over a 10-year period, in violation of the Foreign Corrupt Practices Act (FCPA), in order to obtain construction contracts. The SEC also charged that KBR and Halliburton, KBR’s former parent company, engaged in books and records violations and internal controls violations related to the bribery.

KBR and Halliburton have agreed to pay \$177 million in disgorgement to settle the SEC’s charges. Kellogg Brown & Root LLC has agreed to pay a \$402 million fine to settle parallel criminal charges brought, on February 11, 2009, by the U.S. Department of Justice. The sanctions represent the largest combined settlement ever paid by U.S. companies since the FCPA’s inception.

Kellogg Brown & Root LLC’s predecessor entities (Kellogg, Brown & Root, Inc. and The M.W. Kellogg Company) were members of a four-company joint venture that won the construction contracts worth more than \$6 billion. In September 1998, Halliburton acquired Dresser Industries, Inc., the parent company of The M.W. Kellogg Company.

The SEC alleges that beginning as early as 1994, members of the joint venture determined that it was necessary to pay bribes to officials within the Nigerian government in order to obtain the construction contracts. The former CEO of the predecessor entities, Albert "Jack" Stanley, and others involved in the joint venture met with high-ranking Nigerian government officials and their representatives on at least four occasions to arrange the bribe payments. To conceal the illicit payments, the joint venture entered into sham contracts with two agents, one based in the United Kingdom and one based in Japan, to funnel money to Nigerian officials.

The SEC's complaint alleges that the internal controls of Halliburton, the parent company of the KBR predecessor entities from 1998 to 2006, failed to detect or prevent the bribery, and that Halliburton records were falsified as a result of the bribery scheme. In September 2008, Stanley pleaded guilty to bribery and related charges and entered into a settlement with the SEC.

The SEC alleges that officials of the joint venture formed a "cultural committee" to decide how to carry out the bribery scheme. The committee decided to use the United Kingdom agent to make payments to high-ranking Nigerian officials and to use the Japanese agent to make payments to lower-ranking Nigerian officials. As the joint venture was paid for work on the construction project, the joint venture in turn made payments to the Japanese agent and to the Swiss and Monaco bank accounts of the United Kingdom agent. The total payments to the two agents exceeded \$180 million. After receiving the money, the United Kingdom agent made substantial payments to accounts controlled by Nigerian government officials, and beginning in 2002 paid \$5 million in cash to a Nigerian political party.

The SEC's complaint further alleges that, after the Dresser acquisition, Halliburton failed to devise and maintain adequate internal controls to govern the use of foreign sales agents and failed to maintain and enforce the internal controls it had. Halliburton's due diligence investigation of the United Kingdom agent failed to detect or prevent the bribery scheme. Halliburton conducted no due diligence on the Japanese agent. As a result of the scheme, numerous Halliburton records contained false information relating to the payments to the agents.

Without admitting or denying the SEC's allegations, KBR and Halliburton have consented to the entry of a court order that (i) permanently enjoins KBR from violating the anti-bribery and records falsification provisions in Sections 30A, 13(b)(5) and Rule 13b2-1 of the Securities Exchange Act of 1934, and from aiding and abetting violations of the record-keeping and internal control provisions in Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act; (ii) permanently enjoins Halliburton from violating the record-keeping and internal control provisions of the Exchange Act; (iii) orders the companies to disgorge \$177 million in ill-gotten profits derived from the scheme; (iv) imposes an independent monitor for KBR for a period of three years to review its FCPA compliance program, and (v) imposes an independent consultant for Halliburton to review its policies and procedures as they relate to compliance with the FCPA. The proposed settlements are subject to the court's approval.

In the related criminal proceeding, announced on February 11, 2009, the U.S. Department of Justice filed a criminal action against Kellogg Brown & Root LLC, charging one count of

conspiring to violate the FCPA and four counts of violating the anti-bribery provisions of the FCPA. Kellogg Brown & Root LLC has pled guilty to each of these counts. Under its plea agreement, Kellogg Brown & Root LLC is required to pay a criminal fine of \$402 million and to retain a monitor to review and evaluate KBR's policies and procedures as they relate to compliance with the FCPA.

SEC v. Albert Jackson Stanley

Lit. Rel. No. 20700 (Sept. 3, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20700.htm>

Press Rel. No. 2008-189 (Sept. 3, 2008)

<http://www.sec.gov/news/press/2008/2008-189.htm>

The SEC charged former KBR executive Albert Jackson Stanley with violating the anti-bribery provisions of the Foreign Corrupt Practices Act (FCPA) and related provisions of the federal securities laws. The SEC alleges that over a ten-year period, Stanley and others participated in a scheme to bribe Nigerian government officials in order to obtain construction contracts worth more than \$6 billion. The contracts were awarded to a four-company joint venture of which the M.W. Kellogg Company, and later KBR, was a member.

The SEC alleges that beginning as early as 1994, Stanley and other members of the joint venture determined that it was necessary to pay bribes to individuals within the Nigerian government in order to obtain contracts to build liquefied natural gas facilities (LNG Trains) in Bonny Island, Nigeria. Stanley and others met with high-ranking Nigerian government officials and their representatives on at least four occasions to arrange the bribe payments. To conceal the illicit payments, Stanley and others approved entering into sham contracts with two "agents" to funnel money to the Nigerian officials. Thereafter, as the joint venture was paid for its work building the LNG Trains, the joint venture paid the agents over \$180 million. In turn, substantial payments were made to various Nigerian government officials.

Without admitting or denying the allegations in the complaint, Stanley has consented to the entry of a final judgment that permanently enjoins him from violating the anti-bribery, record-keeping and internal control provisions of Securities Exchange Act of 1934 (Sections 30A and 13(b)(5) and Rule 13b2-1). Stanley has also agreed to cooperate with the SEC's ongoing investigation. The proposed settlement with Stanley is subject to the court's approval.

In a related criminal proceeding announced today, the United States Department of Justice filed criminal charges against Stanley for conspiring to violate the FCPA and conspiring to commit mail and wire fraud. Stanley has pleaded guilty to one count of conspiring to violate the FCPA and one count of conspiring to commit mail and wire fraud (unrelated to the FCPA charge). He faces seven years in prison and payment of \$10.8 million in restitution.

The SEC's investigation into this matter is continuing.

CASES INVOLVING BROKER-DEALERS

In the Matter of Hazan Capital Management, LLC and Steven M. Hazan

A.P. Rel. No. 34-60441 (August 5, 2009)

<http://www.sec.gov/litigation/admin/2009/34-60441.pdf>

The SEC issued an Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (Order) against Hazan Capital Management, LLC (HCM) and Steven M. Hazan (Hazan) arising out of HCM's violations of the locate and close out provisions of Regulation SHO (Reg SHO).

The Order finds that from January 2005 through October 2007, HCM, a broker-dealer registered with the Commission and putative options market maker, improperly claimed the market maker exception to avoid locating shares before effecting short sale transactions in Reg SHO threshold securities, in violation of Rule 203(b)(1) of Reg SHO. The Order also finds that HCM violated Rule 203(b)(3) of Reg SHO by engaging in a series of sham reset transactions that employed short-term, paired stock and option positions, which enabled HCM to circumvent its close out obligations in Reg SHO threshold securities. In addition, according to the Order, HCM assisted other putative market makers in evading their close out obligations by acting as the counterparty to reset transactions and in doing so sold short shares of Reg SHO threshold securities without borrowing, arranging to borrow, or locating the shares of these threshold securities, in violation of Rule 203(b)(1) of Reg SHO. The Order further finds because HCM improperly failed to borrow or arrange to borrow securities to make delivery when delivery was due, the short sales were "naked" short sales that violated Reg SHO.

The Order also finds that Hazan, the principal trader at HCM and its majority owner, willfully aided and abetted and caused HCM's violations of Rules 203(b)(1) and 203(b)(3) of Reg SHO.

Based on the above, the Order censures HCM; bars Hazan from association with any broker or dealer, with the right to reapply for association after five (5) years; and orders HCM to cease-and-desist from committing or causing, and Hazan to cease-and-desist from causing, any violations and any future violations of Exchange Act Rules 203(b)(1), and 203(b)(3). The Order also requires HCM and Hazan to pay, jointly and severally, disgorgement in the amount of \$3,000,000, which obligation shall be deemed satisfied by the orders of NYSE Amex, LLC directing Hazan and HCM to pay disgorgement in the amount of \$1,500,000, and NYSE Arca, Inc., directing Hazan and HCM to pay disgorgement in the amount of \$1,500,000, in related actions brought by those self-regulatory organizations; and acknowledges HCM's and Hazan's undertakings to pay, jointly and severally, fines of \$500,000 to each of NYSE Amex, LLC and NYSE Arca, Inc. HCM and Hazan consented to the issuance of the Order without admitting or denying any of the findings in the order.

In the Matter of TJM Proprietary Trading, LLC, Michael R. Benson, and John T. Burke

A.P. Rel. No. 34-60440 (August 5, 2009)

<http://www.sec.gov/litigation/admin/2009/34-60440.pdf>

The SEC charged TJM Proprietary Trading, LLC (TJM) with violations of Regulation SHO in connection with options trading activity that resulted in "naked" short selling. The SEC also charged TJM trader Michael R. Benson with aiding and abetting TJM's violations of Regulation SHO and charged Benson's supervisor, John T. Burke, with failing to supervise Benson.

The SEC found that, from January 2007 through July 2007, TJM willfully violated Rule 203(b)(1) of Regulation SHO as a result of Benson improperly utilizing the market-maker locate exception to avoid locating shares prior to effecting short sale transactions. In willful violation of Rule 203(b)(3) of Regulation SHO, TJM engaged in a series of transactions through Benson's use of short-term FLEX options that did not satisfy its close-out obligations in Regulation SHO threshold securities that had been allocated to TJM by its clearing firm.

According to the SEC's Order, the SEC found that Burke, TJM's Chief Operating Officer, failed reasonably to supervise Benson with a view to preventing him from willfully aiding and abetting and causing TJM's violations of Rules 203(b)(1) and 203(b)(3) of Regulation SHO.

Under the terms of the settlement, TJM consented to the issuance of an administrative order: (i) imposing a censure; (ii) requiring it to cease and desist from committing or causing any violations and any future violations of Exchange Act Rules 203(b)(1) and 203(b)(3); and (iii) requiring it to pay disgorgement of \$541,000, which shall be deemed satisfied by its payment of \$541,000 to the Chicago Board Options Exchange's (CBOE) Business Conduct Committee (BCC). Benson consented to the issuance of an administrative order: (i) requiring him to cease and desist from causing any violations and any future violations of Exchange Act Rules 203(b)(1) and 203(b)(3); and (ii) suspending him from associating with any broker or dealer for a period of three months. Finally, Burke consented to the issuance of an administrative order suspending him from acting in a supervisory capacity with a broker or dealer for a period of nine months. In addition, as part of their settlement, TJM, Burke, and Benson agreed to an undertaking requiring them to pay, jointly and severally, a \$250,000 fine to the CBOE's BCC.

SEC v. Morgan Keegan & Company

Lit. Rel. No. 21143 (July 21, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21143.htm>

The SEC charged Morgan Keegan & Company, Inc. with misleading investors regarding the liquidity risks associated with auction rate securities (ARS) that the firm underwrote, marketed, or sold.

The SEC's complaint alleges that Morgan Keegan misrepresented to customers that ARS were safe, highly liquid investments that were comparable to money-market funds. In 2007 and early 2008, Morgan Keegan was aware that the ARS market was deteriorating. Specifically, the complaint alleges that investor concerns about the creditworthiness of ARS insurers, auction

failures in certain segments of the ARS market, increased clearing rates for auctions managed by Morgan Keegan and other broker-dealers, and higher than normal ARS inventories at Morgan Keegan collectively indicated that the risk of auction failures had materially increased. Morgan Keegan sold approximately \$925 million of ARS to its customers between November 1, 2007, and March 20, 2008, but failed to inform its customers about liquidity risks for ARS, even after the firm decided to stop supporting the ARS market in February 2008.

The complaint alleges that Morgan Keegan violated the antifraud provisions of the federal securities laws, Sections 17(a) of the Securities Act of 1933 and Sections 10(b) and 15(c) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The complaint also seeks (i) permanent injunctions against Morgan Keegan for future violations; (ii) disgorgement of ill-gotten gains with prejudgment interest; (iii) imposition of civil penalties; and (iv) an order requiring Morgan Keegan to repurchase ARS sold to its customers.

In the Matter of Ameriprise Financial Services, Inc.

A.P. Rel. No. 33-9051 (July 10, 2009)

<http://www.sec.gov/litigation/admin/2009/33-9051.pdf>

The SEC brought an enforcement action against Minneapolis-based broker-dealer Ameriprise Financial Services, Inc., for receiving millions of dollars in undisclosed compensation as a condition for offering and selling certain real estate investment trusts (REITs) to its brokerage customers.

The SEC's order finds that neither Ameriprise nor the REITs disclosed to investors the additional payments that were being made in connection with the sale of REIT shares, or the conflicts of interests these additional payments created. Ameriprise issued a variety of mislabeled invoices to the REITs as a means of collecting the undisclosed revenue sharing payments that appeared to be legitimate reimbursements for services provided by Ameriprise.

The SEC censured Ameriprise and ordered it to cease and desist from committing or causing violations of Sections 5(a), 17(a)(2), and 17(a)(3) of the Securities Act of 1933 and Rule 10b-10 of the Securities Exchange Act of 1934. The SEC also ordered Ameriprise to pay \$17.3 million in disgorgement and financial penalties.

SEC v. Sky Capital LLC a/k/a Granta Capital LLC, Ross Mandell, Stephen Shea, Adam Harrington Ruckdeschel, Arn Wilson, Michael Passaro and Robert Grabowski

Lit. Rel. No. 21120 (July 8, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21120.htm>

The SEC charged a New York based broker-dealer Sky Capital LLC a/k/a Granta Capital LLC for using fraudulent boiler room tactics to raise more than \$61 million from investors in two related companies—Sky Capital Holdings Ltd. and Sky Capital Enterprises, Inc. (the Sky Entities). The SEC also charged Sky Capital's founder, former President and CEO, Ross Mandell, the firm's former COO, Stephen Shea, and four registered representatives, Adam Harrington Ruckdeschel, Arn Wilson, Michael Passaro, and Robert Grabowski, for orchestrating

and participating in the fraudulent scheme designed to fraudulently induce numerous individuals to invest in the Sky Entities.

The SEC's complaint alleges that Mandell directed Sky Capital brokers to make material misrepresentations to induce their Sky Capital customers to purchase stock in the Sky Entities. Mandell also personally made material misrepresentations to his customers. Further, the defendants implemented a "no-net sales" policy, which essentially prevented investors from selling their Sky Entities' stock that were otherwise publicly traded on the Alternative Investment Market of the London Stock Exchange. The trading in the Sky Entities shares was suspended, rendering the investments worthless. The complaint further alleges that Sky Capital raised over \$61 million from U.S. and U.K. investors, and Mandell used the investor funds for various personal expenses.

The SEC's complaint charges each of the defendants with violations of Section 17(a) of the Securities Act of 1933, and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder. The complaint, also, in the alternative, charges Shea with aiding and abetting the other defendants' violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Additionally, it charges Sky Capital with violating Section 15(c) of the Exchange Act, and Mandell with aiding and abetting Sky Capital's violation of Section 15(c) of the Exchange Act. The complaint seeks a final judgment permanently enjoining the defendants from future violations of the above provisions of the federal securities laws, ordering them to disgorge their ill-gotten gains plus prejudgment interest, and ordering them to pay civil penalties. The complaint also seeks to permanently prohibit Mandell from acting as an officer or director of any registered public company.

SEC v. Cohmad Securities Corporation, Maurice J. Cohn, Marcia B. Cohn, and Robert M. Jaffe

Lit. Rel. No. 21095 (June 22, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21095.htm>

The SEC charged Cohmad Securities Corporation, a New York-based broker-dealer, as well as its chairman Maurice J. Cohn, CEO Marcia B. Cohn, and registered representative Robert M. Jaffe, alleging that they collectively raised billions of dollars from investors for Bernard L. Madoff's Ponzi scheme.

In its complaint, the SEC alleged that the defendants actively marketed investment opportunities with Madoff while knowingly or recklessly disregarding facts indicating that Madoff was operating a fraud. According to the SEC, the defendants ignored and even participated in many suspicious practices that clearly indicated that Madoff was engaged in a fraud, for example, by filing false Forms BD and FOCUS reports that concealed Cohmad's primary business of bringing in investors for Madoff.

The SEC's complaint alleges that Cohmad violated Section 17(a) of the Securities Act, Sections 10(b), 15(b)(1), 15(b)(7), and 17(a) of the Exchange Act and rules 10b-5, 15b3-1, 15b7-1, and 17a-3 thereunder and aided and abetted violations of Sections 206(1), 206(2), and 206(4) of the Advisers Act and Rule 206(4)-3 thereunder; that the Cohen violated Section 17(a) of the

Securities Act of 1933 and Section 10(b) of the Exchange Act of 1934 and Rule 10b-5 thereunder and aided and abetted violations of Sections 10(b), 15(b)(1), 15(b)(7), and 17(a) of the Exchange Act and Rule 10b-5, 15b3-1, 15b7-1 and 17a-3 thereunder and Sections 206(1), 206(2) and 206(4) of the Advisers Act of 1940 and Rule 206(4)-3 thereunder. The SEC's complaint seeks injunctions, financial penalties and a court order requiring Cohmad, the Cohns, and Jaffe to disgorge their ill-gotten gains.

SEC v. Aura Financial Services, Inc., Ronald E. Hardy, Jr., Peter C. Dunne, Qais R. Bhavnagari, Dipin Malla, Sandeep Singh, and Raymond Rapaglia

Lit. Rel. No. 21081 (June 12, 2009)

<http://sec.gov/litigation/litreleases/2009/lr21081.htm>

The defendants, Aura Financial Services, Inc. (Aura), an Alabama corporation headquartered in Birmingham, Alabama, and six of its current and former registered representatives, allegedly used fraudulent sales practices to induce customers to open and fund Aura brokerage accounts from October 2005 through at least April 2009. The defendants are also accused of rampantly churning at least fifteen customers. Customers were allegedly defrauded of \$1 million in illicit commissions while suffering combined losses of over \$3.5 million.

The defendants are charged with 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. The complaint seeks (1) preliminary injunctions against Aura and the four individual defendants still affiliated with it as registered representatives, Hardy, Bhavnagari, Malla, and Singh; (2) permanent injunctions against future violations; (3) disgorgement of ill-gotten gains with prejudgment interest; and (4) imposition of civil penalties.

SEC v. Banc of America Securities LLC and Banc of America Investment Services, Inc. SEC v. RBC Capital Markets Corporation SEC v. Deutsche Bank Securities Inc.

Lit. Rel. No. 21066 (June 3, 2009)

<http://sec.gov/litigation/litreleases/2009/lr21066.htm>

These filed complaints allege that these firms misled investors regarding the liquidity risks associated with auction rate securities (ARS) that they underwrote, marketed or sold. Without admitting or denying the allegations, the firms consented to settle the actions. These settlements, combined, will provide or already have provided nearly \$6.7 billion to approximately 9,600 customers who invested in auction rate securities before the market for those securities froze in February 2008.

According to the complaints, Bank of America, RBC and Deutsche Bank misrepresented to certain customers that ARS were safe, highly liquid investments that were comparable to money markets. According to the complaints, in late 2007 and early 2008, the firms knew that the ARS market was deteriorating, causing the firms to have to purchase additional inventory to prevent failed auctions. At the same time, however, the firms knew that their ability to support auctions by purchasing more ARS had been reduced, as the credit crisis stressed the firms' balance sheets. The complaints allege that Bank of America, RBC and Deutsche Bank failed to

make their customers aware of these risks. In mid-February 2008, according to the complaints, Bank of America, RBC and Deutsche Bank decided to stop supporting the ARS market, leaving Bank of America, RBC and Deutsche Bank customers holding billions in illiquid ARS.

The settlements will restore approximately \$4.5 billion in liquidity to Bank of America customers, \$800 million in liquidity to RBC customers and \$1.3 billion in liquidity to Deutsche Bank customers.

The Bank of America, RBC and Deutsche Bank settlements provide, among other things, that:

- Each firm will offer to purchase ARS at par from individuals, charities, and small or medium businesses that purchased those ARS from the firm, even if those customers moved their accounts.
- Each firm will use its best efforts to provide liquidity solutions for institutional and other customers, including, but not limited to, facilitating issuer redemptions, restructurings, and other reasonable means, and will not take advantage of liquidity solutions for its own inventory before making those solutions available to these customers.
- Each firm will pay eligible customers who sold their ARS below par the difference between par and the sale price of the ARS.

Bank of America, RBC and Deutsche Bank will be permanently enjoined from violating the provisions of Section 15(c) of the Exchange Act of 1934, which prohibit the use of manipulative or deceptive devices by broker-dealers. The SEC reserved the right to seek a financial penalty against the firms.

SEC v. William Betta, JR., et al.

Lit. Rel. No. 21061 (May 28, 2009)

<http://sec.gov/litigation/litreleases/2009/lr21061.htm>

In this case, the SEC charged ten brokers with fraud related to mortgage backed securities known as Collateralized Mortgage Obligations (“CMOs”). The defendants allegedly defrauded over 750 customers by selling them risky types of CMOs between 2004 and 2007.

According to the complaint, the defendants told their customers that the CMOs in which they would invest were safe, secure, liquid investments that were suitable for retirees and investors with conservative investment goals. The complaint alleges that contrary to these representations, the defendants invested in risky types of CMOs that: (1) were not all guaranteed by the United States government; (2) jeopardized customers’ yield and principal; (3) were largely illiquid; and (4) were only suitable for sophisticated investors with a high-risk investment profile. The complaint alleges that the defendants received \$18 million in commissions and salaries related to CMO investments.

The complaint also alleges that some defendants told customers that they would use margin, or the ability to borrow money to purchase CMOs, only sparingly, when in fact they heavily margined customers’ accounts, resulting in losses of over \$36 million.

The complaint specifically alleges that the defendants violated the antifraud provisions of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The SEC is seeking permanent injunctive relief, disgorgement of ill-gotten gains with prejudgment interest, and civil monetary penalties.

SEC v. FTC Capital Markets, Inc., FTC Emerging Markets, Inc. also d/b/a FTC Group, Guillermo David Clamens and Lina Lopez a/k/a Nazly Cucunuba Lopez

Lit. Rel. No. 21052 (May 20, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21052.htm>

On May 19, 2009, the SEC filed a civil injunctive action charging Guillermo David Clamens, FTC Capital Markets, Inc., a registered broker-dealer he controls, ("FTC"), and others, with a fraudulent scheme to engage in tens of millions of dollars of unauthorized securities trading. The defendants defrauded FTC's customers in part to conceal their prior fraudulent sale of \$50 million in non-existent notes to a Venezuelan bank through another Clamens-controlled entity, Emerging Markets. When the fictitious notes held by the Venezuelan bank purportedly came due in August 2008, Clamens misappropriated \$50 million from FTC's customers to fund the redemption.

The Complaint alleges that, in furtherance of their Ponzi-like scheme, Clamens, assisted by Lopez, knowingly caused FTC to make unauthorized purchases of securities for the two customers' FTC accounts, knowingly prepared and sent the customers false account statements that omitted the unauthorized securities trades and falsely listed holdings exclusively in short-term, low-risk, liquid investments of the type that the customers authorized FTC to make on its behalf but which were not made. In addition, Clamens and Lopez caused the Venezuelan bank to receive statements for its account falsely stating that it held the \$50 million in (fictitious) notes.

As a result of this conduct, the Complaint alleges that defendants FTC, Emerging Markets, Clamens and Lopez violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder; defendant FTC violated Section 15(c) of the Exchange Act; defendant Emerging Markets violated Section 15(a) of the Exchange Act; and defendants Clamens and Lopez aided and abetted FTC's violations of Exchange Act Section 15(c) and Emerging Markets' violations of Exchange Act Section 15(a). In its Complaint, the SEC seeks permanent injunctions, disgorgement and prejudgment interest and civil penalties against all defendants.

SEC v. Gerald P. Alexander, CJB Consulting, Inc., and Regis Filia Holdings, Inc.

Lit. Rel. No. 20973 (March 25, 2009)

<http://sec.gov/litigation/litreleases/2009/lr20973.htm>

On March 25, 2009, the SEC filed a civil complaint against Gerald P. Alexander, a resident of Alpharetta, Georgia, and two corporations that Alexander controls, alleging that they engaged in multiple unregistered stock distributions and acted as unregistered securities dealers.

According to the complaint, the defendants purchased stock from thirteen issuers over a two year period and then sold the stock through brokerage accounts without registration statements having been filed or in effect as to the sales. The complaint alleges that these activities constituted a scheme to evade the registration provisions of the federal securities laws, and that the defendants acted as underwriters because they acquired the shares with a view to distribute them to other investors. The complaint further alleges that Alexander held himself out to the public and the business community as an "investment banker" who could assist companies with raising capital through sales of stock, and that he carried out this business through CJB Consulting and Regis Filia Holdings.

Alexander, CJB Consulting, and Regis Filia Holdings are charged with violating Sections 5(a) and (c) of the Securities Act of 1933, and Section 15(a)(1) of the Securities Exchange Act of 1934. The SEC is seeking permanent injunctions, an accounting of stock sales proceeds, disgorgement of ill-gotten gains, civil penalties, and penny stock bars against all defendants.

SEC v. Automated Trading Desk Specialists, LLC

SEC v. E*Trade Capital Markets LLC

SEC v. Melvin Securities, LLC and Melvin & Company, LLC

SEC v. Sydan, LP

SEC v. TradeLink, LLC

Litigation Release No. 20952 (March 13, 2009)

<http://sec.gov/litigation/litreleases/2009/lr20952.htm>

Litigation Release No. 20922 (March 4, 2009)

<http://sec.gov/litigation/litreleases/2009/lr20922.htm>

Press Release (March 4, 2009)

<http://sec.gov/news/press/2009/2009-42.htm>

ADMINISTRATIVE PROCEEDING File No. 3-13396 (March 4, 2009)

<http://sec.gov/litigation/admin/2009/34-59507.pdf>

ADMINISTRATIVE PROCEEDING File No. 3-13394 (March 4, 2009)

<http://sec.gov/litigation/admin/2009/34-59505.pdf>

ADMINISTRATIVE PROCEEDING File No. 3-13393 (March 4, 2009)

<http://sec.gov/litigation/admin/2009/34-59504.pdf>

ADMINISTRATIVE PROCEEDING File No. 3-13392 (March 4, 2009)

<http://sec.gov/litigation/admin/2009/34-59503.pdf>

ADMINISTRATIVE PROCEEDING File No. 3-13391 (March 4, 2009)

<http://sec.gov/litigation/admin/2009/34-59502.pdf>

ADMINISTRATIVE PROCEEDING File No. 3-13390 (March 4, 2009)

<http://sec.gov/litigation/admin/2009/34-59501.pdf>

On March 4, 2009, the Securities and Exchange Commission brought enforcement actions against 14 specialist firms for unlawful proprietary trading on several regional and options exchanges. The firms agreed to settle the SEC's charges by collectively paying nearly \$70 million in disgorgement and penalties.

The SEC charged the specialist firms with violating their fundamental obligation to serve public customer orders over their own proprietary interests by "trading ahead" of customer orders, or "interpositioning" the firms' proprietary accounts between customer orders.

The SEC's investigation into the improper trading began with a referral from the SEC's Office of Compliance Inspections and Examinations (OCIE).

The Commission instituted settled administrative and cease-and-desist proceedings against eight specialist firms: Botta Capital Management L.L.C.; Equitec Proprietary Markets LLC; Group One Trading L.P.; Knight Financial Products LLC; Goldman Sachs Execution & Clearing L.P.; SLK-Hull Derivatives LLC; Susquehanna Investment Group; and TD Options LLC. According to the SEC's order, the firms engaged in improper proprietary trading on the American Stock Exchange, the Chicago Board Options Exchange, and the Philadelphia Stock Exchange.

The Commission also filed settled civil injunctive actions in the U.S. District Court for the Southern District of New York against six specialist firms: Automated Trading Desk Specialists LLC; E*Trade Capital Markets LLC; Melvin Securities LLC; Melvin & Company LLC; Sydan LP; and TradeLink LLC. According to the SEC's complaints, these firms engaged in improper proprietary trading on the Chicago Stock Exchange.

According to the SEC's orders and complaints, from 1999 through 2005, the firms violated their basic obligation as specialists to serve public customer orders over their own proprietary interests. As specialist member firms on one or more of the regional and options exchanges, the firms had a duty to match executable public customer or "agency" buy and sell orders and not to fill customer orders through trades from the firm's own accounts when those customer orders could be matched with other customer orders. However, the firms violated this obligation by filling orders through proprietary trades rather than through other customer orders, thereby causing millions of dollars of customer harm.

Also according to the SEC's orders and complaints, the improper proprietary trading took three basic forms: trading ahead, interpositioning, and trading ahead of unexecuted open or cancelled orders. In certain instances, specialists filled one agency order through a proprietary trade for their firm's account while a matchable agency order was present on the opposite side of the market, thereby improperly "trading ahead" of such opposite-side executable agency order. The customer order that was traded ahead of was then disadvantaged when it was subsequently executed at a price that was inferior to the price received by the firm's proprietary account. In some instances, after trading ahead, specialists also traded proprietarily with the matchable opposite-side agency order that had been traded ahead of, thereby interpositioning themselves between the two agency orders that should have been paired off in the first instance. By participating on both sides of trades, the specialist captured the spread between the purchase and sale prices, thereby disadvantaging the other parties to the transactions. In some instances, after the specialists traded ahead, the opposite-side executable agency orders were left open until the end of the trading day, or were cancelled by the customer prior to the close of the trading day before receiving an execution.

In the orders against the group of eight firms, the Commission found that by engaging in unlawful proprietary trading, the firms each violated Section 11(b) of the Securities Exchange Act of 1934 and Rule 11b-1 thereunder, as well as various rules in effect on each of the exchanges. The Commission ordered those firms to pay, in the aggregate, more than \$22.7 million in disgorgement and more than \$4.3 million in penalties. The Commission also ordered the firms to cease-and-desist from future violations, and censured each of the firms. The firms consented to the entry of the orders without admitting or denying the findings.

In its complaints filed against the group of six firms, brought pursuant to Section 21(d) and (e) of the Exchange Act, the SEC alleges that by engaging in unlawful proprietary trading, each of the firms violated Chicago Stock Exchange Article 9, Rule 17. The complaints also allege that each of those firms failed to make or keep current records pertaining to certain types of orders, in violation of Section 17(a) of the Exchange Act and Rule 17a-3(a)(1) thereunder. Those firms have agreed to settle the SEC's charges by consenting to the entry of judgments enjoining them from future violations of the above provisions, and ordering them to pay, in the aggregate, more than \$35.7 million in disgorgement and more than \$6.7 million in penalties. The consent judgments are subject to approval by the court.

SEC v. UBS AG

Litigation Release No. 20905 (February 18, 2009)

<http://sec.gov/litigation/litreleases/2009/lr20905.htm>

Press Release (February 18, 2009)

<http://sec.gov/news/press/2009/2009-29.htm>

The SEC's complaint, filed in the U.S. District Court for the District of Columbia, alleges that UBS's conduct facilitated the ability of certain U.S. clients to maintain undisclosed accounts in Switzerland and other foreign countries, which enabled those clients to avoid paying taxes related to the assets in those accounts. UBS agreed to settle the SEC's charges by consenting to the issuance of a final judgment that permanently enjoins UBS and orders it to disgorge \$200 million.

As alleged in the SEC's complaint, from at least 1999 through 2008, UBS acted as an unregistered broker-dealer and investment adviser to thousands of U.S. persons and offshore entities with United States citizens as beneficial owners. UBS had at least 11,000 to 14,000 of such clients and held billions of dollars of assets for them. The U.S. cross-border business provided UBS with revenues of \$120 to \$140 million per year.

The SEC also alleges that UBS conducted that cross-border business largely through client advisers located primarily in Switzerland, who were not associated with a registered broker-dealer or investment adviser. These client advisers traveled to the U.S., on average, two to three times per year on trips that generally varied in duration from one to three weeks. In many instances, the client advisers attended exclusive events such as art shows, yachting events, and sporting events that were often sponsored by UBS, for the purpose of soliciting and communicating with United States cross-border clients. UBS also used other U.S. jurisdictional means such as telephones, facsimiles, mail and e-mail to provide securities services to its U.S. cross-border clients.

The SEC further alleges that UBS was aware that it was required to be registered with the SEC. UBS took action to conceal its use of U.S. jurisdictional means to provide securities services. Among other things, client advisers typically traveled to the U.S. with encrypted laptop computers that they used to provide account-related information, to show marketing materials for securities products, and occasionally to communicate orders for securities transactions to UBS in Switzerland. Client advisers also received training on how to avoid detection by U.S. authorities of their activities in the U.S.

SEC v. Wachovia Securities, LLC

Litigation Release No. 20885 (February 5, 2009)

<http://sec.gov/litigation/litreleases/2009/lr20885.htm>

Press Release (February 5, 2009)

<http://sec.gov/news/press/2009/2009-17.htm>

On February 5, 2009, the Securities and Exchange Commission announced a settlement with Wachovia Securities, LLC that will provide more than \$7 billion in liquidity to thousands of customers who invested in auction rate securities (ARS) before the market for those securities collapsed.

The settlement resolves the SEC's charges that Wachovia, headquartered in St. Louis, misled investors regarding the liquidity risks associated with ARS that it underwrote, marketed and sold.

The SEC's complaint, filed in the U.S. District Court for the Northern District of Illinois, alleges that Wachovia and A.G. Edwards & Sons, Inc., whose broker-dealer operations were consolidated into Wachovia on Jan. 1, 2008, misrepresented to customers that ARS were safe, highly liquid investments that were comparable to cash or money market instruments. According to the SEC's complaint, Wachovia reinforced the perception of liquidity by routinely purchasing ARS from A.G. Edwards' customers between auctions, without telling customers that Wachovia's willingness to do so depended upon the continued success of the auctions.

The SEC's complaint alleges that Wachovia became aware of mounting evidence in late 2007 and early 2008 that put the firm on notice that the risk of auction failures had materially increased. Wachovia, nevertheless, continued to market ARS to its customers as highly liquid investments. On Feb. 14, 2008, Wachovia followed the lead of other broker-dealers and decided to stop supporting auctions. Without broker-dealer support, ARS auctions failed and thousands of Wachovia's customers were left holding billions of dollars in illiquid ARS, without any practical means of redeeming, selling or deriving value from them.

Without admitting or denying the SEC's allegations, Wachovia agreed to be permanently enjoined from violations of Section 15(c) of the Securities Exchange Act of 1934, the broker-dealer fraud provision, and to comply with a number of undertakings, some of which are set forth below. After Wachovia has completed its obligations under the settlement agreement, the SEC will decide whether to seek a financial penalty.

The settlement, which is subject to court approval, provides, among other things, that:

- Wachovia will offer to buy back ARS from all investors who purchased ARS from Wachovia into accounts maintained at Wachovia on or before Feb. 13, 2008. Wachovia's buyback has two phases. In the first phase, which ended on Nov. 28, 2008, Wachovia offered to purchase ARS held by natural persons, not-for-profit and religious organizations and for other accounts with account values or household values up to \$10 million. As of November 28, it purchased more than \$6.2 billion of eligible ARS from customers. Second, beginning no later than June 10 and ending no later than June 30, 2009, Wachovia will offer to purchase ARS held by all other investors.
- Wachovia will pay customers who sold their ARS below par between Feb. 13, 2008, and Nov. 10, 2008, the difference between par and the sale price of the ARS, plus reasonable interest.
- Wachovia will compensate customers who took out loans from Wachovia after Feb. 13, 2008, because of liquidity concerns by reimbursing customers for no less than the negative carry associated with any such loans.
- Wachovia will offer to lend its customers the full par value of their ARS, pending the contemplated buyback, with interest rates set so that customers will have no negative carry on their loans.
- Further, if eligible customers incurred consequential damages because of the illiquidity of their ARS, they may participate in special Financial Industry Regulatory Authority (FINRA) arbitrations.

Wachovia Capital Markets LLC, an affiliate of Wachovia, has voluntarily agreed to provide identical remedial relief to Wachovia Capital customers who purchased ARS in Wachovia Capital accounts.

SEC v. Citigroup Global Markets, Inc.

SEC v. UBS Securities LLC and UBS Financial Services Inc.

Litigation Release No. 20824 (December 11, 2008)

<http://sec.gov/litigation/litreleases/2008/lr20824.htm>

Press Release (December 11, 2008)

<http://sec.gov/news/press/2008/2008-290.htm>

On December 11, 2008, the Securities and Exchange Commission finalized settlements with Citigroup Global Markets, Inc. (Citi) and UBS Securities LLC and UBS Financial Services, Inc. (UBS) that will provide nearly \$30 billion to tens of thousands of customers who invested in auction rate securities before the market for those securities froze in February.

The settlements resolve the SEC's charges that both firms misled investors regarding the liquidity risks associated with auction rate securities (ARS) that they underwrote, marketed and sold. Previously, on August 7 and 8, 2008, the SEC's Division of Enforcement announced preliminary settlements with Citi and UBS, respectively.

According to the SEC's complaints, filed in federal court in New York City, Citi and UBS misrepresented to customers that ARS were safe, highly liquid investments that were comparable to money markets. According to the complaints, in late 2007 and early 2008, the firms knew that the ARS market was deteriorating, causing the firms to have to purchase additional inventory to prevent failed auctions. At the same time, however, the firms knew that their ability to support auctions by purchasing more ARS had been reduced, as the credit crisis stressed the firms' balance sheets. The complaints allege that Citi and UBS failed to make their customers aware of these risks. In mid-February 2008, according to the complaints, Citi and UBS decided to stop supporting the ARS market, leaving tens of thousands of Citi and UBS customers holding tens of billions of dollars in illiquid ARS.

The settlements, which are subject to court approval, will restore approximately \$7 billion in liquidity to Citi customers who invested in ARS, and \$22.7 billion to UBS customers who invested in ARS.

Without admitting or denying the SEC's allegations, Citi and UBS agreed to be permanently enjoined from violations of the broker-dealer fraud provisions and to comply with a number of undertakings, some of which are set forth below. Investors should review the full text of the consents executed by Citi and UBS.

The Citi settlement provides, among other things, that:

- Citi will offer to purchase ARS at par from individuals, charities, and small businesses that purchased those ARS from Citi, even if those customers moved their accounts.
- Citi will use its best efforts to provide liquidity solutions for institutional and other customers, including, but not limited to, facilitating issuer redemptions, restructurings, and other reasonable means, and will not take advantage of liquidity solutions for its own inventory before making those solutions available to these customers.
- Citi will pay eligible customers who sold their ARS below par the difference between par and the sale price of the ARS.
- Citi will reimburse eligible customers for any excess interest costs associated with loans taken out from Citi due to ARS illiquidity.

The UBS settlement provides, among other things, that:

- UBS will offer to purchase at par from all current or former UBS customers who held their ARS at UBS as of Feb. 13, 2008, or purchased their ARS at UBS between Oct. 1, 2007 and Feb. 12, 2008, even if they moved their accounts. Different categories of customers will receive offers from UBS at different times.
- UBS will not liquidate its own inventory of a particular ARS without making that liquidity opportunity available, as soon as practicable, to customers.
- UBS will pay eligible customers who sold their ARS below par the difference between par and the sale price of the ARS.

- UBS will reimburse customers for any excess interest costs incurred by using UBS's ARS loan programs.

The Commission wishes to alert investors that, in most instances, they will receive correspondence from Citi and UBS, and that they must advise the respective firm that they elect to participate in these settlements, or they could lose their rights to sell their ARS. Further, if eligible customers incurred consequential damages because of the illiquidity of their ARS, they may participate in special FINRA arbitrations.

Both Citi and UBS will also be permanently enjoined from violating the provisions of Section 15(c) of the Exchange Act of 1934, which prohibit the use of manipulative or deceptive devices by broker-dealers. Both firms also face the prospect of financial penalties to the Commission. After the buy back periods are substantially complete, the Commission may consider imposing a financial penalty against Citi and/or UBS based on the traditional factors the Commission considers for penalties and based on whether the individual firm has fulfilled its obligations under its settlement agreement.

In the Matter of CentreInvest, Inc., OOO CentreInvest Securities, Vladimir Chekholko, William Herlyn, Dan Rapoport, and Svyatoslav Yenin

Administrative Proceeding File No. 3-13304 (December 8, 2008)

<http://sec.gov/litigation/admin/2008/34-59067.pdf>

Press Release (December 8, 2008)

<http://sec.gov/news/press/2008/2008-287.htm>

On December 8, 2008 the Securities and Exchange Commission charged a Moscow-based unregistered broker-dealer for registration and reporting violations, alleging that it solicited institutional investors in the U.S. to purchase and sell small cap stocks of Russian companies without registering as a broker-dealer with the SEC or meeting the requirements for an exemption.

In addition to instituting administrative proceedings against OOO CentreInvest Securities (CI-Moscow), the SEC charged its registered U.S. affiliate, CentreInvest, Inc. (CI-New York) and four individuals: CI-Moscow's former executive director Dan Rapoport, CI-New York's former managing director, FINOP and CFO Svyatoslav Yenin, CI-New York's former head of sales Vladimir Chekholko, and CI-New York's chief compliance officer William Herlyn.

In the administrative proceeding, the SEC's Division of Enforcement alleges that from about 2003 through November 2007, CI-Moscow and Rapoport solicited investors in the U.S. both directly, and indirectly, through CI-New York, Yenin, Chekholko and Herlyn. CI-Moscow and Rapoport were not registered as a broker-dealer as required by law, nor did they meet the requirements for the exemption from registration for foreign broker-dealers.

The SEC's Division of Enforcement also alleges that Yenin and Herlyn were responsible for the filing of amendments to CI-New York's broker-dealer disclosure form that failed to disclose CI-Moscow and Rapoport's control of CI-New York, or that the license of the CI-New York's parent company had been revoked by the Cyprus SEC. The Division further alleges that

CI-New York either failed to maintain business-related emails, or failed to produce them at the request of the Commission's staff as required by law, and that Yenin was responsible for CI-New York's failure to maintain these business-related e-mails.

The SEC's Division of Enforcement is seeking cease-and-desist orders, orders directing respondents to provide accountings, pay disgorgement and financial penalties, and orders imposing any remedial action appropriate in the public interest, including, but not limited to, bars from association with any broker or dealer, or revocation of registration.

In the Matter of Scottrade Inc.

Press Rel. No. 2008-120 (June 24, 2008)

<http://www.sec.gov/news/press/2008/2008-120.htm>

Admin. Proc. File No. 3-13081 (June 24, 2008)

<http://www.sec.gov/litigation/admin/2008/34-58012.pdf>

The SEC charged St. Louis-based broker-dealer Scottrade, Inc., for fraudulent misrepresentations it made to customers relating to the firm's execution of their Nasdaq pre-open orders, which are placed after the day's market close to be executed at the next market opening. Without admitting or denying the Commission's findings, Scottrade agreed to pay a \$950,000 penalty to settle the SEC's charges.

By accepting customers' orders, a broker-dealer impliedly represents to customers that it will regularly and rigorously review the quality of execution that it receives on its orders, and take any material differences between the price improvement opportunities offered by market makers into account when deciding where to route its orders. According to the SEC's Order, Scottrade did not conduct a regular and rigorous review of the execution quality of its Nasdaq pre-open orders, and falsely disclosed to customers that it would route orders based on factors including liquidity at market opening when in practice it did not do so.

In 2000, the Commission advised the public that some market makers trading Nasdaq securities offered investors an opportunity to avoid paying a liquidity premium at the market opening. A liquid market allows buying and selling with relative ease and, accordingly, allows market makers to offer opportunities for superior executions. The Commission stated that an example of this is "midpoint pricing" — one price that is offered to both buy and sell orders at the midpoint between the national best bid and offer (NBBO). Another example is a "single price" — one price that is offered to both buy and sell orders somewhere between the NBBO. The Commission further advised that broker-dealers should take these alternative pricing options into consideration when seeking to obtain best execution for their customers' Nasdaq pre-open orders.

According to the SEC's Order, Scottrade did not follow the Commission's advice, and from Jan. 1, 2001, to Dec. 31, 2004, misrepresented in customer account opening documents and statements that it would route its customers' orders based on factors that included "liquidity at market opening," which gave its customers the opportunity to receive executions "that may be superior to the national best bid offer (NBBO) in any one market center." A market center is a market maker that stands ready to buy and sell stocks at publicly quoted bid and offer prices. During the relevant time period, Scottrade had no written policies and procedures to assess

liquidity at the market opening provided by market centers and, as a result, did not consider the availability of executions that may have been superior to the NBBO, such as single or midpoint pricing, for its Nasdaq pre-open orders.

As a result of these misrepresentations, Scottrade willfully violated Section 15(c)(1)(A) of the Securities Exchange Act of 1934, which prohibits broker-dealers from using manipulative, deceptive or fraudulent devices or contrivances to effect securities transactions. Scottrade has consented to the entry of an Order by the Commission that censures Scottrade; requires it to cease-and-desist from committing or causing any violations and any future violations of Section 15(c)(1)(A) of the Exchange Act; and requires Scottrade to pay a civil penalty of \$950,000.

CASES INVOLVING FAILURE TO SUPERVISE

In the Matter of Theodore W. Urban

A.P. Rel. No. 34-60837 (October 19, 2009)

<http://www.sec.gov/litigation/admin/2009/34-60837.pdf>

The SEC issued an Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940 against Theodore W. Urban.

In the Order, the SEC alleges that Urban was the General Counsel and a member of the Board of Directors and Credit Committee of Ferris Baker Watts, Inc. (Ferris), a registered broker-dealer and investment adviser. The SEC also alleges that from at least August 2002 through November 2005, Ferris registered representative Stephen J. Glantz (Glantz), David A. Dadante (Dadante), who was one of Glantz's customers, and a registered representative at another brokerage firm, all participated in a scheme to manipulate the market for the stock of Innotrac Corp. (Innotrac). The SEC further alleges that all three pled guilty to violations of Section 10(b) of the Securities Exchange Act of 1934 and in their plea agreements, they all admitted that they artificially inflated and maintained the price for Innotrac stock. The SEC further alleges that, acting in concert, Glantz, Dadante, and the other registered representative employed a variety of manipulative trading practices, including marking the closing price for Innotrac stock, engaging in matched and wash trades, and attempting to artificially create downbids to suppress short selling of Innotrac. The SEC further alleges that to perpetrate the manipulative scheme, and to generate income for himself, Glantz also engaged in unauthorized and unsuitable trading in Innotrac and certain other securities in the accounts of his customers.

The SEC alleges that Urban had the requisite degree of responsibility, ability or authority at Ferris to affect the conduct of Glantz and, thus, was a supervisor of Glantz. The SEC alleges that Urban failed to respond reasonably to red flags regarding Glantz's misconduct and lack of supervision, including, among others, those raised in a May 23, 2003 Ferris Compliance Department memorandum and in numerous communications from Compliance Department and other Ferris personnel. As a result of this conduct, the SEC alleges that Urban failed reasonably to supervise Glantz with a view to detecting and preventing Glantz's violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

In the Matter of Ferris, Baker, Watts, Inc.

Admin. Proc. File No. 3-13364 (February 10, 2009)

<http://sec.gov/litigation/admin/2009/34-59372.pdf>

On February 10, the Commission issued a settled administrative and cease-and-desist order against Ferris Baker Watts, Inc. (Ferris). The Order finds that Ferris is both a registered broker-dealer and a registered investment adviser, and that Ferris has over 600 employees, including over 250 registered representatives working in over forty branch offices in eight states and the District of Columbia.

The Order finds that from at least August 2002 through November 2005, Ferris registered representative Stephen Glantz (Glantz), one of Glantz's customers, David A. Dadante (Dadante), and a registered representative at another brokerage firm, all participated in a scheme to manipulate the market for the stock of Innotrac Corp. (Innotrac), a thinly traded NASDAQ National Market security in which Ferris made a market. The Order also finds that all three pled guilty to violations of Section 10(b) of the Securities Exchange Act of 1934 and in their plea agreements, they all admitted that they artificially inflated and maintained the price for Innotrac stock. The Order further finds that, acting in concert, Glantz, Dadante, and the other registered representative employed a variety of manipulative trading practices, including marking the closing price for Innotrac stock, engaging in matched and wash trades, and attempting to artificially create downbids to suppress short selling of Innotrac. The Order also finds that to perpetrate the manipulative scheme, and to generate income for himself, Glantz also engaged in unauthorized and unsuitable trading in Innotrac and certain other securities in the accounts of customers other than Dadante's unregistered IPOF Fund. The Order further finds that in February of 2005, Glantz engaged in unauthorized and manipulative transactions in the stock of ATC Healthcare, Inc. (ATC Healthcare).

The Order finds that certain Ferris Senior Executives permitted Glantz to work under a special arrangement which allowed him greater freedom of action than other registered representatives at Ferris. The Order finds that Glantz, a retail broker assigned to Ferris' Beachwood, Ohio branch office, was permitted to work at Ferris' Institutional Trading Desk in Baltimore several days a week, and that Glantz took advantage of that special arrangement to evade Ferris' supervisory procedures. The Order further finds that during the period of Glantz's misconduct at Ferris, Ferris failed to design reasonable systems to implement its written supervisory policies and procedures with respect to the special arrangement under which Glantz was permitted to work. The Order also finds that the information available to Ferris regarding the manipulative practices involving the trading in Innotrac, including red flags raised in a May 23, 2003 Ferris Compliance Department memorandum and a Dec. 15, 2004 memorandum recommending that Glantz be terminated, as well as Ferris' Anti-money Laundering Officer's observations regarding the ATC Healthcare trades, should have suggested to Ferris that it was required to generate and file Suspicious Activity Reports (SARs) with the U.S. Department of Treasury's Financial Crimes Enforcement Network. The Order further finds that Ferris failed to file SARs related to the manipulative practices in Innotrac stock and the suspicious trades in ATC Healthcare.

The Order finds, as a result of this conduct, that Ferris failed reasonably to supervise Glantz with a view to detecting and preventing Glantz's violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5 thereunder, and willfully violated Section 17(a) of the Exchange Act and Rule 17a-18 thereunder by failing to file SARs. Among other things, the Order censures Ferris, orders Ferris to pay disgorgement prejudgment interest totaling \$300,656 and a civil penalty in the amount of \$500,000. Ferris consented to the issuance of the Order without admitting or denying any of the findings in the Order.

In the Matter of Lazard Capital Markets

Press Rel. No. 2008-260 (Oct. 30, 2008)

<http://www.sec.gov/news/press/2008/2008-260.htm>

Admin. Proc. File No. 3-13281 (Oct. 30, 2008) (Lazard)

<http://www.sec.gov/litigation/admin/2008/34-58880.pdf>

Admin. Proc. File No. 3-13282 (Oct. 30, 2008) (Louis Gregory Rice)

<http://www.sec.gov/litigation/admin/2008/34-58881.pdf>

Admin. Proc. File No. 3-13283 (Oct. 30, 2008) (Robert A. Ward)

<http://www.sec.gov/litigation/admin/2008/34-58882.pdf>

Admin. Proc. File No. 3-13284 (Oct. 30, 2008) (David L. Tashjian)

<http://www.sec.gov/litigation/admin/2008/34-58883.pdf>

The SEC charged privately-held, registered broker-dealer Lazard Capital Markets LLC with failing to supervise three employees who collectively spent more than \$600,000 while improperly entertaining traders at Fidelity Investments in an effort to generate brokerage business. The SEC also charged the three employees and a supervisor for their roles in securities laws violations by Fidelity traders.

Earlier this year, the SEC charged Fidelity and current and former executives and employees for improperly accepting lavish gifts provided by brokers. Among those charged were former Fidelity equity trader Thomas H. Bruderman.

The Commission's orders found that former head of Lazard Capital Markets' U.S. sales and trading department David L. Tashjian and former registered representatives Robert A. Ward and W. Daniel Williams facilitated Bruderman's violations of the securities laws by taking him on trips to such destinations as Europe, the Bahamas, the Caribbean, Florida, and Napa Valley, Calif., often by private plane, and paying for his meals and lodging at high-end restaurants and hotels. According to the orders, Bruderman also was provided with race car driving lessons, adult entertainment and expensive wine, and approximately \$50,000 was contributed toward his elaborate bachelor party in Miami.

The Commission also found that Tashjian and Louis Gregory Rice, former head of Lazard Capital Markets' U.S. equity sales and trading desk, failed to supervise Ward and Williams during their misconduct.

The Commission's order against Lazard Capital Markets found that the firm failed to supervise Tashjian, Ward, and Williams and detect or prevent their aiding and abetting violations of Section 17(e)(1) of the Investment Company Act. Lazard Capital Markets consented to the order without admitting or denying the findings, agreeing to be censured and pay disgorgement of \$1,817,629 plus prejudgment interest of \$429,379.04, and a penalty of \$600,000.

Tashjian, Rice, Ward, and Williams also settled the SEC's charges without admitting or denying the allegations. Tashjian, Ward, and Williams were ordered to cease from committing or causing any further violations will pay penalties of \$75,000, \$50,000 and \$25,000, respectively, and will be suspended from associating with a broker, dealer or investment company for nine months, six months and three months, respectively.

For his supervisory lapses, Rice was ordered to pay a \$60,000 penalty and be suspended for a period of six months from associating in a supervisory capacity with any broker or dealer.

In the Matter of vFinance Investments, Inc.

Admin. Proc. File No. 3-13024 (Apr. 28, 2008)

<http://www.sec.gov/litigation/admin/2008/34-57727.pdf>

On April 28, 2008, the SEC instituted settled administrative proceedings against vFinance Investments, Inc. for failure to supervise a registered representative associated with vFinance.

The order found that from September 2002 through June 2003, a registered representative then associated with vFinance violated Section 5 of the Securities Act when he engaged in the illegal distribution of securities by offering and selling restricted shares of two issuers through the Over-the-Counter Bulletin Board (“OTCBB”).

The order found vFinance failed reasonably to supervise its registered representative’s conduct with a view to preventing and detecting his Section 5 violations under Section 15(b)(4)(E) of the Exchange Act. The SEC found vFinance had inadequate procedures in place during the relevant period to require that its registered representative conduct the appropriate due diligence concerning the origin and ownership of thinly-traded securities that vFinance offered and sold on behalf of its customers. The SEC further found vFinance did not establish reasonable procedures or systems for training its registered representative with regard to compliance with the registration provisions of the Securities Act.

As part of the settlement, vFinance agreed to retain an independent consultant to determine whether proper procedures have been implemented, maintained, and followed. In addition, vFinance agreed to pay disgorgement in the amount of \$19,787 and prejudgment interest of \$6,772. In addition, the SEC censured vFinance pursuant to Section 15(b)(4) of the Exchange Act.

In the Matter of Commonwealth Equity Services, LLP d/b/a Commonwealth Financial Network

Admin. Proc. File No. 3-12749 (Sept. 6, 2007)

<http://www.sec.gov/litigation/admin/2007/34-56362.pdf>

In the Matter of Detwiler, Mitchell, Fenton & Graves, Inc.

Admin. Proc. File No. 3-12750 (Sept. 6, 2007)

<http://www.sec.gov/litigation/admin/2007/34-56363.pdf>

<http://www.sec.gov/news/press/2007/2007-174.htm>

In the Matter of James X. McCarthy

Admin. Proc. File No. 3-12751 (Sept. 6, 2007)

<http://www.sec.gov/litigation/admin/2007/34-56364.pdf>

On September 26, 2007, the SEC instituted settled administrative proceedings against Commonwealth Equity Services, LLP, based in Waltham, Mass.; Detwiler, Mitchell, Fenton & Graves, Inc., based in Boston; and James X. McCarty, a resident of South Dennis, Mass. for

failing to reasonably supervise former registered representative Bradford J. Bleidt, who engaged in a multi-million dollar fraud while they were overseeing him. At least forty of Bleidt's victims were over age 70 at the time the SEC charged him.

The Order alleged that Bleidt was associated with Commonwealth from 1991 to 2001 and with Detwiler from 2001 to 2004. In 2004, he was charged by the SEC and the Massachusetts Securities Division with securities fraud stemming from a scheme in which he misappropriated more than \$31 million from over 100 victims. Bleidt is currently serving an 11-year jail term as a result of related criminal charges brought by the United States Attorney's Office in Boston. He pled guilty to those charges in 2005.

The SEC's Order against Commonwealth found that it failed to establish reasonable policies and procedures for responding to red flags related to Bleidt's outside business activities. In particular, the Order found that Commonwealth's staff received, but did not review, financial statements for one of Bleidt's investment advisory businesses and thereby ignored a red flag that this business was failing and he was providing significant cash infusions to keep it afloat. In addition, no one at Commonwealth followed up when Bleidt failed to disclose the source of capital for a radio station that he partially owned.

The SEC's Order against Detwiler found that Detwiler failed to adequately monitor the outside business activities of Bleidt. For example, the Order found Detwiler personnel did not reasonably investigate how Bleidt was funding his outside business activities, including his two investment advisory businesses and the radio station. In fact, these outside business activities were being funded by Bleidt with the victims' misappropriated funds. These Orders also found that Commonwealth failed to have reasonable procedures for the review of incoming mail and Detwiler failed to reasonably implement the procedures it did have.

The SEC's Order against McCarty found that he did not follow Detwiler's procedures for the opening and review of incoming mail. The Order further found that McCarty was not conducting the formal annual audits of each registered representative required by Commonwealth's and Detwiler's procedures and that he accepted Bleidt's explanation that the source of his money was a "trust fund" without any evidence of the existence of the trust fund and the supposed dollar amounts it contained.

Commonwealth, Detwiler and McCarty each consented to the issuance of the Orders without admitting or denying the SEC's findings. The Orders imposed \$250,000 penalties against each of Commonwealth and Detwiler and a \$50,000 penalty against McCarty. The amounts shall be paid into a single Fair Fund created pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 for potential distribution to harmed investors. Additionally, Commonwealth and Detwiler were each censured and McCarty was barred from acting in a supervisory capacity with any broker, dealer, or investment adviser.

In accordance with the Orders, on September 11, 2007, Detwiler paid \$250,001 in disgorgement and civil monetary penalties to the Commission; on September 12, 2007, Commonwealth paid \$250,001; and on September 17, 2007 and November 23, 2007, McCarty

paid \$20,001 and \$7,500, respectively. Pursuant to the Orders, a Fair Fund was established for these funds, totaling \$527,503. The Distribution Plan was approved on February 12, 2008.

CASES INVOLVING SELF-REGULATORY ORGANIZATIONS

In the Matter of Boston Stock Exchange and James B. Crofwell

Admin. Proc. File No. 3-12744 (Sept. 5, 2007)

<http://www.sec.gov/litigation/admin/2007/34-56352.pdf>

Lit. Rel. No. 20265 (Sept. 5, 2007)

<http://www.sec.gov/litigation/litreleases/2007/lr20265.htm>

On September 5, 2007, the SEC instituted a settled enforcement action against the Boston Stock Exchange (Exchange) and its former president, James Crofwell, for failure to enforce compliance by Exchange dealers with exchange rules protecting investor trading priority. At the same time, the SEC instituted a related settled civil action against Crofwell. The SEC's order against the Exchange and Crofwell found that from 1999 to 2004, the Exchange and Crofwell failed to enforce Exchange rules that prohibited Exchange dealer specialist firms from trading securities for their own benefit at the expense of their customers. The Exchange failed to conduct adequate surveillance to detect and prevent violations of the customer priority rules, which expressly prohibit specialists from trading for their own accounts ahead of marketable customer orders. The Order found that the Exchange's failure allowed hundreds, if not thousands, of violations per day to go undetected and continued even after the SEC staff had repeatedly warned the Exchange of the need to improve surveillance systems. Crofwell knew that the procedures then in effect were inadequate, but failed to devote resources necessary to correct the problem.

Without admitting or denying the findings in the SEC's order, the Exchange and Crofwell agreed to an order censuring each of them and requiring the Exchange to cease and desist from committing or causing any violations and any future violations of Section 19(g) of the Exchange Act and Crofwell to cease and desist from causing any violations and any future violations of that section. The Exchange further agreed to comply with specific undertakings contained in the order, including expenditure of at least \$1 million to retain a third party consultant to conduct comprehensive compliance audits, and implementation of the consultant's recommendations.

Crofwell also consented to entry of a final judgment in a settled civil action filed in the U.S. District Court for the District of Massachusetts, without admitting or denying the allegations of the complaint in that action. The judgment ordered him to pay a \$75,000 civil penalty for aiding and abetting the Exchange's violations of Section 19(g) of the Exchange Act.

CASES INVOLVING MUNICIPAL BONDS

SEC v. Larry P. Langford, William B. Blount, Blount Parrish & Co., Inc. and Albert W. LaPierre

Lit. Rel. No. 20545 (Apr. 30, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20545.htm>

On April 30, the SEC filed an enforcement action against Larry Langford, William Blount, and Albert LaPierre. The complaint alleges that Langford, the mayor of Birmingham, Alabama, accepted more than \$156,000 in undisclosed cash and benefits over the course of two years from Blount, the chairman of Blount Parrish & Co., while Langford served as president of the County Commission of Jefferson County, Alabama. The case is the SEC's first enforcement action involving security-based swap agreements.

The SEC alleges that Langford selected Blount Parrish, a broker-dealer based in Montgomery, Alabama, to participate in every Jefferson County municipal bond offering and security-based swap agreement transaction during 2003 and 2004, earning Blount Parrish over \$6.7 million in fees. The SEC also alleges Langford and Blount concealed the payment scheme by using their long-time friend, LaPierre, an Alabama registered political lobbyist, as a conduit. According to the complaint, none of the official documents prepared by Langford or reviewed by Blount Parrish in connection with the bond offerings at issue disclosed Blount's payments to Langford.

The SEC also alleges that Langford directed that Blount Parrish be included in four security-based swap transactions. Langford signed letter agreements with the counterparties to the swap transactions representing that Jefferson County had requested and approved fee payments to Blount's firm for services to Jefferson County in connection with the swap transactions. However, the SEC alleges, neither Langford nor Blount disclosed to Jefferson County Blount's payments to Langford.

The SEC charged Langford, Blount and Blount Parrish with violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act (Exchange Act) and Rule 10b-5 thereunder; Blount and Blount Parrish for violations of Section 15B(c)(1) of the Exchange Act and Municipal Securities Rulemaking Board Rules G-17 and G-20; and LaPierre with aiding and abetting Blount and Blount Parrish's violations. The complaint seeks permanent injunctions, disgorgement with prejudgment interest, and a civil money penalty.

SEC v. Michael T. Uberuaga, et al.

Lit. Rel. No. 20522 (Apr. 7, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20522.htm>

On April 7, 2008, the SEC filed fraud charges against five former San Diego city officials in connection with the City's false and misleading financial statements in five 2002 and 2003 bond offerings.

The defendants are Michael T. Uberuaga, the former San Diego City Manager, Edward P. Ryan, the former Auditor & Comptroller, Patricia Frazier, the former Deputy City Manager for Finance, Teresa A. Webster, the former Assistant Auditor & Comptroller, and Mary E. Vattimo, the former City Treasurer.

The SEC alleges that these five former officials knew the city had been intentionally under-funding its pension obligations so that it could increase pension benefits but defer the costs. The SEC alleges that the former officials failed to disclose this and other material facts to rating agencies or to investors in bond offering documents and continuing disclosures.

According to the complaint, Uberuaga falsely certified the closing letter for one of the bond offerings. Ryan signed letters falsely representing that the city's audited financial statements included in the securities offerings were accurate. Frazier falsely certified that the disclosures were accurate and did not contain any misleading statements, and she reviewed and made presentations to the rating agencies. Webster reviewed the city's financial statements that contained some of the false and misleading disclosures, and Vattimo participated in drafting the city's false and misleading disclosures. Additionally, Vattimo and Webster both knew that in 2003, the rating agencies had concerns about the city's growing pension obligations and that those obligations could negatively affect the city's credit rating. Nevertheless, they withheld material facts from the rating agencies.

The SEC charged the defendants with violating Section 17(a) of the Securities Act and Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5 thereunder. The complaint seeks a final judgment permanently enjoining the officials from further violations of the securities laws and ordering them to pay civil penalties.

CASES INVOLVING HEDGE FUNDS

SEC v. Thomas J. Petters, Gregory M. Bell and Lancelot Investment Management LLC, et al.

Lit. Rel. No. 21124 (July 10, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21124.htm>

The SEC brought fraud charges against Thomas Petters for perpetrating a multi-billion dollar Ponzi scheme through the sale of notes related to consumer electronics; and against Gregory Bell, a hedge fund manager, and his firm, Lancelot Management LLC, for facilitating this Ponzi scheme.

The SEC's complaint alleges that Petters carried out his Ponzi scheme by promising investors that proceeds from the notes would be used to finance the purchase of vast amounts of consumer electronics by vendors who then re-sold the merchandise to large retailers like Wal-Mart and Costco. Instead, this business was a complete sham, and the vendors secretly returned most investor money to Petters, who diverted billions of dollars for his personal purposes. The complaint alleges that Petters sold the notes to several feeder funds, including Bell and Lancelot, that in turn raised their investment capital from hundreds of private investors. Bell and Lancelot raised approximately \$2.62 billion dollars, and helped conceal through a series of sham transactions Petters's scheme as it started to unravel.

The SEC's complaint charges Bell, Lancelot Management, and Petters with 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. The complaint also charges Bell and Lancelot Management with violations of Sections 206(1), 206(2) and 206(4) of the Investment Advisers Act of 1940 and Rule 206-4(8). The SEC seeks entry of a court order of permanent injunction against Bell, Lancelot Management and Petters, as well as an order of disgorgement, including prejudgment interest and financial penalties. The SEC also seeks an order requiring the relief defendants to disgorge all ill-gotten gains and pay prejudgment interest.

SEC v. Moises Pacheco, Advanced Money Management, Inc., and Business Development & Consulting Co., et al.

Lit. Rel. No. 21101 (June 24, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21101.htm>

The SEC charged Moises Pacheco and two entities he controls for operating a Ponzi-like scheme through five hedge funds. The SEC alleges that Moises Pacheco, Advanced Money Management, Inc. (AMM), and Business Development & Consulting Co. (BD&C) raised \$14.7 million from more than 200 investors, acting as investment advisers to the five self-described hedge funds. According to the SEC's complaint, Pacheco told investors that he had developed a lucrative investment strategy, which the hedge funds exclusively relied upon to generate trading profits ranging from 30 percent to 48 percent per year. In reality, Pacheco did not generate such returns, and instead used investor principal to pay purported returns until the scheme collapsed. The SEC alleges that the hedge funds actually generated trading profits of about \$367,000, but paid investors purported returns of more than \$9.7 million. Further, the SEC alleges that Pacheco

made no effort to determine whether the hedge fund investors were accredited or sophisticated, and did not provide investors with financial statements.

The SEC's complaint alleges that Pacheco, AMM, and BD&C violated Sections 5(a), 5(c), and 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), (2), and (4) of the Investment Advisers Act of 1940 and Rule 206(4)-8 thereunder and seeks permanent injunctions, disgorgement of ill-gotten gains with prejudgment interest thereon, and financial penalties. The complaint also names the hedge funds and various third parties receiving investor money as relief defendants, and seeks from them the disgorgement of all such amounts.

SEC v. Bradley L. Ruderman, Ruderman Capital Management, LLC, Ruderman Capital Partners, LLC, and Ruderman Capital Partners A, LLC

Lit. Rel. No. 21017 (April 29, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21017.htm>

The SEC obtained a court order halting Bradley L. Ruderman's hedge fund fraud. The complaint alleges that Ruderman raised at least \$38 million from about twenty investors since at least 2002 through his two hedge funds, Ruderman Capital Partners and Ruderman Capital Partners A. The SEC alleges that Ruderman defrauded his hedge fund investors by misrepresenting to them the hedge funds' investment returns and the assets under management.

Specifically, the SEC's complaint alleges that Ruderman falsely told investors that the hedge funds had earned positive returns from 15% to 60% per year and had over \$800 million in assets. In reality, the hedge funds lost money and had less than \$650,000 in assets. The complaint further alleges that Ruderman made at least one Ponzi-like payment and that Ruderman falsely told prospective investors that Lowell Milken (chairman of the Milken Family Foundation and Michael Milken's younger brother) and Larry Ellison (the CEO of Oracle Corporation) were investors in his hedge funds.

SEC v. Henry Morris, David J. Loglisci, Barrett N. Wissman, Raymond B. Harding, Nosemote LLC, Pantigo Emerging LLC, Purpose LLC, Flandana Holdings Ltd., Tuscany Enterprises LLC, W Investment Strategies, HFV Management LP and HFV Asset Management LP

Initial Complaint

Lit. Rel. No. 20963 (March 19, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr20963.htm>

On March 19, 2009, the SEC charged New York's former Deputy Comptroller and a top political advisor with extracting kickbacks from investment management firms seeking to manage the assets of New York's largest pension fund.

The complaint names as defendants David Loglisci, former Deputy Comptroller and Chief Investment Officer of the New York State Common Retirement Fund, Henry "Hank" Morris, the top political advisor and chief fundraiser for former New York State Comptroller

Alan Hevesi, and three entities controlled by Morris: Nosemote LLC, Pantigo Emerging LLC and Purpose LLC.

According to the complaint, the two men orchestrated a fraudulent scheme from 2003 through late 2006 that corrupted the integrity of the New York State Common Retirement Fund in order to enrich Morris as well as others with close ties to Morris and Loglisci.

Specifically, the SEC alleges that Loglisci caused the fund to invest billions of dollars with private equity firms and hedge fund managers who together paid millions of dollars in the form of sham "finder" or "placement agent" fees to obtain investments from the fund.

The SEC alleges that the payments to Morris and others were kickbacks that resulted from quid pro quo arrangements or that were otherwise fraudulently induced by the defendants. As laid out in the complaint, Loglisci ensured that investment managers who made the requisite payments to Morris — and other recipients designated by Morris and Loglisci — were rewarded with lucrative investment management contracts, while investment managers who declined to make such payments were denied fund business.

The SEC alleges that Loglisci repeatedly directed investment managers, who solicited him for investment business, to Morris or certain other individuals and signaled to the investment managers that they first needed to "hire" Morris as a finder or placement agent. Neither Morris nor anyone else who received the payments at issue allegedly performed legitimate placement or finder services for the investment management firms who made the payments.

In some cases, the investment managers had already allegedly hired a finder or placement agent of their own and were already negotiating an investment with Loglisci when they were told that they also needed to "hire" Morris or another individual. Once the sham finder fee was agreed upon, Loglisci approved the proposed deal with the investment management firm.

The SEC further asserts that Loglisci and Morris took steps to conceal these improper payments and quid pro quo arrangements from relevant members of the Comptroller's investment staff and the fund's Investment Advisory Committee. In some instances, the two men even arranged for investment managers to make payments to another individual who would then covertly funnel a portion of these sham fees to Morris, sometimes even without the knowledge of the investment managers. In addition, Morris allegedly paid the girlfriend of a high-ranking member of the Comptroller's staff nearly \$100,000 in cash to ensure that the staff member would not ask questions or otherwise reveal the scheme to others.

The SEC's complaint, which also charges three entities owned and controlled by Morris, alleges 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, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940. The complaint seeks permanent injunctions against future violations of the federal securities laws, disgorgement of ill-gotten gains with prejudgment interest, and civil money penalties. Related criminal charges were filed against Morris and Loglisci.

First Amended Complaint

Lit. Rel. No. 21001(April 15, 2009)

<http://sec.gov/litigation/litreleases/2009/lr21001.htm>

On April 15, 2009, the SEC filed an amended complaint alleging that Raymond Harding, a former leader of the New York Liberal Party, and Barrett Wissman, a former hedge fund manager, participated in a scheme that extracted kickbacks from investment management firms seeking to manage the assets of the New York State Common Retirement Fund. According to the Complaint, Harding is a political ally of Morris and Loglisci while Wissman is a long-time friend of Loglisci.

Specifically, the SEC alleges that Wissman arranged some of the payments made to Morris, and Wissman was rewarded with at least \$12 million in sham "finder" or "placement agent" fees. Harding received approximately \$800,000 in sham fees that were arranged by Morris and Loglisci.

The SEC's amended complaint alleges Loglisci ensured investment managers who made the requisite payments - to Morris, Wissman, Harding, and certain other recipients designated by Morris and Loglisci - were rewarded with lucrative investment management contracts. Investment managers who declined to make such payments were denied fund business. No bona fide placement or finder services were provided to the investment management firms who made the payments.

The SEC's amended complaint additionally charges three entities through which Wissman perpetrated the fraud - Flandana Holdings Ltd., Tuscany Enterprises LLC, and W Investment Strategies LLC - as well as two investment management firms with which he was affiliated at the time, HFV Management L.P. and HFV Asset Management L.P.

According to the amended complaint, Wissman was a key participant in the kickback scheme. Wissman worked with Loglisci and Morris to extract millions of dollars of sham finder fee payments for Morris and for himself from investment managers.

According to the amended complaint, Harding was allegedly inserted by Morris and Loglisci into at least two fund transactions for the sole purpose of compensating Harding. In one of those transactions, the investment management firm already had a finder and Morris arranged for that finder to secretly split his fee with Harding. In another transaction, Morris and Loglisci simply inserted Harding as a finder on an investment solely for the purpose of directing money to Harding.

In a partial settlement of the SEC's charges, Wissman and Flandana Holdings Ltd. have consented, without admitting or denying the SEC's allegations, to the entry of a partial final judgment that permanently enjoins them from violating Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act") and defers the determination of disgorgement and financial penalties until a later date.

In addition, HFV Management and HFV Asset Management have consented, without admitting or denying the SEC's allegations, to the entry of a final judgment that permanently enjoins them from violating Sections 17(a)(2) and 17(a)(3) of the Securities Act and Section 206(2) of the Advisers Act, and that orders them to pay a penalty in the aggregate amount of \$150,000.

The SEC's charges against Harding remain pending. The amended complaint alleges that Harding aided and abetted violations of Section 10(b) of the Exchange Act and Rule 10b-5 committed by Morris and Loglisci. The SEC is seeking a permanent antifraud injunction, disgorgement of ill-gotten gains with prejudgment interest, and financial penalties.

Second Amended Complaint

Lit. Rel. No. 21018 (April 30, 2009)

<http://sec.gov/litigation/litreleases/2009/lr21001>.

On April 30, 2009, the SEC filed a second amended complaint alleging that Saul Meyer and Aldus Equity Partners, L.P., participated in Morris' fraudulent kickback scheme in order to win investment business from the New York State Common Retirement Fund.

The complaint alleges that Meyer caused Aldus to pay a shell company owned by Morris approximately \$320,000 in sham finder fees, in exchange for which Loglisci caused the pension fund to invest a total of \$375 million with Aldus from 2004 to 2006.

According to the complaint, Loglisci chose Aldus as the Common Fund's emerging fund portfolio manager on the sole basis of Meyer's willingness to pay Morris. Aldus was serving as the Common Fund's outside consultant at the time, making Aldus a fiduciary of the Common Fund. In the midst of Aldus's negotiations to manage the Common Fund's emerging fund portfolio, a close associate of Morris approached Meyer and assured Meyer that Aldus would win the contract if Aldus agreed to pay Morris a portion of the management fees that Aldus received from the Common Fund. After Morris's friend made clear to Meyer that Aldus would not be hired if Aldus did not retain Morris, Meyer arranged for Aldus to kickback 35 percent of its management fees to a shell entity run by Morris. As a result of the quid pro quo arrangement, Aldus secured the Common Fund's emerging fund portfolio business.

Meyer and Aldus allegedly violated and/or aided and abetted 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, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940. The complaint seeks permanent injunctions against future violations of the federal securities laws, disgorgement of ill-gotten gains with prejudgment interest, and financial penalties.

In a parallel criminal action, the Office of the Attorney General of the State of New York today announced the filing of a criminal complaint against Meyer. The SEC acknowledges the assistance of the Office of the Attorney General of the State of New York.

Third Amended Complaint

Lit. Rel. No. 21036 (May 12, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21036.htm>

On May 12, 2009, the a third amended complaint was filed against Julio Ramirez, Jr., who was formerly affiliated with broker-dealers DAV/Wetherly Financial, L.P. and Park Hill Group LLC, in connection with a Morris' kickback scheme.

According to the complaint, Ramirez facilitated Morris's scheme by contacting Meyer and making clear to him that Aldus must pay a kickback to Morris to secure an investment from the Retirement Fund. Although Aldus was already negotiating with the Retirement Fund's investment staff about the proposed investment at the time, Aldus agreed to kick back 35 percent of its management fees to a shell entity run by Morris. Morris in turn paid Ramirez a portion of those fees. As a result of the quid pro quo arrangement, Aldus secured the Retirement Fund's emerging fund portfolio business, and Ramirez shared in the profits even though he performed no legitimate services.

The amended complaint alleges that Ramirez aided and abetted violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940. The complaint seeks permanent injunctions against future violations of the federal securities laws, disgorgement of ill-gotten gains with prejudgment interest, and financial penalties.

The SEC's investigation is continuing. In a parallel criminal action, the Office of the Attorney General of the State of New York today announced the unsealing of criminal charges against Ramirez.

SEC v. Oversea Chinese Fund Limited Partnership, et al.

Lit. Rel. No. 20988 (April 6, 2009)

<http://sec.gov/litigation/litreleases/2009/lr20988.htm>

The SEC filed an emergency action to halt an on-going multi-million dollar Ponzi scheme and affinity fraud involving investments in Oversea Chinese Fund Limited Partnership, a hedge fund based in Toronto, Ontario, Canada. The complaint alleges that Defendant Weizhen Tang, 50, of Toronto orchestrated the fraud scheme through numerous entities he controls. U.S. District Judge Jane Boyle granted a temporary restraining order, asset freeze, and other emergency relief against the Defendants, including the appointment of a receiver to take control of assets belonging to the Investment Adviser and two Relief Defendants — WinWin Capital Partners, LP, and Bluejay Investment, LLC, d/b/a Vintage International Investment, LLC.

The complaint alleges that from at least as early as 2004 to the present, Tang, acting through the Hedge Fund and other entities he controls, raised between \$50 million and \$75 million from more than 200 investors. According to the SEC's complaint, Weizhen Tang (the self-described "Chinese Warren Buffet") recently admitted to investors that the Hedge Fund operated as a Ponzi scheme since at least 2006. Specifically, the SEC alleges that Tang told

investors in February 2009 that he and the Hedge Fund posted false profits on investors' account statements for the purpose of concealing substantial trading losses, and to attract new investors to the Hedge Fund. Further, the SEC alleges that Tang admitted he used funds from new investors to return principal and pay out "fake" profits to other investors, which totaled at least \$8 million in 2006, 2007, and 2008 — despite significant trading losses incurred during that time.

According to the complaint, Tang specifically targeted members of the Chinese-American community in Texas and California. The defendants raised almost \$17.3 million in principal investments from approximately 75 investors. Of the \$17.3 millions, raised, investors have withdrawn approximately \$8.4 million from the Hedge Fund, leaving nearly \$9.6 million in investor principal unaccounted for.

The complaint alleges violations of the anti-fraud provisions of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and the offering registration provisions of Sections 5(a) and 5(c) of the Securities Act of 1933. The complaint also alleges violations of Sections 206(1), (2), and (4) of the Investment Advisers Act of 1940, and Rule 206(4)-8 thereunder. In addition to the emergency relief granted by the Court, the SEC seeks permanent injunctions, disgorgement of ill-gotten gains plus prejudgment interest, and civil money penalties against the Defendants.

Finally, the complaint alleges that the Defendants funneled some investor funds to associated persons and entities: WinWin Capital Partners LP and Bluejay Investment LLC d/b/a Vintage International Investment LLC. The SEC's complaint names them as relief defendants, and requests orders requiring them to disgorge any funds or benefits they received that are traceable to the Hedge Fund or any affiliated entities or individuals.

SEC v. Ponta Negra Fund I, LLC et al.

Lit. Rel. No. 21012 (April 27, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21012.htm>

The SEC filed an emergency action to halt an on-going multi-million dollar fraud involving investments in a Stamford, Connecticut-based hedge fund and its affiliates — Ponta Negra Fund I, LLC, Ponta Negra Offshore Fund I, Ltd., and Ponta Negra Group, LLC (the "Hedge Fund"). The complaint alleges, among other things, that Defendant Francesco Rusciano, 27, of Stamford, Connecticut, in selling interests in the Hedge Fund, (i) forged documents, (ii) promised false returns, and (iii) misrepresented assets managed by the Hedge Fund. U.S. District Judge Sam Sparks granted a temporary restraining order, asset freeze, and other emergency relief against the Defendants.

The complaint alleges that from at least as early as September 1, 2007 to the present, the Hedge Fund raised at least \$31 million from at least 15 investors. The complaint also alleges that, on January 11, 2008, Rusciano forged brokerage account statements for the Hedge Fund to make it appear that the Hedge Fund had approximately \$42 million in assets when it actually had \$3 million. Similarly, the SEC alleges that, on August 5, 2008, Rusciano produced financial statements reflecting an "equity" balance of more \$64 million when the true balance was less than \$7 million.

According to the complaint, Rusciano falsely overstated the Hedge Fund's monthly and yearly performance results. The alleged misstatements covered-up substantial trading losses in 2007 and 2009 and overstated modest 2008 trading gains.

Finally, the SEC alleges that, on April 21, 2009, Rusciano sent an email to a selling agent for the Hedge Fund, detailing the Hedge Fund's assets under management. According to the e-mail, the Hedge Fund had \$59 million in assets under management as of February 2009. According to the complaint, the Hedge Fund had less than \$10 million.

The complaint alleges violations of the anti-fraud provisions of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. In addition to the emergency relief granted by the Court, the SEC seeks permanent injunctions, disgorgement of ill-gotten gains plus prejudgment interest, and civil money penalties against the Defendants.

SEC v. North Hills Management LLC, et al.

Litigation Release No. 20913 (February 25, 2009)

<http://sec.gov/litigation/litreleases/2009/lr20913.htm>

Press Release (January 21, 2009)

<http://sec.gov/news/press/2009/2009-36.htm>

On February 25, 2009, the Securities and Exchange Commission charged Mark Bloom and his firm North Hills Management LLC with securities fraud, and obtained an emergency court order to freeze their assets and halt an alleged investment scheme involving the marketing of a "fund of funds" investment vehicle.

According to the SEC's complaint, filed in federal court in Manhattan, the SEC alleges that Bloom, through North Hills, raised approximately \$30 million from 40 to 50 investors between 2001 and 2007 by representing that the assets would be invested in a diverse group of hedge funds. Instead, Bloom misappropriated more than \$13.2 million of investor funds to furnish a lavish lifestyle that included the purchase of luxury homes, cars and boats for himself and his wife, who is named as a relief defendant. The remaining funds were invested in a single fund which itself turned out to be fraudulent.

The SEC alleges that the defendants solicited investments in North Hills, L.P. (the "Fund"), which is named as a relief defendant, by making misleading representations. Bloom and North Hills represented that the Fund's assets would be allocated across multiple funds and fund managers to ensure diversification and moderate risk. They sent investors false monthly account statements that portrayed their investments as profitable when, in reality, Bloom was systematically looting the Fund's trading account by making "loans" to himself and by investing in contravention of the Fund's stated investment strategy in an investment known as the Philadelphia Alternative Asset Fund (PAAF). Bloom received undisclosed commissions from PAAF in excess of \$355,000 over a 16-month period. PAAF itself was uncovered as a fraudulent scheme in June 2005.

According to the SEC's complaint, beginning in November 2007, one of the Fund's largest investors, a charitable trust (the "Trust") that funds children's schools began to serve Bloom with redemption requests, which Bloom repeatedly evaded. To date, Bloom has failed to honor the Trust's redemption requests in full and claims that he does not have the means to do so. The Trust is owed more than \$9.5 million on its investment.

SEC v. Arthur Nadel, et al.

Litigation Release No. 20858 (January 21, 2009)

<http://sec.gov/litigation/litreleases/2009/lr20858.htm>

Press Release (January 21, 2009)

<http://sec.gov/news/press/2009/2009-10.htm>

On January 21, 2009, the Securities and Exchange Commission filed a civil injunctive action in the United States District Court for the Middle District of Florida charging Arthur Nadel with fraud in connection with six hedge funds (the "Funds") for which he acted as the principal investment advisor. According to the Commission's complaint, Nadel provided false and misleading information for dissemination to investors about the Funds' historical returns and falsely overstated the value of investments in the Funds by approximately \$300 million. In contrast, the Funds appear to have total assets of less than \$1 million. Nadel has been missing since January 14, 2009.

The Commission's complaint also alleges that two entities with which Nadel was associated, and which separately or together provided investment advice to all of the Funds, also engaged in fraud as a result of Nadel's actions.

The Commission's complaint alleges that the defendants provided false and misleading information to the relief defendants for dissemination to investors through account statements and through offering memoranda. For example:

- Offering materials for three of the Funds represented that they had approximately \$342 million in assets as of November 30, 2008. In contrast, those funds had a total of less than \$1 million in assets at that time.
- Offering materials for several of the Funds represented monthly returns of around 11 - 12% between January and November 2008. In contrast, at least three of the Funds had negative returns during that time and another fund had lower than reported returns.
- One investor in one fund received an account statement for November 2008 indicating that her investment was valued at almost \$420,000. In contrast, the entire fund had less than \$100,000 at that time.

The Commission's complaint also alleges that defendant Nadel recently transferred at least \$1.25 million from two of the funds to secret bank accounts that he controlled.

SEC v. Ralph R. Cioffi and Matthew M. Tannin

Lit. Rel. No. 20625 (June 19, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20625.htm>

Press Rel. No. 2008-115 (June 19, 2008)

<http://www.sec.gov/news/press/2008/2008-115.htm>

The SEC charged two former Bear Stearns Asset Management (BSAM) portfolio managers for fraudulently misleading investors about the financial state of the firm's two largest hedge funds and their exposure to subprime mortgage-backed securities before the collapse of the funds in June 2007.

The SEC's complaint alleges that when the hedge funds took increasing hits to the value of their portfolios during the first five months of 2007 and faced escalating redemptions and margin calls, then-BSAM senior managing directors Ralph R. Cioffi and Matthew M. Tannin deceived their own investors and certain institutional counterparties about the funds' growing troubles until they collapsed and caused investor losses of approximately \$1.8 billion.

In a related criminal action today, the U.S. Attorney's Office for the Eastern District of New York announced the indictment of Cioffi and Tannin on conspiracy and fraud charges.

According to the SEC's complaint, filed in the U.S. District Court for the Eastern District of New York, the Bear Stearns High-Grade Structured Credit Strategies Fund and Bear Stearns High-Grade Structured Credit Strategies Enhanced Leverage Fund collapsed after taking highly leveraged positions in structured securities based largely on subprime mortgage-backed securities. According to the complaint, Cioffi acted as senior portfolio manager and Tannin acted as portfolio manager and chief operating officer for the funds, and they misrepresented the funds' deteriorating condition and the level of investor redemption requests in order to bring in new money and keep existing investors and institutional counterparties from withdrawing money. The complaint alleges that, for example, Cioffi misrepresented the funds' April 2007 monthly performance by releasing insufficiently qualified estimates — based only on a subset of the funds' portfolios — that projected essentially flat returns. The complaint alleges that final returns released several weeks later revealed actual April losses of 5.09 percent for the High-Grade Structured Credit Strategies Fund and 18.97 percent for the High-Grade Structured Credit Strategies Enhanced Leverage Fund.

The SEC's complaint alleges that Cioffi and Tannin also misrepresented their funds' investment in subprime mortgage-backed securities. According to the complaint, monthly written performance summaries highlighted direct subprime exposure as typically about 6 to 8 percent of each fund's portfolio. As alleged in the complaint, however, after the funds had collapsed, the BSAM sales force was ultimately told that total subprime exposure — direct and indirect — was approximately 60 percent.

The SEC further alleges that Cioffi and Tannin continually exaggerated their own investments in the funds while using their personal stake as a selling point to investors. The complaint alleges that Tannin repeatedly told investors, directly and through the Bear Stearns

sales force, that he was adding to his own stake in the funds in order to take advantage of the buying "opportunity" presented by the funds' losses. As alleged in the complaint, Tannin never actually added to his investment and he mocked as "silly" at least one investor who sought to redeem instead of following Tannin's supposed example. Meanwhile, as the complaint alleges, Cioffi redeemed \$2 million, which was more than one-third of his personal investment in the funds at the end of March 2007. According to the complaint, Cioffi transferred it to another BSAM fund that he described as "short sub prime," which he knew was profitable at the time.

CASES INVOLVING MUTUAL FUNDS AND INVESTMENT ADVISERS

SEC v. Regions Bank

Lit. Rel. No. 21215 (September 21, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21215.htm>

The SEC filed a settled civil action against Regions Bank (Regions) for its role in connection with a Florida-based offering fraud by unregistered broker-dealers U.S. Pension Trust Corp. and U.S. College Trust Corp. (collectively, USPT). For over six years, Regions or its predecessor bank served as trustee of investment plans through which USPT defrauded thousands of investors (residing primarily in Latin America) by charging exorbitant, undisclosed commissions and fees in connection with the sale of mutual funds.

The SEC alleges that since 1996, USPT has offered and sold mutual funds to investors through a trust created at a U.S. bank. USPT sells the funds through a series of investment plans that give investors a choice of making either annual contributions for multiple years or a single, lump-sum contribution. Until March 2006, USPT did not disclose to new investors that it subtracted from their contributions up to 85% of investor's initial contributions in the annual plans, and as much as 18% in the single contribution plans, for payment of sales commissions, USPT's "net profit," and insurance premiums.

According to the Commission's Complaint, Regions—which has served as trustee of the plans since October 2001 (through its predecessor bank)—contributed to the investment scheme because a primary selling point for USPT's investment plans was the trust relationship created between the investor and the U.S. bank. As trustee, Regions allowed USPT to use its name in marketing materials, prepared a promotional video that was posted on USPT's website, and sent representatives to Latin America to meet with sales agents and prospective investors to explain Regions' role as trustee. Regions entered into individual trust relationships with all investors, processed their contributions, and purchased the selected mutual funds for them. However, when it sent them confirming certificates (prepared by USPT but signed by a Regions representative), it failed to disclose the amounts taken out for USPT's fees and commissions. Regions' own Trust Agreement and Trust Summary were also misleading and failed to disclose the nature and amounts of the commissions and fees that USPT charged (except for Regions' own trust fees). Regions stopped accepting new USPT investor trust relationships in January 2008, and stopped accepting additional contributions under existing plans in August 2009.

The SEC's Complaint charges Regions with violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act of 1933, and with aiding and abetting USPT's violations of Section 15(a)(1) of the Securities Exchange Act of 1934 by serving as trustee.

In the Matter of Perry Corp.

A.P. Rel. No. 34-60351 (July 21, 2009)

<http://www.sec.gov/litigation/admin/2009/34-60351.pdf>

The SEC charged Perry Corp. with securities law violations for failing to disclose that it had acquired nearly 10 percent of the common stock of Mylan Laboratories, a substantial stock in a public company. At the time, Mylan had announced a proposed acquisition of King

Pharmaceuticals, Inc. that was subject to shareholder approval. Perry had entered into an investment strategy known as “merger arbitrage” and would profit from a Mylan-King merger. To increase the likelihood of the merger, Perry separately purchased the Mylan voting shares and entered into a series of “swap” transactions—hedging transactions through the use of derivative instruments—designed to avoid any financial exposure from its ownership of those shares.

The SEC’s order explains that Perry determined not to file the required disclosure statement after allegedly concluding that it acquired the Mylan shares “in the ordinary course of its business” and was thus entitled to defer its reporting obligations. But, Perry’s acquisition of the shares was not “in the ordinary course” of its business, because its purpose was to influence or affect the outcome of a transaction. Thus, Perry was required to disclose its acquisition of more than 5 percent of Mylan shares within 10 days of the acquisition. By failing to do so, Perry violated Section 13(d) of the Securities Exchange Act of 1934 and Rule 13d-1 thereunder.

In the Matter of Morgan Stanley & Co. Incorporated

A.P. Rel. No. 34-60342 (July 20, 2009)

<http://www.sec.gov/litigation/admin/2009/34-60342.pdf>

Morgan Stanley breached its fiduciary duty to advisory clients in its Nashville, Tennessee branch office by making material misstatements about a program through which the firm assisted clients in developing investment objectives and in selecting properly vetted money managers. Contrary to its disclosures, Morgan Stanley recommended some money managers who had not been approved for participation in the firm’s advisory programs and had not been subject to the firm’s due diligence review. William Keith Phillips, then a top producer at Morgan Stanley, steered clients to three unapproved managers in particular. Unbeknownst to investors, Morgan Stanley and Phillips received substantial brokerage commissions or fees from these three unapproved managers.

The SEC’s order against Morgan Stanley finds that the firm violated Section 206(2) of the Advisers Act; failed reasonably to supervise Phillips; and failed to maintain certain books and records as required by Section 204 of the Advisers Act.

SEC v. Regan & Company and Michael C. Regan

Lit. Rel. No. 21102 (June 24, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21102.htm>

The SEC charged Michael C. Regan and his firm, Regan & Company, for conducting a multi-million dollar Ponzi scheme. According to the SEC, from 2001 through April 2008, Regan and Regan & Co. fraudulently obtained at least \$15.9 million and ultimately caused investors to lose at least \$6.69 million through Regan’s misappropriation and trading losses. Specifically, contrary to his representations, Regan conducted no securities trading at all, used less than half of the funds entrusted to him for trading purposes, and suffered substantial losses on his investments. Regan repeatedly concealed his misconduct and deceived investors by preparing and sending them fictitious account statements and tax forms showing artificially inflated balances and returns. Regan also used the investor funds to support his extravagant lifestyle and to satisfy withdrawal requests from some investors.

The SEC's complaint charges Regan and Regan & Co. with violating Section 17(a) of the Securities Act of 1933, Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934, and Sections 206(1), 206(2), 206(4) and Rule 206(4)-8 of the Investment Advisers Act of 1940. The complaint seeks permanent injunctions, disgorgement of ill-gotten gains and prejudgment interest, and civil monetary penalties against both Regan and Regan & Co.

SEC v. Stanley Chais

Lit. Rel. No. 21096 (June 22, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21096.htm>

The SEC charged Stanley Chais, a California-based investment adviser, who acted as adviser to, and general partner of, three funds that invested all of their assets with Bernard Madoff, with fraud for misrepresenting his role in managing the funds' assets and for distributing account statements that he should have known were false.

In its complaint, the SEC alleges that Chais made a number of misrepresentations over the years to the Funds' investors, indicating that he formulated and executed the Funds' trading strategy. But Chais was actually an unsophisticated investor who simply turned all the assets to Madoff, and charged the Funds over \$250 million in fees for his purported "services." Many of the investors did not know that Chais invested with Madoff until Chais informed them about his arrest. The SEC also alleges that Chais ignored red flags indicating that Madoff's reported returns were false.

The SEC's complaint alleges that Chais violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Exchange Act of 1934 and Rule 10b-5 thereunder, and Section 206(4) of the Investment Advisers Act of 1940 and Rule 206(4)-8 thereunder. The SEC's complaint seeks financial penalties and a court order requiring Chais to disgorge his ill-gotten gains.

SEC v. Gendreau & Associates, Inc., and Jacques R. Gendreau

Lit. Rel. No. 21057 (May 26, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21057.htm>

The SEC charged Gendreau & Associates, Inc., and Jacques R. Gendreau, a Monarch Beach, Calif.-based registered investment adviser and its principal, with fraud and breach of fiduciary duty.

According to the complaint, the Defendants, who as of October 2007 had approximately 185 clients and \$97 million in assets under management, advised their clients to become heavily leveraged and invested client funds using substantial margin. Gendreau allegedly failed to disclose that his investment strategies were high-risk. The SEC also alleges that this high-risk strategy was unsuitable for many G&A clients due to their age, retirement status, and otherwise lower risk tolerance. As a result of Gendreau's misconduct, the complaint alleges, G&A clients suffered catastrophic financial losses.

In its complaint, the SEC alleges that Gendreau invested client funds using substantial margin even though many clients had retired, needed the money in the short-term, or had otherwise expressed concerns about incurring additional losses. The SEC further alleges that in late August and early September 2008, Gendreau implemented his riskiest investment strategy by investing client funds using maximum margin solely in the preferred shares of Citigroup Inc. and Wachovia Corporation. The SEC's complaint contends that Gendreau invested client funds in the banks' preferred shares using significant margin even though this strategy was not suitable for many clients and was contrary to some clients' express instructions. Further, the SEC claims that Gendreau misrepresented to his clients that this investment strategy was "guaranteed" or with "practically no risk."

According to the complaint, shortly after Gendreau purchased the preferred shares on behalf of his clients, the prices declined and G&A's custodial broker issued margin calls on the client accounts. The SEC alleges that Gendreau failed to meet these margin calls resulting in the custodial broker cancelling margin and liquidating the G&A client accounts. As a result of this investment strategy, according to the SEC's complaint, clients lost approximately \$12 million (approximately 72% of their assets) within days, and approximately 42 G&A clients were left owing the custodial broker approximately \$300,000 for margin loans.

The complaint charges G&A and Gendreau with violating Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940 (Advisers Act); G&A with violating Section 204 of the Advisers Act and Rule 204-2 thereunder; and Gendreau with aiding and abetting G&A's violation of Section 204 of the Advisers Act and Rule 204-2 thereunder. The SEC is seeking permanent injunctions, disgorgement plus prejudgment interest, and civil penalties against the defendants.

SEC v. Wealth Management LLC, James Putman, and Simone Fevola

Lit. Rel. No. 21055 (May 21, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21055.htm>

The SEC filed an emergency civil action charging Wealth Management LLC (Wealth Management), James Putman (Putman), Wealth Management's founder, majority owner, and Chief Executive Officer, and Simone Fevola (Fevola), Wealth Management's former President and Chief Investment Officer, with engaging in a kickback scheme and other fraudulent conduct involving six unregistered investment pools they managed. The SEC obtained a temporary restraining order enjoining the defendants from violating and aiding and abetting antifraud provisions of the Securities Act, Exchange Act, and Advisers Act and an asset freeze.

The complaint alleges that Wealth Management is a financial planning firm for families and individuals and also serves as General Partner or Managing Member for six investment pools. The complaint alleges that the Defendants caused clients to invest in the pools throughout the period of May 2003 through August 2008 and that Wealth Management claims currently to have approximately \$102 million of its clients' assets invested in the pools.

The complaint alleges that in 2006 and 2007, Putman and Fevola each accepted at least \$1.24 million in undisclosed payments derived from certain investments made by the pools, while continuing to cause clients to invest in the pools. The complaint alleges that the Defendants have also breached their fiduciary duties and engaged in fraud by misrepresenting the safety and stability of the two largest pools, and by placing their clients into these investments even though they were unsuitable for some of their clients.

According to the Complaint, the pools appear to have limited remaining assets and that it appears likely that the reported values of the pools are substantially overstated. The complaint alleges that Wealth Management and Putman have received and continue to receive management fees on the basis of these likely overvalued assets, and that Wealth Management and Putman have been providing redemptions to investors based on likely overstated valuations.

SEC v. Reserve Management Company, Inc., Resrv Partners, Inc., Bruce Bent Sr. and Bruce Bent II

Lit. Rel. No. 21025 (May 5, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21025.htm>

The SEC filed a civil action charging the entities and individuals who operate The Reserve Primary Fund with fraud for failing to provide key material facts to investors and trustees about the fund's vulnerability as Lehman Brothers Holdings, Inc. sought bankruptcy protection. The Reserve Primary Fund "broke the buck" on Sept. 16, 2008, when its net asset value fell below \$1.00 per share, meaning investors in the money market fund would lose money. In bringing the enforcement action, the SEC also seeks to expedite the distribution of the fund's remaining assets to investors.

According to the complaint, defendants failed to provide key material information to the Primary Fund's investors, board of trustees, and ratings agencies after Lehman Brothers filed for bankruptcy protection on September 15. The fund, which held \$785 million in Lehman-issued securities, became illiquid on that day when the fund was unable to meet investor requests for redemptions. According to the complaint, the defendants misrepresented that RMCI would provide the credit support necessary to protect the \$1 net asset value of the Primary Fund. RMCI had no such intention.

The SEC also alleges that RMCI significantly understated the volume of redemption requests and failed to provide the trustees with accurate information concerning the value of Lehman securities. Due to the misrepresentations and omissions, the fund was unable to strike a meaningful hourly net asset value as required by the fund's prospectus.

The complaint alleges that RMCI, Resrv Partners and Bruce Bent II violated Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder and that RMCI directly violated and Bruce Bent Sr. and Bruce Bent II directly violated and aided and abetted violations of Sections 206(1), (2) and (4) of the Investment Advisers Act and Rule 206(4)-8 thereunder. The complaint further alleges violations by Bruce Bent Sr. and Bruce Bent II of Section 10(b) and Rule 10b-5 thereunder as aiders and abettors and control persons.

The complaint names the Reserve Primary Fund as a relief defendant and seeks an order pursuant to Section 25(c) of the Investment Company Act and Section 21(d)(5) of the Exchange Act compelling a pro rata distribution of remaining fund assets which would release a significant amount of money that is currently being withheld from investors pending the outcome of numerous lawsuits against the fund, the trustees and officers and directors of the Reserve entities.

SEC v. Founding Partners Capital Management Company, William Gunlicks, Sun Capital, Inc., Sun Capital Healthcare, Inc., Founding Partners Stable-Value Fund, LP, Founding Partners Stable-Value Fund II, LP, Founding Partners Global Fund, Ltd., and Founding Partners Hybrid-Value Fund, LP

Lit. Rel. No. 21010 (April 23, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21010.htm>

The SEC obtained an emergency asset freeze and the appointment of a receiver over a Naples, Fla.-based investment adviser that has been charged with defrauding investors by misrepresenting the nature of \$550 million in investments. The receivership and asset freeze also extend to the funds managed by the investment adviser.

According to the SEC's complaint, the Defendants misrepresented to investors that their primary fund loaned money to two companies that purchased primarily short-term, highly liquid account receivables that fully secured the loans. The companies instead purchased account receivables that were longer-term, less liquid, and much riskier in nature. The complaint also alleges that the Defendants solicited new investors for their primary fund without disclosing that the fund was facing significant redemption requests.

The SEC also charged the Defendants with misappropriating fund assets for personnel use, and misrepresenting that its funds had audited financial statements for 2007 when they did not. Additionally, the Defendants allegedly failed to disclose to all investors and to comply with a prior SEC order entered against them.

The SEC's complaint alleges that Gunlicks and Founding Partners violated 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), (2), and (4) of the Investment Advisers Act of 1940 and Rule 206(4)-8 thereunder. The SEC also alleges that they violated a prior SEC order requiring that they cease and desist from committing or causing any violations and any future violations of Section 17(a)(2) of the Securities Act. In addition to emergency relief, the SEC's complaint seeks disgorgement of the defendants' ill-gotten gains, prejudgment interest, and financial penalties.

In the Matter of Hennessee Group, LLC and Charles J. Gradante

A.P. Rel. No. IA-2871

<http://www.sec.gov/litigation/admin/2009/ia-2871.pdf>

The SEC charged New York-based investment adviser Hennessee Group LLC and its principal Charles J. Gradante with securities law violations for failing to perform their advertised

review and analysis before recommending that their clients invest in the Bayou hedge funds that were later discovered to be a fraud.

In a settled administrative proceeding, the SEC issued an order finding that Hennessee Group and Gradante did not perform key elements of the due diligence that they had represented they would conduct prior to recommending investments in the Bayou hedge funds. The SEC also finds that they failed to conduct a reasonable investigation into red flags concerning Bayou. Hennessee Group and Gradante routinely represented to clients and prospective clients that they would not recommend investments in hedge funds that did not satisfy all phases of their due diligence evaluation.

According to the SEC's order, approximately 40 clients invested millions of dollars in the Bayou hedge funds from February 2003 through August 2005 after the Hennessee Group recommended those investments. Most of the money was lost through trading or dissipated by Bayou's principals, who defrauded their investors by fabricating Bayou's performance in client account statements and year-end financial statements. The SEC charged the managers of the Bayou hedge funds with fraud in 2005.

The SEC's order finds that Hennessee Group and Gradante failed to conduct the portfolio and trading analysis that it had advertised to clients. Instead of analyzing Bayou's results and processes through a review of Bayou's historical trading methods to determine whether the fund was, in fact, successfully executing its purported day-trading strategy, Hennessee Group and Gradante decided not to perform any analysis after Bayou refused to produce its trading data. They relied entirely on Bayou's uncorroborated representations about its strategy and its purported rates of return.

The SEC's order also finds that despite conflicting reports from Bayou about the identity of their independent auditor, Hennessee Group and Gradante failed to verify Bayou's relationship with its auditor. In fact, the accounting firm that purportedly conducted Bayou's annual audit was a non-existent entity fabricated by one of Bayou's principals, who was identified in publicly available state accountancy board records as the registered agent for the bogus accounting firm. According to the Commission's order, Hennessee Group and Gradante also failed to respond to red flags concerning Bayou that came to their attention while they were monitoring Bayou on behalf of their clients. In particular, they failed to inquire or investigate when Bayou provided contradictory responses regarding the identity of its auditor or to adequately inquire about a rumor that one of Bayou's principals was affiliated with Bayou's purported outside auditing firm. The Commission's order finds that Hennessee Group and Gradante violated Section 206(2) of the Advisers Act. The order requires Hennessee Group and Gradante to pay \$814,644.12 in disgorgement and penalties, and to cease and desist from committing or causing further violations. The parties also are required to adopt policies to ensure adequate disclosures in the future and to provide copies of the Commission's Order to all current and prospective clients for a period of two years.

Hennessee Group and Gradante consented to the entry of the Commission's order without admitting or denying the findings.

SEC v. Locke Capital Management, Inc. and Leila C. Jenkins

Litigation Release No. 20936 (March 9, 2009)

<http://sec.gov/litigation/litreleases/2009/lr20936.htm>

Administrative Proceeding File No. 3-13407 (March 11, 2009)

<http://sec.gov/litigation/admin/2009/34-59555.pdf>

Press Release (March 9, 2009)

<http://sec.gov/news/press/2009/2009-51.htm>

On March 9, 2009, the Securities and Exchange Commission filed a civil injunctive action against Locke Capital Management, Inc., an investment adviser based in Newport, Rhode Island and New York City, and Leila C. Jenkins, its founder and sole owner who currently serves as its President, Chief Executive Officer, and Chief Investment Officer. The Complaint alleges that Locke and Jenkins invented a billion-dollar client in order to gain credibility and attract legitimate investors. The Complaint further alleges that Jenkins tried to perpetuate her scheme by lying to the Commission staff about the existence of the invented client and furnishing the staff with bogus documents in 2008, including fake custodial statements that she created on her laptop.

According to the Complaint, Jenkins repeatedly claimed that the so-called "confidential" client accounts that she invented and claimed to manage contained more than \$1 billion in assets. Even as Locke began to take on genuine clients in late 2006, the assets under management of its real clients never amounted to more than a very small portion of the billion-plus dollars that Jenkins claimed to manage. From at least 2003 to 2009, falsehoods concerning the confidential accounts were made in brochures, meetings, submissions to online databases that prospective clients used to select money managers, and in SEC filings.

Besides the invented client and assets under management, the Complaint alleges several other lies Jenkins and her firm told to investors. These include misrepresenting Locke's performance for years in which Locke had no clients and deceiving clients about the makeup of the firm, including the number, identity, and role of its employees.

In the Matter of Merrill Lynch, Pierce, Fenner & Smith Inc.

Admin Proc. File No. 3-13357 (January 30, 2009)

<http://sec.gov/litigation/admin/2009/ia-2834.pdf>

Administrative Proceeding File No. 3-13407

<http://sec.gov/litigation/admin/2009/34-59555.pdf>

Press Releases

<http://sec.gov/news/press/2009/2009-54.htm> (March 11, 2009)

<http://sec.gov/news/press/2009/2009-13.htm> (January 30, 2009)

On January 30, 2009, the Commission issued a settled administrative and cease-and-desist order against Merrill Lynch, Pierce, Fenner & Smith Inc. (Merrill Lynch).

The Order finds that from at least 2002 through 2005, Merrill Lynch, through its pension consulting services advisory program, breached its fiduciary duty to certain of the firm's pension fund clients and prospective clients by failing to disclose the facts creating the material conflict

of interest in recommending these clients use directed brokerage to pay hard dollar fees, and in recommending the use of Merrill Lynch's transition management desk to these clients. In addition, the Order finds that Merrill Lynch made misleading statements to the clients served by its Ponte Vedra South, Florida office (Ponte Vedra South office) regarding its manager identification process. The Order finds that as a result of the above conduct, Merrill Lynch willfully violated Section 206(2) of the Investment Advisers Act of 1940 (Advisers Act). The Order finds that, in addition, Merrill Lynch failed reasonably to supervise its investment adviser representatives in the Ponte Vedra South office with respect to the provision of advisory services to its consulting services clients. Finally, Merrill Lynch willfully violated Section 204 of the Advisers Act and Rule 204-2(a)(14) thereunder by failing to maintain records of the offer or delivery of disclosure statements.

Based on the above, the Order orders that Merrill Lynch be censured; cease and desist from committing or causing any violations and any future violations of Sections 204 and 206(2) of the Advisers Act, and Rule 204-2(a)(14) thereunder; and pay a civil money penalty in the amount of \$1 million. Merrill Lynch consented to the issuance of the Order without admitting or denying any of the findings in the Order.

SEC v. James Tambone and Robert Hussey

Litigation Release No. 20822 (December 5, 2008)

<http://sec.gov/litigation/litreleases/2008/lr20822.htm>

The Securities and Exchange Commission announced that on December 3, 2008, the United States Court of Appeals for the First Circuit issued a ruling that allowed the SEC to proceed with its fraud action against James Tambone and Robert Hussey, former executives of Columbia Funds Distributor, Inc. ("Columbia Distributor"), the principal underwriter and distributor for a group of approximately 140 mutual funds in the Columbia mutual fund complex ("Columbia Funds"). The SEC had alleged in a civil injunctive action that from 1998 through 2003, Tambone and Hussey participated in a fraudulent scheme with Columbia Distributor and Columbia Management Advisors, Inc. ("Columbia Advisors"), the investment adviser to the funds, by secretly entering into or approving arrangements with at least eight preferred customers allowing them to engage in frequent short-term trading in certain Columbia Funds in contravention of the prospectuses that represented that the funds did not permit or were otherwise hostile to market timing or other short-term or excessive trading.

The First Circuit ruling reversed a decision by the District of Massachusetts that had dismissed the case in December 2006 on the ground that Tambone and Hussey could not be held primarily liable for false statements in the prospectuses because they did not make those statements. The First Circuit held that Tambone and Hussey could be held liable. In its decision, the First Circuit emphasized the unique role that underwriters play in the sale and distribution of mutual funds to the investing public and the reliance that the investing public places on them as a result. The First Circuit explained that Tambone and Hussey, as executives of Columbia Distributor, had a legal duty to confirm the accuracy and completeness of the prospectuses and other fund material that they distributed. By distributing the misleading prospectuses, the First Circuit reasoned, Tambone and Hussey made implied statements to potential investors that they

had a reasonable basis for believing that the key statements in the prospectuses regarding market timing were accurate and complete.

The SEC first brought action against Tambone and Hussey on February 9, 2005. The District Court dismissed that action without prejudice on January 27, 2006. Thereafter, on May 19, 2006, the SEC filed a new complaint concerning the same conduct. The SEC's complaint alleges that the defendants violated Section 17(a) of the Securities Act of 1933 and Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934, and aided and abetted Columbia Distributor's violations of Section 15(c)(1) of the Exchange Act, Columbia Advisors' violations of Sections 206(1) and 206(2) of the Investment Advisers Act of 1940, and the Columbia entities' violations of Section 10(b) and Rule 10b-5 of the Exchange Act. The SEC is seeking an order permanently enjoining Tambone and Hussey from violating the antifraud and other provisions of the federal securities laws, requiring them to disgorge funds received through their violations of the securities laws, and imposing civil monetary penalties. Although the District Court dismissed this complaint on December 29, 2006, the First Circuit, in its decision, remanded the case to the District Court for further proceedings.

In related proceedings, the SEC filed a civil injunctive action against Columbia Management Advisors, Inc. and Columbia Funds Distributor, Inc., in federal court in Massachusetts on February 24, 2004. That action was later dismissed when the two Columbia entities agreed to settle charges through administrative proceedings that resulted in an Order issued by the SEC on February 9, 2005 requiring, among other things, \$140 million in disgorgement and penalties to be distributed to investors harmed by market timing activity at Columbia. The SEC is in the process of distributing those funds to investors.

In the Matter of Pax World Management Corp.

Press Rel. No. 2008-157 (Jul. 30, 2008)

<http://www.sec.gov/news/press/2008/2008-157.htm>

Admin Proc. File No. 3-13107 (July 30, 2008)

<http://www.sec.gov/litigation/admin/2008/ia-2761.pdf>

The SEC charged New Hampshire-based Pax World Management Corp. with violating investment restrictions in socially responsible mutual funds that investors were told would not contain securities issued by companies involved with producing weapons, alcohol, tobacco or gambling products.

The SEC alleges that Pax World purchased at least 10 securities that the Funds' socially responsible investing (SRI) restrictions prohibited them from buying — contrary to representations it made to investors and the boards of the Funds. Pax World agreed to settle the SEC's charges and was ordered to pay a penalty of \$500,000.

According to the SEC's order, Pax World violated the Funds' SRI restrictions by making purchases in the securities of companies that derived revenue from the manufacture of alcohol or gambling products, derived more than 5 percent of their revenue from contracts with the U.S. Department of Defense, or failed to satisfy the Funds' environmental or labor standards. Pax

World Funds held at least one security that violated their SRI restrictions at all times from 2001 through early 2006.

The SEC also alleged that Pax World failed to consistently follow its own internal SRI-related policies and procedures that required that all new securities be screened by Pax World's Social Research Department prior to purchase to ensure compliance with the funds' SRI disclosures. Pax World failed to screen 8 percent of all new security purchases from 2001 to 2005.

Without admitting or denying the findings in the SEC's Order, Pax World agreed to be censured and to cease and desist from any further violations of certain antifraud, false filing, and other provisions of the securities laws in addition to paying the \$500,000 penalty. The settlement takes into account the remedial acts undertaken by Pax World as well as its cooperation.

In the Matter of LPL Financial Corporation

Press Rel. No. 2008-193 (Sept. 11, 2008)

<http://www.sec.gov/news/press/2008/2008-193.htm>

Admin. Proc. File No. 34-58515 (Sept. 11, 2008)

<http://www.sec.gov/litigation/admin/2008/34-58515.pdf>

The SEC took an enforcement action against LPL Financial Corporation for failing to adopt policies and procedures to safeguard their customers' personal information, leaving at least 10,000 customers vulnerable to identity theft following a series of hacking incidents involving LPL's online trading platform.

LPL is a financial services firm with headquarters in Boston, Charlotte, and San Diego. Under the Safeguards Rule of Regulation S-P of the federal securities laws, broker-dealers and SEC-registered investment advisers like LPL are required to adopt policies and procedures reasonably designed to safeguard customer information. The firm agreed to pay a \$275,000 penalty to settle the SEC's enforcement action without admitting or denying the findings.

The SEC's administrative order against LPL finds that the firm conducted an internal audit in mid-2006 that identified inadequate security controls to safeguard customer information at its branch offices. LPL's audit specifically identified the risk from hacking. The SEC's order finds that LPL failed to take timely corrective action because, by the time that hacking incidents began in July 2007, the firm had not implemented increased security measures in response to the identified weaknesses.

According to the SEC's order, LPL experienced multiple hacking incidents between July 2007 and early 2008, and unauthorized persons gained access to the online trading platform LPL provided for its registered representatives. Once logged onto LPL's trading platform, the perpetrators placed or attempted to place 209 unauthorized securities trades worth more than \$700,000 combined in 68 customer accounts.

The SEC ordered LPL to cease and desist from committing future violations of the Safeguards Rule, censured it for its conduct, and ordered it to pay the \$275,000 penalty. LPL

further agreed to undertake certain remedial actions including retaining an independent consultant to review LPL's policies and procedures required by the Safeguards Rule, and to devise and implement a policy and set of procedures for training its employees and all registered representatives regarding safeguarding customer records and information. LPL consented to the entry of the SEC's order without admitting or denying the SEC's findings.

In the Matter of Banc of America Investment Services, Inc. and Columbia Management Advisors, LLC, as successor in interest to Banc of America Capital Management, LLC

Admin. Proc. No. 3-13030 (May 1, 2008)

<http://www.sec.gov/litigation/admin/2008/33-8913.pdf>

On May 1, 2008, the SEC filed a settled enforcement action against Banc of America Investment Services, Inc. (BAISI) for failing to disclose to clients that in selecting investments for discretionary mutual fund wrap fee accounts, it favored affiliated mutual funds. The SEC also charged Columbia Management Advisors, LLC (Columbia), as successor to Banc of America Capital Management, LLC (BACAP) with aiding and abetting, and causing certain of BAISI's violations.

The SEC's Order finds that, from July 2002 through December 2004, BAISI made material misrepresentations and omissions to clients who had given BAISI discretion to select mutual funds for them. The clients participated in an asset-based or "wrap" fee program in which they paid BAISI a fee based upon the amount of their assets in exchange for BAISI providing advisory and other account services. BAISI had a fiduciary duty to act in the best interests of its clients, which required BAISI to disclose material information concerning conflicts of interest, and precluded it from undisclosed use of its clients' assets to benefit itself or its affiliates.

The Order also finds that BAISI purchased at least two proprietary "Nations Funds" for clients with discretionary wrap fee accounts using a methodology contrary to BAISI's disclosures to those clients. Additionally, BAISI omitted to disclose the scope of its conflict of interests, and their bias in the recommendation and selection process. BACAP earned additional fees as a result of these violations because it was paid management and other fees based on the total assets of Nations Funds.

According to the Order, BAISI violated Section 17(a)(2) and (3) of the Securities Act, Sections 206(2), 206(4), and 207 of the Advisers Act and Advisers Act Rule 206(4)-1(a)(5), and BACAP aided and abetted and caused violations of Sections 206(2) and 206(4) of the Advisers Act and Advisers Act Rule 206(4)-1(a)(5).

Under the terms of the settlement, BAISI and Columbia agreed to censures, cease-and-desist orders, and a total of \$9.7 million in disgorgement, prejudgment interest, and penalties, which will be put into a Fair Fund to benefit affected clients of BAISI. BAISI is also required by the order to conduct a review of the firm's method for recommending and selecting mutual funds in discretionary programs.

CASES INVOLVING INSIDER TRADING

SEC v. King Chuen Tang a/k/a Chen Tang, et al.

Lit. Rel. No. 21271 (October 30, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21271.htm>

The SEC charged the former CFO of a private investment firm and six of his relatives and friends with insider trading, alleging that their scheme collectively reaped more than \$8 million in illicit profits from unlawful trades in the securities of Tempur-pedic International, Inc. and Acxiom Corporation.

The SEC alleges that Chen Tang learned non-public information as the CFO of a private equity fund and from illegal tips by his brother-in-law, who was the CFO of a venture capital fund. Tang and his trading partners, which included his brother and four friends, traded on the inside information through their personal brokerage and retirement accounts, the accounts of their spouses, children and relatives, and the accounts of several privately-offered investment funds that Tang and three of his friends managed. Collectively, they realized profits of more than \$6 million from their insider trading in Acxiom securities.

The complaint alleges that the Defendants violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The complaint also alleges that Defendants Chen Tang, Ronald Yee, Zisen Yu, Ming Siu, and Joseph Seto violated Section 17(a) of the Securities Act of 1933. The complaint requests that the court permanently enjoin the Defendants from future violations of the federal securities laws, and order them to disgorge ill-gotten gains with prejudgment interest and pay financial penalties. The complaint also names Venture Associates Fund I, Tang Capital Partners, Acceleration Capital Partners, American Pegasus Long Short Fund Segregated Portfolio, Ping Lee Tang, Ka Ling Lee, Yin Lee Ka, Cheung-Ting Ka, Sylvia Tsui, Doi Ping Siu, Yuen-Lai Ma, Leung-Kee Siu, Rosalie Cho, and two minor children of Chen Tang as relief defendants in order to recover ill-gotten gains in their possession.

SEC v. Galleon Management, LP, Raj Rajaratnam, Rajiv Goel, Anil Kumar, Danielle Chiesi, Mark Kurland, Robert Moffat and New Castle LLC

Lit. Rel. No. 21255 (October 16, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21255.htm>

The SEC charged billionaire Raj Rajaratnam and his New York-based hedge fund advisory firm Galleon Management LP with engaging in a massive insider trading scheme that generated more than \$25 million in illicit gains. The SEC also charged six others involved in the scheme: Danielle Chiesi (portfolio manager at New Castle Funds); Rajiv Goel (managing director at Intel Capital, an Intel subsidiary); Anil Kumar of Saratoga (director at McKinsey & Company); Mark Kurland (Senior Managing Director and General Partner at New Castle); Robert Moffat (senior vice president at IBM); and New Castle Funds LLC (New York-based hedge fund).

The SEC's complaint alleges that Rajaratnam tapped into his network of friends and close business associates to obtain insider tips and confidential information about corporate

earnings or takeover activity at several companies, including Google, Hilton and Sun Microsystems. He then used the non-public information to illegally trade on behalf of Galleon.

The SEC's complaint charges each of the defendants with violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and, except for Kumar and Moffat, violations of Section 17(a) of the Securities Act of 1933 and. The complaint seeks a final judgment permanently enjoining the defendants from future violations of the above provisions of the federal securities laws, ordering them to disgorge their ill-gotten gains plus prejudgment interest, and ordering them to pay financial penalties. The complaint also seeks to permanently prohibit Goel and Moffat from acting as an officer or director of any registered public company.

SEC v. Reza Saleh and Amir Saleh

Lit. Rel. No. 21221 (September 24, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21221.htm>

The SEC charged Richardson, Texas resident Reza Saleh with insider trading around the public announcement of Dell Inc.'s tender offer for Perot Systems earlier this week.

In the SEC's complaint, the SEC alleges that Saleh made increasingly large purchases of Perot Systems call options contracts based on material, non-public information that he learned in the course of his employment with, or duties for, two Perot-related private companies and Perot Systems. Immediately following the tender offer announcement, Saleh sold all of the call option contracts in the accounts and reaped approximately \$8.6 million in illicit profits.

The SEC's complaint alleges that Saleh violated Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 and Rules 10b-5 and 14e-3 thereunder. The SEC has sought an emergency asset freeze, a preliminary injunction and a final judgment permanently enjoining Saleh from future violations of these provisions of the federal securities laws and ordering him to pay financial penalties and disgorgement of ill-gotten gains with prejudgment interest.

The SEC's complaint also names Amir Saleh of Richardson, Texas, as a relief defendant, in order to recover trading profits he received as a co-account holder on one of Reza Saleh's brokerage accounts.

SEC v. Kevan D. Acord et al.

Lit. Rel. No. 21132 (July 15, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21132.htm>

The SEC charged six individuals with insider trading in the securities of Neff Corporation before an April 7, 2005 acquisition announcement.

The SEC alleges that Kevan Acord, an attorney and accountant, and his partner, Philip Growney, an accountant, abused their position of trust and confidence as tax consultants to Neff when they bought \$329,000 of Neff stock in the nine days before the announcement. After the acquisition, Acord exchanged shares that he purchased for his personal account and for the account of a long time client for a profit of nearly \$155,000.

The SEC also alleges that Alberto Perez, a business associate and close friend of Neff's CEO, learned of the possible acquisition while working at an office at Neff's headquarters. Perez abused his position of trust and confidence with the CEO, and misappropriated the information by tipping his brother Jose Perez. The two then used the information to purchase \$282,000 of Neff stock before the acquisition announcement, and following the acquisition, they exchanged their Neff shares for a profit of \$399,000.

The SEC also alleges that Dr. Sebastian De La Maza, the father-in-law of Neff's CEO, learned about the pending acquisition from his daughter, who is married to Neff's CEO, and bought \$111,000 of Neff stock before the acquisition announcement. Following the acquisition, De La Maza exchanged the Neff shares for a profit of \$84,000.

Finally, the SEC alleges that Thomas Borell, a lawyer and a close friend of a Neff director, misappropriated information about the acquisition by buying more than \$1.3 million of Neff stock before the acquisition announcement and thereby abusing his position of trust and confidence with the director.

The SEC's complaint charges each of the defendants with violating Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and seeks permanent injunctions, disgorgement and prejudgment interest, and civil money penalties and an officer and director bar against Acord.

SEC v. Anthony Perez and Ian C. Perez; SEC v. Math J. Hipp Jr.; SEC v. Carl E. Binette and Peter E. Talbot

Lit. Rel. No. 21133 (July 15, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21133.htm>

The SEC brought three separate civil injunctive actions charging five individuals with violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, based on either tipping or purchasing securities of Safeco Corp. in advance of its April 23, 2008 merger announcement.

In the first civil action, the SEC alleges that Math J. Hipp Jr. misappropriated material, non-public information about a potential sale of Safeco from his wife, an executive assistant to Safeco's Executive Vice President of Insurance Operations, and realized profit of over \$118,245.

In the second civil action, the SEC alleges that Anthony Perez, then an investment banker at Goldman Sachs & Co., misappropriated material non-public information from Goldman Sachs and its client regarding a potential acquisition of Safeco, and unlawfully tipped his brother, Ian C. Perez, who in turn bought Safeco call options and sold them later to realize profit of over \$152,000.

In the third civil action, the SEC alleges Peter E. Talbot, then a financial analyst at a subsidiary of The Harford Financial Services Group, Inc., tipped his nephew, Carl E. Binette,

after he learned at work that Safeco was an acquisition target. Using Binette's brokerage account, Talbot and Binette bought Safeco call options and sold them later to realize profit of \$615,833.

SEC v. Phillip Macdonald, Martin Gollan, and Michael Goodman

Lit. Rel. No. 21079 (June 10, 2009)

<http://sec.gov/litigation/litreleases/2009/lr21015.htm>

The SEC's complaint alleges that three Canadian citizens, Phillip Macdonald, Martin Gollan, and Michael Goodman, engaged in insider tipping and trading in the securities of several companies ahead of public announcements of business combinations. One of the business combinations involved a tender offer. Goodman has agreed to settle.

The complaint alleges that between January and June 2005, Goodman's wife, while employed as an administrative assistant with Merrill Lynch Canada, Inc., learned the identities of a number of companies involved in contemplated, but unannounced, business combinations. When they were discussing what was happening at her job, Goodman's wife sometimes mentioned the information to Goodman, expecting that he would keep it confidential. Goodman instead misappropriated to his associates, Macdonald and Gollan. As a result of their illegal trading, Macdonald made over \$900,000 in ill-gotten gains, and Gollan made over \$90,000 in ill-gotten gains.

Goodman has consented to entry of a proposed final judgment permanently enjoining him from further violations of Sections 10(b) and 14(e) of the Exchange Act and Rules 10b 5 and 14e 3 thereunder. The case against MacDonald and Gollan is ongoing. The SEC is seeking disgorgement of all ill-gotten gains, with prejudgment interest thereon; imposing civil money penalties; and permanent injunction from future violations of Sections 10(b) and 14(e) of the Exchange Act and Rules 10b 5 and 14e 3 thereunder.

SEC v. Robert L. Hollier and Wayne A. Dupuis

Lit. Rel. No. 21072 (June 8, 2009)

<http://sec.gov/litigation/litreleases/2009/lr21072.htm>

The SEC filed a Complaint for Injunctive and Other Relief against Robert L. Hollier ("Hollier") and Wayne A. Dupuis ("Dupuis") for insider trading in the securities of Warrior Energy Services Corporation ("Warrior Energy").

The Complaint alleges that during the latter part of August 2006, Hollier, a member of Warrior Energy's board of directors, had knowledge of pending merger talks between Warrior Energy and Superior Energy Services, Inc. ("Superior Energy"). The complaint alleges Hollier tipped this material nonpublic information to Dupuis during a hunting trip in Canada. Immediately following the trip, Dupuis purchased 5,000 shares of Warrior Energy stock for approximately \$85,000. Dupuis, who had no prior history of trading Warrior Energy shares, sold the only two stocks in his portfolio to buy the Warrior Energy shares. When the merger was announced on September 25, 2006, Warrior Energy shares increased in price by almost 70%. The complaint also alleges that on October 3, 2006, Dupuis sold all of his Warrior Energy stock for a profit of approximately \$41,800.

The complaint alleges that the defendants have violated the antifraud provisions of the federal securities laws, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The SEC is seeking (i) a permanent injunction against future violations; (ii) disgorgement of ill-gotten gains plus prejudgment interest; and (iii) imposition of civil penalties.

SEC v. Jon-Paul Rorech, et. al

Lit. Rel. No. 21023 (May 5, 2009)

<http://sec.gov/litigation/litreleases/2009/lr21023.htm>

The SEC filed a civil action alleging that Renato Negrin, a former portfolio manager at hedge fund investment adviser Millennium Partners, L.P., and Jon-Paul Rorech, a salesman at Deutsche Bank Securities Inc., engaged in insider trading in the credit default swaps of VNU N.V., an international holding company that owns Nielsen Media and other media businesses.

According to the complaint, Rorech learned information from Deutsche Bank investment bankers about a change to the proposed VNU bond offering that was expected to increase the price of the CDS on VNU bonds. Deutsche Bank was the lead underwriter for a proposed bond offering by VNU. According to the complaint, Rorech illegally tipped Negrin about the contemplated change to the bond structure, and Negrin then purchased CDS on VNU for a Millennium hedge fund. When news of the restructured bond offering became public in late July 2006, the price of VNU CDS substantially increased, and Negrin closed Millennium's VNU CDS position at a profit of approximately \$1.2 million.

The complaint charges violations of Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934. The SEC is seeking permanently enjoinder from future violations of the federal securities laws, financial penalties and disgorgement of ill-gotten gains with prejudgment interest.

SEC v. Matthew J. Browne

Lit. Rel. No. 21015 (April 28, 2009)

<http://sec.gov/litigation/litreleases/2009/lr21015.htm>

The SEC filed a civil action on April 28, 2009, alleging that Matthew J. Browne, a Tulsa, Oklahoma attorney, engaged in insider trading in securities of then Nasdaq-listed SemGroup Energy Partners, LP ("SGLP").

According to the complaint, on July 14, 2008, in the course of providing legal services to a client, Browne learned that SGLP's privately-held parent company and largest customer, SemGroup, LP, was experiencing liquidity issues. The complaint further alleges that, immediately after learning this information, Browne sold his entire position in SGLP (5,200 units), at an average price of \$24.06 per share. According to the complaint, by secretly trading on the non-public information, Browne breached duties of trust and confidence owed to his client and the law firm at which he was then employed.

On July 17, after the close of trading, SGLP announced that SemGroup, LP was "experiencing liquidity issues" and was considering bankruptcy. On July 18, SGLP's unit price closed at \$8.30 per share, 65.5% lower than Browne's July 14 average sale price. According to the complaint, by liquidating his SGLP holdings on July 14, Browne avoided losses of \$81,773.

Without admitting or denying the allegations in the complaint, Browne has consented to a permanent injunction against future violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and to pay disgorgement of the \$81,773 loss he avoided by his illegal trading, plus prejudgment interest of \$1,505.98, and a civil penalty of \$81,773. Browne has also consented to a five-year suspension from appearing or practicing before the Commission under Rule 102(e).

SEC v. Maher F. Kara, Michael F. Kara, Emile Y. Jilwan, Zahi T. Haddad, Bassam Y. Salman, and Karim I. Bayyouk

Lit. Rel. No. 21020 (April 30, 2009)

<http://sec.gov/litigation/litreleases/2009/lr21020.htm>

On April 30, 2009, the SEC filed a civil action against Maher Kara, his brother Michael Kara, and others. The complaint alleges that Maher Kara, a former Citigroup investment banker, repeatedly tipped his brother about upcoming merger deals in an insider trading scheme that involved friends and family throughout Northern California and the Midwest.

The SEC further alleges that Michael Kara, in addition to buying stock and options in target companies that were the subject of the Citigroup deals, leaked the information to a network of friends and family who also traded in advance of the deals. Michael Kara allegedly traded in at least 20 companies that were involved in confidential transactions pending in the Citigroup health care investment banking group where Maher Kara worked.

The participants in the scheme made their biggest profits trading in the stock and options of San Diego, Calif.-based medical testing company Biosite, Inc., less than three days before a March 25, 2007, announcement that it would be acquired. According to the SEC's complaint, Maher Kara tipped his brother on March 22 about the confidential merger negotiations, and less than 15 minutes later Michael Kara began acquiring a large volume of Biosite stock and short-term call options. That same day, Michael Kara began calling friends and family members to pass along the tip, and they too began buying Biosite securities. After the acquisition of Biosite was publicly disclosed days later, the stock price jumped over 50 percent. Michael Kara made illegal profits of more than \$1.2 million, while his six tippees together made nearly \$4 million.

In addition to the Kara brothers, the SEC complaint also names the following defendants: Emile Jilwan of Pleasanton, Calif. (Michael Kara's friend), who made \$2.3 million on Biosite trades; Zahi Haddad of Stockton, Calif. (Michael and Maher Kara's uncle), who made \$82,000; Bassam Salman of Orland Park, Ill. (brother of Maher Kara's wife), who passed the information to his brother-in-law; and Karim Bayyouk of Livonia, Mich. (Salman's brother-in-law), who made \$950,000 (some of which he returned to Salman).

The SEC's complaint charges the defendants with violating Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 and Rules 10b-5 and 14e-3 thereunder. The complaint seeks disgorgement of illegal profits, civil penalties, and a permanent injunction against future violations of Sections 10(b) and 14(e).

In separate civil actions filed April 30, 2009, the SEC also charged two of Michael Kara's tippees, Nasser Mardini of Stockton, Calif. and Joseph Azar of Pleasanton, Calif., with violating Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 and Rules 10b-5 and 14e-3 thereunder. Azar and Mardini have agreed to settle the SEC's charges without admitting or denying the allegations. Mardini has agreed to repay illegal profits and the entry of a permanent injunction against future violations of Section 10(b) and 14(e), and Azar has agreed to repay illegal profits, pay a penalty, and the entry of a permanent injunction against future violations of Section 10(b) and 14(e).

SEC v. Nicos Achilleas Stephanou, et al.

SEC v. Ramesh Chakrapani

Litigation Release No. 20884 (February 5, 2009)

<http://sec.gov/litigation/litreleases/2009/lr20884.htm>

Press Release (February 5, 2009)

<http://sec.gov/news/press/2009/2009-18.htm>

On February 5, 2009, the Securities and Exchange Commission charged seven individuals involved in an insider trading ring that generated more than \$11.6 million in illegal profits and avoided losses.

The SEC alleges that two mergers and acquisitions professionals, Nicos Achilleas Stephanou at UBS Investment Bank and Ramesh Chakrapani at Blackstone Advisory Services, L.P., tipped five individuals including Joseph Contorinis, a portfolio manager for a Jefferies Group, Inc. hedge fund, with material nonpublic information about three impending corporate acquisitions.

According to the SEC's complaint, the insider trading ring included:

- Nicos Achilleas Stephanou, a resident of the United Kingdom, was an Associate Director of Mergers and Acquisitions at UBS Investment Bank
- Ramesh Chakrapani, a resident of the United Kingdom, was a Managing Director in the Corporate and Mergers and Acquisitions group at Blackstone Advisory Services, L.P. and a friend and former colleague of Nicos Stephanou
- Joseph Contorinis, a resident of Florida, was a Managing Director at Jefferies & Company, Inc. and portfolio manager for the Jefferies Paragon Fund, and a friend and former colleague of Nicos Stephanou
- Achilleas Stephanou, a resident of Cyprus, is Nico Stephanou's father
- George Paparrizos, a resident of Foster City, Calif., is a former classmate of Nicos Stephanou
- Konstantinos Paparrizos, a resident of Greece, is the father of George Paparrizos

- Michael G. Koulouroudis, a resident of Brooklyn, N.Y., is a close family friend of Nicos Stephanou

Related criminal charges by the U.S. Attorney's Office for the Southern District of New York were unsealed, on February 5, 2009, against Koulouroudis, Contorinis, Nicos Achilleas Stephanou, and George Paparrizos.

The SEC's complaint alleges that the illicit trading occurred from at least November 2005 through December 2006 and involved at least three acquisitions, including those of Albertson's Inc., ElkCorp., and National Health Investors, Inc.

SEC v. Matthew C. Devlin, et al.

Litigation Release No. 20831 (December 18, 2008)

<http://sec.gov/litigation/litreleases/2008/lr20831.htm>

Press Release (December 18, 2008)

<http://sec.gov/news/press/2008/2008-301.htm>

On December 18, 2008, the Securities and Exchange Commission charged seven individuals and two companies involved in an insider trading ring, alleging that Matthew Devlin, a former registered representative at Lehman Brothers, Inc. in New York City, traded on and tipped his clients and friends with confidential, nonpublic information about 13 impending corporate transactions. According to the complaint, some of Devlin's clients and friends, three of whom worked in the securities or legal professions, tipped others who also traded in the securities of the companies involved in the transactions.

According to the SEC's complaint, Devlin got the inside information from his wife, a partner in the New York City office of an international public relations firm working on the deals. Because the inside information was valuable, some of the traders referred to Devlin and his wife as the "golden goose." The SEC's complaint further alleges that Devlin was rewarded with cash and luxury items for providing inside information, including a widescreen TV, a leather jacket, and Porsche driving lessons.

The SEC alleges that the illicit trading occurred from at least March 2004 through July 2008, and yielded more than \$4.8 million in profits. Related criminal charges by the U.S. Attorney's Office for the Southern District of New York were unsealed on December 18, 2008 against some of the defendants named in the SEC's complaint.

The SEC's complaint alleges that although many of the defendants had accounts with Lehman, they often attempted to avoid detection by trading in the securities of the target companies in numerous accounts that were not associated with Lehman or Devlin. The complaint further alleges that to further conceal their illicit trading, at least two of the defendants sold off some of the shares they had purchased based on inside information prior to public announcements of the deals. In addition, Devlin and one of his tippees arranged to buy shares on Devlin's behalf so Devlin could profit from the nonpublic information but evade scrutiny. When this tippee's name appeared on a watch list, Devlin and the tippee agreed that Devlin would stop providing him inside information.

The SEC's complaint alleges that, based on the information provided by Devlin, the defendants variously purchased the common stock or options of the following public companies: InVision Technologies, Inc.; Eon Labs, Inc.; Mylan, Inc.; Abgenix, Inc.; Aztar Corporation; Veritas, DGC, Inc.; Mercantile Bankshares Corporation; Alcan, Inc.; Ventana Medical Systems, Inc.; Pharmion Corporation; Take-Two Interactive Software, Inc.; Anheuser-Busch, Inc.; and Rohm and Haas Company. At the time that Devlin tipped the other defendants about these companies, each company was confidentially engaged in a significant transaction that involved a merger, tender offer, or stock repurchase.

The SEC's complaint also charges three relief defendants.

SEC v. Lou L. Pai

Lit. Rel. No. 20658 (Jul. 29, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20658.htm>

Press Re. No. 2008-151 (Jul. 29, 2008)

<http://www.sec.gov/news/press/2008/2008-151.htm>

On July 29, 2008, the SEC filed a civil action against Lou L. Pai, the former Chairman and Chief Executive Officer of Enron Energy Services ("EES"), a division of Enron Corp. ("Enron"). The Commission's complaint, filed in the United States District Court for the Southern District of Texas, alleges that Pai sold Enron stock in May and June 2001 on the basis of material, nonpublic information concerning Enron. Pai simultaneously settled the action without admitting or denying the allegations in the Commission's complaint.

According to the Commission's complaint, shortly before his departure from Enron, between May 18, 2001 and June 7, 2001, Pai sold 338,897 shares of Enron stock and exercised stock options that resulted in the sale of 572,818 shares to the open market - yielding millions of dollars in proceeds. Before making these sales, Pai learned from EES successor management that it had identified certain financial and operational problems and substantial contract-related losses at EES. Had Enron reported EES's contract-related losses in its Retail Energy Services segment, that segment would have shown a quarterly loss of at least \$60 million, rather than a profit of \$40 million as falsely reported in Enron's Form 10-Q for the first quarter of 2001. Pai knew or should have known that he could not sell Enron stock without first disclosing such material, nonpublic information. By selling Enron stock without disclosing this information, Pai breached his fiduciary duty to Enron shareholders.

The Commission's complaint further alleges that Pai avoided substantial losses from these sales when the price of Enron stock collapsed in the fall of 2001. Enron's stock price averaged approximately \$53.78 per share during the time of Pai's sales, but closed at \$0.40 on December 3, 2001 - the day after Enron filed for Chapter 11 bankruptcy protection. By selling his shares in May and June 2001 before the collapse of Enron's share price, Pai avoided millions of dollars of losses.

Pai has consented to the entry of a final judgment that permanently enjoins him from violating Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and

bars him from acting as an officer or director of a public company for five years. Pai also agreed to pay \$30 million in disgorgement and prejudgment interest (subject to a \$6 million offset based on his prior waiver of insurance coverage for the benefit of Enron investors), plus a \$1.5 million civil money penalty.

SEC v. William J. Rauch

Lit. Rel. No. 20646 (Jul. 16, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20646.htm>

The SEC charged Mayor William J. Rauch of Beaufort, S.C., with insider trading on non-public information that he obtained while doing consulting work for a California biotechnology company. According to the complaint, Mayor Rauch purchased stock in Advanced Cell Technology, Inc., immediately after one of its executives informed him about a breakthrough embryonic stem cell technique that the company was about to disclose publicly. Rauch was told the information was confidential, and he had previously signed an agreement with the company that barred him from using confidential company information for his own benefit. Rauch has agreed to settle the SEC's charges without admitting or denying the allegations.

According to the Commission's complaint, Rauch called a securities broker and opened accounts in his name and his children's names on the same day he received the confidential information. On August 9 and 14, after further discussions with the Advanced Cell executive, Rauch telephoned his broker and purchased more than \$11,000 of Advanced Cell stock in his children's accounts. On August 23, Advanced Cell publicly announced its embryonic stem cell development, and its stock price jumped 360 percent from \$0.40 to \$1.83 per share. The stock price declined to \$0.96 per share on August 25, still 140 percent above the price just before the announcement. Even with the price decline, Rauch's potential profit on his stock purchases two weeks earlier, had he sold, was more than \$20,000.

Without admitting or denying the Commission's allegations, Rauch has consented to an injunction from future violations of Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder and has agreed to pay \$20,708 in disgorgement, \$2,576 in prejudgment interest, and a \$20,708 penalty.

SEC v. James E. Gansman, et al.

Lit. Rel. No. 20603 (May 29, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20603.htm>

On May 29, 2008, the SEC filed insider trading charges against a partner in a Big Four accounting firm for allegedly tipping his friend concerning the identities of at least seven different acquisition targets of clients who sought valuation services from the partner's firm in connection with those acquisitions.

The SEC alleges James E. Gansman, a lawyer and a former partner in Ernst & Young LLP's Transaction Advisory Services department, learned of pending acquisitions through his work at E&Y advising the acquirers. According to the complaint, Gansman repeatedly provided material, non-public information, including the identities of target companies and the existence

of acquisition talks involving those companies, to Donna B. Murdoch, a registered securities professional and Managing Director of a Philadelphia-based broker-dealer and investment banking firm. The SEC alleges Murdoch used the information to trade in the securities of the target companies and made recommendations to others who traded as well, resulting in total illegal trading profits of \$596,000.

The SEC charged the defendants with violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Section 14(e) of the Exchange Act and Rule 14e-3 thereunder. The complaint seeks injunctions against future violations, disgorgement with prejudgment interest, and civil monetary penalties.

CASES INVOLVING MARKET MANIPULATION

SEC v. Lambros D. Ballas

Lit. Rel. No. 21259 (October 22, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21259.htm>

The SEC charged Lambros Ballas, a licensed securities broker at a New York stock brokerage firm, with using phony press releases to manipulate the stock prices of multiple publicly traded companies. Ballas created and then distributed fake press releases purporting to announce good news regarding the companies, including that Google was buying one company at a substantial premium. Ballas then posed as an investor on Internet message boards, touting the announcements he had fabricated. In one instance, Ballas' scheme caused the stock price to increase by over 75 percent within a few hours of the issuance of his phony press release.

The SEC further alleges that for at least one of the stocks he touted, Ballas purchased shares of the company immediately before disseminating the phony press release he had drafted.

The SEC alleges Ballas violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The SEC seeks an ex parte temporary restraining order, a preliminary and permanent injunction, expedited discovery, disgorgement with prejudgment interest, and civil penalties against Ballas.

SEC v. Gary A. Reys

Lit. Rel. No. 21200 (September 8, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21200.htm>

The SEC charged CellCyte Genetics Corporation, a biotechnology company, and its former CEO and Chief Scientific Officer, for falsely telling investors that the company's cutting-edge stem cell technology had been proven successful and was headed for human trials. In reality, the SEC alleges, the company merely had a license for a very early stage technology and no reasonable basis for its claims. According to the SEC, stock promoters hired by the company then spread the false information to investors, briefly driving the stock price to \$7.50 before it plummeted back down to under a dime.

The SEC's complaints allege that in multiple public filings with the SEC and in other investor materials, CellCyte falsely claimed it had received U.S. Food and Drug Administration ("FDA") approval to begin human clinical trials with a special stem cell compound to repair the heart. In fact, the SEC alleges, CellCyte did not know how to properly formulate the stem cell compound, had never attempted experiments with the compound to repair organs, and had not satisfied any of the FDA requirements to begin human clinical trials. According to the SEC, CellCyte's Chief Scientific Officer, Ronald Berninger of Mukilteo, originally approved or participated in the drafting of many of the false and misleading statements, while CEO Gary Reys approved the company's fraudulent SEC filings.

The SEC's action further alleges that CellCyte engaged in an illegal stock distribution by partnering with a Canadian stock promoter, who sent millions of spam emails, faxes and newsletters containing false information about CellCyte.

The SEC's action against CellCyte and Berninger alleges that CellCyte violated Sections 5(a) and 5(c) of the Securities Act of 1933, Sections 10(b) and 13(a) of the Securities Exchange Act of 1934 ("Exchange Act"), and Exchange Act Rules 10b-5, 12b-20, 13a-11 and 13a-13. The SEC alleges that Berninger violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and that Berninger aided and abetted CellCyte's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-11 and 13a-13 thereunder.

In a separate litigated action, the SEC charges Reys with violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and with aiding and abetting CellCyte's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-11 and 13a-13 thereunder. The SEC's action against Reys further alleges that he made false statements about his past employment and that he concealed CellCyte's role in the spam campaign. The SEC seeks injunctive relief, a monetary penalty, and an order barring Reys from serving as an officer or director of a public company.

SEC v. Hazem Khalid Al-Braikan

Lit. Rel. No. 21152 (July 23, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21152.htm>

The SEC charged Hazem Khalid Al-Braikan, a resident of Kuwait, and three related foreign entities for engaging in an illicit scheme through which they reaped millions of dollars in profits from trading around hoax offers to acquire U.S. companies. The SEC obtained an emergency court order to freeze more than \$5 million in trading profits that it has located in various accounts in their names.

The SEC alleges that Hazem Khalid Al-Braikan and the related entities traded around false news of a purported tender offer by a Middle East investment group to acquire Harman International Industries, Inc. at \$49.50 per share. A phony press release publicizing the hoax offer was faxed to media outlets on Sunday, July 19, and subsequently reported on the Internet on Monday, July 20, before the stock market opened. Harman International's share price, which had closed the previous trading day at \$25.18, climbed more than 40 percent in pre-market trading. Harman International repudiated the offer shortly before the market opened for regular trading. The share price dropped sharply thereafter and closed the day at \$20.86.

The SEC further alleges that two of the entities similarly traded around a hoax tender offer in April 2009, when a Kuwaiti newspaper reported that a consortium of Middle East companies were offering to purchase Textron Inc. This offer also turned out to be false. Al-Braikan and the entities amassed positions in the one or both of the securities of the companies shortly before the bogus offers were publicized. They then sold their securities at prices inflated by the false information to reap their illicit profits.

The SEC alleges that Al-Braikan, who is or was associated with each of the three entities, traded in an account in his own name. Accounts in the names of the three entities also traded. The three entities are United Gulf Bank (B.S.C.); KIPCO Asset Management Company (KAMCO); and Al-Raya Investment Company.

By virtue of the conduct described above, the SEC alleges in its complaint that the defendants violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5, antifraud provisions of the federal securities laws. The complaint seeks a permanent injunction, disgorgement of ill-gotten gains with prejudgment interest, and financial penalties.

SEC v. David M. Otto, Todd Van Sieten, MitoPharm Corp., Pak Peter Cheung, Wall Street PR, Inc., Charles Bingham

Lit. Rel. No. 21126 (July 13, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21126.htm>

The SEC charged Seattle-based securities lawyer David Otto and several others with conducting a fraudulent “pump-and-dump” scheme, in which they secretly unloaded more than \$1 million in penny stock of a company touting non-existent anti-aging products of MitoPharm Corporation.

According to the SEC’s complaint, Otto, hired by Cheung, arranged to purchase a publicly traded shell company as a merger partner for MitoPharm. Otto and Van Sieten drafted opinion letters to MitoPharm’s transfer agent, filled with false statements to secure supposedly “freely tradable” stock certificates for individuals and entities secretly controlled by Otto. Cheung hired Bingham on Otto’s recommendation, and they embarked on a misleading promotional campaign advertising non-existent anti-aging products of MitoPharm. This promotional campaign caused MitoPharm’s stock price to more than quadruple. The complaint alleges that Otto sold his shares for more than \$1 million, and Bingham netted an additional \$300,000. The massive selling of the stock caused the price to fall significantly.

The SEC’s complaint alleges that all defendants violated Sections 5 and 17(a) of the Securities Act of 1933, and that Otto, Van Sieten, Cheung, and MitoPharm violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 thereunder. The SEC’s complaint also charges MitoPharm with violating Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder, and Otto with violating Section 16(a) of the Exchange Act and Rule 16a-3 thereunder. The SEC seeks injunctive relief, disgorgement and financial penalties from the defendants as well as penny stock bars for Otto, Van Sieten, and Cheung, and an officer-and-director bar against Cheung.

SEC v. Pegasus Wireless Corporation, Jasper Knabb, and Stephen Durland

Lit. Rel. No. 21060 (May 27, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21060.htm>

The SEC filed securities fraud charges against Pegasus Wireless Corporation and two Pegasus officers illegally sold hundreds of millions of Pegasus shares they secretly controlled and lying about the transactions in company filings.

The SEC alleges that former CEO Jasper Knabb and former CFO Stephen Durland reaped more than \$30 million in illicit profits and used these profits to support their extravagant lifestyles including the purchase of homes, boats, and sports cars.

According to the complaint, Knabb and Durland created Pegasus from a dormant shell company around 2005. They then touted several acquisitions in a series of press releases, causing Pegasus' stock price to soar and briefly giving the company a market capitalization of more than \$1.4 billion. Unbeknownst to investors, however, Knabb and Durland are alleged to have secretly controlled hundreds of millions of Pegasus shares through nominees, which they sold to individual investors and dumped on the open market through 2008. Pegasus saw its share price steadily decline to under a penny.

As alleged in the SEC's complaint, Knabb and Durland accomplished their scheme by issuing hundreds of millions of shares to individuals and entities they controlled. The nominees unloaded the shares and funneled millions of dollars to Knabb, Knabb's wife, and Durland. Knabb and Durland reported none of these transactions in reports with the SEC, and instead falsely told investors they owned only minimal amounts of stock and received no compensation from Pegasus. The SEC further alleges that Knabb and Durland falsely claimed in numerous SEC filings that much of the stock was issued to satisfy a business debt, when in reality this "debt" was entirely fabricated through phony documentation. By February 2008, Pegasus had issued more than 75 percent of its total outstanding shares in this fraudulent manner. The forged documents and false SEC filings concealed the fact that Knabb and Durland were, in essence, printing shares and diluting the interests of innocent shareholders to enrich themselves.

The complaint charges Pegasus, Knabb, and Durland with violating Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. Pegasus is also charged with violating the books-and-records requirements of Section 13(a) of the Exchange Act, and Rules 12b-20, 13a-1, 13a-11, and 13a-13, and Knabb and Durland are charged with aiding and abetting Pegasus' violations. All three defendants are charged with violations of the registration requirements embodied in Sections 5(a) and 5(c) of Securities Act. The SEC's complaint also charges Knabb and Durland with falsifying Pegasus' books and records in violation of Exchange Act Section 13(b)(5) and Rule 13b2-1, falsely certifying Pegasus' quarterly and annual reports in violation of Exchange Act Rule 13a-14, and with stock ownership reporting violations under Section 16(a) of the Exchange Act and Rule 16a-3 thereunder. Finally, Durland is charged with making false statements to an accountant in connection with an audit in violation of Exchange Act Rule 13b2-2.

SEC v. Pawel P. Dynkowski, Matthew W. Brown, Jacob Cancelli, Gerard J. D'Amaro, Joseph Mangiapane Jr., Nathan M. Michaud, Marc J. Riviello and Adam S. Rosengard

Lit. Rel. No. 21053 (May 21, 2009)

<http://sec.gov/litigation/litreleases/2009/lr21053.htm>

The SEC filed a complaint alleging that in 2006 and 2007, Dynkowski, a Polish citizen who resided in the U.S., engaged in market manipulation schemes with at least four separate stocks: GH3 International, Inc., Asia Global Holdings, Inc., Playstar Corp., and Xtreme

Motorsports of California, Inc. As alleged in the complaint, Dynkowski's co-defendants each participated in one or more of these schemes, which together generated more than \$6.2 million in illicit profits.

The complaint alleges that these fraudulent schemes generally followed the same pattern: The defendants agreed to sell large blocks of shares for penny stock companies in exchange for a portion of the proceeds. The companies put these shares in nominee accounts that Dynkowski and his accomplices controlled. The defendants pumped the market price of the stocks using wash sales, matched orders and other manipulative trading, often timed to coincide with false or touting press releases by the companies, to give the market the false impression that there was real demand for these stocks. After artificially inflating the stocks' market price, Dynkowski and his accomplices then dumped the shares obtained from the issuers and divided the illicit proceeds.

The SEC's complaint further alleges that:

- The pump-and-dump scheme involving GH3 International, Inc. stock occurred between October and December 2006. Dynkowski orchestrated this fraud with Matthew W. Brown, who operates a penny stock website called InvestorsHub.com. Brown introduced Dynkowski to a representative of GH3 and to Jacob Canceli, a penny stock promoter who participated in the scheme. Brown acted as a liaison between Dynkowski, Canceli and the issuer. Dynkowski and his associates used wash sales, matched orders, and other manipulative trading, timed to coincide with false, misleading and touting press releases by the company, to inflate the price of GH3 stock. Canceli provided the accounts from which Dynkowski subsequently sold purportedly unrestricted shares received from the issuer. The scheme culminated in mid-December 2006, with Dynkowski dumping 312 million shares of GH3 stock for total illicit proceeds of \$747,609.
- Brown planned the Asia Global pump-and-dump scheme with Joseph Mangiapane Jr. and Marc J. Riviello, who were both registered representatives at a small broker-dealer in California. Dynkowski and Nathan M. Michaud, who met through InvestorsHub.com, pumped the price of Asia Global stock using wash sales, matched orders and other manipulative trading, coordinated with false, misleading, and touting press releases by the company. The scheme occurred in three cycles: August-September 2006, November-December 2006, and January-February 2007. After manipulating the price of stock, Dynkowski, Brown, Mangiapane and Riviello dumped more than 54 million shares that had been improperly registered on SEC Form S-8 and held in nominee accounts. The illicit proceeds from this scheme totaled at least \$4,050,529.
- Dynkowski and Gerard J. D'Amato carried out the Playstar pump-and-dump scheme. The two of them met through InvestorsHub.com. D'Amato acted as the liaison with the issuer as well as the nominee account holder for the purportedly unrestricted shares received from the company. In this scheme, which occurred during October and November 2006, Dynkowski pumped Playstar's stock through wash sales, matched orders and other manipulative trading. Dynkowski and D'Amato sold 11.5 million shares for total illicit proceeds of \$1,180,294.

- Dynkowski and an accomplice carried out the Xtreme Motorsports pump-and-dump scheme. The two of them, who met through InvestorsHub.com, pumped Xtreme Motorsports stock through wash sales, matched orders and other manipulative trading during January and February 2007. Dynkowski's friend, Adam S. Rosengard, served as the nominee account holder who facilitated the dump of 13 million purportedly unrestricted shares of Xtreme Motorsports stock. After pumping the stock, Dynkowski sold the shares from Rosengard's account generating illicit proceeds of \$257,646.

The complaint alleges violations of Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act"), Sections 10(b) and 13(d) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rules 10b-5, 13d-1 and 13d-2 thereunder. The complaint seeks permanent injunction against future violations, disgorgement of ill-gotten gains with prejudgment interest, and civil monetary penalties, and, as to certain defendants, orders barring them from participating in penny stock offerings.

The U.S. Attorney's Office for the District of Delaware also announced today felony criminal charges against Dynkowski, Brown, Cancelli, D'Amaro, Mangiapane, and Riviello.

SEC v. Albert J. Rasch, Jr., Kathleen R. Novinger, Sandra B. Masino, and 144 Opinions, Inc.

Lit. Rel. No. 21024 (May 5, 2009)

<http://sec.gov/litigation/litreleases/2009/lr21024.htm>

The SEC filed a complaint against Albert J. Rasch, Jr. ("Rasch") and Sandra B. Masino ("Masino") of Costa Mesa, California, Kathleen R. Novinger ("Novinger") of Cypress, California, and 144 Opinions, Inc. ("144 Opinions") a California corporation formerly headquartered in Newport Beach, California. The complaint alleges that Rasch was the sole partner and owner of the Law Firm of Albert J. Rasch and Associates. Novinger was the sole associate at Rasch and Associates. Masino was the sole owner and employee of 144 Opinions.

Allegedly, during 2007, the defendants collectively operated a legal "opinion mill," which issued fraudulent legal opinions used by promoters in a pump-and-dump scheme, and others, to sell securities in violation of the registration provisions of the federal securities laws. Masino and 144 Opinions drafted and Rasch or Novinger executed, at least 24 legal opinion letters concerning the removal of restrictive legends on certificates representing over 22 million shares of Mobile Ready Entertainment Corp. ("Mobile Ready"). The defendants cited to non-existent documents and misrepresented critical facts in executing the 24 legal opinions. The complaint alleges that the false and misleading statements drafted by Masino and 144 Opinions and thereafter executed by Rasch and Novinger fraudulently induced the transfer agent for Mobile Ready to remove the restrictive legends and permit the illegal sale of over 22 million shares of Mobile Ready in violation of the registration provision of the federal securities laws.

The defendants are accused of 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 complaint also seeks (i) permanent injunctions against future violations; (ii)

disgorgement of ill-gotten gains plus prejudgment interest from Rasch and Masino; (iii) imposition of civil penalties; and (iv) an order permanently prohibiting defendants from participating in any offering of penny stock.

SEC v. Sky Way Global LLC (dba Sky Way Global, Inc.), Brent C. Kovar, Glenn A. Kovar, James S. Kent, Kenneth Bruce Baker (aka Bruce Baker), and Kenneth R. Kramer,

Lit. Rel. No. 20960 (March 18, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr20960.htm>

The SEC filed a civil injunctive action against Sky Way Global LLC (aka Sky Way Global, Inc.) (Global), an internet service provider and purported anti-terrorism company based in Tampa, Florida, and its principals Brent C. Kovar, Glenn A. Kovar, and James S. Kent, who allegedly defrauded investors through an unregistered fraudulent offering of Global stock and orchestrated a pump-and-dump scheme of SkyWay Communications Holding Corp. (SkyWay). The SEC also charged Kenneth Bruce Baker and Kenneth R. Kramer, alleged unregistered broker-dealers, who found investors for SkyWay and sold SkyWay stock.

The complaint alleges that from at least February 2002 until December 2005, Global, the Kovars, and Kent raised approximately \$1.38 million from 18 investors by offering and selling unregistered shares of Global's stock. In connection with the offer and sale of Global's securities, the defendants allegedly made numerous material misrepresentations and omissions to investors through marketing and offering materials, including, among other things, that Global possessed a nationwide network of broadcasting towers and anti-terrorism technology that would allow the government to monitor and, if necessary, take control of an airplane. These claims were patently false because Global had no towers and no technology to monitor and take control of airplanes.

The complaint further alleges that after a Global subsidiary merged with a public shell to become SkyWay and Global transferred its purported technology and assets to SkyWay, the Kovars and Kent carried out a pump-and-dump scheme of SkyWay stock. From August 2003 to May 2005, false press releases were made to increase SkyWay's stock price and trading volume. The press releases reiterated the aforementioned misrepresentations. . During the same period, Global, the Kovars, and Kent dumped their SkyWay stock and made more than \$12 million in profits.

The complaint charges Global, the Kovars, and Kent with violating Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 (Securities Act) and Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder. The Complaint further charges Brent Kovar and Kent with aiding and abetting SkyWay's violations of disclosure provisions under Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-11; and charges Baker and Kramer with violating Section 15(b) of the Exchange Act. The complaint seeks permanent injunctive relief against all defendants, enjoining them from future violations of the provisions charged, and an order requiring them to disgorge their ill-gotten gains, with prejudgment interest, and imposing civil penalties; imposing a penny stock bar against the individual defendants, and an officer and director bar against Brent Kovar and Kent.

SEC v. Paul M. Gozzo and PMG Capital, LLC

Lit. Rel. No. 20957 (March 17, 2009)

<http://sec.gov/litigation/litreleases/2009/lr20957.htm>

The SEC filed a settled complaint against Paul M. Gozzo and PMG Capital, LLC of Jupiter, Florida, alleging that they violated the federal securities laws by manipulating the markets of numerous microcap stocks in 2006 and 2007. The Commission alleges that the manipulation led to artificially high prices, which allowed Gozzo and others to sell their holdings for substantial gains.

The complaint alleges that Gozzo, who was associated with several broker-dealers in a variety of capacities between 1999 and 2008, engaged in a number of manipulative practices, including:

- engaging in "bid support" by placing orders for shares at prices below the inside (highest) bid to absorb sell orders and create an artificial floor for the stocks;
- trading in multiple accounts through multiple brokers to give the false impression that there was greater demand for the stocks than truly existed; and
- coordinating trading among a group of individuals for the purpose of maintaining stock prices.

Without admitting or denying the allegations in the complaint, Gozzo and PMG Capital consented to the entry of final judgment prohibiting them from participating in offerings of penny stock and permanently enjoining them from violating Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5. Gozzo also agreed to pay \$437,788 in disgorgement of unlawful profits and prejudgment interest.

As a result of the same conduct, Gozzo, in a separate criminal matter, today pleaded guilty to one count of conspiracy to commit securities fraud and one count of securities fraud.

SEC v. National Lampoon, Inc., et al.

SEC v. Advatech Corporation, et al.

SEC v. Alex Kanakaris, et al.

Litigation Release No. 20828 (December 15, 2008)

<http://sec.gov/litigation/litreleases/2008/lr20828.htm>

Press Release (December 15, 2008)

<http://sec.gov/news/press/2008/2008-296.htm>

The Securities and Exchange Commission, on December 15, 2009, charged National Lampoon, Inc., its CEO Daniel S. Laikin, and others for engaging in fraudulent schemes to manipulate the market by generating purchases of company stock in exchange for pre-arranged cash kickbacks.

The SEC, which also charged stock promoters, a consultant, and another company and an officer, alleges that the goal of the manipulators was to create the false appearance of market

interest in particular securities including National Lampoon stock, induce public purchases of stock, and ultimately increase the stock's trading price.

In addition to filing three separate enforcement actions, on December 15, 2009, the SEC suspended trading in the securities of National Lampoon and the other company charged, Advatech Corporation. On the same day, the U.S. Attorney for the Eastern District of Pennsylvania separately announced criminal charges involving the same conduct.

The SEC's enforcement actions, filed in federal district court in Philadelphia, allege that, in each case, individuals who controlled the stock of a public company arranged with corrupt promoters and others to generate purchases of the company's stock in exchange for cash kickbacks. In each case, a witness secretly cooperating with the government (the CW) was paid a kickback to make purchases in the stock. For example, the SEC alleges that Laikin and another defendant paid at least \$68,000 in cash kickbacks for the purchase of National Lampoon stock in order to artificially inflate the stock price.

The SEC's complaints allege as follows:

SEC v. National Lampoon, Inc., et al.

National Lampoon, headquartered in Los Angeles, is a media and entertainment company that develops, produces and distributes media projects including feature films, television programming, online and interactive entertainment, home video, and book publishing. Its common stock is registered with the SEC and is listed on the NYSE Alternext, formerly the American Stock Exchange (AMEX). Daniel S. Laikin, of Los Angeles, California, has been the Chief Executive Officer of National Lampoon since 2005. Laikin controls approximately 40 percent of the voting stock of National Lampoon. Dennis S. Barsky, of Las Vegas, is a consultant to National Lampoon, and a significant stockholder. Eduardo Rodriguez, of Livingston, N.J., is a stock promoter. Tim Dougherty, of Webster, N.Y., is a stock promoter and principal of OTC Advisors, Inc., a stock promotion company.

The SEC's complaint alleges that, from at least March 2008 through June 2008, Laikin, Barsky, Rodriguez and Dougherty engaged in a fraudulent scheme to manipulate the market for the common stock of National Lampoon. Specifically, Laikin, along with Barsky, paid kickbacks in exchange for generating or causing purchases of National Lampoon stock to Rodriguez, a corrupt stock promoter, and the CW, whom Laikin, Barsky and Rodriguez believed had connections to corrupt registered representatives. As part of this scheme, Dougherty generated purchases of National Lampoon stock in exchange for a portion of the kickbacks. Dougherty made his purchases over the course of a number of days and used various accounts to give the false impression of a steady demand for the stock.

The complaint alleges that Laikin and Barsky paid at least \$68,000 that went to Rodriguez, Dougherty, and the CW to cause the purchase of at least 87,500 shares of National Lampoon stock. Through these efforts, Laikin and Barsky sought to artificially push National Lampoon's stock price from under \$2 per share to at least \$5 per share, in part, to keep the company's stock price above the minimum listing requirements of the AMEX, and to increase

National Lampoon's ability to enter into possible "strategic partnerships" and acquisitions. In addition to paying others to purchase the stock, Laikin shared confidential financial information regarding National Lampoon, non-public news releases, and confidential shareholder lists, and coordinated the release of news with the illegal purchases in the stock. Barsky helped direct the purchases and facilitated the kickback payments. National Lampoon and Laikin also made materially misleading statements in a tender offer.

The complaint alleges violations of Section 17(a) of the Securities Act of 1933, Sections 9(a)(2), 10(b) and 13(e) of the Securities Exchange Act of 1934 and Rules 10b-5 and 13e-4 thereunder. The complaint seeks permanent injunctions against all defendants, disgorgement of ill-gotten gains, together with prejudgment interest, and civil penalties, from the individual defendants, and an officer and director bar against Laikin.

SEC v. Advatech Corporation, et al.

Advatech Corporation is headquartered in West Palm Beach, Fla. It describes itself as an early stage biotechnology company engaged in research and development for the commercialization of products for non-invasive therapeutic medicine. Advatech's securities trade on the grey market. Grey market stocks have no market makers, and are not listed, traded or quoted on any stock exchange, or the over-the-counter bulletin board. However, customers may trade through brokers on an unsolicited basis, and trading data is publicly available throughout the trading day. Defendant Richard J. Margulies, of Edison, N.J., is Advatech's Chief Financial Officer and a member of its board of directors. Margulies owns or controls a significant portion of Advatech stock either directly or through nominees.

The Commission's complaint alleges that, from at least May 2008 through June 2008, Margulies engaged in a fraudulent scheme to manipulate the market for Advatech's common stock. In furtherance of the scheme, Margulies arranged to pay a 20 percent kickback to Rodriguez and the CW for purchases of Advatech stock. Before Rodriguez and the CW made the illegal purchases, Margulies provided them with shareholder lists, confidential information about the company, and non-public press releases. Margulies coordinated the release of news with the purchases, said that he wanted to increase Advatech's stock price from approximately \$0.30 to \$2.00 per share, and instructed Rodriguez and the CW that they should "move (the stock) up nice and slow, so it doesn't look like we're a bunch of idiots."

The complaint alleges that, to effectuate his scheme, Margulies paid at least \$1,040 in kickbacks as partial payments to the CW in exchange for purchases of at least 5,000 shares of Advatech stock on June 17 and 18, 2008.

The complaint alleges violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The complaint seeks permanent injunctions against Advatech and Margulies, and disgorgement of ill-gotten gains, together with prejudgment interest, civil penalties, and a penny stock bar against Margulies.

SEC v. Alex Kanakaris, et al.

Alex Kanakaris, of Newport Beach, Calif., and Richard Epstein, of Parkland, Fla., are stock promoters who are significant investors in the stock of SwedishVegas, Inc., headquartered in Arcadia, Calif., whose stated business plan is to "launch a series of themed eateries with an extensive beer and wine menu and reasonably priced lunches, dinners and appetizers." Until July 23, 2008, when the Commission suspended trading in its stock, SwedishVegas common stock was quoted on an inter-dealer electronic quotation and trading system in the over-the-counter securities market which is operated by Pink OTC Markets, Inc., commonly known as the "Pink Sheets."

The Commission's complaint alleges that, from at least June through July 2008, Kanakaris and Epstein engaged in a fraudulent scheme to manipulate the market for the common stock of SwedishVegas. Specifically, the defendants paid a kickback to Rodriguez, a corrupt stock promoter, and the CW, whom they believed had connections to corrupt stockbrokers, to buy Swedish Vegas stock in an effort to create the appearance of market interest, induce public purchases of stock, and ultimately increase the stock's trading price. At one point, Kanakaris told Rodriguez and the CW that he wanted them to buy as much stock as possible in order to make the stock price "fly."

The complaint further alleges that, in accordance with their scheme, Kanakaris and Epstein paid at least \$15,000 to Rodriguez and the CW in exchange for completed purchases of at least 125,000 shares of SwedishVegas stock on July 22, 2008. After this initial stock purchase, actually made with FBI funds, the Commission suspended trading in the stock.

The complaint alleges violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The complaint seeks permanent injunctions, disgorgement of ill-gotten gains, together with prejudgment interest, civil penalties, and penny stock bars from the defendants.

In the Matter of Andros Isle Development Corp., et al.

Exchange Act Rel. No. 57486 (Mar. 13, 2008)

<http://www.sec.gov/litigation/suspensions/2008/34-57486.pdf>

<http://www.sec.gov/news/press/2008/2008-41.htm>

On March 13, 2008 the SEC suspended trading in the securities of 26 companies due to a corporate hijacking scheme. The SEC ordered the suspensions because of questions regarding the accuracy of the publicly traded status of these companies. These suspensions are some of the first actions of the Enforcement Division's Microcap Fraud Working Group.

The corporate hijacking scheme involved incorporating each of the 26 companies using the same name as a defunct or inactive publicly-traded corporation. The persons behind the scheme then took the CUSIP numbers and ticker symbols assigned to the corporations' publicly-traded securities for use with one of the 26 new entities. They then appear to have obtained new CUSIP numbers and ticker symbols in lieu of the old ones, by apparently representing falsely that they were duly authorized officers, directors, or agents of the original publicly-traded corporation.

The 26 companies whose trading was suspended are: Andros Isle Development Corp. (AVPJ); Asante Networks, Inc. (ASTN); Beluga Composites Corporation (BGCC); Cobra Energy Inc. (CBNG); Complete Care Medical, Inc. (CCMI); Disability Access Corporation (DBYC); El Alacran Gold Mine Corp. (EAGM); Extreme Fitness Inc. (EXTF); Gaming Transactions Inc. (GGTS); Global Equity Fund, Inc. (GEQF); HealthSonix Inc. (HSXI); IQ Webquest, Inc. (IQWB); JSX Energy Inc. (JSXG); Kensington Industries, Inc. (KSGT); Kingslake Energy Inc. (KGLJ); L International Computers Inc. (LITL); Let's Talk Recovery Inc. (LKRIV); Mobilestream, Inc. (MSRM); Mvive, Inc. (MVIV); Native American Energy Group Inc. (NVMG); Paramount Gold and Silver Corp. (PZG); Regal Technologies Inc. (RGTN); Remington Ventures, Inc. (REMV); Straight Up Brands, Inc. (STRU); Transglobal Oil Corp. (TRGO); and Turquoise Development Company (TQDC).

CASES INVOLVING SECURITIES OFFERINGS

SEC v. 3001 AD, LLC, Jimmy L. Barker, Robert J. Ladrach, Marc S. Rifkin, Ronald B. Bowsky, Jack Maddock and Michael Weidgans

Lit. Rel. No. 21227 (September 29, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21227.htm>

The SEC charged a virtual reality technology company 3001 AD, LLC, its principals, and three former sales agents with conducting a fraudulent offering scheme that garnered investors primarily through telemarketer sales out of a boiler room in the company's Delray Beach, Fla., offices.

The SEC alleges that 3001 AD, LLC and these individuals raised approximately \$20 million from about 500 investors nationwide through a maze of unregistered offerings that hyped the company's supposedly promising virtual reality products. Investors were told in the offering materials that the sales commissions paid on their investments were dramatically less than they actually were. An imminent Initial Public Offering (IPO) was repeatedly hyped to investors while no steps were actually being taken toward going public. And prestigious business relationships between 3001 AD and Microsoft, Apple, and former Disney CEO Michael Eisner were touted to investors even though such relationships never existed.

The SEC's complaint charged 3001 AD, LLC; its principals Jimmy L. Barker, Robert J. Ladrach and Marc S. Rifkin; and three former sales agents Ronald B. Bowsky, Jack W. Maddock and Michael J. Weidgans with making several material misrepresentations and omissions to investors in the offer and sale of units of 3001 AD and a myriad of general partnerships.

The SEC charges 3001 AD and the defendants with 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, and charges Barker, Rifkin, Bowsky, Maddock and Weidgans with violating Section 15(a) of the Exchange Act. The SEC is seeking permanent injunctions, disgorgement and financial penalties against all defendants and the imposition of officer and director bars against Barker, Ladrach, and Rifkin.

SEC v. John J. Bravata, et al.

Lit. Re. No. 21155 (July 28, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21155.htm>

The SEC alleges that John J. Bravata, Antonio M. Bravata, and Richard J. Trabulsky raised more than \$50 million from at least 440 investors by offering them membership interests in a purported real estate investment fund with promised annual returns of 8 to 12 percent. The defendants told prospective investors that BBC Equities, LLC was a real estate investment fund and safe investment vehicle. However, the SEC alleges that no more than \$20.7 million of the more than \$50 million raised since May 2006 through the sale of membership interests in BBC Equities was actually spent on real estate acquisitions. Furthermore, this real estate portfolio is highly leveraged with mortgages and other liabilities exceeding \$128 million, and BBC Equities has never been profitable.

The SEC alleges that John Bravata and Trabulsy spent approximately \$7.2 million of investor money for their own personal benefit. To keep their scheme afloat, they paid out \$11.3 million in Ponzi payments by using new investment proceeds to pay distributions to earlier investors. They also spent \$14 million soliciting and marketing the offering in order to continue the scheme.

The SEC's complaint charges John Bravata, Trabulsy, and Bravata Financial with violating Sections 5 and 17(a) of the Securities Act of 1933 ("Securities Act") and Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder. The complaint charges BBC Equities with violating Sections 5 and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5. The complaint also charges Antonio Bravata (John Bravata's son) with violating Section 5 of the Securities Act and Section 15(a) of the Exchange Act. The SEC's complaint seeks permanent injunctive relief and disgorgement from all of the Defendants, and civil penalties from John Bravata, Trabulsy, and Antonio Bravata. The SEC's complaint further seeks disgorgement of all investor funds or assets acquired with investor funds from Relief Defendant Shari Bravata.

In the Matter of TD Ameritrade, Inc.

A.P. Rel. No. 33-9053 (July 20, 2009)

<http://www.sec.gov/litigation/admin/2009/33-9053.pdf>

The SEC charged TD Ameritrade, Inc. for making inaccurate statements when selling auction rate securities (ARS) to customers. TD Ameritrade's registered representatives told customers that ARS were an alternative to certificates of deposit and money market accounts, when in fact ARS were very different types of investments. They did not tell customers about the complexity and risks of ARS, including their dependence on successful auctions for liquidity.

The SEC's order finds that TD Ameritrade willfully violated Section 17(a)(2) of the Securities Act of 1933. The Commission censured TD Ameritrade, ordered it to cease and desist from future violations, and reserved the right to seek a financial penalty against the firm.

SEC v. Provident Royalties, LLC, et al.

Lit. Rel. No. 21118 (July 7, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21118.htm>

The SEC obtained a temporary restraining order and emergency asset freeze in a \$485 million offering fraud and Ponzi scheme orchestrated by Paul R. Melbye, Brendan W. Coughlin, and Henry D. Harrison through a company they owned and controlled, Provident Royalties LLC.

The SEC alleges that Provident made a series of fraudulent offerings of preferred stock and limited partnership interests, promising returns through investments in oil and gas assets and making sales to more than 7,700 investors throughout the U.S. through its 21 affiliated entities. Provident falsely promised yearly returns of up to 18 percent and misrepresented to investors that 85 percent of the funds raised through the offerings would be used to purchase interests in oil and gas assets. The SEC alleges that, in fact, less than 50 percent of investor funds were used for

their state purpose, and the proceeds from later offerings were used to pay expenses related to earlier offerings and investor returns.

The SEC's complaint charges the defendants with violations of Section 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 complaint also seeks a temporary restraining order and preliminary and permanent injunctions, disgorgement of ill-gotten gains plus prejudgment interest and financial penalties. Officer and director bars are sought against Melbye, Harrison and Coughlin. Five affiliated entities that did not sell securities are named as relief defendants for purposes of disgorgement.

SEC v. Blackout Media Corporation and Sandy Winick

Lit. Rel. No. 21083 (June 12, 2009)

Accounting and Auditing Rel. No. 2990 (June 12, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21083.htm>

The SEC filed a complaint against penny stock company Blackout Media Corporation, formerly known as First Canadian American Holding Corporation ("First Canadian"), and its former principal Sandy Winick, a resident of Toronto, Canada. The SEC's complaint alleges that from April 2002 to May 2004, First Canadian spun off 59 subsidiaries through unregistered distribution of their securities to shareholders. As alleged in the complaint, these spinoffs had no legitimate business purpose and were instead a means to create publicly traded companies without providing the disclosure required by registration.

According to the complaint, while conducting the spinoffs, First Canadian never filed periodic reports with the SEC, and made no meaningful disclosure about the financial and business operations of First Canadian or any of the subsidiaries. The complaint alleges that while First Canadian "reported" the spinoffs on Forms 8-K and proxy statements on Schedule 14A, these filings failed to disclose the true nature of the spinoff transactions and that Winick had control over 16.5% of First Canadian's stock through his wife, his friends, and affiliated entities. And by trading shares in these spinoffs, Winick allegedly profited by at least \$3.2 million from 2004 through 2007.

The SEC's complaint charges Blackout Media and Winick with violating Sections 5(a) and 5(c) of the Securities Act of 1933 and Section 14(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 14a-9 thereunder. The complaint also charges Blackout Media with violating, and Winick with aiding and abetting violations of, Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder; and Winick with violating Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-1 and 16a-3 thereunder.

The SEC seeks permanent injunctions and civil penalties against Blackout Media and Winick, and seeks from Winick an accounting, disgorgement, a penny stock bar, and the surrender of all stock he owns or controls in the companies spun off by First Canadian or their successors.

SEC v. Berkshire Resources, L.L.C., et al.

Lit. Rel. No. 21074 (June 9, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21074.htm>

The SEC filed a complaint charging Berkshire Resources, L.L.C. ("Berkshire"), a Wyoming company purportedly involved in oil and gas exploration, its principals, Jason T. Rose and David G. Rose, and the six companies through which Berkshire carried out a securities offering with securities fraud in connection with an oil and gas offering fraud. The complaint also charged Berkshire's head sales agents, Mark D. Long and Yolanda C. Velazquez, with securities registration and broker-dealer registration violations.

The SEC alleges that from April 2006 through December 2007, Berkshire raised approximately \$15.5 million from about 265 investors in the U.S. and Canada through a series of unregistered, fraudulent offerings of securities in the form of "units of participation." The defendants marketed the offerings to the public through cold call sales solicitations, and at trade shows and "wealth expositions." The purported purpose of the offerings was to fund oil and gas development projects that Berkshire was to oversee. According to the complaint, Jason Rose was the public face of Berkshire and was held out as its lead manager with significant experience in the oil and gas industry. In reality, Jason Rose had no experience managing an oil and gas company, and David Rose, Jason's father, ran the company behind the scenes. David Rose has an extensive disciplinary history for securities fraud and is facing a criminal indictment in connection with another similar but unrelated oil and gas scam.

The complaint further alleges the Defendants also misled investors, among other things, about the use of investor proceeds. The defendants assured investors they would use 100 percent of their funds for the oil and gas drilling projects. Contrary to these representations, Berkshire spent approximately \$6.7 million on items having nothing to do with developing the projects. Moreover, of the \$6.7 million, approximately \$1.3 million went directly to members of the Rose family to pay for mortgages on their homes, home furnishings and electronics, cars, and personal credit card charges. The complaint also alleges that to further their scheme, Jason and David Rose enlisted Velazquez and Long to run two boiler-room type sales offices on Berkshire's behalf. Long and Velazquez received commissions for their sales efforts, despite the fact that neither they nor Berkshire were registered broker-dealers.

The complaint charges that: (a) Berkshire, Jason Rose, and David Rose violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") and Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5; (b) the Berkshire Offerings violated Sections 5(a), 5(c), and 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5; (c) Mark D. Long violated Sections 5(a) and 5(c) of the Securities Act, and Section 15(a) of the Exchange Act; and (d) Yolanda C. Velazquez, violated Sections 5(a) and 5(c) of the Securities Act, and Sections 15(a) and 15(b)(6)(B)(i) of the Exchange Act. In its complaint, the SEC seeks permanent injunctions, accountings, disgorgement plus prejudgment interest, and civil money penalties against all of the defendants and an accounting and disgorgement against the relief defendants.

SEC v. Wall Street Communications, Inc. et al.

Lit. Rel. No. 21070 (June 5, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21070.htm>

The SEC's complaint alleges that from at least January through December 2004, Wall Street Communications and Howard Scala, its principal, acquired large blocks of stock in thinly-traded microcap companies. Wall Street acquired the stock for little or no consideration, based on agreements to find buyers for the shares in exchange for a portion of the sales proceeds. According to the complaint, Wall Street and Scala then created a market for these shares either by causing the release of spam emails touting the stocks or by coordinating manipulative trading with brokerage accounts controlled by Barall. The SEC alleges that after creating an artificially inflated market for the stock, Wall Street and Scala dumped the shares on unsuspecting investors, reaping tens of thousands of dollars in profits each time.

The complaint further alleges that from 2003 through at least July 2004, Wall Street and Scala engaged in another scheme in which they illegally acquired 8.6 million shares of Telco-Technology, Inc. pursuant to Form S-8 registration statements, purportedly in exchange for consulting services. According to the complaint, in fact, Wall Street did not perform any services for which Telco was permitted to issue the S-8 stock to Wall Street. The complaint alleges that almost immediately after obtaining the Telco shares, Wall Street and Scala sold them in a fraudulent unregistered distribution and funneled half of the proceeds to a company controlled by Telco's president, Donald R. McKelvey.

The complaint charges that: (a) Wall Street and Scala violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") and Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5, and that they aided and abetted McKelvey's violations of Section 10(b) of the Exchange Act and Rule 10b-5; (b) Barall violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5; and (c) McKelvey violated Sections 5(a), 5(c), and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5. The SEC also seeks permanent injunctions, an accounting, disgorgement plus prejudgment interest, civil penalties, penny stock bars, and an officer and director bar against McKelvey.

SEC v. PrivateFX Global One Ltd., SA, 36 Holdings, Ltd., Robert D. Watson, and Daniel J. Petroski

Lit. Rel. No. 21056 (May 26, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21056.htm>

The SEC filed an emergency civil action against PrivateFX Global One Ltd., SA, 36 Holdings, Ltd., Robert D. Watson, and Daniel J. Petroski alleging their involvement in a multi-million dollar offering fraud targeting U.S. investors. The district court entered a temporary restraining order against the defendants, froze their assets, and appointed a receiver over them and all affiliated entities.

The complaint alleges that Watson and Petroski raised more than \$19 million from investors and claimed they would earn profits through "Alpha One," a foreign-currency trading

software program purportedly owned by their firm PrivateFX Global One Ltd. The SEC alleges that Watson and Petroski misrepresented to investors that it had millions of dollars in bank accounts in the U.S. and Switzerland and that their foreign exchange trading business had achieved an annual return of more than 23 percent since its inception and has never had a losing month. The SEC alleges that the defendants' historical performance claims are not supported by valid financial records.

The complaint also alleges that in response to SEC investigative subpoenas, Watson and Petroski produced phony records purporting to show that 36 Holdings held an account at Deutsche Bank, where it earned more than \$2 million for Global One in 2009 by trading foreign currencies. In fact, 36 Holdings did not even have an account at Deutsche Bank. The SEC's complaint also alleges that the defendants provided the SEC staff with phony bank statements from a Swiss bank and falsely claimed that 36 Holdings had almost \$70 million on deposit there, including \$11 million of Global One funds.

The SEC alleges violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder.

SEC v. Kiselak Capital Group, LLC et al.

Lit. Rel. No. 21035 (May 11, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21035.htm>

The SEC filed an emergency action to halt an on-going multi-million dollar fraud involving investments in Kiselak Capital Group, LLC ("KCG") and Gemstar Capital Group, Inc. ("Gemstar"). The court granted a temporary restraining order and asset freeze against the Defendants, and other emergency relief.

The complaint alleges that from approximately June 2007 to the present, Defendant Michael J. Kiselak (a former Dallas Cowboys football player), solicited approximately \$24 million from 14 investors on behalf of KCG by promising inflated returns and misrepresenting how investor funds would be invested. The complaint also alleges that Kiselak failed to disclose to investors that KCG took a 35% performance fee on all trading profits. The complaint further alleges that Kiselak told investors that KCG made a 2.25% per month profit trading treasury bills; instead, Kiselak invested over 95% of the investor funds in Gemstar.

According to the complaint, KCG and Gemstar could not account for all of the investor funds. Specifically, the SEC alleges that KCG provided to the SEC a brokerage statement purportedly showing that Gemstar, as of March 31, 2009, had over \$23 million in segregated accounts for the benefit of KCG. But the complaint alleges that Gemstar, through its president, Defendant Jeffrey J. Sykes, produced this fabricated document to KCG. According to the complaint, as of March 31, 2009, Gemstar had only \$20 million in its brokerage accounts — exactly \$3 million less than the amount represented in the letter Sykes provided to Kiselak — and the funds were not segregated for the benefit of KCG investors. According to the SEC's complaint, as of May 7, 2009, the account had approximately \$19 million.

The complaint alleges that KKG, Gemstar, Kiselak, and Sykes violated Section 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 SEC also seeks the appointment of a receiver to take control of assets held by KCG and Gemstar, permanent injunctions, disgorgement of ill-gotten gains plus prejudgment interest, and civil money penalties.

SEC v. Millennium Bank, et al.

Lit. Rel. No. 20974 (March 26, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr20974.htm>

The SEC filed an emergency action to halt an on-going \$68 million Ponzi scheme involving the sale of bogus certificates of deposit ("CDs"). The complaint alleges that Defendants William J. Wise, and Kristi M. Hoegel orchestrated the scheme through companies they control, including Millennium Bank. The district court granted a temporary restraining order, asset freeze, and other emergency relief against Defendants, including the appointment of a receiver to take control of their assets.

The complaint alleges that from July 2004 to the present, Millennium Bank, acting through Wise, Hoegel, and others, raised at least \$68 million from over 375 investors. According to the complaint, the Defendants solicited the funds for purported investment in self-styled "CDs" which promised returns up to 321% higher than the national overnight average rates offered on traditional bank-issued CDs.

The solicitations by the Defendants, which were distributed on the bank's website, www.mlnbank.com, and in advertisements in luxury lifestyle magazines, were replete with extensive and fundamental misrepresentations about Millennium Bank and its CDs, according to the complaint. For example, Millennium Bank mass marketed its CDs as safe and secure with guaranteed rates of return. Millennium Bank also claimed to be "the benefactor of Swiss banking . . . as well as the vast global investment network that United Trust of Switzerland S.A. has built over the last 75 years." According to the complaint, however, these assurances were false, because neither Millennium Bank nor United Trust of Switzerland actually invested any of the money it received from investors. Moreover, United Trust of Switzerland S.A. is not a bank. In reality, investor funds were diverted to the Defendants and used for a variety of illegitimate purposes.

The complaint alleges that, in order to create the appearance of a legitimate offshore investment, Defendants instructed investors purchasing the so-called "CDs" to mail/Federal Express their checks to the offshore bank. Once received, the checks were packaged and mailed to the United States for deposit.

Furthermore, according to the complaint, bank records establish that a vast majority of the \$68 million raised from investors was misappropriated by the Defendants, who enriched themselves and paid their personal expenses, while making small Ponzi payments to investors.

The complaint alleges that the Defendants violated Section 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

complaint also alleges that the Defendants violated the offering registration provisions of Sections 5(a) and 5(c) of the Securities Act. In addition to the emergency relief already obtained, the SEC seeks permanent injunctions, disgorgement of ill-gotten gains plus prejudgment interest, and civil money penalties.

SEC v. Sunwest Management, Inc., Canyon Creek Development, Inc., Canyon Creek Financial, LLC, and Jon M. Harder

Litigation Release No. 20920 (March 2, 2009)

<http://sec.gov/litigation/litreleases/2009/lr20920.htm>

Press Release (March 2, 2009)

<http://sec.gov/news/press/2009/2009-38.htm>

On March 2, 2009, the Securities and Exchange Commission charged Oregon-based Sunwest Management Inc. with securities fraud and is seeking an emergency court order freezing its assets. The SEC alleges that Sunwest, which operates hundreds of retirement homes across the United States, lied to investors about its operations and concealed the risks of the investments, exposing investors to massive losses when the economic downturn triggered Sunwest's collapse.

According to the SEC's complaint, Sunwest raised at least \$300 million from more than 1,300 investors nationwide by promising a steady income stream and touting its success in running the properties.

On March 2, 2009 the SEC's complaint, filed in federal district court in Eugene, Oregon, charges Sunwest, its former President and CEO Jon M. Harder of Salem, Ore., and several related entities with securities fraud. According to the complaint, Sunwest, which operates more than 200 retirement homes at one point valued at \$2 billion, told investors that they would be investing in a particular property. Investors were told that the property would generate sufficient profits to pay annual returns of around 10 percent, and that Sunwest had a track record of never missing a payment. Between 2006 and 2008, Sunwest raised more than \$300 million from investors, which was used for the down payments on approximately 100 retirement homes, with the balance financed by institutional lenders and banks.

The SEC alleges that at least half of the properties had lost money, and Sunwest concealed this information from investors by commingling all of its finances and making investor payments from this pot of cash. The SEC further alleges that investor returns came not just from these commingled assets, but from mortgage refinancings as well as loans from Harder. According to the SEC's complaint, Sunwest concealed its precarious financial position and the risks it posed to investors by failing to disclose that Sunwest was being run as a single massive enterprise with its fortunes tied to the success of hundreds of properties and contingent on future financing ability. When the recent credit crisis derailed Sunwest's ability to continue to refinance the properties, payments to investors ceased and many of them stood to lose their entire investments.

The SEC further alleges that, even after Sunwest encountered difficulties refinancing properties and lenders began foreclosing, the defendants continued raising money from investors.

Sunwest obtained millions more in investments up through June 2008, continuing to misrepresent that the money was designated for a specific property when, according to the SEC, it was being used to prop up the failing business.

The SEC's complaint alleges that Harder, Sunwest, and related entities Canyon Creek Development Inc. and Canyon Creek Financial LLC, violated the antifraud provisions of the federal securities laws, and seeks relief including disgorgement and civil monetary penalties. The SEC's complaint also seeks disgorgement from several relief defendants, including Sunwest Chief Operating Officer Darryl E. Fisher, General Counsel J. Wallace Gutzler, and Chief Restructuring Officer Hamstreet & Associates and its principal Clyde Hamstreet, as well as Harder's wife and several entities he controls.

SEC v. Stanford International Bank, et al.

Litigation Release No. 20901 (February 17, 2009)

<http://sec.gov/litigation/litreleases/2009/lr20901.htm>

Press Releases

<http://sec.gov/news/press/2009/2009-26.htm> (February 17, 2009)

<http://sec.gov/news/press/2009/2009-32.htm> (February 19, 2009)

First Complaint

On February 17, 2009, the Securities and Exchange Commission charged Robert Allen Stanford and three of his companies for orchestrating a fraudulent, multi-billion dollar investment scheme centering on an \$8 billion CD program.

Stanford's companies include Antigua-based Stanford International Bank (SIB), Houston-based broker-dealer and investment adviser Stanford Group Company (SGC), and investment adviser Stanford Capital Management. The SEC also charged SIB chief financial officer James Davis as well as Laura Pendergest-Holt, chief investment officer of Stanford Financial Group (SFG), in the enforcement action.

Pursuant to the SEC's request for emergency relief for the benefit of defrauded investors, U.S. District Judge Reed O'Connor entered a temporary restraining order, froze the defendants' assets, and appointed a receiver to marshal those assets.

The SEC's complaint, filed in federal court in Dallas, alleges that acting through a network of SGC financial advisers, SIB has sold approximately \$8 billion of so-called "certificates of deposit" to investors by promising improbable and unsubstantiated high interest rates. These rates were supposedly earned through SIB's unique investment strategy, which purportedly allowed the bank to achieve double-digit returns on its investments for the past 15 years.

According to the SEC's complaint, the defendants have misrepresented to CD purchasers that their deposits are safe, falsely claiming that the bank re-invests client funds primarily in "liquid" financial instruments (the portfolio); monitors the portfolio through a team of 20-plus analysts; and is subject to yearly audits by Antigua regulators. Recently, as the market absorbed

the news of Bernard Madoff's massive Ponzi scheme, SIB attempted to calm its own investors by falsely claiming the bank has no "direct or indirect" exposure to the Madoff scheme.

According to the SEC's complaint, SIB is operated by a close circle of Stanford's family and friends. SIB's investment committee, responsible for the management of the bank's multi-billion dollar portfolio of assets, is comprised of Stanford; Stanford's father who resides in Mexia, Texas; another Mexia resident with business experience in cattle ranching and car sales; Pendergest-Holt, who prior to joining SFG had no financial services or securities industry experience; and Davis, who was Stanford's college roommate.

The SEC's complaint also alleges an additional scheme relating to \$1.2 billion in sales by SGC advisers of a proprietary mutual fund wrap program, called Stanford Allocation Strategy (SAS), by using materially false historical performance data. According to the complaint, the false data helped SGC grow the SAS program from less than \$10 million in 2004 to more than \$1 billion, generating fees for SGC (and ultimately Stanford) of approximately \$25 million in 2007 and 2008. The fraudulent SAS performance was used to recruit registered investment advisers with significant books of business, who were then heavily incentivized to reallocate their clients' assets to SIB's CD program.

The SEC's complaint charges violations of the anti-fraud provisions of the Securities Act of 1933, the Securities Exchange Act of 1934 and the Investment Advisers Act, and registration provisions of the Investment Company Act. In addition to emergency and interim relief that has been obtained, the SEC seeks a final judgment permanently enjoining the defendants from future violations of the relevant provisions of the federal securities laws and ordering them to pay financial penalties and disgorgement of ill-gotten gains with prejudgment interest.

Amended Complaint

Lit. Rel. No. 21092 (June 19, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21092.htm>

The SEC's amended its complaint additionally charging Mark Kuhrt and Gilberto Lopez, accountants for Stanford-affiliated companies who allegedly fabricated financial statements to give investors the false illusion that their investments were solid, safe and secure. The SEC also charged Leroy King, the administrator and chief executive officer of Antigua's Financial Services Regulatory Commission (FSRC), for accepting thousands of dollars per month in bribes to ignore the Stanford Ponzi scheme and supply Stanford himself with confidential information about the SEC's investigation. King obstructed the SEC's case since 2005, when its investigation into Stanford began.

The SEC's additional charges today are in coordination with criminal authorities. The U.S. Department of Justice (DOJ) today simultaneously announced federal fraud charges against Stanford, Davis, Pendergast-Holt, King, Kuhrt, and Lopez. The DOJ also charged King, Kuhrt, and Lopez with conspiracy to obstruct the SEC's investigation. The DOJ previously charged Pendergast-Holt with obstruction of justice in the SEC's investigation.

According to the SEC's complaint, Kuhrt and Lopez used a pre-determined return on investment number (typically provided by Stanford or Davis) to reverse-engineer the SIB's financial statements and report investment income that the bank did not actually earn. Information in SIB's financial statements and annual reports to investors bore no relationship to the actual performance of the bank investments.

The SEC's complaint alleges that King facilitated the Ponzi scheme by ensuring that the FSRC conducted sham audits and examinations of SIB's books and records. In exchange for bribes paid to him over a period of several years, King made sure that the FSRC did not examine SIB's investment portfolio. King also provided Stanford with access to the FSRC's confidential regulatory files on him, including the SEC's requests for information from FSRC in its investigation. King went so far as to allow Stanford to essentially dictate the FSRC's responses to the SEC on those information requests. King made false assurances that there was no cause for concern about Stanford International Bank. He collaborated with Stanford to withhold significant information being requested by the SEC.

According to the SEC's complaint, King is a citizen of the U.S. as well as Antigua and Barbuda, West Indies. He maintains residences in both Atlanta and Antigua. Lopez lives in Spring, Texas, and worked in SFG's Houston office as the chief accounting officer of SFG and its affiliate, Stanford Financial Group Global Management, LLC (SFGGM). Lopez provided accounting services to many entities under Stanford's control, including SIB, SFG and SFGGM. Kuhrt is a resident of Christiansted, St. Croix, U.S. Virgin Islands, and is the global controller for SFGGM. He provided accounting services to many entities under Stanford's control, including SIB, SFG, and SFGGM. Kuhrt reported at various times to Lopez and Davis, but also directly to Stanford. Neither Lopez nor Kuhrt is a certified public accountant (CPA).

The SEC's complaint charges the defendants with violating and/or aiding and abetting 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; Sections 206(1) and 206(2) of the Investment Advisers Act of 1940; and Section 7(d) of the Investment Company Act of 1940. The SEC's action seeks permanent injunctions, financial penalties, and disgorgement of ill-gotten proceeds plus prejudgment interest.

SEC v. Stefan H. Bengert, et al.

Litigation Release No. 20881 (February 4, 2009)

<http://sec.gov/litigation/litreleases/2009/lr20881.htm>

Press Release (February 4, 2009)

<http://sec.gov/news/press/2009/2009-16.htm>

The Securities and Exchange Commission has taken emergency action to stop a massive and ongoing international boiler room scheme that allegedly sold shares of U.S. penny stock issuers to investors located in Europe by misrepresenting that investors paid no sales commissions. The SEC alleges that, in fact, investors paid commissions exceeding 60 percent of the amount invested, and the fraudulent scheme raised at least \$44.2 million from 1,400 investors since March 2007.

The SEC's complaint alleges that four Chicago residents and their entities have worked in concert with sales agents based in Europe who make fraudulent cold calls to solicit investors. The SEC charged Chicago residents Stefan H. Bengel, Jason B. Meyers, Frank I. Reinschreiber, and Philip T. Powers as well as four entities through which they operated the boiler room scheme: SHB Capital Inc., International Capital Financial Resources LLC, Global Financial Management LLC, and Handler, Thayer & Duggan, LLC. Handler Thayer is a Chicago law firm that employs Powers. The SEC charged Bengel, Meyers, SHB Capital and International Capital with securities fraud. The SEC charged Powers, Reinschreiber and Global Financial with aiding and abetting the securities fraud. The SEC also charged all of the defendants with failing to register with the SEC as broker-dealers.

The SEC alleges that the multi-faceted boiler room scheme victimized residents of the United Kingdom, Germany, and other European countries. According to the SEC's complaint, Bengel, Meyers, SHB Capital, and International Capital acted as distribution agents for at least eight different U.S. penny stock issuers, agreeing to solicit foreign investors in exchange for commissions that collectively exceed 60 percent of the investor proceeds. The SEC alleges that Bengel, Meyers, SHB Capital, and International Capital, in turn, retained foreign sales agents to solicit investors. The foreign sales agents worked for boiler room operations and made cold calls to investors utilizing high pressure sales tactics. The SEC alleges that in connection with these sales, investors were not informed of the exorbitant commissions being collected or were told that no commissions would be charged. The SEC alleges that Powers, Reinschreiber and Global Financial provided knowing and substantial assistance to the scheme by acting as escrow agents in exchange for a share of the commissions. The escrow agents took custody of approximately \$44.2 million in investor funds, disbursed nearly \$29 million in investor funds as undisclosed commissions and the remainder to the stock issuers. The SEC also alleges that Handler Thayer acted as an unregistered broker-dealer in connection with its activities as an escrow agent.

The SEC filed its emergency action in the U.S. District Court for the Northern District of Illinois alleging that: Bengel, Meyers, SHB Capital and International Capital violated Section 17(a) of the Securities Act of 1933 and Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder; Powers, Reinschreiber and Global Financial aided and abetted violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and violated Section 15(a) of the Exchange Act; and Handler Thayer violated Section 15(a) of the Exchange Act. The SEC seeks in its action, among other things, a temporary restraining order, preliminary and permanent injunctions, disgorgement plus prejudgment interest, penny stock bars and financial penalties.

U.S. District Judge Joan Lefkow granted all of the emergency relief requested by the SEC, including a temporary restraining order, asset freeze, repatriation order, and temporary penny stock bar.

SEC v. Joseph S. Forte, et al.

Litigation Release No. 20847 (January 8, 2009)

<http://sec.gov/litigation/litreleases/2009/lr20847.htm>

Press Release (January 8, 2009)

<http://sec.gov/news/press/2009/2009-5.htm>

The Securities and Exchange Commission has charged a Philadelphia-area investment fund manager and his firm for conducting a multi-million dollar Ponzi scheme, and has obtained an emergency court order freezing their assets.

According to the SEC's complaint, Joseph S. Forte of Broomall, Pa., fraudulently obtained an estimated \$50 million from as many as 80 investors through the sale of securities in the form of limited partnership interests in his firm, Joseph Forte, L.P. The SEC alleges that Forte told investors that he would invest the funds in an account that would trade in securities futures contracts, including S&P 500 stock index futures. According to the complaint, despite the impressive and consistent returns he reported to investors, Forte consistently lost money in the limited trading that he did, withdrew millions of dollars in so-called fees for his personal use based on the falsely inflated value of Forte LP, and used investor funds to repay other investors.

Judge Paul S. Diamond, U.S. District Judge for the Eastern District of Pennsylvania, issued an order on January 7 granting a preliminary injunction, freezing assets, compelling an accounting, and imposing other emergency relief. Without admitting or denying the allegations in the Commission's complaint, Forte and Forte LP consented to the entry of the order.

The SEC's complaint alleges that Forte has been conducting a Ponzi scheme since at least 1995. Forte, who has never been registered with the SEC in any capacity, has admitted that he misrepresented and falsified Forte LP's trading performance from the very first quarter. From 1995 through Sept. 30, 2008, Forte and Forte LP reported to investors annual returns ranging from 18.52 percent to as high as 37.96 percent. However, from January 1998 through October 2008, the Forte LP trading account had net trading losses of approximately \$3.3 million.

The SEC's complaint further alleges that in addition to misrepresenting to investors that the trading was highly successful and making huge profits, Forte and Forte LP misrepresented the use of investor funds. Although Forte claimed that he raised approximately \$50 million from investors for the purpose of participating in the trading program, Forte deposited only \$25.8 million in the trading account between January 1998 and October 2008, and during that same time period withdrew \$23.1 million. Forte claims that he took at least \$10 to \$12 million in so-called fees for his personal use based on the falsely inflated value of Forte LP. But Forte LP statements provided to investors reflect fees charged of \$28.7 million between March 1995 and September 2008. He also claims he used approximately \$15 to \$20 million of investor funds to repay other investors — the hallmark of a Ponzi scheme. The SEC's complaint alleges that Forte and Forte LP also lied to investors about the value of the partnership portfolio. For example, in September 2008, they reported to investors that the Forte LP portfolio had a value of more than \$150 million. In fact, Forte LP's trading account at that time had a balance of only \$146,814.

The SEC's complaint alleges violations of Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. In addition to the emergency relief, the Commission's complaint seeks disgorgement of the defendants' ill-gotten gains plus pre-judgment interest, financial penalties, and permanent injunctions barring future violations of the antifraud provisions of the federal securities laws.

SEC v. Bernard L. Madoff and Bernard L. Madoff Investment Securities LLC

Litigation Release No. 20834 / December 19, 2008

<http://sec.gov/litigation/litreleases/2008/lr20834.htm>

Press Releases:

<http://sec.gov/news/press/2008/2008-293.htm> (December 11, 2008)

<http://sec.gov/news/press/2008/2008-297.htm> (December 16, 2008)

The SEC's complaint, filed on December 11, 2008, in federal court in Manhattan, alleges that Madoff and Defendant Bernard L. Madoff Investment Securities LLC committed a \$50 billion fraud and violated 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 206(2) of the Advisers Act of 1940. The complaint alleges that Madoff, just prior to the filing of the complaint on December 11, 2008, informed two senior employees that his investment advisory business was a fraud. Madoff told these employees that he was "finished," that he had "absolutely nothing," that "it's all just one big lie," and that it was "basically, a giant Ponzi scheme." The senior employees understood him to be saying that he had for years been paying returns to certain investors out of the principal received from other, different investors. Madoff admitted in this conversation that the firm was insolvent and had been for years, and that he estimated the losses from this fraud were at least \$50 billion.

SEC v. Marc S. Dreier

Litigation Release No. 20823 (December 8, 2008)

<http://sec.gov/litigation/litreleases/2008/lr20823.htm>

Press Release (December 8, 2008)

<http://sec.gov/news/press/2008/2008-285.htm>

On December 8, 2008, the Securities and Exchange Commission filed a civil injunctive action in United States District Court for the Southern District of New York alleging that New York attorney Marc S. Dreier engaged in an elaborate scheme, that violated the antifraud provisions of the federal securities laws and raised at least \$113 million from the sale of bogus promissory notes. According to the SEC's complaint, Dreier is the founder and managing partner of Dreier LLP, a 250-attorney law firm headquartered in Manhattan. Along with its complaint seeking a permanent injunction, disgorgement of Dreier's ill-gotten gains, and civil monetary penalties, the Commission filed an application for an emergency court order to freeze Dreier's assets and appoint a temporary receiver.

The SEC's complaint, filed in federal court in Manhattan alleges that since at least October 2008, Dreier has been marketing fake promissory notes, including bogus notes of a New York-based real estate development company, to hedge funds and other private investment funds, and has closed at least three sales. According to the complaint, Dreier created an elaborate charade designed to convince purchasers that the notes were genuine. He allegedly distributed phony financial statements and audit opinion letters of a reputable accounting firm, and recruited confederates to play the parts of representatives of legitimate companies involved in the transactions, even creating dummy email addresses and telephone numbers.

According to the Commission's complaint, Dreier directed that two purchasers of the bogus notes wire payment to what appeared to be his law firm's escrow account. At least one note purchaser discovered the fraud and demanded, and received, the return of its investment. Approximately \$100 million in known proceeds from the sale of the bogus notes remains unaccounted for.

The SEC's complaint alleges that, among other fake securities, Dreier has been offering fictitious promissory notes of a New York-based real estate development company (the "developer"), a former client of Dreier and his firm. Since at least October of this year, Dreier has approached at least three different investment funds with an offer to sell them, at a deep discount, various short-term, unsecured promissory notes supposedly issued by the developer. Two of the investment funds agreed to purchase the notes (one fund purchased notes in two separate transactions) and forwarded approximately \$113 million to an account in the name of "Dreier LLP Attorney Trust Account" in payment. A third fund was offered the notes, but declined to participate.

As alleged in the complaint, all of the offers were accompanied by documents that Dreier subsequently admitted he knew were fabricated. Dreier offered the notes for sale even though he knew that the developer had never issued the notes, had not authorized Dreier to market them and indeed knew nothing of their existence or Dreier's offers or sales.

The complaint further alleges that in marketing the notes, Dreier provided the hedge funds with fabricated documents including a "form" note and related agreements, "audited financial statements," and purported audit letters, which bore the forged signature of the developer's auditor, but which were printed on purported stationery of the developer's auditing firm. Dreier did not tell representatives from the hedge funds that the notes were bogus, that the "audited financial statements" and audit opinion letters were fabricated, or that the developer had never issued the notes or authorized Dreier to market them, despite Dreier's knowledge of these matters.

As alleged in the complaint, Dreier has admitted that:

- the notes were fictitious;
- the notes had never been issued by the developer;
- the developer had never authorized him to market the notes;
- he had fabricated documents evidencing that the notes had been issued by the developer to the original holder even though the original holder may never have purchased any notes issued by the developer (he or his confederates forged the signature of the developer's CEO);
- the developer's financial statements and the audit reports were fabrications;
- he knew that the phony financial statements and audit reports had been distributed to the hedge funds without disclosure that they were false.

CASES INVOLVING AFFINITY FRAUDS

SEC v. Charles C. Slowey, Jr., et al.

Lit. Rel. No. 21258 (October 22, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21258.htm>

The SEC charged Charles C. Slowey, Jr.; Endeavor Partners, LLC; Endeavor Capital Management Group, LLC; Edward D. Puttick, Sr.; and Advanced Planning Securities, Inc. with violations of the antifraud provisions of the securities laws in connection with the sale of unregistered securities representing interests in four real estate funds to investors, many of whom were unsophisticated retirees and senior citizens. The SEC also charged the above defendants, along with two brokers, Gregory L. Oldham and Glenn R. Harris and their company Oldham Harris Inc., with violations of the registration provisions of the securities laws.

According to the SEC's complaint, the securities fraud was orchestrated by Charles C. Slowey, Jr., 65, of Oak Beach, NY, and two companies controlled by Slowey, Endeavor Partners, LLC and Endeavor Capital Management Group, LLC. The SEC alleges that the four real estate funds were managed by Endeavor Partners or Endeavor Capital Management Group. The SEC alleges that these three defendants made misrepresentations to investors who invested approximately \$12 million in the funds, and, further, that these defendants misappropriated investor proceeds. The SEC also alleges that Advanced Planning Securities, Inc. (APS) and its former president Edward D. Puttick, Sr. failed to conduct sufficient due diligence prior to authorizing brokers to sell interests in the funds to investors, including unsophisticated senior citizens. Finally, the SEC alleges that these defendants; the brokers, Gregory L. Oldham, 59, of Kenosha, Wisconsin, and Glenn R. Harris, 34, of Santa Rosa, California; and Oldham Harris Inc. (OHI) violated the registration provisions of the securities laws.

The SEC's complaint charges each of the defendants with violations of Sections 5(a) and 5(c) of the Securities Act of 1933. Further, the SEC's complaint charges Slowey, the Management Companies, Puttick, and APS with violations of Section 17(a) of the Securities Act, and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The SEC's complaint seeks a final judgment permanently enjoining the defendants (except APS) from future violations of the above provisions of the federal securities laws, ordering them to disgorge their ill-gotten gains plus prejudgment interest on a joint and several basis, and ordering them to pay financial penalties.

SEC v. HomePals Investment Club, LLC, HomePals, LLC, Ronnie Eugene Bass, Jr., Abner Alabre and Brian J. Taglieri

Lit. Rel. No. 21251 (October 16, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21251.htm>

The SEC filed a civil injunctive action against HomePals Investment Club, LLC and HomePals, LLC (together, "HomePals"), and their principals, Ronnie Eugene Bass, Jr., Abner Alabre and Brian J. Taglieri, alleging that they ran a Ponzi scheme and affinity fraud that targeted Haitian-American investors residing primarily in South Florida.

The SEC's complaint alleges that from April 2008 through December 2008, the defendants raised at least \$14.3 million through the sale of unsecured notes to hundreds of Haitian-American investors by promising guaranteed returns of 100% every 90 days. The defendants claimed they were able to generate such spectacular returns through Bass' purported successful trading of stock options and commodities. The SEC's complaint further alleges that, in reality, Bass traded no more than \$1.2 million of the \$14.3 million raised, generated trading losses of 19 percent, and that HomePals used the bulk of the investor funds to repay earlier investors in typical Ponzi scheme fashion. The SEC also alleges that Bass, Alabre and Taglieri misappropriated at least \$668,000 of investor funds for personal use.

The SEC's complaint charges each of the defendants with violating Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933, Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 and, with respect to Bass, Sections 206(1), (2) and (4) and Rule 206(4)-8 of the Investment Advisers Act of 1940. The SEC seeks permanent injunctions, disgorgement of ill-gotten gains and financial penalties against all defendants.

SEC v. Frank Bluestein

Lit. Rel. No. 21223 (September 28, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21223.htm>

The SEC charged Detroit-area stock broker Frank Bluestein with fraud, alleging that he lured elderly investors into refinancing the mortgages on their homes to fund their investments in a \$250 million Ponzi scheme.

The SEC alleges that Bluestein acted as the single largest salesperson in the Ponzi scheme operated by Edward May and his company, E-M Management Company LLC (E-M). The SEC alleges that Bluestein specifically targeted potential investors who were retired or elderly and conducted so-called "investment seminars" in Michigan and California to lure them into investing in E-M securities. Bluestein facilitated May's fraudulent scheme by raising approximately \$74 million from more than 800 investors through the sale of E-M securities over a five-year period. Bluestein, through his company Maximum Financial, conducted numerous investment seminars to find new E-M investors.

The SEC's complaint alleges that Bluestein misrepresented to investors that the investments were low-risk and that he had conducted adequate due diligence with respect to the investments when, in fact, he did little to investigate the legitimacy of the E-M offerings even when confronted with serious red flags about the existence of some transactions. Bluestein also misled investors about the compensation he was receiving from the offerings by failing to disclose that he received at least \$2.4 million in commissions from May and E-M in addition to the \$1.4 million in disclosed compensation he received from investor funds.

The SEC complaint alleges violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, Sections 10(b) and 15(a) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder by Bluestein. As part of this action, the SEC seeks an order of permanent injunction against Bluestein as well as the payment of disgorgement of ill-gotten gains, prejudgment interest and financial penalties.

SEC v. Sidney S. Hanson, et al.

Lit. Rel. No. 21198 (September 8, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21198.htm>

The SEC entered an order freezing the proceeds of an allegedly fraudulent high-yield investment scheme run by defendants Sidney S. Hanson, Charlotte M. Hanson, and the twelve entities they controlled. The defendants, who consented to the order as well as civil injunctions and other equitable relief, are charged with operating a scheme that sold approximately 500 investors in North Carolina and elsewhere throughout the United States \$32.5 million in “private loan agreements” from at least August 2006 to June 2009.

The SEC alleges that the Hansons, through a network of more than 45 salesmen, offered and sold the so-called "private loan agreements" to investors located throughout the country. Operating through the various limited liability companies, the Hansons told investors that the investment contracts would generate fixed yearly profits ranging from 8% to 30%, depending on the amount invested and length of the agreement. Investors were provided periodic interest payments and account statements reflecting supposedly successful results and increasing balances. The Hansons informed investors that they were able to earn fixed, above-average, returns because the funds they invested in the private loan agreements were placed in a diversified and safe portfolio of treasury bills, precious metals, and foreign currency. In actuality, they invested the majority of the investor funds in a number of very risky private investments and did not invest in any treasury bills. Investors also were not informed that their funds would be used to pay the Hansons and their extensive sales force, or to make interest payments to other investors including investors in prior unsuccessful investment schemes operated by the Hansons.

Without admitting or denying the allegations of the SEC's complaint, the defendants consented to the entry of judgments permanently enjoining them from violating Sections 17(a) and 5 of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, with monetary relief to be determined by the court at a later date upon motion of the SEC. The defendants have also consented to an asset freeze and order expediting discovery and preventing the destruction or concealment of documents.

In the Matter of Prime Capital Services, Inc., Gilman Ciocia, Inc., Michael P. Ryan, Rose M. Rudden, Christie A. Andersen, Eric J. Brown, Matthew J. Collins, Kevin J. Walsh and Mark W. Wells

A.P. Rel. No. 33-9047 (June 30, 2009)

<http://www.sec.gov/litigation/admin/2009/33-9047.pdf>

The SEC charged a Poughkeepsie, N.Y.-based firm and several representatives and supervisors for their alleged roles in fraudulent and unsuitable sales of variable annuities to senior citizens who were lured through free-lunch seminars at restaurants in south Florida.

The SEC alleges that Prime Capital Services (PCS) and its parent company recruited elderly investors to attend the seminars, after which the seniors were encouraged to schedule private appointments with PCS representatives who then induced them to buy variable annuities.

The SEC alleges that many of the variable annuities were unsuitable investments for the customers due to their age, liquidity, and investment objectives, and that PCS representatives sometimes omitted to tell the seniors certain material information. In some cases, the paperwork allegedly was altered after it was signed by the customer, making it appear that disclosures had been provided and the sales were suitable when, in fact, they were not.

In addition to the fraudulent and unsuitable sales, the SEC alleges that PCS and its president, Michael P. Ryan, failed to implement the firm's supervisory procedures in a way that reasonably would be expected to detect and prevent the representatives' violations of the federal securities laws.

SEC v. Horizon Property Holdings, L.C. and Cydney Sanchez

Lit. Rel. No. 21088 (June 17, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21088.htm>

The SEC filed a complaint against Horizon Property Holdings, L.C. ("Horizon") and its principal, Cydney Sanchez. The SEC alleges that Sanchez and Beverly Hills-based Horizon operated a \$6 million real estate investment scheme that primarily targeted the African-American and Hispanic communities.

The SEC's complaint alleges that, in 2006 and 2007, Sanchez and Horizon recruited approximately 150 investors to participate in a purported foreclosure reinstatement program. According to the complaint, Sanchez claimed that investor funds were secured by a promissory note and an interest in real property and would be used to cure defaults on distressed properties. By promising returns of 40% in as little as 30 days, Sanchez raised approximately \$6 million.

The complaint alleges, however, that investor money was not secured and was not used to rescue homeowners from foreclosure. The complaint alleges that Sanchez and Horizon were instead operating a Ponzi scheme that used approximately \$3.7 million from new investors to pay principal and returns due to earlier investors. The complaint further alleges that Sanchez also misappropriated the remaining investor funds to finance unrelated and undisclosed real estate-related activities and pay her personal expenses.

The SEC's complaint alleges that Sanchez and Horizon violated 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 SEC seeks permanent injunctions, disgorgement of ill-gotten gains, and civil penalties.

SEC v. Matthew D. Weitzman

Lit. Rel. No. 21078 (June 10, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21078.htm>

The SEC charged Matthew D. Weitzman, an investment adviser, for orchestrating a scheme in which he stole more than \$6 million in investor funds for his own personal use, in some instances victimizing clients who were terminally ill or mentally impaired.

The SEC alleges that Weitzman sold securities in clients' brokerage accounts and illegally funneled their money to a bank account that he secretly controlled. While Weitzman spent the money on a multi-million dollar home, cars, and other luxury items, he provided false account statements to clients often showing inflated account balances and securities holdings. Weitzman also submitted to a broker-dealer phony letters from clients that purported to authorize the money transfers. When clients questioned Weitzman about the transfers they did not authorize, he misrepresented that he was withdrawing their funds to make legitimate investments.

The SEC alleges that Weitzman either sold securities held in the clients' accounts or redeemed shares held in money market funds in order to acquire cash for the unauthorized transfers, because the clients' brokerage accounts at the broker-dealer generally did not hold more than a minimal amount of cash. He also siphoned money from clients' Individual Retirement Accounts.

Weitzman agreed to settle the SEC, without admitting or denying guilt, to violating Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940, and with aiding and abetting violations of Section 204 and Rules 204-2(a)-3 and 204-2(a)(7) also of the Advisers Act. The complaint seeks a permanent injunction, disgorgement of ill-gotten gains plus prejudgment interest, financial penalties, an asset freeze, a sworn accounting, an order prohibiting the destruction of documents, and a requirement that Weitzman notify the SEC and obtain approval of the court before he files for bankruptcy protection.

SEC v. Peter C. Son, Jin K. Chung, SNC Asset Management, Inc., and SNC Investments, Inc.

Lit. Rel. No. 21076 (June 9, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21076.htm>

The SEC charged the Defendants with securities fraud for conducting an \$80 million Ponzi scheme that targeted Korean-American investors with false promises of extraordinarily high returns from foreign currency (forex) trading.

The SEC alleges that the Defendants lured approximately 500 investors in the United States, South Korea, and Taiwan into their investment scheme in which funds were not traded in the forex market as claimed, but instead used to pay cash "returns" to certain investors in Ponzi-like fashion. They also misappropriated investor money for their own personal use, including mortgage payments on Son's multi-million dollar home. The SEC is seeking an emergency court order to freeze the defendants' assets.

According to the SEC, Son and Chung operated their scheme through SNC Asset Management, Inc. (SNCA) and SNC Investments, Inc. (SNCI). Son and Chung promised investors annual returns of up to 36 percent from forex trading, and told investors that SNCA had generated 50 percent profits from such trading each year since 2003. Both statements were lies.

The complaint charges the defendants with violating Section 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 SEC seeks court orders prohibiting the defendants from engaging in future violations of these provisions; freezing their assets and compelling them to return overseas assets to the U.S.; and requiring them to disgorge their ill-gotten gains and pay financial penalties. Son is also facing federal criminal charges.

SEC v. Sun Group, et al.

Lit. Rel. No. 21045 (May 18, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr21045.htm>

The SEC charged Bich Quyen Nguyen, Johnny E. Johnson, and their entities, Sun Group and Sun Investment Savings and Loan, with securities fraud in connection with a multi-level marketing scheme targeting the unemployed and recently bankrupt. The SEC obtained an emergency court order freezing their assets and halting the scheme.

The SEC alleges the Defendants raised more than \$9 million by promising guaranteed returns on high-yield instruments. The complaint alleges the defendants misused funds for personal use or sent money to other entities under their control.

According to the SEC's complaint, Nguyen solicited investors through Sun Group and Sun Investment Savings and Loan and encouraged club leaders to find investors who were unemployed or recently bankrupt. Through Sun Investment Savings and Loan, Nguyen offered certificates of deposit with returns as high as 19.30%. Johnson represented to prospective investors that they could double their investment with Sun Group and could earn "many times more than 10% returns." Both Nguyen and Johnson promised a full guarantee for the original investment and profit. In fact, according to the complaint, Sun Investment Savings and Loan is not a savings and loan at all. The amended complaint alleges that Sun Investment Savings and Loan does not exist at the purported business location alleged by defendants and was not authorized by the state to do business as a financial institution. Moreover, Sun Investment Savings and Loan has not been paying the promised returns to investors.

The SEC obtained an order (1) freezing the assets of Sun Group, Sun Investment Savings and Loan, Nguyen, and Johnson; (2) requiring accountings; (3) prohibiting the destruction of documents; and (4) granting expedited discovery; and (5) temporarily enjoining Sun Group, Sun Investment Savings and Loan, Nguyen, and Johnson from future violations of the registration and antifraud provisions of the federal securities laws.

SEC v. Isaac I. Ovid, Aaron Riddle, J. Jonathan Coleman, Stephen Cina, Cory A. Martin, Timothy Smith, Robert J. Riddle, Jadis Capital, Inc., Jadis Investments, LLC, and Logos Multi-Strategy Hedge Fund I, LP

Lit. Rel. No. 20998 (April 14, 2009)

<http://www.sec.gov/litigation/litreleases/2009/lr20998.htm>

The SEC filed civil injunctive actions charging seven leading members of a church in Queens, N.Y. for orchestrating a fraudulent investment scheme that targeted mostly elderly

parishioners. The seven individuals defrauded scores of investors of more than \$12 million by making numerous misrepresentations, including promises of returns as high as 75 percent, to encourage them to invest in two hedge funds - the Logos Fund and the Donum Fund. Instead of investing the money as promised, the defendants misappropriated millions of dollars to furnish their own lavish lifestyles with purchases of luxury cars, jewelry, clothing, meals, and expensive foreign travel.

The SEC's complaint alleges that between January and November 2005, the defendants raised more than \$12 million from more than 80 investors in the two funds by making material misrepresentations including promises of incredible returns. The defendants misrepresented the performance of the Logos Fund, the amount of assets under management, the identity and skill of the portfolio managers, and the level of supervision of the portfolio managers. The defendants also misrepresented the registration status of the Donum Fund by falsely claiming to investors that the fund was registered with the SEC.

The SEC's complaint further alleges that instead of investing the investor funds as promised, the defendants misappropriated investor funds almost as soon as they were obtained, using the money to buy luxury items including a Bentley automobile and expensive watches.

The SEC's claims violations of the following securities laws: Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, Sections 203A, 206(1) and 206(2) of the Investment Advisers Act of 1940, and Section 7(a) of the Investment Company Act of 1940. The SEC's complaint seeks a final judgment permanently enjoining the defendants from future violations of the above provisions of the federal securities laws, ordering disgorgement ill-gotten gains payment of civil monetary penalties.