

Outline of Recent SEC Enforcement Actions

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FINANCIAL FRAUD & OTHER DISCLOSURE AND REPORTING VIOLATIONS

SEC v. Gordon B. Grigg and ProTrust Management, Inc., et al.

Litigation Release No. 20873 (January 28, 2009)

<http://sec.gov/litigation/litreleases/2009/lr20873.htm>

Press Release (January 28, 2009)

<http://sec.gov/news/press/2009/2009-12.htm>

On January 28, 2009, the Securities and Exchange Commission took emergency action to charge Nashville, Tenn.-based investment adviser Gordon B. Grigg and his firm ProTrust Management, Inc. with securities fraud, and obtained a court order freezing their assets. The SEC alleges that Grigg and ProTrust defrauded clients out of at least \$6.5 million and misrepresented that their money was invested in the federal government's Troubled Asset Relief Program (TARP) and other securities that, in reality, do not exist.

According to the SEC's complaint, Grigg is a self-purported financial planner and investment adviser, but neither he nor his firm is registered with the SEC or a state regulator. The SEC alleges that Grigg obtained control over funds of at least 27 clients since 2007 and falsely claimed to have invested their money in securities described as "Private Placements." Grigg created fraudulent account statements reflecting his clients' ownership of these non-existent securities. The SEC further alleges that Grigg began falsely claiming in December that ProTrust had the ability to invest client funds in government-guaranteed commercial paper and bank debt as part of the TARP program. Grigg also falsely claimed to have partnerships and other business relationships with several of the nation's top investment firms.

According to the SEC's complaint, filed in the U.S. District Court for the Middle District of Tennessee, Nashville Division, the defendants have violated the antifraud provisions of the federal securities laws, 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 Investment Advisers Act of 1940. As relief, the SEC's complaint seeks (i) a temporary restraining order, preliminary and permanent injunctions; (ii) an asset freeze; (iii) an accounting of all funds raised; (iv) an order expediting discovery and preventing the destruction of documents; (v) disgorgement of ill-gotten gains plus prejudgment interest thereon; and (vi) the imposition of financial penalties.

After the SEC's complaint was filed, Grigg and ProTrust consented to the emergency relief sought by the SEC, and the Honorable Judge William J. Haynes, Jr., U.S. District Judge for the Middle District of Tennessee, Nashville Division, issued a temporary restraining order to prevent the defendants from further violations and freezing their assets.

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. United Rentals Inc.

Lit. Rel. No. 20706 (Sept. 8, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20706.htm>

Press Rel. No. 2008-190 (Sept. 8, 2008)

<http://www.sec.gov/news/press/2008/2008-190.htm>

The SEC announced on September 8, 2008, that it filed charges against United Rentals, Inc. (URI) alleging that URI engaged in financial fraud and in a broad range of other improper accounting practices. URI is one of the largest equipment rental companies in the world with a network of rental locations in the United States, Canada and Mexico.

The SEC's complaint, filed in the United States District Court for the District of Connecticut, alleges that, from late 2000 through 2002, URI engaged in a series of fraudulent transactions undertaken in order to meet URI's earnings forecasts and analyst expectations. The fraud was accomplished primarily through a series of interlocking three-party sale-leaseback transactions orchestrated by URI's then-Chief Financial Officer, Michael Nolan, and its then-Chief Acquisitions Officer, John Milne. Nolan and Milne were previously charged by the SEC for individual wrongdoing.

The complaint alleges that in these transactions URI sold used equipment to a financing company and leased it back for a short period, and then arranged for a third party equipment manufacturer to agree to sell the equipment at the end of the lease period and guarantee the financing company against any losses incurred in the resale of the equipment. URI separately guaranteed the equipment manufacturer against any losses it might incur under the guarantee it had extended to the financing company.

The SEC's complaint also alleges that in another effort to improve its earnings, URI engaged in a series of fraudulent "trade packages" with suppliers. The company sold blocks of used equipment for amounts in excess of fair value, in exchange for certain undisclosed financial inducements offered to those suppliers.

In addition, the SEC alleges that from 1997 to 2000, during a period of enormous growth through acquisitions, URI engaged in other improper accounting practices involving its valuations of acquired assets, use of acquisition reserves, and accounting for customer relationships as well as improperly accounting for other items that overstated net income, including its estimation and recording of self-insurance reserves, its recognition of equipment rental revenues, and its income tax accounting.

Without admitting or denying the charges, URI has agreed to settle the SEC's enforcement action and pay \$14 million penalty, which the Commission intends to place in a Fair Fund for distribution to affected investors.

In addition to the financial penalty, URI consented to be permanently enjoined from violating 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, and Rules 10b-5, 12b-20, 13a-1, 13a-11 and 13a-13, thereunder. The settlement is subject to court approval.

In determining to accept URI's settlement offer, the Commission considered URI's cooperation with the Commission and its staff in the investigation leading to this action, and the remedial actions it has taken.

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. Interpublic Group of Companies, Inc. and McCann-Erickson Worldwide, Inc.
SEC v. Salvatore LaGreca and Brian Watson

Lit. Rel. No. 20547 (May 1, 2008)

*<http://www.sec.gov/litigation/litreleases/2008/lr20547.htm>
Admin. Proc. File No. 3-13062
<http://www.sec.gov/litigation/admin/2008/34-57944.pdf>*

On May 1, 2008, the Securities and Exchange Commission filed a civil injunctive action against McCann-Erickson Worldwide, Inc. (“McCann”) and the Interpublic Group of Companies, Inc. (“IPG”). The Commission alleged that McCann committed securities fraud when it misstated its financial results by failing to expense properly intercompany charges. IPG negligently failed to address the intercompany problems at its largest subsidiary, McCann. IPG also violated the reporting, internal controls and books and records provisions of the securities laws in connection with a variety of issues that were reflected in various restatements IPG issued from August 2002 through September 2005 totaling more than \$600 million. IPG and McCann agreed to settle the Commission’s charges, and McCann agreed to pay a \$12 million civil penalty.

The Commission also brought settled charges against Salvatore LaGreca and Brian Watson for their role in failing to reconcile intercompany accounts that resulted in the 2002 restatement. LaGreca served as McCann’s Vice-Chairman, Finance and Operations and CFO from January 1996 to October 2002. LaGreca is a CPA licensed in the State of New York. LaGreca, among other things, oversaw McCann’s accounting, financial reporting, strategic planning, mergers and acquisitions, and budgeting. Watson joined McCann’s European-Middle-East-Asia region (“EMEA”) as Director of Operations in 1996, from 2000 served as Chief Operating Officer and in approximately May 2002 became Deputy Regional Director of EMEA. Although Watson was not an accountant, from approximately the middle of 1998 until January 2000, and from early 2001 to May 2002, when EMEA did not have a Finance Director, Watson handled many aspects of the Finance Director’s responsibilities.

IPG, McCann, LaGreca and Watson settled the Commission’s charges without admitting or denying the allegations in the Commission's complaints. IPG agreed to consent to a final judgment permanently enjoining it from future violations of Sections 17(a)(2) and (3) of the Securities Act and Sections 13(a) and 13(b)(2)(A) and (B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder.

McCann consented to a final judgment permanently enjoining it from future violations of Sections Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and aided and abetted IPG’s violations of Sections 13(a) and 13(b)(2)(A) and (B) of the Exchange Act, and Rules 12b-20, 13a-1, 13a-11 and 13a-13. McCann also agreed to pay a \$12 million penalty and \$1 in disgorgement for its role regarding intercompany accounts resulting in the 2002 restatement.

LaGreca and Watson agreed to settle this matter by consenting to final judgments permanently enjoining them from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and from aiding and abetting violation of Sections 13(a) and 13(b)(2)(A) and (B) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13. LaGreca and Watson also agreed to pay a civil penalty, in the amounts of \$25,000 and \$50,000, respectively, and to

disgorge all gains derived from their violative conduct plus pre-judgment interest, in the amounts of \$46,947 and \$17,325, respectively.

LaGreca consented to an order under Rule 102(e), suspending him from appearing or practicing before the Commission as an accountant for five years.

SEC v. Biovail Corporation, Eugene Melnyk, Brian Crombie, John Miszuk, and Kenneth Howling

Lit. Rel. No. 20506 (Mar. 24, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20506.htm>

The Commission's complaint, filed on March 24, 2008, alleges that present and former senior Biovail executives, obsessed with meeting quarterly and annual earnings guidance, repeatedly overstated earnings and hid losses in order to deceive investors and create the appearance of achieving earnings goals.

Biovail settled the Commission's charges and will pay a \$10 million penalty. Four current or former Biovail senior executives still face SEC charges: Eugene Melnyk; former chief financial officer Brian Crombie; current controller John Miszuk; and current chief financial officer Kenneth G. Howling.

The Commission's complaint argues that Biovail and some of its executives schemed to deceive investors and analysts by falsely attributing nearly half of Biovail's failure to meet its third quarter 2003 earnings guidance to a truck accident involving a shipment of one of Biovail's products. The accident, in fact, had no effect on third quarter earnings.

The Commission's complaint also alleges three fraudulent accounting schemes had a material effect on Biovail's financial statements. Biovail management also intentionally deceived the company's outside auditors.

The Commission seeks a final judgment permanently enjoining all defendants from future violations; and Melnyk, Crombie, Miszuk, and Howling from aiding and abetting violations of Section 10(b) of the Exchange Act and Rule 10b-5; Biovail from violating Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-16; Crombie and Biovail from violating Section 17(a) of the Securities Act; Crombie from violating Rule 13a-14; Melnyk from violating Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2; Crombie and Miszuk from violating Section 13(b)(5) of the Exchange Act and Rules 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, and 13a-16; and ordering them to pay civil penalties and disgorgement of any ill-gotten gains with prejudgment interest. The Commission also seeks a judgment barring Melnyk, Crombie, Howling, and Miszuk from serving as officers or directors of any public company.

Without admitting or denying the allegations in the Commission's complaint, Biovail agreed to settle this matter by consenting to a final judgment requiring it to pay a penalty of \$10 million and disgorgement of \$1, ordering it to comply with certain undertakings, including the

retention of an independent consultant, and permanently enjoining it from future violations of 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-16, and Rule 302(b) of Regulation S-T.

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.

In the Matter of Moneesh K. Bakshi

Press Rel. No. 2008-26 (Mar. 3, 2008)

<http://www.sec.gov/news/press/2008/2008-26.htm>

Admin. Proc. File No. 3-12916 (Dec. 28, 2007)

<http://www.sec.gov/litigation/admin/2007/34-57064.pdf>

On March 3, 2008, the SEC announced that it permanently suspended attorney Moneesh K. Bakshi from practicing before the SEC for taking a primary role in his client's fraud and filing false and misleading documents with the SEC. Bakshi was suspended based on an injunction entered against him by the U.S. District Court for the Southern District of New York. The court found that Bakshi misused his role as corporate counsel for Ramoil Management Ltd. to violate, and aid and abet Ramoil's violations of, the federal securities laws. In part as a result of Bakshi's fraud, Ramoil's stock price rose to an all-time high of \$20 per share before plunging to less than 10 cents per share and eventually being de-listed.

On October 25, 2007, the District Court entered a decision and order in the SEC's favor against Bakshi for his knowingly filing a Form 10-KSB that included an unsigned and falsified audit report and for knowingly making false representations in registration statements on Forms

S-8 and supporting opinion letters related to Ramoil's issuance of shares for consulting services that were never performed. The court ordered Bakshi to pay a \$100,000 penalty.

The SEC's temporary suspension against Bakshi, imposed December 28, 2007, became permanent when no petition to lift the suspension was received. The SEC determined that allowing Bakshi to continue appearing and practicing before the SEC would not be in the public interest because of Bakshi's willful violations of the federal securities laws.

SEC v. James E. Koenig

Lit. Rel. No. 20420 (Jan. 3, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20420.htm>

On December 21, 2007, the U.S. District Court for the Northern District of Illinois entered final judgment against defendant James E. Koenig, the former CFO of Waste Management, Inc. after a jury found that he committed 60 securities laws violations in a five-year period. The final judgment follows an 11-week jury trial in 2006 that resulted in a verdict in the SEC's favor against Koenig on all charges. The jury found Koenig liable for securities fraud, falsifying company books and records, lying to auditors, and aiding and abetting the company's violations.

The final judgment, which followed a two-day bench trial on remedies before U.S. District Court Judge Wayne R. Andersen, permanently bars Koenig from acting as an officer or director of a public company, enjoins him from future violations of the antifraud and other provisions of the federal securities laws, and requires him to pay more than \$4 million: \$831,500 in disgorgement, prejudgment interest of \$1,246,517, and a civil penalty of \$2,078,017.

The SEC alleged in its complaint that, beginning in 1992 and continuing into 1997, Koenig and others engaged in a systematic scheme to falsify and misrepresent Waste Management's financial results with profits being overstated by \$1.7 billion. According to the complaint, the scheme was accomplished through false and misleading disclosures and a variety of non-GAAP accounting practices designed to defer current period expenses whenever possible. The fraud resulted in a restatement in February 1998, which at the time was the largest restatement in history.

SEC v. Federal Home Loan Mortgage Corporation

Lit. Rel. No. 20304 (Sept. 27, 2007)

<http://sec.gov/litigation/litreleases/2007/lr20304.htm>

On September 27, 2007, the SEC filed a settled enforcement action charging the Federal Home Loan Mortgage Corporation ("Freddie Mac"), a shareholder-owned government-sponsored enterprise, with securities fraud in connection with improper earnings management that occurred from at least the second quarter of 1998 through and including the third quarter of 2002. The SEC's settled action also charged the following former Freddie Mac executives: David W. Glenn ("Glenn"), its former President, Chief Operating Officer, and Vice-Chairman of the Board; Vaughn A. Clarke ("Clarke"), its former CFO; Robert C. Dean ("Dean"), a former Senior Vice President; and Nazir G. Dossani ("Dossani"), a former Senior Vice President.

The SEC's complaint alleged that Freddie Mac engaged in a fraudulent scheme that deceived investors about its true performance, profitability, and growth trends, and that in 2000, 2001 and 2002 the Company misreported its net income in each of those years by 30.5%, 23.9% and 42.9%, respectively. The complaint alleged that Freddie Mac's senior management exerted consistent pressure to have the Company report smooth and dependable earnings growth and to present investors with the image of a company that would continue to generate predictable and growing earnings. The Company's violations were the direct result of this corporate culture that placed great emphasis on steady earnings, and a senior management that fostered a corporate image that was touted as "Steady Freddie" to the marketplace.

In its settlement with the SEC, Freddie Mac agreed, without admitting or denying the allegations, to the entry of a final judgment that permanently enjoins the Company from violations of anti-fraud provisions of the federal securities laws. Freddie Mac also agreed to pay a \$50 million civil penalty, which is expected to be distributed to injured investors through a Fair Fund. Without admitting or denying the allegations in the SEC's Complaint, Glenn, Clarke, and Dossani agreed to the entry of a final judgment that permanently enjoins them from violating the antifraud provisions of the Securities Act. In a separate proceeding, Dean consented to the entry of an SEC Order requiring that he cease and desist from committing or causing any violations and any future violations of the antifraud provisions of the Securities Act. Additionally, Glenn, Clarke, Dossani and Dean agreed to respectively pay civil penalties of \$250,000, \$125,000, \$75,000, and \$65,000, as well as \$150,000, \$29,227, \$61, 663, and \$34,658 in disgorgement.

CASES INVOLVING STOCK OPTION BACKDATING

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. Stephen R. Wong

SEC v. Raj P. Sabhlok and Michael C. Pattison

Lit. Rel. No. 20710 (Sept. 9, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20710.htm>

Press Rel. No. 2008-191 (Sept. 9, 2008)

<http://www.sec.gov/news/press/2008/2008-191.htm>

The SEC charged three former senior executives of Embarcadero Technologies, Inc. on September 9, 2008, alleging that they fraudulently backdated stock option grants to employees at the San Francisco business software company and reported false financial information to shareholders.

The SEC alleges that the former CEO, President and Chairman, Stephen R. Wong, the former CFO, Raj P. Sabhlok, and the former Controller, Michael C. Pattison, concealed millions of dollars in compensation expenses associated with valuable, “in-the-money” options secretly granted to company employees.

The SEC’s complaints, filed in federal district court in San Francisco, allege that Embarcadero routinely provided valuable options priced at below market prices to its employees. The SEC alleges that the three executives allowed Embarcadero to avoid reporting expenses for these options by backdating paperwork to make it appear as if the options had been granted on an earlier date, when the stock was trading at a lower price. According to the SEC’s complaints, Embarcadero made hundreds of backdated stock option grants during 16 consecutive quarters. As a result, the company significantly overstated its net income (or understated its net loss) from 2000 through 2005. In the year with the largest percentage impact, Embarcadero understated its net losses by more than 500 percent.

The SEC’s complaints also allege that all three executives participated in backdating grants, each playing a role in falsifying paperwork, selecting false grant dates, and filing false financial statements. Moreover, according to the SEC, Sabhlok and Pattison used false documents to support large option awards to themselves that were collectively “in-the-money” by almost \$1.5 million—a potential windfall hidden from Embarcadero’s shareholders.

Wong, without admitting or denying the Commission’s allegations, consented to a permanent injunction against violations of Section 17(a) of the Securities Act of 1933 and

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. Wong also agreed to pay a \$250,000 civil penalty.

The Commission's litigated action against Sabhlok and Pattison charges both with violating Section 17(a) of the Securities Act of 1933 and Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 and Rules 10b-5 and 13b2-1 thereunder, and with aiding and abetting violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Securities Exchange Act of 1934 and Rules 12b-20, 13a-1, 13a-11, 13a-13 and 14a-9 thereunder. Sabhlok is also charged with violating Section 16(a) of the Securities Exchange Act of 1934 and Rules 16a-3, 13a-14, and 13b2-2. The Commission seeks permanent injunctions, civil monetary penalties, and disgorgement against both Sabhlok and Pattison, and forfeiture of bonuses and stock sales pursuant to Section 304 of the Sarbanes-Oxley Act and an order barring against acting as an officer or director of a public company against Sabhlok.

SEC v. Analog Devices, Inc. and Jerald Fishman

Lit. Rel. No. 20604 (May 30, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20604.htm>

Admin. Proc. File No 3-13050 (May 30, 2008)

<http://www.sec.gov/litigation/admin/2008/33-8923.pdf>

On May 30, 2008, the Securities and Exchange Commission charged Massachusetts high tech company Analog Devices, Inc. and its CEO Jerald Fishman for reporting false compensation and related financial information to investors by backdating stock option grants to officers, directors and employees.

Without admitting or denying the allegations in the SEC's complaint, Analog and Fishman agreed to settle charges against them by consenting to the entry of final judgments against them that orders Analog to pay a \$3 million civil penalty and orders Fishman to pay a \$1 million civil penalty. Fishman also consented to pay disgorgement of \$450,000, plus prejudgment interest of \$42,110, which represents the in-the-money benefit that Fishman obtained from selling stock obtained from the exercise of the 1998 backdated option grant that he exercised.

According to the complaint, in 1998, 1999 and 2001, Fishman caused the company to backdate stock option grants to price them below the market price of the stock on the date they were actually approved by Analog's Compensation Committee and caused the company to grant options at lower exercise prices than were allowed by the company's option plan.

The complaint alleges that these in-the-money option grants were made to Analog's officers and employees and resulted in \$30.7 million in compensation costs that the defendants failed to properly expense and that the company and Fishman failed to disclose this practice in Analog's proxy statements and related annual reports, and instead made false and misleading statements and omissions concerning the option grants.

In related administrative proceedings, without admitting or denying the SEC's findings, Analog and Fishman consented to the entry of an administrative cease-and-desist order. The SEC's order finds that Analog violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The order also finds that Fishman violated Sections 17(a)(2) and 17(a)(3) of the Securities Act. Analog also agreed to re-price two of the three option grants awarded to Fishman that he has not yet exercised in order to eliminate the benefit of the lower exercise prices that resulted from backdating the options. See Administrative Proceeding No. 3-13050 / Release No. 33-8923 (May 30, 2008).

SEC v. Brooks Automation, Inc.

Lit. Rel. No. 20584 (May 19, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20584.htm>

On May 19, 2008, the Securities and Exchange Commission filed a civil injunctive action against Brooks Automation, Inc., a Chelmsford, Massachusetts semiconductor capital equipment company, alleging that it overstated income and understated employee compensation expenses in its financial statements by \$64.5 million during the period from 1996 through 2005 as a result of its failure to properly account for employee stock options.

Without admitting or denying the allegations, Brooks agreed to settle to charges that it violated the reporting, books and records, and internal controls provisions of the federal securities laws.

According to the complaint, a backdated exercise in 1999 by former President and CEO Robert J. Therrien and other grants for which the company improperly accounted resulted in misleading disclosures, with Brooks overstating its net income by as much as 30% in fiscal year 2000 alone. Brooks also filed misstated financial statements with the SEC in its Forms 10-K and 10-Q that did not recognize compensation expense for the company's stock option grants, as required by generally accepted accounting principles.

The Complaint further alleges several instances of company-wide options grants with purported grant dates that were inaccurate. The Complaint alleged the backdated grants produced immediate compensation to the recipients of the grant of approximately \$22 million, which Brooks failed to disclose in its financial reports.

Brooks, without admitting or denying the allegations in the Commission's complaint, agreed to settle the matter by consenting to a permanent injunction from further 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.

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, Ruele, and Dull violated Section 14(a) of the Exchange Act and Rule 14a-9 thereunder; (ii) Nicholas and Ruele violated Rules 13a-14 and 13b2-2 of the Exchange Act; (iii) Ruele 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 Ruele and Dull, and reimbursement of bonuses and profits from stock sales from Nicholas and Ruele 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.

SEC v. Marvell Technology Group, Ltd. and Weili Dai

Lit. Rel. No. 20559 (May 8, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20559.htm>

On May 8, 2008, the Securities and Exchange Commission charged a Silicon Valley semiconductor company and its co-founder for reporting false financial information to investors by improperly backdating stock option grants to employees.

The SEC's complaint against Marvell Technology Group, Ltd., and former chief operating officer Weili Dai alleges that Marvell provided potentially lucrative "in-the-money" options to employees. The complaint alleges Marvell backdated the options to dates with lower stock prices, and falsely represented that the options had been granted "at-the-money" (at market price) on earlier dates.

Marvell and Dai settled the SEC's charges without admitting or denying the allegations and will pay financial penalties of \$10 million and \$500,000, respectively.

According to the SEC's complaint, the scheme allowed Marvell to overstate its income by \$362 million from its fiscal years 2000 through 2006. To make it appear that Marvell had actually granted the options on the historical date with the lowest stock price, Dai signed falsified minutes attesting to a meeting of the Committee on that earlier date.

In addition to financial penalties, Marvell consented to a permanent injunction against violations of the antifraud and other provisions of the federal securities laws. Dai consented to an order barring her from serving as an officer or director of a public company for five years.

SEC v. Andrew J. McKelvey

Lit. Rel. No. 20435 (Jan. 23, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20435.htm>

On January 23, 2008, the SEC announced a settled enforcement action against Andrew J. McKelvey, the former Chief Executive Officer of Monster Worldwide, Inc., for his participation in a multi-year scheme to secretly backdate stock options granted to Monster officers, directors, and employees.

The SEC's complaint alleges that, beginning in 1997, McKelvey and others backdated stock option grants to coincide with the dates of low closing prices for the company's common stock, resulting in grants of in-the-money options to numerous individuals. McKelvey understood that backdating options to coincide with low closing prices for Monster stock without recognizing a compensation expense was contrary to accounting rules and contrary to representations in Monster's SEC filings. McKelvey caused Monster to misrepresent in its periodic filings and proxy statements filed with the SEC that all stock options were granted at the fair market value of the stock on the date of the award. This was not the case. McKelvey also caused Monster to file materially misstated financial statements with the SEC in its Forms 10-K and 10-Q that did not recognize compensation expense for the company's stock option grants, as required by generally accepted accounting principles. As a result, Monster overstated its aggregate pretax operating income by approximately \$339.5 million for fiscal years 1997 through 2005. Although McKelvey did not receive backdated options, he benefited from the scheme by granting backdated options to four individuals he personally employed, including three pilots and a mechanic.

McKelvey, without admitting or denying the allegations in the complaint, has agreed to the settlement under which he will pay \$275,989.72 in disgorgement and prejudgment interest, will be barred from serving as an officer or director of a public company, and will be enjoined from violations of the anti-fraud, reporting, and other provisions of the federal securities laws. The settlement does not include a civil penalty due to overriding personal circumstances related to McKelvey.

SEC v. William W. McGuire, M.D.

Lit. Rel. No. 20387 (Dec. 6, 2007)

<http://www.sec.gov/litigation/litreleases/2007/lr20387.htm>

On December 6, 2007, the SEC announced a record \$468 million settled enforcement action in an options backdating case against William W. McGuire, M.D., the former CEO and Chairman of the Board of UnitedHealth Group Inc. The settlement is the first with an individual under the “clawback” provision (Section 304) of the Sarbanes-Oxley Act. It includes a \$7 million civil penalty and reimbursement to UnitedHealth Group for equity based compensation Mr. McGuire received from 2003 through 2006.

The SEC alleged that, from at least 1994 through 2005, McGuire picked grant dates for UnitedHealth options that coincided with dates of historically low quarterly closing prices for the company’s common stock, resulting in grants of in-the-money options. McGuire signed and approved backdated documents falsely indicating that the options had actually been granted on these earlier dates. These inaccurate documents caused the company to understate compensation expenses for stock options and were routinely provided to the company’s external auditors.

The SEC’s complaint alleges that UnitedHealth filed with the SEC quarterly and annual reports, proxy statements, and registration statements that McGuire knew, or should have known, contained materially false and misleading statements concerning the true grant dates and proper exercise prices of stock options. In March 2007, UnitedHealth restated its financial statements for each year from 1994 through 2005 and disclosed material cumulative pre-tax errors in stock-based compensation accounting that totaled \$1.526 billion for that period. McGuire also received nearly \$5 million of incentive-based cash bonuses in 2005 and 2006 due to the misstatements. He received more than 44 million split-adjusted UnitedHealth options, with most or all being backdated. He exercised and sold these options for a gain of more than \$6 million.

McGuire, without admitting or denying the allegations of the SEC’s complaint, 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, certification, 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 10 years.

CASES INVOLVING ACCOUNTANTS AND AUDITORS

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.

In the Matter of Melvin Dick, CPA

Admin. Proc. File No. 3-13006 (Apr. 14, 2008)

<http://www.sec.gov/litigation/admin/2008/34-57662.pdf>

In the Matter of Kenneth M. Avery, CPA

Admin. Proc. File No. 3-13007 (Apr. 14, 2008)

<http://www.sec.gov/litigation/admin/2008/34-57663.pdf>

On April 14, 2008, the SEC filed a settled administrative proceedings against Melvin Dick, CPA and Kenneth M. Avery, CPA. The Order found Melvin Dick, an audit partner with the public accounting firm Arthur Andersen LLP (“Andersen”), and Kenneth M. Avery, who was promoted from manager to audit partner at Andersen during the 2001 audit of WorldCom, engaged in improper professional conduct in connection with the audit of the financial statements of WorldCom, Inc. (“WorldCom”) for its fiscal year ended December 31, 2001. Dick was the lead engagement partner on the audit. In the planning and performance of that audit, the

SEC alleged that Dick and Avery unreasonably failed to comply with Generally Accepted Auditing Standards (“GAAS”).

As part of these settlements, Dick and Avery, without admitting or denying the SEC's findings, consented to the issuance of administrative orders, pursuant to Rule 102(e)(1)(ii) of the SEC's Rules of Practice, denying them the privilege of appearing or practicing before the SEC as an accountant with leave to apply for reinstatement after four years and three years, respectively.

SEC v. Thomas J. Saiz, and Calderon, Jaham & Osborn

Lit. Rel. No. 20394 (Dec. 10, 2007)

<http://www.sec.gov/litigation/litreleases/2007/lr20394.htm>

On December 11, 2007, the SEC announced a settled civil fraud action filed against Thomas J. Saiz and Calderon, Jaham & Osborn (CJO), San Diego's independent auditor, in connection with the city's false and misleading financial statements in five bond offerings in 2002 and 2003. Mr. Saiz also agreed to a \$15,000 civil penalty.

The SEC alleged that the independent auditor issued unqualified audit reports on the bond offerings that raised \$260 million from investors but contained false and misleading information about San Diego's pension and retiree health care obligations. According to the SEC, Mr. Saiz and his firm, CJO, drafted the disclosures contained in footnotes to the city's financial statements. While the footnotes disclosed that San Diego was underfunding its annual pension contribution, they also included certain other positive statements that were false and misleading, and they failed to disclose that the city's net pension obligation was not funded in a reserve, that, in 2002, the pension plan had fallen below a funded level that the actuary deemed appropriate, and that the actuary no longer supported the city's funding method. CJO and Saiz also drafted footnotes that failed to disclose that, as Saiz and CJO knew from auditing the city and its pension plan, the retiree health care expense was being paid with earnings from the pension plan and that the city would soon have to begin paying this substantial expense out of its own budget. Saiz and CJO also did not present the financial statements in conformity with general accepted accounting principles (GAAP), although they claimed to do so in their audit reports, and they failed to inquire into the recent substantial increase in the city's obligations to its pension to determine whether the financial statements or the audit report required revision.

The SEC previously entered an order sanctioning the City of San Diego for committing securities fraud by failing to disclose to the investing public important information about its pension and retiree health care obligations in the sale of its municipal bonds in 2002 and 2003.

CASES INVOLVING FOREIGN PAYMENTS

OIL FOR FOOD CASES

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.

SEC v. AB Volvo

Lit. Rel. No. 20504 (Mar. 20, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20504.htm>

On March 20, 2008, the SEC filed Foreign Corrupt Practices Act books and records and internal controls charges against AB Volvo.

The Commission's complaint alleges that from 1999 through 2003, two of AB Volvo's subsidiaries and their agents and distributors made approximately \$6.2 million in kickback payments, and authorized additional payments of approximately \$2.4 million 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 allowed the Iraqi government to purchase humanitarian goods through a U.N. escrow account. The kickbacks paid by AB Volvo's subsidiaries diverted funds out of the escrow account and into Iraqi-controlled accounts at banks in Jordan.

AB Volvo either knew or was reckless in not knowing that illicit payments were either offered or paid in connection with these transactions. AB Volvo failed to maintain an adequate system of internal controls to detect and prevent the payments and its accounting for these transactions failed properly to record the nature of the payments. AB Volvo, 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 Exchange Act, ordering it to disgorge approximately \$7.3 million, in profits plus approximately \$1.3 in pre-judgment interest, and to pay a civil penalty of \$4.0 million. AB Volvo will also pay a \$7.0 million penalty pursuant to a deferred prosecution agreement with the U.S. Department of Justice, Fraud Section. Volvo is not the company that currently makes the "Volvo" brand car.

The Commission considered remedial acts promptly undertaken by AB Volvo and the cooperation the company afforded the Commission staff in its investigation.

SEC v. Flowserve Corporation

Lit. Rel. No. 20461 (Feb. 21, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20461.htm>

On February 21, 2008, the SEC filed Foreign Corrupt Practices Act books and records and internal controls charges against Flowserve Corporation ("Flowserve") in the U.S. District Court for the District of Columbia. Flowserve is a Texas-based manufacturer of pumps, valves, seals, and related automation and services to the power, oil, gas, and chemical industries. The SEC's complaint alleges that from 2001 through 2003, two of Flowserve's subsidiaries entered into a total of twenty contracts in which \$646,488 in kickback payments were made and another \$173,758 were authorized in connection with sales of industrial equipment to Iraqi government entities under the U.N. Oil for Food Program. The kickbacks paid by Flowserve's subsidiaries diverted funds out of the escrow account and into an Iraqi slush fund. The contracts submitted to the U.N. did not disclose that the illicit payments were included in the inflated contract prices.

According to the SEC's Complaint, Flowserve either knew or was reckless in not knowing that illicit payments were either offered or paid in connection with these transactions. Flowserve failed to maintain an adequate system of internal controls to detect and prevent the payments, and Flowserve's accounting for these transactions failed properly to record the nature of the company's payments. Flowserve, without admitting or denying the allegations in the SEC's complaint, consented to the entry of a final judgment permanently enjoining it from future violations of books and records and internal controls violations, ordering it to disgorge \$2,720,861 in profits, plus \$853,364 in pre-judgment interest, and ordering it to pay a civil penalty of \$3,000,000. Flowserve will also pay a \$4,000,000 fine pursuant to a deferred prosecution agreement with the U.S. Department of Justice, Fraud Section. A subsidiary, Flowserve B.V. will enter into a criminal disposition with the Dutch Public Prosecutor pursuant to which it will pay a fine.

The SEC considered remedial acts promptly undertaken by Flowserve and the cooperation the company afforded the SEC staff in its investigation. The SEC also acknowledged the assistance of the Department of Justice, Fraud Section and the United Nations Independent Inquiry Committee.

OTHER CASES

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.

SEC v. Robert W. Philip

Lit. Rel. No. 20397 (Dec. 13, 2007)

<http://www.sec.gov/litigation/litreleases/2007/lr20397.htm>

On December 13, 2007 the SEC charged the former Chairman and CEO of Schnitzer Steel Industries, Inc. with violating the anti-bribery provisions of the Foreign Corrupt Practices Act (FCPA) by approving cash payments and other gifts to officials at Chinese government-owned steel mills to solicit their business. Without admitting or denying the allegations, Robert W. Philip agreed to settle the charges.

The SEC's complaint alleges that from at least 1999 through 2004, Philip authorized payment of more than \$200,000 in cash bribes and other gifts to managers at government-owned steel mills in China to induce them to purchase scrap metal from Portland-based Schnitzer. The SEC alleges that Schnitzer generated more than \$96 million in revenue, and more than \$6.2 million in profits, from sales to customers who had received the improper payments. The complaint further alleges that Philip authorized more than \$1.7 million in payments to managers of privately - owned steel mills in both China and South Korea, generating more than \$500 million in additional revenue for the company.

The complaint alleges that Philip's conduct violated the anti-bribery, recordkeeping and internal controls provisions of the securities laws. Philip agreed to disgorge \$169,863.79 in bonuses and to pay \$16,536.63 in prejudgment interest and a \$75,000 civil penalty, and agreed to an order enjoining him from future violations of the FCPA.

In October 2006, Schnitzer paid \$7.7 million in disgorgement to settle related charges by the SEC and paid \$7.5 million in penalties to settle related criminal charges brought by the U.S. Department of Justice.

SEC v. Baker Hughes Incorporated and Roy Fearnley

Lit. Rel. No. 20094 (Apr. 26, 2007)

<http://www.sec.gov/litigation/litreleases/2007/lr20094.htm>

On April 26, 2007, the SEC announced the filing of a settled enforcement action charging Baker Hughes Incorporated, a Houston, Texas-based global provider of oil field products and services, with violations of the Foreign Corrupt Practices Act (FCPA). In the same complaint, the SEC also charged Roy Fearnley, a former business development manager for Baker Hughes, with violating and aiding and abetting violations of the FCPA. The action against Fearnley is ongoing.

The SEC alleged that Baker Hughes paid approximately \$5.2 million to two agents while knowing that some or all of the money was intended to bribe government officials, specifically officials of State-owned companies, in Kazakhstan. Baker Hughes, the complaint alleged, paid one agent \$4.1 million to its bank account in London but received no identifiable services from the agent. The complaint also alleged that in 1998 Baker Hughes retained a second agent in connection with the award of a large chemical contract with KazTransOil, the national oil transportation operator of Kazakhstan. Between 1998 and 1999, Baker Hughes paid over \$1

million to the agent's Swiss bank account, despite a company employee knowing by December 1998 that the agent's representative was a high-ranking executive of KazTransOil.

The SEC's complaint against Baker Hughes also alleged that between 1998 and 2005, Baker Hughes made payments in Nigeria, Angola, Indonesia, Russia, Uzbekistan and Kazakhstan in circumstances that reflected a failure to implement sufficient internal controls to determine whether the payments were for legitimate services, whether the payments would be shared with government officials, or whether these payments would be accurately recorded in Baker Hughes' books and records. In addition to violating the FCPA, certain of this conduct occurred after September 12, 2001, and consequently violated the SEC's 2001 cease-and-desist Order. *In the Matter of Baker Hughes Incorporated*, Admin. Proc. No. 3-10572 (Sept. 12, 2001).

Without admitting or denying the SEC's allegations, Baker Hughes consented to the entry of a final judgment permanently enjoining it from future violations of Sections 30A, 13(b)(2)(A), 13(b)(2)(B), and 13(b)(5) of the Exchange Act. Baker Hughes also agreed to disgorge \$19,944,778, and to pay prejudgment interest thereon in the amount of \$3,133,237.41, and to pay \$10,000,000 as a civil penalty for the company's violations of the prior SEC cease-and-desist Order. Under the terms of the final judgment, Baker Hughes will also retain an independent consultant to review the company's FCPA compliance and procedures.

The SEC also filed, in the same complaint, a contested action against Roy Fearnley, a former business development manager for Baker Hughes, seeking to permanently enjoin Fearnley from alleged violations of Sections 30A and 13(b)(5) of the Exchange Act and Rule 13b2-1 thereunder, and aiding and abetting Baker Hughes' violations of Sections 30A, 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act, and seeking disgorgement, prejudgment interest and civil penalties.

In a related criminal proceeding, the United States Department of Justice filed criminal FCPA charges against Baker Hughes and its wholly-owned subsidiary Baker Hughes Services International, Inc., with an office in Atyrau, Kazakhstan. Baker Hughes Services International, Inc. agreed to plead guilty to one count of violating the anti-bribery provisions of the FCPA, one count of aiding and abetting the falsification of the books and records of Baker Hughes, and one count of conspiracy to violate the FCPA, and to pay a criminal fine of \$11 million. The Department of Justice also entered into an agreement with Baker Hughes to defer prosecution for two years on charges of violating the anti-bribery and books and records provisions of the FCPA. Under the agreement, the company will retain for a period of three years a monitor to review and assess the company's compliance program and monitor its implementation of and compliance with new internal policies and procedures.

CASES INVOLVING HEDGE FUNDS

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.

SEC v. Plus Money, Inc. and Matthew La Madrid, et al.

Lit Rel. No. 20554 (May 5, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20554.htm>

Lit. Rel. No. 20587 (May 19, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20587.htm>

On April 28, 2008, the SEC filed an enforcement action against a San Diego-based investment adviser, Plus Money, Inc., and its principal, Matthew La Madrid, to halt an ongoing \$30 million hedge fund fraud.

The SEC alleges that since at least May 2004, the defendants managed Premium Return Funds and raised more than \$30 million dollars from investors by telling them they would engage in a covered call options trading strategy. According to the complaint, the defendants abandoned the covered call trading strategy in the fall of 2007, emptied out the monies in the funds' brokerage accounts, and dissipated the money to both La Madrid and the relief defendants through a series of illicit transfers. The SEC also alleges that defendant Plus Money failed to make monthly payments to the Premium Return Funds' investors beginning in February 2008.

The court issued an order temporarily enjoining defendants from future violations of the antifraud provisions of the Investment Advisers Act of 1940 ("Advisers Act"), as well as orders freezing the assets of all defendants. The complaint seeks injunctions, disgorgement with prejudgment interest, civil penalties, and the return of investor monies that were transferred to the relief defendants.

On May 16, 2008, the Honorable Roger T. Benitez, United States District Judge for the Southern District of California, entered an order preliminarily enjoining Plus Money and La Madrid from violating the antifraud provisions of the federal securities laws. In addition to the preliminary injunction, the order freezes the assets of both the defendants and the relief defendants (the Premium Return Fund Limited Liability Limited Partnerships I through III, the Return Fund LLCs I through VI, Palladium Holding Company, and Donald Lopez), and appoints Stephen J. Donell as permanent receiver over Plus Money, the Premium Return Funds, and the Return Funds.

SEC v. Headstart Advisers Ltd.

Lit. Rel No. 20524 (Apr. 10, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20524.htm>

SEC v. Marc J. Gabelli and Bruce Alpert

Lit. Rel. No. 20539 (Apr. 24, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20539.htm>

In the Matter of Gabelli Funds LLC

Admin. Proc. File No. 3-13019 (Apr. 24, 2008)

<http://www.sec.gov/litigation/admin/2008/ia-2727.pdf>

On April 10, 2008, the SEC filed a civil action against United Kingdom-based hedge-fund adviser Headstart Advisers, Ltd. and its "Chief Investment Adviser," Majy N. Nasser. The complaint alleges that HAL and Nasser orchestrated a scheme to defraud mutual funds in the United States and their shareholders through late trading and deceptive market timing. HAL's advisory client, Headstart Fund, Ltd., obtained approximately \$198 million in illicit profits through this scheme.

The SEC alleges that, from approximately September 1998 through September 2003, HAL actively traded U.S. mutual funds through Headstart Fund's accounts at numerous broker-dealers in the United States and routinely engaged in late trading of U.S. mutual funds. The complaint also alleges that NAL and Nasser used deceptive techniques to market time U.S. mutual funds by opening numerous accounts on behalf of Headstart Fund at various U.S. broker-dealers. According to the complaint, the defendants split Headstart Fund trades among multiple

accounts to keep the size of the trades below a certain threshold that mutual funds monitored in order to conceal the extent of Headstart Fund's trading from U.S. mutual fund companies.

The SEC charged HAL and Nasser with violating Section 17(a) of the Securities Act and violating, or aiding and abetting violations of, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The complaint seeks as relief a final judgment: (i) permanently enjoining HAL and Nasser; (ii) ordering HAL, Nasser, and the Headstart Fund to disgorge their ill-gotten gains and to pay prejudgment interest; and (iii) imposing civil money penalties against HAL and Nasser. The Complaint charges Marc Gabelli and Alpert with fraud for aiding and abetting violations of Sections 206(1) and 206(2) of the Advisers Act. It charges Alpert with violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5.

On April 24, 2008, the SEC filed a related civil fraud action against Marc J. Gabelli, the former portfolio manager of the Gabelli Growth Fund, and Bruce Alpert, chief operating officer of GGGF's adviser, Gabelli Funds, LLC in connection with an undisclosed marketing timing arrangement with HAL. The SEC alleges that, from September 1999 until August 2002, Gabelli authorized Headstart to place market timing trades in GGGF, and neither Gabelli nor Alpert disclosed to the GGGF Board of Directors that Headstart was allowed to market time GGGF while others were blocked from doing so.

In a related administrative proceeding, the SEC simultaneously instituted and settled administrative and cease-and-desist proceedings against Gabelli Funds. Without admitting or denying the Commission's findings, Gabelli Funds consented to the issuance of a Commission Order finding that Gabelli Funds willfully violated Section 206(2) of the Advisers Act, Section 17(d) of the Investment Company Act of 1940 ("Investment Company Act") and Investment Company Act Rule 17d-1, and willfully aided and abetted and caused violations by GGGF of Section 12(d)(1)(B)(i) of the Investment Company Act in connection with the undisclosed market timing by Headstart. Gabelli Funds was censured, ordered to cease and desist its securities law violations, and ordered to pay \$9.7 million in disgorgement, \$1.3 million in prejudgment interest, and a penalty of \$5 million, for a total payment of \$16 million. As described in the Order, Gabelli Funds' payment will be distributed to shareholders harmed by the market timing activity during the relevant period.

SEC v. Pentagon Capital Management PLC

Lit. Rel. No. 20516 (Apr. 3, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20516.htm>

On April 3, 2008, the SEC filed a civil action against United Kingdom-based hedge fund adviser Pentagon Capital Management PLC and its chief executive officer, Lewis Chester. The complaint alleges that PCM and Chester orchestrated a scheme to defraud mutual funds in the United States and their shareholders through late trading and deceptive market timing.

The complaint alleges that from approximately June 1999 through September 2003, PCM and Chester routinely engaged in late trading of U.S. mutual funds by placing orders on behalf of Pentagon Special Purpose Fund, Ltd., an international business company incorporated in the British Virgin Islands that served as the master fund in a master-feeder fund structure, after the

4:00 p.m. Eastern Time market close while still receiving the current day's mutual fund price. The illegal practice enabled Pentagon Fund to obtain approximately \$62 million in illicit profits. The complaint also alleges that PCM and Chester used deceptive techniques to market time U.S. mutual funds by opening numerous accounts for the Pentagon Fund at various U.S. broker-dealers, and split the Pentagon Fund trades among these multiple accounts to hide the extent of the Pentagon Fund's trading from mutual fund companies.

As a result of this conduct, PCM and Chester violated Section 17(a) of the Securities Act, and violated, or aided and abetted violations of, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The complaint seeks as relief a final judgment: (1) permanently enjoining PCM and Chester; (ii) ordering PCM, Chester, and the Pentagon Fund to disgorge their ill-gotten gains and to pay prejudgment interest; and (iii) imposing civil money penalties against PCM and Chester.

SEC v. Thompson Consulting, Inc., et al.

Lit. Rel. No. 20475 (Mar. 4, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20475.htm>

On March 4, 2008, the SEC announced the filing of an enforcement action against a Salt Lake City investment adviser and three of its principals for making undisclosed subprime and other high-risk investments that resulted in the near total asset losses of two hedge funds managed by the adviser. The SEC charged Thompson Consulting, Inc., Kyle Thompson, David Condie and Sherman Warner with violations of the antifraud provisions of the securities laws for engaging in much riskier trading strategies than those described to investors.

The SEC alleges that Thompson, Condie, and Warner managed the hedge funds' investment strategy and also made sales presentations to potential investors in which they emphasized the safety of Thompson Consulting's investment strategy. The SEC's complaint also alleges that Thompson Consulting's deviations from its stated investment policy resulted in substantial losses to both the hedge funds and an individual client. Among the alleged departures from its stated strategy were failed investments in options on the stock of a subprime lender. The complaint further alleges that the defendants improperly transferred money from the hedge funds to the account they managed for the individual client to make up for the individual's losses. The Complaint seeks injunctions, disgorgement, prejudgment interest, and civil penalties against Thompson Consulting, Thompson, Condie, and Warner. Finally, the Complaint seeks disgorgement from several relief defendants.

In the Matter of Ritchie Capital Management L.L.C., Ritchie Multi-Strategy Global Trading, Ltd., A.R. Thane Ritchie, and Warren Louis DeMaio

Admin. Proc. File No. 3-12947 (Feb. 5, 2008)

<http://www.sec.gov/litigation/admin/2008/33-8890.pdf>

On February 5, 2008, the SEC announced a settled enforcement action against Ritchie Multi-Strategy Global Trading Ltd., a hedge fund; Ritchie Capital Management LLC, its investment adviser; A.R. Thane Ritchie, its founder and CEO; and Warren DeMaio and Michael Mauriello, two of its employees, for their roles in an illegal late trading scheme.

The SEC's Order finds that from January 2001 through September 2003, Ritchie Capital engaged in an illegal late trading scheme. Ritchie Capital placed thousands of late trades in mutual fund shares and used post-4 p.m. ET news and market information to make its mutual fund trading decisions while receiving the same day's net asset value. Thane Ritchie approved the use of late trading by Ritchie Capital's mutual fund group and oversaw its performance. DeMaio supervised mutual fund trading at Ritchie Capital and was involved in the development of the late trading strategy. Mauriello was responsible for placing mutual fund late trades with brokers on behalf of Ritchie Capital. Ritchie Capital's post-4 p.m. trading resulted in a profit of approximately \$30 million to the Ritchie Multi-Strategy fund.

The SEC's Order requires Ritchie Multi-Strategy Global Trading Ltd. and Ritchie Capital Management LLC to pay disgorgement, jointly and severally, of \$30 million and prejudgment interest thereon of approximately \$7.4 million. Ritchie Capital and Ritchie will pay civil penalties, jointly and severally, totaling \$2.5 million. DeMaio will pay \$250,000 in civil penalties. In addition, the SEC's Order requires that Ritchie Capital, the Ritchie Multi-Strategy fund, Thane Ritchie, and Warren DeMaio cease and desist from committing or causing violations of the antifraud provisions of the federal securities laws and Rule 22c-1 under the Investment Company Act and that Ritchie Capital be censured and comply with certain undertakings. The Order also requires that Mauriello cease and desist from committing or causing violations of Rule 22c-1 under the Investment Company Act.

All respondents consented to the SEC's Order without admitting or denying the findings, and the payments made by them under this order will be distributed to the affected mutual funds.

CASES INVOLVING INSIDER TRADING

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. Mark Cuban

Lit. Rel. No. 20810 (Nov. 17, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20810.htm>

Press Rel. No. 2008-273 (Nov. 17, 2008)

<http://www.sec.gov/news/press/2008/2008-273.htm>

The SEC filed insider trading charges against Dallas entrepreneur Mark Cuban alleging that Cuban engaged in insider trading in the securities of Mamma.com Inc. ("Mamma.com"), a publicly traded Internet search engine company (now known as Copernic Inc.) based in Montreal, Canada. According to the complaint, in June 2004, Cuban sold his entire 600,000 share position in Mamma.com on the basis of material, non-public information concerning an impending PIPE (private investment in public equity) offering by the company. The complaint alleges that Cuban avoided losses in excess of \$750,000 by selling his stock prior to the public announcement of the PIPE offering.

According to the complaint, Cuban was Mamma.com's largest known shareholder during the relevant time period. On June 28, 2004, the complaint alleges, Mamma.com's then-chief executive officer — after securing Cuban's agreement to keep the information confidential — invited Cuban to invest in the PIPE offering. The complaint further alleges that Cuban knew that the offering would be conducted at a discount to the prevailing market price and that it would be dilutive to existing shareholders. According to the complaint, later that day, Cuban called his broker and — in breach of his agreement to keep the information confidential — instructed him to sell out his entire position in the company. That afternoon (June 28), and over the next day (June 29), the broker liquidated Cuban's entire 600,000 share position. After the markets closed on June 29, 2004, Mamma.com publicly announced the PIPE offering. The next day, Mamma.com's stock price opened at \$11.89, down \$1.215 or 9.3%, from the prior day's closing price of \$13.105. According to the complaint, Cuban thereby avoided losses in excess of \$750,000 by selling on the basis of material, non-public information concerning the PIPE offering.

The Commission's complaint seeks to permanently enjoin Cuban from future violations of the applicable provisions of the federal securities laws, disgorgement (with prejudgment interest thereon), and a civil penalty.

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.

SEC v. Michael A. Stummer

Lit. Rel. No. 20529 (Apr. 17, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20529.htm>

On April 17, 2008, the SEC filed settled civil action against Michael A. Stummer alleging illegal trading in the common stock of Ryan's Restaurant Group, a restaurant company operating more than 340 restaurants in the Southern and Midwest United States.

The SEC alleges that Stummer fraudulently obtained material, non-public information about the impending acquisition of Ryan and then using that information to trade Ryan's securities. According to the complaint, Stummer snuck into his brother-in-law's bedroom office

during an annual weekend gathering; at the time, his brother-in-law served as director of the private equity firm advising the acquiring company on the impending Ryan's transaction. By correctly guessing his brother-in-law's password on his bedroom office computer, Stummer secretly and without permission gained unauthorized access to the private equity firm's computer network and read several confidential and non-public e-mails relating to the transaction. According to the complaint, Stummer then used the information he fraudulently obtained to buy 5,500 shares of Ryan's, and then sold his entire position following the public announcement of the acquisition of Ryan's shortly after.

The SEC charged Stummer with violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Without admitting or denying the Commission's allegations, Stummer consented to the entry of a final judgment permanently enjoining him from violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The final judgment also requires Stummer to pay \$46,386.66, representing the disgorgement of his illegal trading profits, prejudgment interest, and a civil penalty in an amount equal to the profits.

SEC v. David K. Donovan, Jr. and David R. Hinkle

Lit. Rel. No. 20528 (Apr. 16, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20528.htm>

On April 16, 2008, the SEC filed a civil action against David K. Donovan, Jr., a former equity trader at Fidelity Investments, and David R. Hinkle, a former broker at Capital Institutional Services, Inc., for defrauding Fidelity and its advisory clients.

The SEC alleges that, between July and September 2003, the defendants defrauded Fidelity and its advisory clients by gaining access to confidential trading information stored on Fidelity's internal order database; by learning that Fidelity's advisory clients, including the Fidelity mutual funds, were purchasing and intended to continue purchasing a substantial amount of the common stock of Covad Communications Group, Inc.; by using that confidential information to trade on and ahead of Fidelity's securities order for the stock of Covad; by failing to disclose to Fidelity and its clients that they were trading on and ahead of those orders; and by profiting thereby.

The SEC charged Donovan and Hinkle with violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The complaint seeks permanent injunctive relief, disgorgement with prejudgment interest, and civil penalties.

SEC v. John F. Marshall, Ph.D., et al.

Lit. Rel. 20491 (Mar. 13, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20491.htm>

On March 13, 2008, the SEC filed insider trading charges against John Marshall, Alan Tucker, and Mark Larson, partners in Marshall Tucker & Associates, LLC, a financial consulting partnership. The complaint seeks permanent injunctions against future violations, disgorgement of unlawful trading profits plus prejudgment interest, civil penalties, and, against Marshall, an officer and director bar.

The complaint alleges illegal tipping and trading in advance of an announcement of Eurex Frankfurt A.G.'s \$2.8 billion cash merger agreement with International Securities Exchange Holdings, Inc. (ISE). The complaint alleges that Marshall had access to information concerning the merger and tipped Tucker and Larson. Tucker and Larson then allegedly purchased ISE securities resulting in illegal profits totaling approximately \$1.1 million and \$31,000, respectively.

SEC v. Kan King Wong, Charlotte Ka On Wong Leung, Michael Leung Kai Hung and David Li Kwok Po

Lit. Rel. No. 20447 (Feb. 5, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20447.htm>

On February 5, 2008, the SEC announced a \$24 million settlement with a former Dow Jones & Company board member and three other Hong Kong residents accused of illegal tipping and insider trading ahead of news of an unsolicited buyout offer from News Corporation that sent Dow Jones shares soaring in the spring of 2007.

The SEC's complaint, filed in the U.S. District Court for the Southern District of New York, alleges that David Li Kwok Po, a Dow Jones board member at the time who also is Chairman and CEO of the Bank of East Asia and a member of Hong Kong's Legislative Counsel and Executive Committee, learned of the then-secret News Corp. offer and illegally tipped his close friend Michael Leung Kai Hung. The SEC complaint also alleges that Leung, with the help of his daughter Charlotte Ka On Wong Leung and son-in-law Kan King Wong purchased approximately \$15 million worth of Dow Jones securities in their account at Merrill Lynch. They stood to make approximately \$8 million in illicit profits had the SEC not won an emergency court order within days of the News Corp. offer, freezing the account.

David Li, Michael Leung, K.K. Wong and Charlotte Wong, without admitting or denying the SEC's allegations, consented to the entry of court orders enjoining them from violations of the antifraud provisions of the federal securities laws. David Li agreed to pay an \$8.1 million civil penalty; Michael Leung agreed to pay \$8.1 million in disgorgement plus prejudgment interest and an \$8.1 million penalty; and K.K. Wong agreed to pay \$40,000 in disgorgement plus prejudgment interest and a \$40,000 civil penalty.

SEC v. Gregory B. Raben and William Patrick Borchard

Lit. Rel. No. 20429 (Jan. 15, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20429.htm>

In the Matter of William Patrick Borchard (CPA)

Admin. Proc. File No. 3-12949 (Feb. 6, 2008)

<http://www.sec.gov/litigation/admin/2008/34-57282.pdf>

On January 15, 2008, the SEC filed insider trading charges against Gregory Raben and William Borchard, two former employees of PricewaterhouseCoopers (PwC). Without admitting or denying the allegations, Raben and Borchard agreed to settle.

The complaint filed by the SEC alleged that Borchard, a senior associate in the Transaction Services Group, used his knowledge of the potential acquisition plans of PwC clients to give information to Raben, an auditor at PwC, who would then use the information to trade before the news was released to the investing public.

The SEC's complaint alleges that Raben netted unlawful trading profits of more than \$20,000 through this scheme and that he tipped off two other acquaintances, allowing them to make several thousand dollars in unlawful trading profits. In a settlement with the SEC, Raben agreed to a permanent injunction from further violations of the antifraud provisions of the federal securities laws. He will also disgorge his trading profits and those of the two acquaintances he tipped, totaling \$23,879.22, and pay a civil penalty of the same amount. Borchard's settlement included his consent to a permanent injunction and a civil penalty of \$20,835.57 (equal to Raben's trading profits), as well as an order denying him the privilege of appearing or practicing before the SEC as an accountant, with the right to apply for reinstatement after three years.

On February 6, 2008, in a related administrative proceeding, Borchard was suspended from appearing or practicing before the Commission as an accountant with the right to apply for reinstatement after three years.

CASES INVOLVING MARKET MANIPULATION

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.

SEC v. Quogue Capital LLC and Wayne P. Rothbaum

Lit. Rel. No. 20561 (May 8, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20561.htm>

On May 8, 2008, the Securities and Exchange Commission announced that it filed a settled civil action against Quogue Capital LLC, a private investment company, and Wayne P. Rothbaum, Quogue's managing member and owner.

The Commission's complaint alleges that Quogue and Rothbaum committed multiple violations of Rule 105 of Regulation M. Rule 105 prohibits covering a short sale with securities obtained in certain public offerings when the short sale occurs during a specific period (usually within five business days) before the pricing of the offering. The Commission's complaint alleges that Quogue and Rothbaum violated Rule 105 of Regulation M in connection with purchases of securities in public offerings made by, respectively, Bioenvision, Inc., Geron Corporation, Cotherix, Inc. and Point Therapeutics, Inc. The complaint alleges that on each such occasion, Quogue, at Rothbaum's direction, sold securities short within five business days before the pricing of public offerings and then covered the short positions with securities purchased in the offering. The complaint alleges that Quogue's profits from the prohibited trading totaled \$782,902. Without admitting or denying the allegations of the complaint, Quogue and Rothbaum agreed to jointly pay a civil money penalty in the amount of \$390,000.

The Commission also instituted settled cease-and-desist and administrative proceedings against Quogue and Rothbaum, concerning the same conduct. In connection with these proceedings, Quogue and Rothbaum agreed to an order requiring them to cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M under the Exchange Act and jointly and severally to pay disgorgement of \$782,902 and prejudgment interest of \$161,154.

In the Matter of Paul S. Berliner

Lit. Rel. No. 20537 (April 24, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20537.htm>

Admin. Proc. File No. 3-13035 (May 5, 2008)

<http://www.sec.gov/litigation/admin/2008/34-57774.pdf>

On April 24, 2008, the SEC filed a settled civil action charging Paul S. Berliner with securities fraud and market manipulation for intentionally disseminating a false rumor concerning The Blackstone Group's acquisition of Alliance Data Systems, Corp.

The SEC alleges that Berliner, a Wall Street trader formerly associated with Schottenfeld Group LLC, drafted and disseminated a false rumor that ADS's board of directors was meeting to consider a revised proposal from Blackstone to acquire ADS at a share price \$10 less than what had been announced six months before. According to the complaint, Berliner profited by short selling ADS stock and covering those sales as the false rumor caused the price of ADS stock drop 17%. The SEC alleges that the false rumor had such a significant impact that day on trading in the securities of ADS that the NYSE temporarily halted trading in ADS stock.

The SEC charged Berliner with violating Section 17(a) of the Securities Act, Sections 9(a)(4) and 10(b) of the Exchange Act, and Rule 10b-5 thereunder. Without admitting or denying the allegations in the Commission's complaint, Berliner agreed to settle the charges against him by consenting to entry of a final judgment that (i) enjoins him from future violations of the antifraud and anti-manipulation provisions of the federal securities laws, (ii) orders him to disgorge \$26,129 in illicit trading profits and prejudgment interest, and (iii) orders him to pay a third-tier civil penalty of \$130,000. Berliner also consented to entry of a Commission Order barring him from association with any broker or dealer.

SEC v. One or More Unknown Traders in the Common Stock of Certain Issuers a/k/a AWE Trading, Inc. and Andrew Andersen

Lit. Rel. No. 20520 (Apr. 7, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20520.htm>

On April 7, 2008, the SEC filed a complaint against one or more unknown traders who carried out a sophisticated Internet scheme that stole the identities of unsuspecting individuals and netted more than \$66,000 in illicit profits in just seven weeks.

The SEC alleges that the defendants conducted their entire online account intrusion scheme over the Internet and concealed their identities by, among other things, fraudulently opening brokerage accounts in the names of individuals who responded to a job advertisement on the website Craigslist.org. According to the complaint, beginning in February 2007, the unknown traders posted a job advertisement on Craigslist and used the personal information they collected from individuals who applied to open trading accounts online with Interactive Brokers, LLC without the individuals' knowledge.

The SEC also alleges that, on multiple occasions between March 8 and April 24, 2007, the unknown traders gained unauthorized, online access to accounts held by customers of various retail brokerage firms. They purchased and sold at least 18 securities listed on the NYSE and NASDAQ while simultaneously purchasing and selling the same securities in the fraudulently-opened accounts, profiting from the change in trading volume and stock prices generated by the unauthorized transactions.

The SEC charged the unknown trader defendants with violating Section 17(a) of the Securities Act and Section 10(b) and Rule 10b-5 of the Exchange Act by engaging in the complex securities account intrusion scheme. The complaint seeks injunctions, repatriation of assets held outside the U.S., disgorgement, and civil money penalties

SEC v. Ryan M. Reynolds, et al.

Lit. Rel. No. 20496 (Mar. 14, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20496.htm>

On March 12, 2008, the SEC obtained emergency relief against stock promoters Ryan M. Reynolds, Jason Wynn, Carlton Fleming, and their companies Bellaitalia, LP, Wynn Industries, LLC, and Thomas Wade Investments, LLC based on their roles in distributing the common stock of Beverage Creations, Inc., also named as a defendant.

The SEC alleges that Beverage Creations sold stock to the promoter defendants and then took steps to facilitate the promoters' prompt resale of the stock to the public without full disclosure. The stock promoters allegedly engaged in manipulative trading to create demand and push the price of the stock up. The complaint also alleges that Wynn and Wynn Industries pumped Beverage Creations' stock through promotional mailers and spam e-mail; while Wynn Industries disclosed in the mailer that it received stock, it did not disclose that it intended to sell that stock into the artificially inflated market created by its own activities. The promoters sold their shares at a profit of at least \$2.4 million.

The SEC charged the defendants with violating Section 5 of the Securities Act, and Wynn, Wynn Industries, and Beverage Creations with violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The court issued a temporary restraining order prohibiting further violations of Section 5 by the defendants, froze the promoter defendants' assets, and temporarily prohibited them from participating in any offer of penny stock. The complaint also seeks preliminary and permanent injunctions and civil penalties against all defendants and disgorgement of ill-gotten gains and penny stock bars from the promoter 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).

Anti-Spam Initiative

Exch. Act Rel. No. 55420 (Mar. 8, 2007)
<http://www.sec.gov/news/press/2007/2007-34.htm>
<http://www.sec.gov/litigation/suspensions/2007/34-55420.pdf>
Exch. Act Rel. No. 55628 (April 13, 2007)
<http://www.sec.gov/litigation/suspensions/2007/34-55628.pdf>
Exch. Act Rel. No. 56610 (Oct. 4, 2007)
<http://www.sec.gov/litigation/suspensions/2007/34-56610.pdf>
Exch. Act Rel. No. 56897 (Dec. 5, 2007)
<http://www.sec.gov/litigation/suspensions/2007/34-56897.pdf>
Exch. Act Rel. No. 57190 (Jan. 24, 2008)
<http://www.sec.gov/litigation/suspensions/2008/34-57190.pdf>
Exch. Act Rel. No. 57476 (Mar. 12, 2008)
<http://www.sec.gov/litigation/suspensions/2008/34-57476.pdf>
Exch. Act Rel. No. 57533 (Mar. 20, 2008)
<http://www.sec.gov/litigation/suspensions/2008/34-57533.pdf>
Exch. Act Rel. No. 57600 (Apr. 2, 2008)
<http://www.sec.gov/litigation/suspensions/2008/34-57600.pdf>
Exch. Act Rel. No. 57982 (June 18, 2008)
<http://www.sec.gov/litigation/suspensions/2008/34-57982.pdf>

On March 8, 2007, the SEC announced that it had suspended trading in the securities of 35 companies that have been the subject of recent and repeated spam email campaigns. The trading suspensions were part of a stepped-up anti-spam initiative to protect investors from potentially fraudulent spam email hyping small company stocks with phrases like, "Ready to Explode," "Ride the Bull," and "Fast Money."

It is estimated that 100 million of these spam messages are sent every week, triggering dramatic spikes in share price and trading volume before the spamming stops and investors lose their money. The trading suspensions lasted ten business days. The trading suspensions commenced on March 8, 2007, at 9:30 a.m., EDT, and terminated at 11:59 p.m., EDT, on March 21, 2007.

The SEC found that the 35 suspensions involved companies that were not subject to the reporting requirements of the Securities Exchange Act of 1934. The companies' securities had been quoted on the Pink Sheets quotation service on an unsolicited basis, meaning that the brokers posting quotations for the purchase and sale of the securities are not required to conduct due diligence regarding the issuers.

The Commission's anti-spam initiative is ongoing, and has resulted in at least 15 trading suspensions since March 8, 2007.

CASES INVOLVING SECURITIES OFFERINGS

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. Billion Coupons, Inc. (aka Billion Coupons Investment) and Marvin R. Cooper

Litigation Release No. 20906 (February 19, 2009)

<http://sec.gov/litigation/litreleases/2009/lr20906.htm>

Press Release (February 19, 2009)

<http://sec.gov/news/press/2009/2009-30.htm>

The Securities and Exchange Commission has obtained a court order halting a Ponzi scheme that specifically targeted members of the Deaf community in the United States and Japan.

The SEC alleges that Hawaii-based Billion Coupons, Inc. (BCI) and its CEO Marvin R. Cooper raised \$4.4 million from 125 investors since at least September 2007 by, among other things, holding investment seminars at Deaf community centers. The SEC also alleges that Cooper misappropriated at least \$1.4 million in investor funds to pay for a new home and other personal expenses. The order obtained by the SEC freezes the assets of BCI and Cooper.

The SEC's complaint, filed yesterday in federal court in Honolulu, alleges that BCI and Cooper represented to the investors that their funds would be invested in the foreign exchange (Forex) markets, that investors would receive returns of up to 25 percent compounded monthly from such trading, and that their investments were safe. According to the complaint, BCI and Cooper actually used only a net \$800,000 (cash deposits minus cash withdrawals) of investor funds for Forex trading, and they lost more than \$750,000 from their Forex trading. The complaint further alleges that BCI and Cooper failed to generate sufficient funds from their Forex trading to pay the promised returns, and instead operated as a Ponzi scheme by paying returns to existing investors from funds contributed by new investors.

The SEC alleges that BCI and Cooper have violated the registration and antifraud provisions of the federal securities laws. In its lawsuit, the SEC obtained an order temporarily enjoining BCI and Cooper from future violations of these provisions. The SEC also obtained an order: (1) freezing the assets of BCI and Cooper; (2) appointing a temporary receiver over BCI; (3) preventing the destruction of documents; (4) granting expedited discovery; and (5) requiring BCI and Cooper to provide accountings. The Commission also seeks preliminary and permanent injunctions, disgorgement, and civil penalties against both defendants.

On February 18, 2009, the Commodity Futures Trading Commission (CFTC) also filed an emergency action against BCI and Cooper, alleging violations of the antifraud provisions of the Commodity Exchange Act. The State of Hawaii's Department of Commerce and Consumer

Affairs (DCCA), Office of the Commissioner of Securities, issued a preliminary order to cease and desist against BCI and Cooper.

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)

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 Antiguan-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 Antiguan 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.

SEC v. Stefan H. Bengler, 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. Bengler, 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 Bengler, 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, Bengler, 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 Bengler, 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: Bengier, 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.

SEC v. Andres L. Pimstein, the Bottom Line of South Florida, Inc. and Summit Trading LLC

Lit. Rel. No. 20794 (Oct. 30, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20794.htm>

The SEC filed a civil injunctive action against Andres L. Pimstein, The Bottom Line of South Florida, Inc. ("Bottom Line") and Summit Trading LLC ("Summit") alleging they conducted a \$30 million Ponzi scheme. The complaint alleges that from at least 2005 to April 2008, the defendants offered and sold more than \$30 million of securities to at least 80 investors in at least five states, purportedly to fund an export business that Pimstein and his agents operated through Bottom Line and Summit.

According to the complaint, Pimstein and his agents told investors that Bottom Line and Summit would use the proceeds from their investments to buy iPods and other personal electronics from vendors in the United States for resale to Ripley Corp., S.A., a Chilean company that operates one of the largest department store chains in South America. The complaint further alleges that Pimstein and his agents claimed Bottom Line and Summit had a competitive edge

over other electronics suppliers because Pimstein was the cousin of Ripley's chief executive officer and had previously worked for Ripley.

The complaint alleges that, contrary to defendants' representations, they purchased very few electronics with investor funds and did not re-sell any electronics to Ripley. Instead, defendants operated a large Ponzi scheme by using newly invested funds to make principal and interest payments to existing investors. The defendants also paid commissions to the agents who solicited investors on the defendants' behalf. In addition, Pimstein used investor funds to pay his personal expenses. According to the complaint, in April 2008, the defendants' Ponzi scheme collapsed when the interest and principal Bottom Line and Summit were obligated to pay investors substantially exceeded the amount of new funds Pimstein and his agents were able to raise from investors. The complaint alleges that Pimstein subsequently confessed to local police that that he had operated a Ponzi scheme and admitted that Ripley never purchased any electronics from the defendants.

Upon the filing of the Commission's complaint, and without admitting or denying the allegations in the complaint, Pimstein, Bottom Line and Summit consented to the entry of a judgment permanently enjoining them from violating the above-mentioned provisions of the federal securities laws. The judgment also orders the defendants to pay disgorgement plus prejudgment interest and civil money penalties, the amounts of which will be determined by the Court at a later date.

The United States Attorney's Office for the Southern District of Florida conducted a parallel investigation of this matter. Simultaneous with the Commission's announcement of this action, the United States Attorneys Office announced the filing of criminal charges against Pimstein alleging mail and wire fraud.

SEC v. Next Components and Norman Hsu

Lit. Rel. No. 20772 (Oct. 6, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20772.htm>

The SEC announced that today it filed a Complaint in the United States District Court for the Central District of California against Next Components, Ltd. and its principal, Norman Hsu alleging that the defendants violated Sections 5 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. Norman Hsu, a former resident of California and New York, is in federal custody awaiting trial on federal criminal charges of investment fraud and wire fraud in connection with his operation of the alleged nationwide Ponzi scheme.

According to the SEC's complaint, filed in the federal district court for the Central District of California, Hsu presented himself as an international businessman with high-level contacts with overseas businesses, particularly in the Chinese apparel and technology industries. The SEC's complaint alleges that from January 2003 through September 2007, Hsu told investors that Next Components would pool their funds to finance bridge loans negotiated by Hsu that would generate investor returns of 14 to 24 percent every 70 to 130 days.

The SEC alleges that Hsu and Next Components instead used new investor funds to pay “returns” to pre-existing investors, and misappropriated the remainder of investor funds to pay sales agent commissions, finance Hsu’s luxury living and entertainment expenses, and reimburse investors for political donations solicited by Hsu.

SEC v. David William Thomas and Global Marketing Consultants

Lit. Rel. No. 20728 (Sept. 19, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20728.htm>

The SEC charged David William Thomas ("Thomas"), of Loveland, Colorado, with misappropriating investor funds through two fraudulent investment schemes. According to the Commission's complaint, from at least June 2002 through February 2005, Thomas, through his company, Global Marketing Consultants, LLC ("GMC"), offered and sold unregistered securities in the form of investment contracts, and raised approximately \$6.3 million from over 140 investors nationwide. According to the complaint, approximately one-third of the investors are seniors. The complaint alleges that, among other things, Thomas and GMC represented that investor funds would be pooled into "non-depleting custodial" bank accounts and would be used only as collateral to fund a high-speed internet business and a global positioning system business. The complaint also alleges that Thomas and GMC represented that the investments were fully insured and would generate a "high rate of return." According to the Commission's complaint, all of Thomas' and GMC's representations were false and misleading, and unbeknownst to the investors, the true nature of Thomas' plan was to use investors' money for prime bank trading programs. Further, the complaint alleges that Thomas acted as an unregistered broker dealer.

The Commission's complaint alleges Thomas violated Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act"); Sections 10(b) and 15(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder; and GMC violated Sections 5(a), 5(c), and 17(a) of the Securities Act; Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. Without admitting or denying the Commission's claims, Thomas and GMC each consented to the entry of an order permanently enjoining them from future violations of the same provisions of the federal securities laws.

SEC v. Steven Byers, Joseph Shereshevsky (a/k/a Joseph Heller and “Josie”), Wextrust Capital LLC, Wextrust Equity Partners LLC, Wextrust Development Group LLC, Wextrust Securities LLC, and Axela Hospitality LLC

Lit. Rel. No. 20678 (August 11, 2008)

<http://sec.gov/litigation/litreleases/2008/lr20678.htm>

The SEC filed charges against Wextrust Capital, LLC (Wextrust), its principals, and four affiliated Wextrust entities, alleging that defendants conducted a massive Ponzi-type scheme from 2005 or earlier that raised approximately \$255 million from approximately 1,200 investors. The targets of the fraudulent offerings are primarily members of the Orthodox Jewish community. Simultaneously with the filing of the action, the SEC is seeking emergency relief from the Court to freeze the defendants' assets and place the Wextrust entities under the control

of a receiver to safeguard assets. The SEC is also seeking a temporary restraining order to stop the ongoing offerings and other immediate relief.

The SEC's complaint, filed in federal court in Manhattan, charges that Wextrust, its principals Steven Byers and Joseph Shereshevsky, and its affiliated entities Wextrust Equity Partners, LLC (WEP), Wextrust Development Group, LLC (WDG), Wextrust Securities, LLC (Wextrust Securities) and Axela Hospitality, LLC (Axela) conducted at least 60 securities offerings through private placements and created approximately 150 entities in the form of limited liability companies or similar vehicles to act as issuers or facilitators of the offerings, purportedly to fund the acquisition of specified assets, the majority of which were commercial real estate ventures. Contrary to representations in the offering memoranda that proceeds would be used for specific projects, the defendants allegedly diverted funds to pay returns to investors in prior offerings, or to fund expenses of the defendants.

In one offering, conducted in 2005, the SEC complaint alleges that defendants falsely represented to investors that the more than \$9 million raised would be used to purchase seven specifically identified real estate properties that were leased by federal government agencies, such as the General Services Administration. In fact, according to the complaint, the defendants never purchased the seven properties. Moreover, at the time the offering occurred, they knew or were reckless in not knowing that the seven properties would not be acquired. Significantly, while the offering was ongoing, the Wextrust entities "borrowed" more than \$6 million from the funds raised in the GSA offering and used these funds for purposes unrelated to the GSA offering.

Overall, the complaint alleges, defendants diverted at least \$100 million dollars to unauthorized purposes. The complaint alleges that the defendants are conducting at least four ongoing offering frauds intended to raise money to pay back investors from prior offerings.

In addition to the emergency relief sought today, the Commission's complaint seeks disgorgement of the defendants' ill-gotten gains, civil penalties, and permanent injunctions barring future violations of the antifraud and other provisions of the federal securities laws.

SEC v. Michael J. McNaul, II, Dale C. Lucas, Gregg Krause, Lloyd F. Nunns, Russel W. Kilgariff, Steve L. Tallman, Freddie J. Hembree, Raymond L. Leonard, Jr., Mid Western Natural Gas, Inc. and Mark DuBoise

Lit. Rel. No. 20608 (June 3, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20608.htm>

On May 28, 2008, the Securities and Exchange Commission filed civil securities fraud charges against defendants Michael J. McNaul, II, Dale C. Lucas, Gregg Krause, Lloyd F. Nunns, Russell W. Kilgariff, Steven L. Tallman, Freddie J. Hembree, Raymond L. Leonard, Jr., Mid Western Natural Gas, Inc. and Mark DuBoise. The charges stem from an alleged massive securities offering fraud that has victimized over 1,300 investors from across the United States, as well as Canada and Puerto Rico.

The SEC alleges that, between March 2004 and December 2007, the defendants raised approximately \$156 million through the use of 22 purported oil-and-gas related equipment “joint ventures” structured to evade the securities laws. Allegedly, the defendants lured potential investors with, among other things, the false promise of annual returns of up to 40% from leasing and operating oil and gas equipment, and that the “joint ventures” would be rolled up into a single entity that would be the subject of an even more lucrative initial public offering resulting in returns as high as 3 to 8 times their investment. However, the complaint alleges, the promised IPO and high annual returns have never come to fruition. On the contrary, the defendants have only returned approximately \$7 million to investors over the four-year period of their fraudulent scheme, \$1 million of which was diverted from other investors as Ponzi payments.

The complaint alleges that McNaul, Lucas, Krause, Nunns, Kilgariff, Tallman, Hembree, Leonard, Mid Western, and DuBoise violated Sections 5(a), 5(c) and 17(a) of the Securities Act, and Section 10(b) of the Exchange Act (Exchange Act) and Rule 10b-5 thereunder. The complaint also alleges that Leonard, DuBoise, and Mid Western violated Section 15(a) of the Exchange Act. The complaint seeks preliminary and permanent injunctions, disgorgement together with prejudgment interest, and civil penalties. The Commission's complaint sought an asset freeze against certain defendants and relief defendants, and the appointment of a receiver to recover and conserve assets for the benefit of defrauded investors.

Without admitting or denying the allegations set forth in the complaint, all of the defendants except Leonard have consented to the entry of an order permanently enjoining them from engaging in the violations set forth above. Tallman has agreed to an order finding him liable for disgorgement of \$110,000, plus prejudgment interest of \$9,369.59, and Hembree has agreed to an order finding him liable for disgorgement of \$40,000, plus prejudgment interest of \$5,535.24. However, payment of all but \$20,000 by Tallman, and \$10,000 by Hembree, will be waived, and no civil penalties imposed, based on their respective sworn statements of financial condition and other documents. The remaining settling defendants have agreed to defer determination of disgorgement and civil penalties. In addition, defendants McNaul, Lucas, and Kilgariff and all relief defendants except Consumer Information have consented to an immediate asset freeze and to the appointment of a receiver. Separately, the Court entered freeze and receivership orders against Leonard and relief defendant Consumer Information.

SEC v. Jeanetta M. Standefor, et al.

Lit. Rel. No. 20575 (May 14, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20575.htm>

On May 14, the SEC filed civil securities fraud charges against Jeanetta M. Standefor of Altadena, Ca. and Pasadena, Ca.-based Accelerated Funding Group for operating an \$18 million real estate investment scheme targeting the African-American community.

The SEC alleges that between 2005 and 2007, Standefor and AFG solicited investors in a foreclosure reinstatement scheme through AFG's website, word of mouth, and testimonials by other seemingly successful investors. Standefor claimed investor funds would be used to cure defaults on distressed properties, enticing investors with promises of returns up to 50% within 30 to 45 days. According to the complaint, Standefor and AFG have instead operated a Ponzi-like

scheme by using money from new investors to pay previous investors. Standefor misappropriated more than \$1.9 million of investor funds for personal expenses, and Standefor and AFG also misused investor funds to pay \$121,000 in consulting fees to Standefor's husband, Darrell R. Dansby.

The SEC charged defendants with violations of the securities registration provisions of Sections 5(a) and 5(c) of the Securities Act of 1922, as well as violations of 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 seeks permanent injunctions, disgorgement and civil penalties. The U.S. Attorney's Office for the Central District of California indicted Standefor on May 13, 2008, and the Federal Bureau of Investigation arrested her on May 14, 2008.

SEC v. Gold-Quest International, et al.

Lit. Rel. No. 20557 (May 7, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20557.htm>

On May 6, 2008, the SEC filed an enforcement action against Las Vegas-based Gold-Quest International and its principals, David M. Greene, John Jenkins, and Michael McGee for allegedly running a Ponzi scheme and misappropriating investor funds.

The SEC alleges that since May 2006, the defendants have raised and misappropriated more than \$27.9 million from more than 2,100 investors in the United States and Canada, and, unbeknownst to investors, paid more than \$19.1 million as returns to other investors. According to the complaint, the defendants claim they are not subject to the jurisdiction of the United States or Canada because they are members of the Little Shell Nation Indian tribe; however, the Little Shell Nation is not in fact recognized as a sovereign tribe or nation.

The SEC obtained an order (1) freezing the assets of Greene, Jenkins, and McGee; (2) freezing and repatriating the assets of, and appointing a temporary receiver over, Gold-Quest and its affiliates; (3) preventing the destruction of documents; and (4) temporarily enjoining Gold-Quest, Greene, Jenkins, and McGee from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The complaint also seeks preliminary and permanent injunctions, disgorgement, and civil penalties.

SEC v. Safevest, LLC, et al.

Lit. Rel. No. 20552 (May 2, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20552.htm>

Lit. Rel. No. 20582 (May 16, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20582.htm>

On May 1, 2008, the SEC filed an enforcement action against Laguna Hills, California-based Safevest, LLC and its principals, Jon G. Ervin, Sr. and John V. Slye for allegedly running a Ponzi-like scheme and misappropriating investor funds.

The SEC alleges that since at least May 2007, the defendants have raised at least \$25 million from more than 500 investors by misrepresenting that investor funds would be pooled

and invested in futures commodities trading, that the investment would generate daily profits ranging from 1.5% to 1.9%, and that investors could receive their money back within 72 hours of requesting it. According to the complaint, no investor money was invested in futures trading, and requests by investors for withdrawal of their funds have either not been honored or have only been partially honored. The SEC also alleges that, undisclosed to investors, the defendants paid more than \$18 million to investors in Ponzi-like fashion. The defendants also allegedly misappropriated investor funds for the personal use of Ervin, Slye, and their family members.

The SEC charged the defendants with violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The court issued an order freezing the assets of the individual defendants and appointing a receiver over the frozen assets of Safevest and its affiliates. The complaint also seeks injunctions, disgorgement, and civil penalties against all defendants.

The Commodity Futures Trading Commission also filed an emergency action against the defendants, alleging violations of the antifraud and registration provisions of the Commodity Exchange Act, and the California Department of Corporations issued a desist and refrain order to Safevest and Ervin. The U.S. Attorney's Office for the Central District of California also filed a criminal complaint against Ervin, and the Federal Bureau of Investigation arrested him.

On May 12, 2008, the Honorable James V. Selna, United States District Court Judge for the Central District of California, entered an order preliminarily enjoining Safevest and its principals from future violations of the antifraud provisions of the federal securities laws. In addition to the preliminary injunction, the order continued the previously imposed asset freeze and appointed a permanent receiver over Safevest, LLC.

SEC v. James B. Duncan; Hendrix M. Montecastro, Maurice E. Mcleod, Pacific Wealth Management, LLC, Stonewood Consulting, Inc. and Total Return Fund, LLC

Lit. Rel. No. 20469 (Feb. 27, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20469.htm>

On February 27, 2008, the SEC filed civil securities fraud charges stemming from a \$10 million unregistered offering of securities that victimized over 75 investors from several affinity groups, including the Southern California Filipino community, fellow church members, and military personnel. The SEC seeks permanent injunctions, disgorgement of ill-gotten gains, and civil penalties against each of the defendants.

The SEC's complaint alleges that James B. Duncan, Hendrix M. Montecastro, and Maurice E. McLeod, operating through Pacific Wealth Management, LLC ("PWM") and Murrieta-based Stonewood Consulting, Inc., promised investors "financial freedom" within three years in exchange for control over their finances. The defendants offered investors securities in the form of investment contracts to purchase and maintain investment homes. The complaint further alleges that James Duncan raised \$1.2 million in a separate offering of preferred membership units in Total Return Fund, LLC to approximately 20 investors. The complaint

alleges that the proceeds raised in both offerings were commingled and used to run a Ponzi-like scheme that fell apart in late 2006.

The SEC's complaint further alleges that the defendants solicited investors using investment seminars and "referral partners," one of which was a member of the Air Force who solicited his fellow servicemen. As alleged in the complaint, the defendants falsely represented to investors that their funds would be invested in real estate, stocks, foreign currency, precious metals, and various other investments and that the earnings on such investments would help make the mortgage payments on the investment homes purchased on their behalf. The complaint alleges that, instead of investing client funds as promised, the defendants operated a Ponzi-like scheme by using new investor money to make the mortgage payments on previously purchased investment homes.

CASES INVOLVING SUBPRIME-RELATED SECURITIES

SEC v. Julian T. Tzolov and Eric S. Butler

Lit. Rel. No. 20698 (Sept. 3, 2008)

<http://www.sec.gov/litigation/litreleases/2008/lr20698.htm>

Press Rel. No. 2008-187 (Sept. 3, 2008)

<http://www.sec.gov/news/press/2008/2008-187.htm>

The SEC charged two Wall Street brokers with defrauding their customers when making more than \$1 billion in unauthorized purchases of subprime-related auction rate securities. The complaint alleges that Julian Tzolov and Eric Butler misled customers into believing that auction rate securities being purchased in their accounts were backed by federally guaranteed student loans and were a safe and liquid alternative to bank deposits or money market funds. Instead, the securities that Tzolov and Butler purchased for their customers were backed by subprime mortgages, collateralized debt obligations (CDOs), and other non-student loan collateral.

The complaint also alleges that Tzolov and Butler, while employed at Credit Suisse in New York, deceived foreign corporate customers in short-term cash management accounts by sending or directing their sales assistants to send e-mail confirmations in which the terms "St. Loan" or "Education" were added to the names of non-student loan securities purchased for the customers. Tzolov and Butler also routinely deleted references to "CDO" or "Mortgage" from the names of the securities in these e-mails. As a result, the complaint alleges that customers were stuck holding more than \$800 million in illiquid securities after auctions for auction rate securities began to fail in August 2007. Those holdings have since significantly declined in value.

The SEC's complaint charges Tzolov and Butler with securities fraud in violation 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. The SEC seeks permanent injunctive relief, disgorgement of ill-gotten gains, if any, plus prejudgment interest on a joint and several basis, and civil money penalties.