

ADMINISTRATIVE PROCEEDING  
FILE NO. 3-13584

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION  
January 13, 2010

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In the Matter of	:	
	:	ORDER PROPOSING TO TAKE
JAYCEE JAMES	:	OFFICIAL NOTICE
	:	

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The Order Instituting Proceedings (OIP) alleges that Respondent violated the ownership reporting provisions in Sections 13(d) and 16(a) of the Securities Exchange Act of 1934 (Exchange Act), as well as Exchange Act Rules 13d-1, 13d-2, and 16a-3.

In relevant part, Sections 13(d) and 16(a) of the Exchange Act apply to ownership reports concerning equity securities that are registered pursuant to Section 12 of the Exchange Act.<sup>1</sup> The Division of Enforcement's (Division) pending Motion for Summary Disposition does not address the question of whether the relevant securities were registered pursuant to Section 12 when the alleged violations occurred. A preliminary review of the EDGAR files of the Securities and Exchange Commission (Commission) indicates that many of the securities identified in Exhibit 1 to the OIP were not registered pursuant to Section 12 when the alleged violations occurred.

Pursuant to Rule 323 of the Commission's Rules of Practice, official notice may be taken of any matter in the public official records of the Commission. If official notice is taken of a material fact not appearing in evidence in the record, the parties must be afforded an opportunity to establish the contrary. The Division will be given an opportunity to supplement its Motion for Summary Disposition by demonstrating that the securities listed in OIP Exhibit 1 were registered pursuant to Section 12 when the alleged violations occurred.<sup>2</sup>

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<sup>1</sup> Section 13(d)(1) of the Exchange Act also applies to ownership reports concerning three other types of equity securities (those issued by insurance companies, closed-end investment companies, and Native Corporations). However, these other types of securities are not involved in this proceeding.

<sup>2</sup> In its supplemental pleading, the Division must first demonstrate that the securities identified in this Order were registered, or concede that the securities identified herein were not registered. If the Division intends to argue that Section 12 registration is (or ought to be) immaterial, it must address the statutory text and the relevant precedent. See Steele v. Polymer Research Corp. of Am., No. 85 Civ. 5563, 1987 U.S. Dist. LEXIS 5270, at \*3-6 (S.D.N.Y. June 18, 1987) (rejecting such an argument and imposing sanctions under Fed. R. Civ. Pro. 11 against the party

## I.

Based on a preliminary review of the Commission's EDGAR files, it appears that eight of the issuers identified in OIP Exhibit 1 filed Form 12g-4 or Forms 15 voluntarily terminating the registration of their respective securities.<sup>3</sup> These voluntary terminations of registration became effective between 1983 and 2008, well before Respondent is alleged to have committed the ownership reporting violations identified in the OIP.

<u>Issuer</u>	<u>Filing Date</u>
Capital Media Group Ltd.	Dec. 30, 2002 (Form 15)
Network Holdings International, Inc.	Jan. 15, 2002 (Form 15)
American Basketball Association, Inc.	Dec. 19, 2007 (Form 15)
Cinemastar Luxury Theaters, Inc.	Dec. 4, 2001 (Form 15)
Global Technologies, Ltd.	Mar. 12, 2002 (Form 15)
HydroFlo, Inc.	Nov. 8, 2006 (Form 15)
General Acceptance Corp. (Indiana)	Feb. 17, 1998 (Form 15)
Cornet Stores	June 16, 1983 (Form 12g-4)

The Commission's EDGAR files also show that TVSL S.A. in Liquidation filed a Form 15F on June 30, 2006, and SCOR Holding (Switzerland) Ltd. filed a Form 15F on January 7, 2008. As a result, the respective securities of these two issuers were also deregistered before Respondent is alleged to have committed the ownership reporting violations identified in the OIP.

The Division shall show cause why I should not dismiss all allegations relating to the securities of these ten issuers on the grounds that the securities were not registered pursuant to Section 12 of the Exchange Act at the time of the alleged ownership reporting violations.

## II.

Three other companies listed in OIP Exhibit 1, Solar Night Industries, Inc., CapitalSource Healthcare REIT, and Asia Broadband, Inc., were only prospective issuers of registered securities. A preliminary review of the Commission's records does not show that the proposed registrations ever became effective.

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advancing it); Brascan Ltd. v. Edper Equities Ltd., 477 F. Supp. 773, 789 (S.D.N.Y. 1979) (holding that Section 13(d) does not apply to all securities, but only to equity securities registered pursuant to Section 12 and citing with favor an amicus curiae brief from the Commission).

<sup>3</sup> An issuer may file a Form 15 Certification and Notice of Termination of Registration under Section 12(g) of the Exchange Act under certain conditions. The termination becomes effective in ninety days, pursuant to Section 12(g)(4) of the Exchange Act and Exchange Act Rule 12g-4. The Commission adopted Form 15 to replace Form 12g-4 in 1984.

Solar Night Industries, Inc., applied to withdraw its request for registration on May 3, 2007. Pursuant to 17 C.F.R. § 230.477, an application to withdraw is deemed granted unless, within fifteen calendar days, the Commission notifies the applicant that it will not be granted. EDGAR does not show that the Commission provided such notice to Solar Night Industries, Inc.

A registration statement relating to the common shares of CapitalSource Healthcare REIT has been filed with the Commission, but it has not yet become effective. See Declaration of Joseph Turitz, Paragraph 5, dated May 28, 2009, and attached to the Division's Motion for Summary Disposition.

Asia Broadband, Inc., filed several iterations of a registration statement during 2004 and 2005. However, the Division of Corporation Finance provided comment letters noting deficiencies in the proposal. There is no evidence that Asia Broadband, Inc., replied to the last comment letter, dated May 19, 2005, or amended its registration statement. There is no evidence that the proposed registration was declared effective.

The Division shall show cause why I should not dismiss all allegations relating to the securities of Solar Night Industries, Inc., CapitalSource Healthcare REIT, and Asia Broadband, Inc., on the grounds that these three companies had not registered any securities pursuant to Section 12 of the Exchange Act at the time of the alleged ownership reporting violations.

I have been unable to confirm from the Commission's EDGAR files that the equity securities of Williams & Associates were ever registered pursuant to Section 12 of the Exchange Act. If the Division has evidence that Williams & Associates is an issuer of registered securities, it shall supplement the record. If the Division does not have such evidence, it must show cause why I should not dismiss all allegations in the OIP relating to the securities of Williams & Associates on the grounds that this company never had any securities registered pursuant to Section 12 of the Exchange Act.

### III.

Section 16(a)(1) of the Exchange Act applies to ownership reports concerning registered equity securities other than exempted securities.<sup>4</sup> The securities of a foreign private issuer are exempt from Section 16 of the Exchange Act. See 17 C.F.R. § 240.3a12-3(b). Based on a preliminary review of the Commission's EDGAR files, five of the issuers identified in Exhibit 1 to the OIP were or are foreign private issuers: APT Satellite Holdings Ltd.; APT Satellite Holdings Ltd. \ADR; Asia Electronics Holding Co., Inc.; TVSL S.A. in Liquidation; and SCOR Holding (Switzerland) Ltd. In these circumstances, the Division must explain how Respondent's alleged violations of Section 16(a) and Exchange Act Rule 16a-3 could occur as to the exempt securities of foreign private issuers. If the Division is unable to do so, it shall show cause why I should not dismiss all allegations under Section 16(a) relating to the exempted securities of the foreign private issuers.

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<sup>4</sup> Section 13(d) of the Exchange Act applies to ownership reports concerning exempted equity securities.

IT IS ORDERED THAT the Division shall file a supplemental pleading, no later than January 27, 2010, addressing the matters set forth in this Order and explaining why the allegations of the OIP discussed in this Order should not be dismissed as a matter of law; and

IT IS FURTHER ORDERED THAT Respondent may file an opposition to the Division's supplemental pleading no later than February 3, 2010.

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James T. Kelly  
Administrative Law Judge