

SECURITIES AND EXCHANGE COMMISSION

This file is maintained pursuant to the Freedom of Information Act (5 U.S.C. 552). It contains a copy of each decision, order, rule or similar action of the Commission, for September 2008, with respect to which the final votes of individual Members of the Commission are required to be made available for public inspection pursuant to the provisions of that Act. Commissioner Atkins was Commissioner from July 29, 2002 to August 1, 2008.

Unless otherwise noted, each of the following individual Members of the Commission voted affirmatively upon each action of the Commission shown in the file:

CHRISTOPHER COX, CHAIRMAN

PAUL S. ATKINS, COMMISSIONER

KATHLEEN L. CASEY, COMMISSIONER

11 Documents

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 2, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13153

In the Matter of

Wall Street Deli, Inc.,
Wamex Holdings, Inc.,
Waterfalls Corp.,
WebMedicalServices.com, Inc., and
World Media Group, Inc.,

Respondents.

ORDER INSTITUTING
PROCEEDINGS AND NOTICE
OF HEARING PURSUANT TO
SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT
OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Wall Street Deli, Inc., Wamex Holdings, Inc., Waterfalls Corp., WebMedicalServices.com, Inc., and World Media Group, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Wall Street Deli, Inc. (CIK No. 705408) is a void Delaware corporation located in Birmingham, Alabama with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Wall Street is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2001, which reported a net loss of over \$4 million for the prior thirty-nine weeks. On October 1, 2001, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Northern District of Alabama, and its reorganization plan was confirmed on November 24, 2003.

2. Wamex Holdings, Inc. (CIK No. 1099514) is an inactive New York corporation located in New York, New York with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Wamex is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2000, which reported a net loss

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of over \$1 million for the prior three months. As of August 25, 2008, the company's common stock (symbol "WAMX") was traded on the over-the-counter markets.

3. Waterfalls Corp. (CIK No. 1098965) is a Delaware corporation located in North Miami Beach, Florida with a class of equity securities registered with the Commission pursuant to Exchange Act Sections 12(g). Waterfalls is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2001, which reported a net loss of \$592 since inception in 1999.

4. WebMedicalServices.com, Inc. (CIK No. 1099116) is a revoked Nevada corporation located in Louisville, Kentucky with classes of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). WebMedicalServices.com is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2000, which reported a net loss of \$62,075 since inception in 1999.

5. World Media Group, Inc. (CIK No. 1163960) is a Colorado corporation located in Ocklawaha, Florida with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). World Media is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2002, which reported a net loss of \$5,134 for the prior nine months.

B. DELINQUENT PERIODIC FILINGS

6. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

7. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

8. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

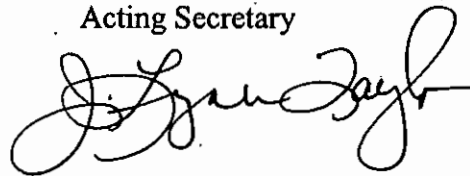
This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary

A handwritten signature in cursive script, appearing to read "J. Lynn Taylor".

Attachment

By: J. Lynn Taylor
Assistant Secretary

Appendix 1

Chart of Delinquent Filings *Wall Street Deli, Inc., et al.*

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
<i>Wall Street Deli, Inc.</i>					
	10-K	06/30/01	09/28/01	Not filed	83
	10-Q	09/30/01	11/14/01	Not filed	81
	10-Q	12/31/01	02/14/02	Not filed	78
	10-Q	03/31/02	05/15/02	Not filed	75
	10-K	06/29/02	09/27/02	Not filed	71
	10-Q	09/30/02	11/14/02	Not filed	69
	10-Q	12/31/02	02/14/03	Not filed	66
	10-Q	03/31/03	05/15/03	Not filed	63
	10-K	06/28/03	09/26/03	Not filed	59
	10-Q	09/30/03	11/14/03	Not filed	57
	10-Q	12/31/04	02/14/05	Not filed	42
	10-Q	03/31/04	05/17/04	Not filed	51
	10-K	07/03/04	10/01/04	Not filed	46
	10-Q	09/30/04	11/15/04	Not filed	45
	10-Q	12/31/04	02/14/05	Not filed	42
	10-Q	03/31/05	05/16/05	Not filed	39
	10-K	07/02/05	09/30/05	Not filed	35
	10-Q	09/30/05	11/14/05	Not filed	33
	10-Q	12/31/05	02/14/06	Not filed	30
	10-Q	03/31/06	05/15/06	Not filed	27
	10-K	07/01/06	09/29/06	Not filed	23
	10-Q	09/30/06	11/14/06	Not filed	21
	10-Q	12/31/06	02/14/07	Not filed	18
	10-Q	03/31/07	05/15/07	Not filed	15
	10-K	06/30/07	09/28/07	Not filed	11
	10-Q	09/29/07	11/13/07	Not filed	9
	10-Q	12/29/07	02/12/08	Not filed	6
	10-Q	03/29/08	05/13/08	Not filed	3
Total Filings Delinquent	28				

Wamex Holdings, Inc.

10-KSB	12/31/00	04/02/01	Not filed	88
10-QSB	03/31/01	05/15/01	Not filed	87
10-QSB	06/30/01	08/14/01	Not filed	84
10-QSB	09/30/01	11/14/01	Not filed	81
10-KSB	12/31/01	04/01/02	Not filed	76
10-QSB	03/31/02	05/15/02	Not filed	75

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Wamex Holdings, Inc.					
	10-QSB	06/30/02	08/14/02	Not filed	72
	10-QSB	09/30/02	11/14/02	Not filed	69
	10-KSB	12/31/02	03/31/03	Not filed	65
	10-QSB	03/31/03	05/15/03	Not filed	63
	10-QSB	06/30/03	08/14/03	Not filed	60
	10-QSB	09/30/03	11/14/03	Not filed	57
	10-KSB	12/31/03	03/30/04	Not filed	53
	10-QSB	03/31/04	05/17/04	Not filed	51
	10-QSB	06/30/04	08/16/04	Not filed	48
	10-QSB	09/30/04	11/15/04	Not filed	45
	10-KSB	12/31/04	03/31/05	Not filed	41
	10-QSB	03/31/05	05/16/05	Not filed	39
	10-QSB	06/30/05	08/15/05	Not filed	36
	10-QSB	09/30/05	11/14/05	Not filed	33
	10-KSB	12/31/05	03/31/06	Not filed	29
	10-QSB	03/31/06	05/15/06	Not filed	27
	10-QSB	09/30/06	11/14/06	Not filed	21
	10-KSB	12/31/06	04/02/07	Not filed	16
	10-QSB	03/31/07	05/15/07	Not filed	15
	10-QSB	06/30/07	08/14/07	Not filed	12
	10-QSB	09/30/07	11/14/07	Not filed	9
	10-KSB	12/31/07	03/31/08	Not filed	5
	10-Q*	03/31/08	05/15/08	Not filed	3
	10-Q*	06/30/08	08/14/08	Not filed	0
Total Filings Delinquent	30				

Waterfalls Corp.

10-KSB	09/30/01	12/31/01	Not filed	80
10-QSB	12/31/01	02/14/02	Not filed	78
10-QSB	03/31/02	05/15/02	Not filed	75
10-QSB	06/30/02	08/14/02	Not filed	72
10-KSB	09/30/02	12/31/02	Not filed	68
10-QSB	12/31/02	02/14/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	63
10-QSB	06/30/03	08/14/03	Not filed	60

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Waterfalls Corp.					
	10-KSB	09/30/03	12/29/03	Not filed	56
	10-QSB	12/31/03	02/16/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	51
	10-QSB	06/30/04	08/16/04	Not filed	48
	10-KSB	09/30/04	12/29/04	Not filed	44
	10-QSB	12/31/04	02/14/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	39
	10-QSB	06/30/05	08/15/05	Not filed	36
	10-KSB	09/30/05	12/29/05	Not filed	32
	10-QSB	12/31/05	02/14/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	27
	10-QSB	06/30/06	08/14/06	Not filed	24
	10-KSB	09/30/06	12/29/06	Not filed	20
	10-QSB	12/31/06	02/14/07	Not filed	18
	10-QSB	03/31/07	05/15/07	Not filed	15
	10-QSB	06/30/07	08/14/07	Not filed	12
	10-KSB	09/30/07	12/31/07	Not filed	8
	10-QSB	12/31/07	02/14/08	Not filed	6
	10-Q*	03/31/08	05/15/08	Not filed	3
	10-Q*	06/30/08	08/14/08	Not filed	0

Total Filings Delinquent 28

**WebMedicalServices.com,
Inc.**

10-QSB	09/30/00	11/14/00	Not filed	93
10-KSB	12/31/00	04/02/01	Not filed	88
10-QSB	03/31/01	05/15/01	Not filed	87
10-QSB	06/30/01	08/14/01	Not filed	84
10-QSB	09/30/01	11/14/01	Not filed	81
10-KSB	12/31/01	04/01/02	Not filed	76
10-QSB	03/31/02	05/15/02	Not filed	75
10-QSB	06/30/02	08/14/02	Not filed	72
10-QSB	09/30/02	11/14/02	Not filed	69
10-KSB	12/31/02	03/31/03	Not filed	65
10-QSB	03/31/03	05/15/03	Not filed	63
10-QSB	06/30/03	08/14/03	Not filed	60
10-QSB	09/30/03	11/14/03	Not filed	57
10-KSB	12/31/03	03/30/04	Not filed	53

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
WebMedicalServices.com, Inc.					
	10-QSB	03/31/04	05/17/04	Not filed	51
	10-QSB	06/30/04	08/16/04	Not filed	48
	10-QSB	09/30/04	11/15/04	Not filed	45
	10-KSB	12/31/04	03/31/05	Not filed	41
	10-QSB	03/31/05	05/16/05	Not filed	39
	10-QSB	06/30/05	08/15/05	Not filed	36
	10-QSB	09/30/05	11/14/05	Not filed	33
	10-KSB	12/31/05	03/31/06	Not filed	29
	10-QSB	03/31/06	05/15/06	Not filed	27
	10-QSB	06/30/06	08/14/06	Not filed	24
	10-QSB	09/30/06	11/14/06	Not filed	21
	10-KSB	12/31/06	04/02/07	Not filed	16
	10-QSB	03/31/07	05/15/07	Not filed	15
	10-QSB	06/30/07	08/14/07	Not filed	12
	10-QSB	09/30/07	11/14/07	Not filed	9
	10-KSB	12/31/07	03/31/08	Not filed	5
	10-Q*	03/31/08	05/15/08	Not filed	3
	10-Q*	06/30/08	08/14/08	Not filed	0

Total Filings Delinquent 32

World Media Group, Inc.

10-KSB	12/31/02	03/31/03	Not filed	65
10-QSB	03/31/03	05/15/03	Not filed	63
10-QSB	06/30/03	08/14/03	Not filed	60
10-QSB	09/30/03	11/14/03	Not filed	57
10-KSB	12/31/03	03/30/04	Not filed	53
10-QSB	03/31/04	05/17/04	Not filed	51
10-QSB	06/30/04	08/16/04	Not filed	48
10-QSB	09/30/04	11/15/04	Not filed	45
10-KSB	12/31/04	03/31/05	Not filed	41
10-QSB	03/31/05	05/16/05	Not filed	39
10-QSB	06/30/05	08/15/05	Not filed	36
10-QSB	09/30/05	11/14/05	Not filed	33
10-KSB	12/31/05	03/31/06	Not filed	29
10-QSB	03/31/06	05/15/06	Not filed	27
10-QSB	06/30/06	08/14/06	Not filed	24
10-QSB	09/30/06	11/14/06	Not filed	21
10-KSB	12/31/06	04/02/07	Not filed	16

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
World Media Group, Inc.					
	10-QSB	03/31/07	05/15/07	Not filed	15
	10-QSB	06/30/07	08/14/07	Not filed	12
	10-QSB	09/30/07	11/14/07	Not filed	9
	10-KSB	12/31/07	03/31/08	Not filed	5
	10-Q*	03/31/08	05/15/08	Not filed	3
	10-Q*	06/30/08	08/14/08	Not filed	0
Total Filings Delinquent		23			

*Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes:

FCR

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 2, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13154

In the Matter of

Struthers Industries, Inc.,
Sun River Development Co.,
Sun River Investment Co.,
Sun West Enterprises, Inc.
(n/k/a Natural Alternative
Products, Inc.),
SunBank Resorts International, Inc.,
(f/k/a Kaufman & Hurtz, Inc.),
Surecare, Inc., and
Symbolics, Inc.,

Respondents.

ORDER INSTITUTING
PROCEEDINGS AND NOTICE
OF HEARING PURSUANT TO
SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT
OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Struthers Industries, Inc., Sun River Development Co., Sun River Investment Co., Sun West Enterprises, Inc. (n/k/a Natural Alternative Products, Inc.), SunBank Resorts International, Inc. (f/k/a Kaufman & Hurtz, Inc.), Surecare, Inc., and Symbolics, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Struthers Industries, Inc. (CIK No. 94945) is a forfeited Delaware corporation located in Tulsa, Oklahoma with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Struthers Industries is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB/A for the period ended September 30, 1996, which reported a net loss of over \$21 million for the prior nine months. On March 9, 1998, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Northern District of

Oklahoma, its reorganization plan was confirmed on October 2, 2003, and the case was terminated on January 12, 2006.

2. Sun River Development Co. (CIK No. 1108106) is a permanently revoked Nevada corporation located in Minden, Nevada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Sun River is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on March 1, 2000, which reported a net loss of \$3,755 since inception in 1997.

3. Sun River Investment Co. (CIK No. 1108613) is a permanently revoked Nevada corporation located in Minden, Nevada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Sun River is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on March 7, 2000, which reported total assets of \$45 as of January 31, 2000.

4. Sun West Enterprises, Inc. (n/k/a Natural Alternative Products, Inc.) (CIK No. 1083407) is a Nevada corporation located in Las Vegas, Nevada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Sun West is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2006, which reported a net loss of \$66 for the prior six months.

5. SunBank Resorts International, Inc. (f/k/a Kaufman & Hurtz, Inc.) (CIK No. 1140456) is a dissolved Nevada corporation located in Scottsdale, Arizona with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Sunbank is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2002, which reported a net loss of \$16,425 since inception in 1998.

6. Surecare, Inc. (CIK No. 1062564) is a void Delaware corporation located in Houston, Texas with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Surecare is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2002, which reported a net loss of \$532,044 for the prior nine months.

7. Symbolics, Inc. (CIK No. 745664) is a void Delaware corporation located in Chatsworth, California with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Symbolics is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 1993, which reported a net loss of over \$3.5 million for the prior nine months.

B. DELINQUENT PERIODIC FILINGS

8. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

9. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports (Forms 10-K or 10-KSB), and Rule 13a-13 requires issuers to file quarterly reports (Forms 10-Q or 10-QSB).

10. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

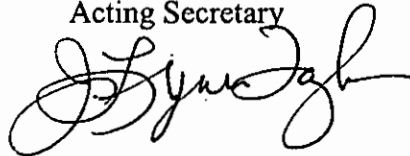
IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Attachment

Florence E. Harmon
Acting Secretary

A handwritten signature in dark ink, appearing to read "J. Lynn Taylor", is written over the typed name of the Assistant Secretary.

By: J. Lynn Taylor
Assistant Secretary

Appendix 1

Chart of Delinquent Filings In the Matter of Struthers Industries, Inc., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Struthers Industries, Inc.					
	10-KSB	12/31/96	03/31/97	Not filed	137
	10-QSB	03/31/97	05/15/97	Not filed	135
	10-QSB	06/30/97	08/14/97	Not filed	132
	10-QSB	09/30/97	11/14/97	Not filed	129
	10-KSB	12/31/97	03/31/98	Not filed	125
	10-QSB	03/31/98	05/15/98	Not filed	123
	10-QSB	06/30/98	08/14/98	Not filed	120
	10-QSB	09/30/98	11/16/98	Not filed	117
	10-KSB	12/31/98	03/31/99	Not filed	113
	10-QSB	03/31/99	05/17/99	Not filed	111
	10-QSB	06/30/99	08/16/99	Not filed	108
	10-QSB	09/30/99	11/15/99	Not filed	105
	10-KSB	12/31/99	03/30/00	Not filed	101
	10-QSB	03/31/00	05/15/00	Not filed	99
	10-QSB	06/30/00	08/14/00	Not filed	96
	10-QSB	09/30/00	11/14/00	Not filed	93
	10-KSB	12/31/00	04/02/01	Not filed	88
	10-QSB	03/31/01	05/15/01	Not filed	87
	10-QSB	06/30/01	08/14/01	Not filed	84
	10-QSB	09/30/01	11/14/01	Not filed	81
	10-KSB	12/31/01	04/01/02	Not filed	76
	10-QSB	03/31/02	05/15/02	Not filed	75
	10-QSB	06/30/02	08/14/02	Not filed	72
	10-QSB	09/30/02	11/14/02	Not filed	69
	10-KSB	12/31/02	03/31/03	Not filed	65
	10-QSB	03/31/03	05/15/03	Not filed	63
	10-QSB	06/30/03	08/14/03	Not filed	60
	10-QSB	09/30/03	11/14/03	Not filed	57
	10-KSB	12/31/03	03/30/04	Not filed	53
	10-QSB	03/31/04	05/17/04	Not filed	51
	10-QSB	06/30/04	08/16/04	Not filed	48
	10-QSB	09/30/04	11/15/04	Not filed	45

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Struthers Industries, Inc.					
	10-KSB	12/31/04	03/31/05	Not filed	41
	10-QSB	03/31/05	05/16/05	Not filed	39
	10-QSB	06/30/05	08/15/05	Not filed	36
	10-QSB	09/30/05	11/14/05	Not filed	33
	10-KSB	12/31/05	03/31/06	Not filed	29
	10-QSB	03/31/06	05/15/06	Not filed	27
	10-QSB	06/30/06	08/14/06	Not filed	24
	10-QSB	09/30/06	11/14/06	Not filed	21
	10-KSB	12/31/06	04/02/07	Not filed	16
	10-QSB	03/31/07	05/15/07	Not filed	15
	10-QSB	06/30/07	08/14/07	Not filed	12
	10-QSB	09/30/07	11/14/07	Not filed	9
	10-KSB	12/31/07	03/31/08	Not filed	5
	10-Q ¹	03/31/08	05/15/08	Not filed	3
	10-Q ¹	06/30/08	08/14/08	Not filed	0

Total Filings Delinquent 47

Sun River Development Co.

10-QSB	03/31/00	06/14/00	Not filed	98
10-QSB	06/30/00	08/14/00	Not filed	96
10-QSB	09/30/00	11/14/00	Not filed	93
10-KSB	12/31/00	04/02/01	Not filed	88
10-QSB	03/31/01	05/15/01	Not filed	87
10-QSB	06/30/01	08/14/01	Not filed	84
10-QSB	09/30/01	11/14/01	Not filed	81
10-KSB	12/31/01	04/01/02	Not filed	76
10-QSB	03/31/02	05/15/02	Not filed	75
10-QSB	06/30/02	08/14/02	Not filed	72
10-QSB	09/30/02	11/14/02	Not filed	69

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Sun River Development Co.					
	10-KSB	12/31/02	03/31/03	Not filed	65
	10-QSB	03/31/03	05/15/03	Not filed	63
	10-QSB	06/30/03	08/14/03	Not filed	60
	10-QSB	09/30/03	11/14/03	Not filed	57
	10-KSB	12/31/03	03/30/04	Not filed	53
	10-QSB	03/31/04	05/17/04	Not filed	51
	10-QSB	06/30/04	08/16/04	Not filed	48
	10-QSB	09/30/04	11/15/04	Not filed	45
	10-KSB	12/31/04	03/31/05	Not filed	41
	10-QSB	03/31/05	05/16/05	Not filed	39
	10-QSB	06/30/05	08/15/05	Not filed	36
	10-QSB	09/30/05	11/14/05	Not filed	33
	10-KSB	12/31/05	03/31/06	Not filed	29
	10-QSB	03/31/06	05/15/06	Not filed	27
	10-QSB	06/30/06	08/14/06	Not filed	24
	10-QSB	09/30/06	11/14/06	Not filed	21
	10-KSB	12/31/06	04/02/07	Not filed	16
	10-QSB	03/31/07	05/15/07	Not filed	15
	10-QSB	06/30/07	08/14/07	Not filed	12
	10-QSB	09/30/07	11/14/07	Not filed	9
	10-KSB	12/31/07	03/31/08	Not filed	5
	10-Q	03/31/08	05/15/08	Not filed	3
	10-Q	06/30/08	08/14/08	Not filed	0

Total Filings Delinquent 34

Sun River Investment Co.

10-QSB	03/31/00	06/20/00	Not filed	98
10-QSB	06/30/00	08/14/00	Not filed	96
10-QSB	09/30/00	11/14/00	Not filed	93
10-KSB	12/31/00	04/02/01	Not filed	88
10-QSB	03/31/01	05/15/01	Not filed	87
10-QSB	06/30/01	08/14/01	Not filed	84
10-QSB	09/30/01	11/14/01	Not filed	81
10-KSB	12/31/01	04/01/02	Not filed	76

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Sun River Investment Co.					
	10-QSB	03/31/02	05/15/02	Not filed	75
	10-QSB	06/30/02	08/14/02	Not filed	72
	10-QSB	09/30/02	11/14/02	Not filed	69
	10-KSB	12/31/02	03/31/03	Not filed	65
	10-QSB	03/31/03	05/15/03	Not filed	63
	10-QSB	06/30/03	08/14/03	Not filed	60
	10-QSB	09/30/03	11/14/03	Not filed	57
	10-KSB	12/31/03	03/30/04	Not filed	53
	10-QSB	03/31/04	05/17/04	Not filed	51
	10-QSB	06/30/04	08/16/04	Not filed	48
	10-QSB	09/30/04	11/15/04	Not filed	45
	10-KSB	12/31/04	03/31/05	Not filed	41
	10-QSB	03/31/05	05/16/05	Not filed	39
	10-QSB	06/30/05	08/15/05	Not filed	36
	10-QSB	09/30/05	11/14/05	Not filed	33
	10-KSB	12/31/05	03/31/06	Not filed	29
	10-QSB	03/31/06	05/15/06	Not filed	27
	10-QSB	06/30/06	08/14/06	Not filed	24
	10-QSB	09/30/06	11/14/06	Not filed	21
	10-KSB	12/31/06	04/02/07	Not filed	16
	10-QSB	03/31/07	05/15/07	Not filed	15
	10-QSB	06/30/07	08/14/07	Not filed	12
	10-QSB	09/30/07	11/14/07	Not filed	9
	10-KSB	12/31/07	03/31/08	Not filed	5
	10-Q ¹	03/31/08	05/15/08	Not filed	3
	10-Q ¹	06/30/08	08/14/08	Not filed	0

Total Filings Delinquent

34

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Sun West Enterprises, Inc. (n/k/a Natural Alternative Products, Inc.)					
	10-KSB	03/31/01	06/29/01	Not filed	86
	10-QSB	06/30/01	08/14/01	Not filed	84
	10-QSB	09/30/01	11/14/01	Not filed	81
	10-QSB	12/31/01	02/14/02	Not filed	78
	10-KSB	03/31/02	07/01/02	Not filed	73
	10-QSB	06/30/02	08/14/02	Not filed	72
	10-QSB	09/30/02	11/14/02	Not filed	69
	10-QSB	12/31/02	02/14/03	Not filed	66
	10-KSB	03/31/03	06/30/03	Not filed	62
	10-QSB	06/30/03	08/14/03	Not filed	60
	10-QSB	09/30/03	11/14/03	Not filed	57
	10-QSB	12/31/03	02/17/04	Not filed	54
	10-KSB	03/31/04	06/29/04	Not filed	50
	10-QSB	06/30/04	08/16/04	Not filed	48
	10-QSB	09/30/04	11/15/04	Not filed	45
	10-QSB	12/31/04	02/14/05	Not filed	42
	10-QSB	06/30/05	08/15/05	Not filed	36
	10-QSB	09/30/05	11/14/05	Not filed	33
	10-QSB	12/31/05	02/14/06	Not filed	30
	10-QSB	12/31/06	02/14/07	Not filed	18
	10-KSB	03/31/07	06/29/07	Not filed	14
	10-QSB	06/30/07	08/14/07	Not filed	12
	10-QSB	09/30/07	11/14/07	Not filed	9
	10-KSB	12/31/07	02/14/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	3
	10-Q ¹	06/30/08	08/14/08	Not filed	0

Total Filings Delinquent

26

Months
Delinquent
(rounded
up)

**SunBank Resorts International,
Inc. (f/k/a Kaufman & Hertz, Inc.)**

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
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10-QSB	09/30/02	11/14/02	Not filed	69
10-KSB	12/31/02	03/31/03	Not filed	65
10-QSB	03/31/03	05/15/03	Not filed	63
10-QSB	06/30/03	08/14/03	Not filed	60
10-QSB	09/30/03	11/14/03	Not filed	57
10-KSB	12/31/03	03/30/04	Not filed	53
10-QSB	03/31/04	05/17/04	Not filed	51
10-QSB	06/30/04	08/16/04	Not filed	48
10-QSB	09/30/04	11/15/04	Not filed	45
10-KSB	12/31/04	03/31/05	Not filed	41
10-QSB	03/31/05	05/16/05	Not filed	39
10-QSB	06/30/05	08/15/05	Not filed	36
10-QSB	09/30/05	11/14/05	Not filed	33
10-KSB	12/31/05	03/31/06	Not filed	29
10-QSB	03/31/06	05/15/06	Not filed	27
10-QSB	06/30/06	08/14/06	Not filed	24
10-QSB	09/30/06	11/14/06	Not filed	21
10-KSB	12/31/06	04/02/07	Not filed	16
10-QSB	03/31/07	05/15/07	Not filed	15
10-QSB	06/30/07	08/14/07	Not filed	12
10-QSB	09/30/07	11/14/07	Not filed	9
10-KSB	12/31/07	03/31/08	Not filed	5
10-Q ¹	03/31/08	05/15/08	Not filed	3
10-Q ¹	06/30/08	08/14/08	Not filed	0

Total Filings Delinquent

24

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Surecare, Inc.					
	10-KSB	12/31/02	03/31/03	Not filed	65
	10-QSB	03/31/03	05/15/03	Not filed	63
	10-QSB	06/30/03	08/14/03	Not filed	60
	10-QSB	09/30/03	11/14/03	Not filed	57
	10-KSB	12/31/03	03/30/04	Not filed	53
	10-QSB	03/31/04	05/17/04	Not filed	51
	10-QSB	06/30/04	08/16/04	Not filed	48
	10-QSB	09/30/04	11/15/04	Not filed	45
	10-KSB	12/31/04	03/31/05	Not filed	41
	10-QSB	03/31/05	05/16/05	Not filed	39
	10-QSB	06/30/05	08/15/05	Not filed	36
	10-QSB	09/30/05	11/14/05	Not filed	33
	10-KSB	12/31/05	03/31/06	Not filed	29
	10-QSB	03/31/06	05/15/06	Not filed	27
	10-QSB	06/30/06	08/14/06	Not filed	24
	10-QSB	09/30/06	11/14/06	Not filed	21
	10-KSB	12/31/06	04/02/07	Not filed	16
	10-QSB	03/31/07	05/15/07	Not filed	15
	10-QSB	06/30/07	08/14/07	Not filed	12
	10-QSB	09/30/07	11/14/07	Not filed	9
	10-KSB	12/31/07	03/31/08	Not filed	5
	10-Q'	03/31/08	05/15/08	Not filed	3
	10-Q'	06/30/08	08/14/08	Not filed	0
Total Filings Delinquent		23			

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Symbolics, Inc.					
	10-K	06/30/93	09/28/93	Not filed	179
	10-Q	09/30/93	11/15/93	Not filed	177
	10-Q	12/31/93	02/14/94	Not filed	174
	10-Q	03/31/94	05/16/94	Not filed	171
	10-K	06/30/94	09/28/94	Not filed	167
	10-Q	09/30/94	11/14/94	Not filed	165
	10-Q	12/31/94	02/14/95	Not filed	162
	10-Q	03/31/95	05/15/95	Not filed	159
	10-K	06/30/95	09/28/95	Not filed	155
	10-Q	09/30/95	11/14/95	Not filed	153
	10-Q	12/31/95	02/14/96	Not filed	150
	10-Q	03/31/96	05/15/96	Not filed	147
	10-K	06/30/96	09/30/96	Not filed	143
	10-Q	09/30/96	11/14/96	Not filed	141
	10-Q	12/31/96	02/14/97	Not filed	138
	10-Q	03/31/97	05/15/97	Not filed	135
	10-K	06/30/97	09/29/97	Not filed	131
	10-Q	09/30/97	11/14/97	Not filed	129
	10-Q	12/31/97	02/17/98	Not filed	126
	10-Q	03/31/98	05/15/98	Not filed	123
	10-K	06/30/98	09/28/98	Not filed	119
	10-Q	09/30/98	11/16/98	Not filed	117
	10-Q	12/31/98	02/16/99	Not filed	114
	10-Q	03/31/99	05/17/99	Not filed	111
	10-K	06/30/99	09/28/99	Not filed	107
	10-Q	09/30/99	11/15/99	Not filed	105
	10-Q	12/31/99	02/14/00	Not filed	102
	10-Q	03/31/00	05/15/00	Not filed	99
	10-K	06/30/00	09/28/00	Not filed	95
	10-Q	09/30/00	11/14/00	Not filed	93
	10-Q	12/31/00	02/14/01	Not filed	90
	10-Q	03/31/01	05/15/01	Not filed	87
	10-K	06/30/01	09/28/01	Not filed	83

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Symbolics, Inc.	10-Q	09/30/01	11/14/01	Not filed	81
	10-Q	12/31/01	02/14/02	Not filed	78
	10-Q	03/31/02	05/15/02	Not filed	75
	10-K	06/30/02	09/30/02	Not filed	71
	10-Q	09/30/02	11/14/02	Not filed	69
	10-Q	12/31/02	02/14/03	Not filed	66
	10-Q	03/31/03	05/15/03	Not filed	63
	10-K	06/30/03	09/29/03	Not filed	59
	10-Q	09/30/03	11/14/03	Not filed	57
	10-Q	12/31/03	02/17/04	Not filed	54
	10-Q	03/31/04	05/17/04	Not filed	51
	10-K	06/30/04	09/28/04	Not filed	47
	10-Q	09/30/04	11/15/04	Not filed	45
	10-Q	12/31/04	02/14/05	Not filed	42
	10-Q	03/31/05	05/16/05	Not filed	39
	10-K	06/30/05	09/28/05	Not filed	35
	10-Q	09/30/05	11/14/05	Not filed	33
	10-Q	12/31/05	02/14/06	Not filed	30
	10-Q	03/31/06	05/15/06	Not filed	27
	10-K	06/30/06	09/28/06	Not filed	23
	10-Q	09/30/06	11/14/06	Not filed	21
	10-Q	12/31/06	02/14/07	Not filed	18
	10-Q	03/31/07	05/15/07	Not filed	15
	10-K	06/30/07	09/28/07	Not filed	11
	10-Q	09/30/07	11/14/07	Not filed	9
	10-Q	12/31/07	2/14/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	3
	10-Q ¹	06/30/08	08/14/08	Not filed	0

Total Filings Delinquent 61

¹Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end

FD-11

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 2, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13155

In the Matter of

Kaleidoscope Media Group, Inc.,
Keo International, Inc.,
Kideo Productions, Inc.,
Kiwi International Air Lines, Inc.,
KP Wingate Insured Partners LP,
Krisch American Inns, Inc.,
Krupp Realty L.P. IV, and
Krupp Realty L.P. VII,

Respondents.

ORDER INSTITUTING
PROCEEDINGS AND NOTICE OF
HEARING PURSUANT TO SECTION
12(j) OF THE SECURITIES
EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Kaleidoscope Media Group, Inc., Keo International, Inc., Kideo Productions, Inc., Kiwi International Air Lines, Inc., KP Wingate Insured Partners LP, Krisch American Inns, Inc., Krupp Realty L.P. IV, and Krupp Realty L.P. VII.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Kaleidoscope Media Group, Inc. (CIK No. 848447) is a void Delaware corporation located in New York, New York with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Kaleidoscope is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2001, which reported a net loss of \$229,209 for the prior three months. As of August 28, 2008, the

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company's common stock (symbol "KMGG") was traded on the over-the-counter markets.

2. Keo International, Inc. (CIK No. 1114449) is a dissolved Delaware corporation located in New York, New York with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Keo is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB amended registration statement on July 25, 2000, which reported a net loss of \$45,385 since inception of April 5, 1999 to June 30, 2000.

3. Kideo Productions, Inc. (CIK No. 946073) is a void Delaware corporation located in New York, New York with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Kideo is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended April 30, 2000, which reported a net loss of over \$1.5 million for the prior nine months.

4. Kiwi International Air Lines, Inc. (CIK No. 889013) is a New Jersey corporation located in Newark, New Jersey with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Kiwi is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 1996, which reported a net loss of over \$5.3 million for the prior nine months.

5. KP Wingate Insured Partners LP (CIK No. 814826) is a canceled Massachusetts limited partnership located in Boston, Massachusetts with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). KP is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 1997.

6. Krisch American Inns, Inc. (CIK No. 799099) is a Virginia corporation located in Roanoke, Virginia with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Krisch is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 1993, which reported a net loss of \$47,298 for the prior nine months. On January 31, 1994, Krisch filed a Chapter 7 petition in the U.S. Bankruptcy Court for the Western District of Virginia, and the case was terminated on November 6, 1996.

7. Krupp Realty L.P. IV (CIK No. 710389) is a canceled Massachusetts limited partnership located in Boston, Massachusetts with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Krupp is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed an amended Form 10-Q for the period ended September 30, 2002.

8. Krupp Realty L.P. VII (CIK No. 751570) is a canceled Massachusetts limited partnership located in Boston, Massachusetts with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Krupp is delinquent in its

periodic filings with the Commission, having not filed any periodic reports since it filed an amended Form 10-Q for the period ended September 30, 2002.

B. DELINQUENT PERIODIC FILINGS

10. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

11. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires issuers to file quarterly reports.

12. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

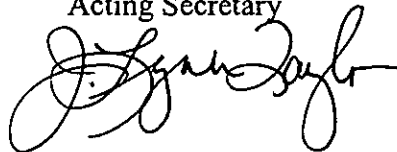
IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Attachment

Florence E. Harmon
Acting Secretary



By: J. Lynn Taylor
Assistant Secretary

Appendix 1

Chart of Delinquent Filings In The Matter of Kaleidoscope Media Group, Inc.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Kaleidoscope Media Group, Inc.	10-QSB	06/30/01	08/14/01	Not filed	84
	10-QSB	09/30/01	11/14/01	Not filed	81
	10-KSB	12/31/01	04/01/02	Not filed	76
	10-QSB	03/31/02	05/15/02	Not filed	75
	10-QSB	06/30/02	08/14/02	Not filed	72
	10-QSB	09/30/02	11/14/02	Not filed	69
	10-KSB	12/31/02	03/31/03	Not filed	65
	10-QSB	03/31/03	05/15/03	Not filed	63
	10-QSB	06/30/03	08/14/03	Not filed	60
	10-QSB	09/30/03	11/14/03	Not filed	57
	10-KSB	12/31/03	03/30/04	Not filed	53
	10-QSB	03/31/04	05/17/04	Not filed	51
	10-QSB	06/30/04	08/16/04	Not filed	48
	10-QSB	09/30/04	11/15/04	Not filed	45
	10-KSB	12/31/04	03/31/05	Not filed	41
	10-QSB	03/31/05	05/16/05	Not filed	39
	10-QSB	06/30/05	08/15/05	Not filed	36
	10-QSB	09/30/05	11/14/05	Not filed	33
	10-KSB	12/31/05	03/31/06	Not filed	29
	10-QSB	03/31/06	05/15/06	Not filed	27
	10-QSB	06/30/06	08/14/06	Not filed	24
	10-QSB	09/30/06	11/14/06	Not filed	21
	10-KSB	12/31/06	04/02/07	Not filed	16
	10-QSB	03/31/07	05/15/07	Not filed	15
	10-QSB	06/30/07	08/14/07	Not filed	12
	10-QSB	09/30/07	11/14/07	Not filed	9
	10-KSB	12/31/07	03/30/08	Not filed	5
	10-Q ¹	03/31/08	05/16/08	Not filed	3
	10-Q	06/30/08	08/15/08	Not filed	0

Total Filings Delinquent 29

¹ Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Keo International, Inc.					
	10-QSB	09/30/00	11/14/00	Not filed	93
	10-QSB	12/31/00	02/14/01	Not filed	90
	10-KSB	03/31/01	06/29/01	Not filed	86
	10-QSB	06/30/01	08/14/01	Not filed	84
	10-QSB	09/30/01	11/14/01	Not filed	81
	10-QSB	12/31/01	02/14/02	Not filed	78
	10-KSB	03/31/02	07/01/02	Not filed	73
	10-QSB	06/30/02	08/14/02	Not filed	72
	10-QSB	09/30/02	11/14/02	Not filed	69
	10-QSB	12/31/02	02/14/03	Not filed	66
	10-KSB	03/31/03	06/30/03	Not filed	62
	10-QSB	06/30/03	08/14/03	Not filed	60
	10-QSB	09/30/03	11/14/03	Not filed	57
	10-QSB	12/31/03	02/17/04	Not filed	54
	10-KSB	03/31/04	06/29/04	Not filed	50
	10-QSB	06/30/04	08/16/04	Not filed	48
	10-QSB	09/30/04	11/15/04	Not filed	45
	10-QSB	12/31/04	02/14/05	Not filed	42
	10-KSB	03/31/05	06/29/05	Not filed	38
	10-QSB	06/30/05	08/15/05	Not filed	36
	10-QSB	09/30/05	11/14/05	Not filed	33
	10-QSB	12/31/05	02/14/06	Not filed	30
	10-KSB	03/31/06	06/29/06	Not filed	26
	10-QSB	06/30/06	08/14/06	Not filed	24
	10-QSB	09/30/06	11/14/06	Not filed	21
	10-QSB	12/31/06	02/14/07	Not filed	18
	10-KSB	03/31/07	06/29/07	Not filed	14
	10-QSB	06/30/07	08/14/07	Not filed	12
	10-QSB	09/30/07	11/14/07	Not filed	9
	10-QSB	12/31/07	02/14/08	Not filed	6
	10-KSB	03/31/08	06/30/08	Not filed	2
	10-Q	06/30/08	08/14/08	Not filed	0

Total Filings Delinquent 32

Kideo Productions, Inc.

10-KSB	07/31/00	10/30/00	Not filed	94
10-QSB	10/31/00	12/15/00	Not filed	92
10-QSB	01/31/01	03/19/01	Not filed	89

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Kideo Productions, Inc.					
	10-QSB	04/30/01	06/14/01	Not filed	86
	10-KSB	07/31/01	10/29/01	Not filed	82
	10-QSB	10/31/01	12/17/01	Not filed	80
	10-QSB	01/31/02	03/18/02	Not filed	77
	10-QSB	04/30/02	06/14/02	Not filed	74
	10-KSB	07/31/02	10/29/02	Not filed	70
	10-QSB	10/31/02	12/16/02	Not filed	68
	10-QSB	01/31/03	03/17/03	Not filed	65
	10-QSB	04/30/03	06/16/03	Not filed	62
	10-KSB	07/31/03	10/29/03	Not filed	58
	10-QSB	10/31/03	12/15/03	Not filed	56
	10-QSB	01/31/04	03/16/04	Not filed	53
	10-QSB	04/30/04	06/14/04	Not filed	50
	10-KSB	07/31/04	10/29/04	Not filed	46
	10-QSB	10/31/04	12/15/04	Not filed	44
	10-QSB	01/31/05	03/17/05	Not filed	41
	10-QSB	04/30/05	06/14/05	Not filed	38
	10-KSB	07/31/05	10/31/05	Not filed	34
	10-QSB	10/31/05	12/15/05	Not filed	32
	10-QSB	01/31/06	03/17/06	Not filed	29
	10-QSB	04/30/06	06/14/06	Not filed	26
	10-KSB	07/31/06	10/30/06	Not filed	22
	10-QSB	10/31/06	12/15/06	Not filed	20
	10-QSB	01/31/07	03/19/07	Not filed	17
	10-QSB	04/30/07	06/14/07	Not filed	14
	10-KSB	07/31/07	10/29/07	Not filed	10
	10-QSB	10/31/07	12/17/07	Not filed	8
	10-QSB	01/31/08	03/17/08	Not filed	5
	10-QSB	04/30/08	06/16/08	Not filed	2

Total Filings Delinquent 32

Kiwi International Air Lines, Inc.

10-K	12/31/96	03/31/97	Not filed	137
10-Q	03/31/97	05/15/97	Not filed	135
10-Q	06/30/97	08/14/97	Not filed	132
10-Q	09/30/97	11/14/97	Not filed	129
10-K	12/31/97	03/31/98	Not filed	125
10-Q	03/31/98	05/15/98	Not filed	123
10-Q	06/30/98	08/14/98	Not filed	120
10-Q	09/30/98	11/16/98	Not filed	117
10-K	12/31/98	03/31/99	Not filed	113

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Kiwi International Air Lines, Inc.	10-Q	03/31/99	05/17/99	Not filed	111
	10-Q	06/30/99	08/16/99	Not filed	108
	10-Q	09/30/99	11/15/99	Not filed	105
	10-K	12/31/99	03/30/00	Not filed	101
	10-Q	03/31/00	05/15/00	Not filed	99
	10-Q	06/30/00	08/14/00	Not filed	96
	10-Q	09/30/00	11/14/00	Not filed	93
	10-K	12/31/00	04/02/01	Not filed	88
	10-Q	03/31/01	05/15/01	Not filed	87
	10-Q	06/30/01	08/14/01	Not filed	84
	10-Q	09/30/01	11/14/01	Not filed	81
	10-K	12/31/01	04/01/02	Not filed	76
	10-Q	03/31/02	05/15/02	Not filed	75
	10-Q	06/30/02	08/14/02	Not filed	72
	10-Q	09/30/02	11/14/02	Not filed	69
	10-K	12/31/02	03/31/03	Not filed	65
	10-Q	03/31/03	05/15/03	Not filed	63
	10-Q	06/30/03	08/14/03	Not filed	60
	10-Q	09/30/03	11/14/03	Not filed	57
	10-K	12/31/03	03/30/04	Not filed	53
	10-Q	03/31/04	05/17/04	Not filed	51
	10-Q	06/30/04	08/16/04	Not filed	48
	10-Q	09/30/04	11/15/04	Not filed	45
	10-K	12/31/04	03/31/05	Not filed	41
	10-Q	03/31/05	05/16/05	Not filed	39
	10-Q	06/30/05	08/15/05	Not filed	36
	10-Q	09/30/05	11/14/05	Not filed	33
	10-K	12/31/05	03/31/06	Not filed	29
	10-Q	03/31/06	05/15/06	Not filed	27
	10-Q	06/30/06	08/14/06	Not filed	24
	10-Q	09/30/06	11/14/06	Not filed	21
	10-K	12/31/06	04/02/07	Not filed	16
	10-Q	03/31/07	05/15/07	Not filed	15
	10-Q	06/30/07	08/14/07	Not filed	12
	10-Q	09/30/07	11/14/07	Not filed	9
	10-K	12/31/07	03/30/08	Not filed	5
	10-Q	03/31/08	05/16/08	Not filed	3
	10-Q	06/30/08	08/15/08	Not filed	0

Total Filings Delinquent

47

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
KP Wingate Insured Partners LP					
	10-K	12/31/97	03/31/98	Not filed	125
	10-Q	03/31/98	05/15/98	Not filed	123
	10-Q	06/30/98	08/14/98	Not filed	120
	10-Q	09/30/98	11/16/98	Not filed	117
	10-K	12/31/98	03/31/99	Not filed	113
	10-Q	03/31/99	05/17/99	Not filed	111
	10-Q	06/30/99	08/16/99	Not filed	108
	10-Q	09/30/99	11/15/99	Not filed	105
	10-K	12/31/99	03/30/00	Not filed	101
	10-Q	03/31/00	05/15/00	Not filed	99
	10-Q	06/30/00	08/14/00	Not filed	96
	10-Q	09/30/00	11/14/00	Not filed	93
	10-K	12/31/00	04/02/01	Not filed	88
	10-Q	03/31/01	05/15/01	Not filed	87
	10-Q	06/30/01	08/14/01	Not filed	84
	10-Q	09/30/01	11/14/01	Not filed	81
	10-K	12/31/01	04/01/02	Not filed	76
	10-Q	03/31/02	05/15/02	Not filed	75
	10-Q	06/30/02	08/14/02	Not filed	72
	10-Q	09/30/02	11/14/02	Not filed	69
	10-K	12/31/02	03/31/03	Not filed	65
	10-Q	03/31/03	05/15/03	Not filed	63
	10-Q	06/30/03	08/14/03	Not filed	60
	10-Q	09/30/03	11/14/03	Not filed	57
	10-K	12/31/03	03/30/04	Not filed	53
	10-Q	03/31/04	05/17/04	Not filed	51
	10-Q	06/30/04	08/16/04	Not filed	48
	10-Q	09/30/04	11/15/04	Not filed	45
	10-K	12/31/04	03/31/05	Not filed	41
	10-Q	03/31/05	05/16/05	Not filed	39
	10-Q	06/30/05	08/15/05	Not filed	36
	10-Q	09/30/05	11/14/05	Not filed	33
	10-K	12/31/05	03/31/06	Not filed	29
	10-Q	03/31/06	05/15/06	Not filed	27
	10-Q	06/30/06	08/14/06	Not filed	24
	10-Q	09/30/06	11/14/06	Not filed	21
	10-K	12/31/06	04/02/07	Not filed	16
	10-Q	03/31/07	05/15/07	Not filed	15
	10-Q	06/30/07	08/14/07	Not filed	12

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
KP Wingate Insured Partners LP					
	10-Q	09/30/07	11/14/07	Not filed	9
	10-K	12/31/07	03/30/08	Not filed	5
	10-Q	03/31/08	05/16/08	Not filed	3
	10-Q	06/30/08	08/15/08	Not filed	0

Total Filings Delinquent 43

Krisch American Inns, Inc.

10-K	12/31/93	03/31/94	Not filed	173
10-Q	03/31/94	05/16/94	Not filed	171
10-Q	06/30/94	08/15/94	Not filed	168
10-Q	09/30/94	11/14/94	Not filed	165
10-K	12/31/94	03/31/95	Not filed	161
10-Q	03/31/95	05/15/95	Not filed	159
10-Q	06/30/95	08/14/95	Not filed	156
10-Q	09/30/95	11/14/95	Not filed	153
10-K	12/31/95	04/01/96	Not filed	148
10-Q	03/31/96	05/15/96	Not filed	147
10-Q	06/30/96	08/14/96	Not filed	144
10-Q	09/30/96	11/14/96	Not filed	141
10-K	12/31/96	03/31/97	Not filed	137
10-Q	03/31/97	05/15/97	Not filed	135
10-Q	06/30/97	08/14/97	Not filed	132
10-Q	09/30/97	11/14/97	Not filed	129
10-K	12/31/97	03/31/98	Not filed	125
10-Q	03/31/98	05/15/98	Not filed	123
10-Q	06/30/98	08/14/98	Not filed	120
10-Q	09/30/98	11/16/98	Not filed	117
10-K	12/31/98	03/31/99	Not filed	113
10-Q	03/31/99	05/17/99	Not filed	111
10-Q	06/30/99	08/16/99	Not filed	108
10-Q	09/30/99	11/15/99	Not filed	105
10-K	12/31/99	03/30/00	Not filed	101
10-Q	03/31/00	05/15/00	Not filed	99
10-Q	06/30/00	08/14/00	Not filed	96
10-Q	09/30/00	11/14/00	Not filed	93
10-K	12/31/00	04/02/01	Not filed	88
10-Q	03/31/01	05/15/01	Not filed	87

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Krisch American Inns, Inc.					
	10-Q	06/30/01	08/14/01	Not filed	84
	10-Q	09/30/01	11/14/01	Not filed	81
	10-K	12/31/01	04/01/02	Not filed	76
	10-Q	03/31/02	05/15/02	Not filed	75
	10-Q	06/30/02	08/14/02	Not filed	72
	10-Q	09/30/02	11/14/02	Not filed	69
	10-K	12/31/02	03/31/03	Not filed	65
	10-Q	03/31/03	05/15/03	Not filed	63
	10-Q	06/30/03	08/14/03	Not filed	60
	10-Q	09/30/03	11/14/03	Not filed	57
	10-K	12/31/03	03/30/04	Not filed	53
	10-Q	03/31/04	05/17/04	Not filed	51
	10-Q	06/30/04	08/16/04	Not filed	48
	10-Q	09/30/04	11/15/04	Not filed	45
	10-K	12/31/04	03/31/05	Not filed	41
	10-Q	03/31/05	05/16/05	Not filed	39
	10-Q	06/30/05	08/15/05	Not filed	36
	10-Q	09/30/05	11/14/05	Not filed	33
	10-K	12/31/05	03/31/06	Not filed	29
	10-Q	03/31/06	05/15/06	Not filed	27
	10-Q	06/30/06	08/14/06	Not filed	24
	10-Q	09/30/06	11/14/06	Not filed	21
	10-K	12/31/06	04/02/07	Not filed	16
	10-Q	03/31/07	05/15/07	Not filed	15
	10-Q	06/30/07	08/14/07	Not filed	12
	10-Q	09/30/07	11/14/07	Not filed	9
	10-K	12/31/07	03/30/08	Not filed	5
	10-Q	03/31/08	05/16/08	Not filed	3
	10-Q	06/30/08	08/15/08	Not filed	0

Total Filings Delinquent 59

Krupp Realty L.P. IV

10-K	12/31/02	03/31/03	Not filed	65
10-Q	03/31/03	05/15/03	Not filed	63
10-Q	06/30/03	08/14/03	Not filed	60
10-Q	09/30/03	11/14/03	Not filed	57
10-K	12/31/03	03/30/04	Not filed	53
10-Q	03/31/04	05/17/04	Not filed	51
10-Q	06/30/04	08/16/04	Not filed	48
10-Q	09/30/04	11/15/04	Not filed	45
10-K	12/31/04	03/31/05	Not filed	41
10-Q	03/31/05	05/16/05	Not filed	39

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Krupp Realty L.P. IV					
	10-Q	06/30/05	08/15/05	Not filed	36
	10-Q	09/30/05	11/14/05	Not filed	33
	10-K	12/31/05	03/31/06	Not filed	29
	10-Q	03/31/06	05/15/06	Not filed	27
	10-Q	06/30/06	08/14/06	Not filed	24
	10-Q	09/30/06	11/14/06	Not filed	21
	10-K	12/31/06	04/02/07	Not filed	16
	10-Q	03/31/07	05/15/07	Not filed	15
	10-Q	06/30/07	08/14/07	Not filed	12
	10-Q	09/30/07	11/14/07	Not filed	9
	10-K	12/31/07	03/30/08	Not filed	5
	10-Q	03/31/08	05/16/08	Not filed	3
	10-Q	06/30/08	08/15/08	Not filed	0

Total Filings Delinquent 23

Krupp Realty L.P. VII					
	10-K	12/31/02	03/31/03	Not filed	65
	10-Q	03/31/03	05/15/03	Not filed	63
	10-Q	06/30/03	08/14/03	Not filed	60
	10-Q	09/30/03	11/14/03	Not filed	57
	10-K	12/31/03	03/30/04	Not filed	53
	10-Q	03/31/04	05/17/04	Not filed	51
	10-Q	06/30/04	08/16/04	Not filed	48
	10-Q	09/30/04	11/15/04	Not filed	45
	10-K	12/31/04	03/31/05	Not filed	41
	10-Q	03/31/05	05/16/05	Not filed	39
	10-Q	06/30/05	08/15/05	Not filed	36
	10-Q	09/30/05	11/14/05	Not filed	33
	10-K	12/31/05	03/31/06	Not filed	29
	10-Q	03/31/06	05/15/06	Not filed	27
	10-Q	06/30/06	08/14/06	Not filed	24
	10-Q	09/30/06	11/14/06	Not filed	21
	10-K	12/31/06	04/02/07	Not filed	16
	10-Q	03/31/07	05/15/07	Not filed	15
	10-Q	06/30/07	08/14/07	Not filed	12
	10-Q	09/30/07	11/14/07	Not filed	9
	10-K	12/31/07	03/30/08	Not filed	5
	10-Q	03/31/08	05/16/08	Not filed	3
	10-Q	06/30/08	08/15/08	Not filed	0

Total Filings Delinquent 23

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 5, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13160

In the Matter of

**Karts International, Inc.,
Keith Group of Companies, Inc., and
KMS Industries, Inc.,**

Respondents.

**ORDER INSTITUTING
PROCEEDINGS AND NOTICE OF
HEARING PURSUANT TO SECTION
12(j) OF THE SECURITIES
EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Karts International, Inc., Keith Group of Companies, Inc., and KMS Industries, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Karts International, Inc. (CIK No. 1010077) is a Nevada corporation located in Hammond, Louisiana with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Karts is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2001, which reported a net loss of over \$4.9 million for the prior nine months.

2. Keith Group of Companies, Inc. (CIK No. 803656) is a void Delaware corporation located in Hallandale, Florida with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Keith Group is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended May 31, 1994.

4 of 11

3. KMS Industries, Inc. (CIK No. 56356) is a forfeited Delaware corporation located in Ann Arbor, Michigan with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). KMS is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2006, which reported a net loss of \$500,000 for the prior nine months.

B. DELINQUENT PERIODIC FILINGS

4. As discussed in more detail above, all of the respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

5. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires issuers to file quarterly reports.

6. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

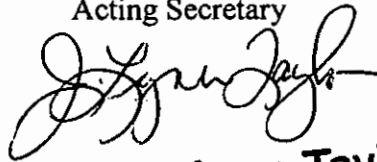
IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Attachment

Florence E. Harmon
Acting Secretary



By: J. Lynn Taylor
Assistant Secretary

Appendix 1

Chart of Delinquent Filings *In the Matter of Karts International, Inc., et al.*

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Karts International, Inc.					
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/30/08	Not filed	6
	10-Q ¹	03/31/08	05/16/08	Not filed	4
	10-Q	06/30/08	08/15/08	Not filed	1
Total Filings Delinquent		27			

¹Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

Company Name

Form Type

Period Ended

Due Date

Date
Received

Months
Delinquent
(rounded up)

**Keith Group of
Companies, Inc.**

10-K	08/31/94	11/29/94	Not filed	166
10-Q	11/30/94	01/16/95	Not filed	164
10-Q	02/28/95	04/14/95	Not filed	161
10-Q	05/31/95	07/17/95	Not filed	158
10-K	08/31/95	11/29/95	Not filed	154
10-Q	11/30/95	01/16/96	Not filed	152
10-Q	02/28/96	04/15/96	Not filed	149
10-Q	05/31/96	07/15/96	Not filed	146
10-K	08/31/96	11/29/96	Not filed	142
10-Q	11/30/96	01/14/97	Not filed	140
10-Q	02/28/97	04/14/97	Not filed	137
10-Q	05/31/97	07/15/97	Not filed	134
10-K	08/31/97	12/01/97	Not filed	129
10-Q	11/30/97	01/14/98	Not filed	128
10-Q	02/28/98	04/14/98	Not filed	125
10-Q	05/31/98	07/15/98	Not filed	122
10-K	08/31/98	11/30/98	Not filed	118
10-Q	11/30/98	01/14/99	Not filed	116
10-Q	02/28/99	04/14/99	Not filed	113
10-Q	05/31/99	07/15/99	Not filed	110
10-K	08/31/99	11/29/99	Not filed	106
10-Q	11/30/99	01/14/00	Not filed	104
10-Q	02/29/00	04/14/00	Not filed	101
10-Q	05/31/00	07/17/00	Not filed	98
10-K	08/31/00	11/29/00	Not filed	94
10-Q	11/30/00	01/16/01	Not filed	92
10-Q	02/28/01	04/16/01	Not filed	89
10-Q	05/31/01	07/16/01	Not filed	86
10-K	08/31/01	11/29/01	Not filed	82
10-Q	11/30/01	01/14/02	Not filed	80
10-Q	02/28/02	04/15/02	Not filed	77
10-Q	05/31/02	07/15/02	Not filed	74
10-K	08/31/02	11/29/02	Not filed	70
10-Q	11/30/02	01/14/03	Not filed	68
10-Q	02/28/03	04/14/03	Not filed	65
10-Q	05/31/03	07/15/03	Not filed	62
10-K	08/31/03	12/01/03	Not filed	57
10-Q	11/30/03	01/14/04	Not filed	56
10-Q	02/28/04	04/13/04	Not filed	53
10-Q	05/31/04	07/15/04	Not filed	50
10-K	08/31/04	11/29/04	Not filed	46
10-Q	11/30/04	01/14/05	Not filed	44
10-Q	02/28/05	04/14/05	Not filed	41
10-Q	05/31/05	07/15/05	Not filed	38
10-K	08/31/05	11/29/05	Not filed	34

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Keith Group of					
	10-Q	11/30/05	01/16/06	Not filed	32
	10-Q	02/28/06	04/14/06	Not filed	29
	10-Q	05/31/06	07/17/06	Not filed	26
	10-K	08/31/06	11/29/06	Not filed	22
	10-Q	11/30/06	01/16/07	Not filed	20
	10-Q	02/28/07	04/16/07	Not filed	17
	10-Q	05/31/07	07/16/07	Not filed	14
	10-K	08/31/07	11/29/07	Not filed	10
	10-Q	11/30/07	01/14/08	Not filed	8
	10-Q	02/28/08	04/14/08	Not filed	5
	10-Q	05/31/08	07/16/08	Not filed	2
Total Filings Delinquent	56				

KMS Industries, Inc.

10-KSB	12/31/96	03/31/97	Not filed	138
10-QSB	03/31/97	05/15/97	Not filed	136
10-QSB	06/30/97	08/14/97	Not filed	133
10-QSB	09/30/97	11/14/97	Not filed	130
10-KSB	12/31/97	03/31/98	Not filed	126
10-QSB	03/31/98	05/15/98	Not filed	124
10-QSB	06/30/98	08/14/98	Not filed	121
10-QSB	09/30/98	11/16/98	Not filed	118
10-KSB	12/31/98	03/31/99	Not filed	114
10-QSB	03/31/99	05/17/99	Not filed	112
10-QSB	06/30/99	08/16/99	Not filed	109
10-QSB	09/30/99	11/15/99	Not filed	106
10-KSB	12/31/99	03/30/00	Not filed	102
10-QSB	03/31/00	05/15/00	Not filed	100
10-QSB	06/30/00	08/14/00	Not filed	97
10-QSB	09/30/00	11/14/00	Not filed	94

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
KMS Industries, Inc.					
	10-KSB	12/31/00	04/02/01	Not filed	89
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-QSB	06/30/01	08/14/01	Not filed	85
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/30/08	Not filed	6
	10-Q	03/31/08	05/16/08	Not filed	4
	10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent	47
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FOIA

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 9, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13174

In the Matter of

StyleSite Marketing, Inc. and
Supreme Equipment & Systems Corp.,

Respondents.

ORDER INSTITUTING PROCEEDINGS
AND NOTICE OF HEARING PURSUANT
TO SECTION 12(j) OF THE SECURITIES
EXCHANGE ACT

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against StyleSite Marketing, Inc. and Supreme Equipment & Systems Corp..

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. StyleSite Marketing, Inc. (CIK No. 910319) is a void Delaware corporation located in Teaneck, New Jersey with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). StyleSite is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q/A for the period ended June 30, 1999, which reported a net loss of \$22 million for the prior nine months. StyleSite's common stock (symbol "SSMKQ") is quoted on the Pink Sheets, has two market makers, and is eligible for the piggy back exception of Exchange Act Rule 15c2-11(f)(3).

2. Supreme Equipment & Systems Corp. (CIK No. 95620) is an inactive New York corporation located in Brooklyn, New York with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Supreme is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended April 30, 1993. Supreme's common stock (symbol "SEQP") is traded on the over-the-counter markets.

B. DELINQUENT PERIODIC FILINGS

3. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

4. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

5. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary

Attachment

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

Appendix 1

Chart of Delinquent Filings In the Matter of StyleSite Marketing, Inc., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
StyleSite Marketing, Inc.	10-K	09/30/99	12/29/99	Not filed	105
	10-Q	12/31/99	02/14/00	Not filed	103
	10-Q	03/31/00	05/15/00	Not filed	100
	10-Q	06/30/00	08/14/00	Not filed	97
	10-K	09/30/00	12/29/00	Not filed	93
	10-Q	12/31/00	02/14/01	Not filed	91
	10-Q	03/31/01	05/15/01	Not filed	88
	10-Q	06/30/01	08/14/01	Not filed	85
	10-K	09/30/01	12/31/01	Not filed	81
	10-Q	12/31/01	02/14/02	Not filed	79
	10-Q	03/31/02	05/15/02	Not filed	76
	10-Q	06/30/02	08/14/02	Not filed	73
	10-K	09/30/02	12/30/02	Not filed	69
	10-Q	12/31/02	02/14/03	Not filed	67
	10-Q	03/31/03	05/15/03	Not filed	64
	10-Q	06/30/03	08/14/03	Not filed	61
	10-K	09/30/03	12/29/03	Not filed	57
	10-Q	12/31/03	02/17/04	Not filed	55
	10-Q	03/31/04	05/17/04	Not filed	52
	10-Q	06/30/04	08/16/04	Not filed	49
	10-K	09/30/04	12/29/04	Not filed	45
	10-Q	12/31/04	02/14/05	Not filed	43
	10-Q	03/31/05	05/16/05	Not filed	40
	10-Q	06/30/05	08/15/05	Not filed	37
	10-K	09/30/05	12/29/05	Not filed	33
	10-Q	12/31/05	02/14/06	Not filed	31
	10-Q	03/31/06	05/15/06	Not filed	28
	10-Q	06/30/06	08/14/06	Not filed	25
	10-K	09/30/06	12/29/06	Not filed	21

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
StyleSite Marketing, Inc.	10-Q	12/31/06	02/14/07	Not filed	19
(continued)	10-Q	03/31/07	05/15/07	Not filed	16
	10-Q	06/30/07	08/14/07	Not filed	13
	10-K	09/30/07	12/31/07	Not filed	9
	10-Q	12/31/07	Thursday	Not filed	7
	10-Q	03/31/08	Thursday	Not filed	4
	10-Q	06/30/08	Thursday	Not filed	1

Total Filings Delinquent 36

**Supreme Equipment
& Systems Corp.**

10-K	07/31/93	10/29/93	Not filed	179
10-Q	10/31/93	12/15/93	Not filed	177
10-Q	01/31/94	03/17/94	Not filed	174
10-Q	04/30/94	06/14/94	Not filed	171
10-K	07/31/94	10/31/94	Not filed	167
10-Q	10/31/94	12/15/94	Not filed	165
10-Q	01/31/95	03/17/95	Not filed	162
10-Q	04/30/95	06/14/95	Not filed	159
10-K	07/31/95	10/30/95	Not filed	155
10-Q	10/31/95	12/15/95	Not filed	153
10-Q	01/31/96	03/18/96	Not filed	150
10-Q	04/30/96	06/14/96	Not filed	147
10-K	07/31/96	10/29/96	Not filed	143
10-Q	10/31/96	12/16/96	Not filed	141
10-Q	01/31/97	03/17/97	Not filed	138
10-Q	04/30/97	06/16/97	Not filed	135
10-K	07/31/97	10/29/97	Not filed	131
10-Q	10/31/97	12/15/97	Not filed	129
10-Q	01/31/98	03/17/98	Not filed	126
10-Q	04/30/98	06/15/98	Not filed	123
10-K	07/31/98	10/29/98	Not filed	119
10-Q	10/31/98	12/15/98	Not filed	117
10-Q	01/31/99	03/17/99	Not filed	114
10-Q	04/30/99	06/14/99	Not filed	111
10-K	07/31/99	10/29/99	Not filed	107
10-Q	10/31/99	12/15/99	Not filed	105
10-Q	01/31/00	03/16/00	Not filed	102

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Supreme Equipment & Systems Corp. (continued)	10-Q	04/30/00	06/14/00	Not filed	99
	10-K	07/31/00	10/30/00	Not filed	95
	10-Q	10/31/00	12/15/00	Not filed	93
	10-Q	01/31/01	03/19/01	Not filed	90
	10-Q	04/30/01	06/14/01	Not filed	87
	10-K	07/31/01	10/29/01	Not filed	83
	10-Q	10/31/01	12/17/01	Not filed	81
	10-Q	01/31/02	03/18/02	Not filed	78
	10-Q	04/30/02	06/14/02	Not filed	75
	10-K	07/31/02	10/29/02	Not filed	71
	10-Q	10/31/02	12/16/02	Not filed	69
	10-Q	01/31/03	03/17/03	Not filed	66
	10-Q	04/30/03	06/16/03	Not filed	63
	10-K	07/31/03	10/29/03	Not filed	59
	10-Q	10/31/03	12/15/03	Not filed	57
	10-Q	01/31/04	03/16/04	Not filed	54
	10-Q	04/30/04	06/14/04	Not filed	51
	10-K	07/31/04	10/29/04	Not filed	47
	10-Q	10/31/04	12/15/04	Not filed	45
	10-Q	01/31/05	03/17/05	Not filed	42
	10-Q	04/30/05	06/14/05	Not filed	39
	10-K	07/31/05	10/31/05	Not filed	35
	10-Q	10/31/05	12/15/05	Not filed	33
	10-Q	01/31/06	03/17/06	Not filed	30
	10-Q	04/30/06	06/14/06	Not filed	27
	10-K	07/31/06	10/30/06	Not filed	23
	10-Q	10/31/06	12/15/06	Not filed	21
	10-Q	01/31/07	03/19/07	Not filed	18
	10-Q	04/30/07	06/14/07	Not filed	15
	10-K	07/31/07	10/29/07	Not filed	11
	10-Q	10/31/07	12/17/07	Not filed	9
	10-Q	01/31/08	03/17/08	Not filed	6
	10-Q	04/30/08	06/16/08	Not filed	3
Total Filings Delinquent		60			

Form

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 15, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13196

In the Matter of

Webservices Innovations, Ltd.,
Westar Financial Services, Inc.,
Winsor & Eton Golf
Concepts, Inc., and
Wiskers Acquisition Corp.,

Respondents.

ORDER INSTITUTING
PROCEEDINGS AND NOTICE
OF HEARING PURSUANT TO
SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT
OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Webservices Innovations, Ltd., Westar Financial Services, Inc., Winsor & Eton Golf Concepts, Inc., and Wiskers Acquisition Corp.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Webservices Innovations, Ltd. (CIK No. 1087026) is a revoked Nevada corporation located in San Juan Capistrano, California with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Webservices is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2002, which reported a net loss of \$203,429 since inception in 1999.

2. Westar Financial Services, Inc. (CIK No. 761682) is an inactive Washington corporation located in Tumwater, Washington with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Westar is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2001.

3. Winsor & Eton Golf Concepts, Inc. (CIK No. 1130063) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Winsor & Eton is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on February 22, 2001, which went effective on April 23, 2001.

4. Wiskers Acquisition Corp. (CIK No. 1122151) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Wiskers is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2001, which reported a net loss of \$1,500 since inception in 2000.

B. DELINQUENT PERIODIC FILINGS

5. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

6. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports; and Rule 13a-13 requires issuers to file quarterly reports.

7. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.


Florence E. Harmon
Acting Secretary

Attachment

Appendix 1

Chart of Delinquent Filings In the Matter of Webservices Innovations, Ltd., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Webservices Innovations, Ltd.					
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent	24				
Westar Financial Services, Inc.					
	10-Q	12/31/01	02/14/02	Not filed	79
	10-K	03/31/02	07/01/02	Not filed	74
	10-Q	06/30/02	08/14/02	Not filed	73

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Westar Financial Services, Inc.					
	10-Q	09/30/02	11/14/02	Not filed	70
	10-Q	12/31/02	02/14/03	Not filed	67
	10-K	03/31/03	06/30/03	Not filed	63
	10-Q	06/30/03	08/14/03	Not filed	61
	10-Q	09/30/03	11/14/03	Not filed	58
	10-Q	12/31/03	02/17/04	Not filed	55
	10-K	03/31/04	06/29/04	Not filed	51
	10-Q	06/30/04	08/16/04	Not filed	49
	10-Q	09/30/04	11/15/04	Not filed	46
	10-Q	12/31/04	02/14/05	Not filed	43
	10-K	03/31/05	06/29/05	Not filed	39
	10-Q	06/30/05	08/15/05	Not filed	37
	10-Q	09/30/05	11/14/05	Not filed	34
	10-Q	12/31/05	02/14/06	Not filed	31
	10-K	03/31/06	06/29/06	Not filed	27
	10-Q	06/30/06	08/14/06	Not filed	25
	10-Q	09/30/06	11/14/06	Not filed	22
	10-Q	12/31/06	02/14/07	Not filed	19
	10-K	03/31/07	06/29/07	Not filed	15
	10-Q	06/30/07	08/14/07	Not filed	13
	10-Q	09/30/07	11/14/07	Not filed	10
	10-Q	12/31/07	02/14/08	Not filed	7
	10-K	03/31/08	06/30/08	Not filed	3
	10-Q	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent

27

Winsor & Eton Golf Concepts, Inc.

10-QSB	03/31/01	06/07/01	Not filed	87
10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Winsor & Eton Golf Concepts, Inc.					
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent 30

Wiskers Acquisition Corp.

10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Wiskers Acquisition Corp.					
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent		29			

SECURITIES AND EXCHANGE COMMISSION

This file is maintained pursuant to the Freedom of Information Act (5 U.S.C. 552). It contains a copy of each decision, order, rule or similar action of the Commission, for September 2008, with respect to which the final votes of individual Members of the Commission are required to be made available for public inspection pursuant to the provisions of that Act. Commissioner Atkins was Commissioner from July 20, 2002 to August 1, 2008.

Unless otherwise noted, each of the following individual Members of the Commission voted affirmatively upon each action of the Commission shown in the file:

CHRISTOPHER COX, CHAIRMAN

PAUL S. ATKINS, COMMISSIONER

KATHLEEN L. CASEY, COMMISSIONER

ELISSE B. WALTER, COMMISSIONER

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 5, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13161

In the Matter of

**MAII Holdings, Inc.,
Tandycrafts, Inc., and
Transportation Equities, Inc.,

Respondents.**

**ORDER INSTITUTING PROCEEDINGS
AND NOTICE OF HEARING PURSUANT
TO SECTION 12(j) OF THE SECURITIES
EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents MAII Holdings, Inc., Tandycrafts, Inc., and Transportation Equities, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. MAII Holdings, Inc. (CIK No. 1018913) is a Texas corporation located in Van Nuys, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). MAII is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 2002, which reported a net loss of \$710,667 for the prior three months. On February 7, 2005, an involuntary Chapter 7 petition was filed against MAII in the U.S. Bankruptcy Court for the Northern District of Texas, and the case was closed on August 29, 2005. As of September 4, 2008, the company's common stock (symbol "MAII") was traded on the over-the-counter markets.

2. Tandycrafts, Inc. (CIK No. 96294) is a delinquent Delaware corporation located in Fort Worth, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(b). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2000, which reported a net loss of over \$6 million for the prior three months. On May 15, 2001, Tandycrafts filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Delaware, which is still pending.

3. Transportation Equities, Inc. (CIK No. 779954) is a dissolved Nevada corporation located in Garrison, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 1997, which reported a net loss of over \$7 million for the prior nine months. As of September 4, 2008, the company's stock (symbol "TEQT") was traded on the over-the-counter markets.

B. DELINQUENT PERIODIC FILINGS

4. As discussed in more detail above, all of the respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

5. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires domestic issuers to file quarterly reports.

6. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further

order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified or Express Mail, or by other means permitted by the Commission's Rules of Practice.

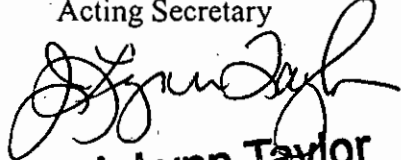
IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Attachment

Florence E. Harmon
Acting Secretary


By: J. Lynn Taylor
Assistant Secretary

Appendix 1

**Chart of Delinquent Filings
MAIL Holdings, Inc., et al.**

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
MAIL Holdings, Inc.					
	10-Q	09/30/02	11/14/02	Not filed	70
	10-K	12/31/02	03/31/03	Not filed	66
	10-Q	03/31/03	05/15/03	Not filed	64
	10-Q	06/30/03	08/14/03	Not filed	61
	10-Q	09/30/03	11/14/03	Not filed	58
	10-K	12/31/03	03/30/04	Not filed	54
	10-Q	03/31/04	05/17/04	Not filed	52
	10-Q	06/30/04	08/16/04	Not filed	49
	10-Q	09/30/04	11/15/04	Not filed	46
	10-K	12/31/04	03/31/05	Not filed	42
	10-Q	03/31/05	05/16/05	Not filed	40
	10-Q	06/30/05	08/15/05	Not filed	37
	10-Q	09/30/05	11/14/05	Not filed	34
	10-K	12/31/05	03/31/06	Not filed	30
	10-Q	03/31/06	05/15/06	Not filed	28
	10-Q	06/30/06	08/14/06	Not filed	25
	10-Q	09/30/06	11/14/06	Not filed	22
	10-K	12/31/06	04/02/07	Not filed	17
	10-Q	03/31/07	05/15/07	Not filed	16
	10-Q	06/30/07	08/14/07	Not filed	13
	10-Q	09/30/07	11/14/07	Not filed	10
	10-K	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent	24				
Tandycrafts, Inc.					
	10-K	06/30/00	09/28/00	Not filed	96
	10-Q	09/30/00	11/14/00	Not filed	94
	10-Q	12/31/00	02/14/01	Not filed	91
	10-Q	03/31/01	05/15/01	Not filed	88
	10-K	06/30/01	09/28/01	Not filed	84
	10-Q	09/30/01	11/14/01	Not filed	82
	10-Q	12/31/01	02/14/02	Not filed	79
	10-Q	03/31/02	05/15/02	Not filed	76
	10-K	06/30/02	09/30/02	Not filed	72

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Tandycrafts, Inc.					
	10-Q	09/30/02	11/14/02	Not filed	70
	10-Q	12/31/02	02/14/03	Not filed	67
	10-Q	03/31/03	05/15/03	Not filed	64
	10-K	06/30/03	09/29/03	Not filed	60
	10-Q	09/30/03	11/14/03	Not filed	58
	10-Q	12/31/03	02/17/04	Not filed	55
	10-Q	03/31/04	05/17/04	Not filed	52
	10-K	06/30/04	09/28/04	Not filed	48
	10-Q	09/30/04	11/15/04	Not filed	46
	10-Q	12/31/04	02/14/05	Not filed	43
	10-Q	03/31/05	05/16/05	Not filed	40
	10-K	06/30/05	09/28/05	Not filed	36
	10-Q	09/30/05	11/14/05	Not filed	34
	10-Q	12/31/05	02/14/06	Not filed	31
	10-Q	03/31/06	05/15/06	Not filed	28
	10-K	06/30/06	09/28/06	Not filed	24
	10-Q	09/30/06	11/14/06	Not filed	22
	10-Q	12/31/06	02/14/07	Not filed	19
	10-Q	03/31/07	05/15/07	Not filed	16
	10-K	06/30/07	09/28/07	Not filed	12
	10-Q	09/30/07	11/14/07	Not filed	10
	10-Q	12/31/07	02/14/08	Not filed	7
	10-Q	03/31/08	05/19/08	Not filed	2
Total Filings Delinquent	32				
Transportation Equities, Inc.					
	10-KSB	12/31/97	03/31/98	Not filed	126
	10-QSB	03/31/98	05/15/98	Not filed	124
	10-QSB	06/30/98	08/14/98	Not filed	121
	10-QSB	09/30/98	11/16/98	Not filed	118
	10-KSB	12/31/98	03/31/99	Not filed	114
	10-QSB	03/31/99	05/17/99	Not filed	112
	10-QSB	06/30/99	08/16/99	Not filed	109
	10-QSB	09/30/99	11/15/99	Not filed	106
	10-KSB	12/31/99	03/30/00	Not filed	102
	10-QSB	03/31/00	05/15/00	Not filed	100
	10-QSB	06/30/00	08/14/00	Not filed	97
	10-QSB	09/30/00	11/14/00	Not filed	94

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Transporatation Equities, Inc.					
	10-KSB	12/31/00	04/02/01	Not filed	89
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-QSB	06/30/01	08/14/01	Not filed	85
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q*	03/31/08	05/15/08	Not filed	4
	10-Q*	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent 33

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
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*Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

10-A

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

Securities Act of 1933
Release No. 8955 / September 5, 2008

In the Matter of

Prudential Financial, Inc.,
Respondent.

ORDER UNDER RULE 602(e) OF THE
SECURITIES ACT OF 1933 GRANTING A
WAIVER OF THE RULE 602(b)(4) and
602(c)(2) DISQUALIFICATION PROVISIONS.

I.

Prudential Financial, Inc. ("Prudential") has submitted a letter, dated July 1, 2008, requesting a waiver of the Rule 602(b)(4) and 602(c)(2) disqualifications from the exemption from registration under Regulation E arising from Prudential's settlement of a civil injunctive action commenced by the Commission.

II.

On August 6, 2008, the Commission filed a civil injunctive action in the United States District Court for the District of New Jersey charging Prudential, a provider of financial services, with violating the financial reporting, books-and-records, and internal control provisions of the Securities Exchange Act of 1934 ("Exchange Act"). In its complaint, the Commission alleged that from 1997 to 2002, Prudential's former property and casualty subsidiaries known as the Prupac companies ("Prupac") entered into a series of so-called finite reinsurance contracts with General Reinsurance Corporation ("Gen Re") that had no economic substance and no purpose other than to build up and then draw down on an off-balance sheet asset, or "bank," that Gen Re held for Prupac. Prupac built up the bank in 1997, 1998 and 1999 and then in 2000, 2001 and 2002 drew down on the bank and improperly recorded the repayments as income. In 2001, Prudential became a public company and the inaccurate financial statements became a part of its annual, quarterly and current filings. On September 4, 2008, pursuant to Prudential's consent, the Court entered a Final Judgment permanently enjoining Prudential from violating 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.

III.

The Regulation E exemption is unavailable for the securities of small business investment company issuers or business development company issuers if the issuer or any of its affiliates is subject to any order, judgment, or decree of any court of competent jurisdiction "temporarily or permanently restraining or enjoining such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security." See Rule 602(b)(4) of the Securities Act of 1933 ("Securities Act"). The Regulation E exemption is also not available for the securities of an issuer if any of its directors, officers, principal security holders, any investment adviser or underwriter of the securities to be offered, or any partner, director or officer of such investment adviser or underwriter is temporarily or permanently restrained or enjoined by any court from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or arising out of such person's conduct as an underwriter, broker, dealer or investment adviser. See Rule 602(c)(2). Rule 602(e) provides, however, that the disqualification "shall not apply . . . if the Commission determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption be denied."

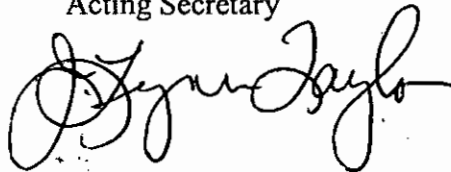
IV.

Based upon the representations set forth in Prudential's request, the Commission has determined that pursuant to Rule 602(e), a showing of good cause has been made that it is not necessary under the circumstances that the exemption be denied as a result of the Final Judgment.

Accordingly, **IT IS ORDERED**, pursuant to Rule 602(e) under the Securities Act, that a waiver from the application of the disqualification provisions of Rule 602(b)(4) and 602(c)(2) under the Securities Act resulting from the entry of the Final Judgment is hereby granted.

By the Commission.

Florence E. Harmon
Acting Secretary



By: J. Lynn Taylor
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC - 28377; 812- 13572]

Prudential Financial, Inc., et al.; Notice of Application and Temporary Order

September 5, 2008

Agency: Securities and Exchange Commission ("Commission").

Action: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

Summary of Application: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against Prudential Financial, Inc. ("Prudential") on September 4, 2008 by the United States District Court for the District of New Jersey ("Injunction") until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

Applicants: Prudential, Prudential Investment Management, Inc. ("PIM, Inc."), Prudential Investments LLC ("PI LLC"), The Prudential Insurance Company of America ("Prudential Insurance"), Jennison Associates LLC ("Jennison"), Prudential Bache Asset Management, Inc. ("Bache"), Quantitative Management Associates LLC ("QMA, LLC"), Pruco Securities, LLC ("Pruco"), AST Investment Services, Inc. ("AST Investment"), Prudential Annuities Distributors, Inc. ("PAD"), Prudential Investment Management Services LLC ("PIMS LLC"), Pruco Life Insurance Company ("Pruco Life"), Pruco Life Insurance Company of New Jersey ("Pruco Life NJ"), Prudential Annuities Life Assurance Corporation ("PALAC") and Prudential Retirement Insurance and Annuity Company ("PRIAC") (collectively, other than Prudential, the "Fund Servicing Applicants" and together with Prudential, the "Applicants").¹

¹ Applicants request that any relief granted pursuant to the application also apply to any other company of which Prudential is or may become an affiliated person (together with the Applicants, the "Covered Persons").

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Filing Dates: The application was filed on September 5, 2008.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 30, 2008, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

Addresses: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090; Applicants c/o Kathryn Quirk, Prudential Financial, Inc., 751 Broad Street, Newark, New Jersey 07102.

For Further Information Contact: Keith A. Gregory, Senior Counsel, at 202-551-6815 or Janet M. Grossnickle, Assistant Director, at 202-551-6821 (Division of Investment Management, Office of Investment Company Regulation).

Supplementary Information: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549-1520 (tel. 202-551-5850).

Applicants' Representations:

1. Prudential, through its subsidiaries and affiliates, offers a wide array of financial products and services, including life insurance, annuities, mutual funds, pension and retirement-related services and administration, investment management, real estate brokerage and relocation services. Each of the Fund Servicing Applicants is an indirect wholly owned subsidiary of Prudential. PIM, Inc., PI LLC, Jennison, QMA, LLC and AST Investment (collectively, "Adviser Applicants") are investment advisers registered under the Investment Advisers Act of 1940 ("Advisers Act") that provide investment management and advisory services to certain registered investment companies ("Funds"). Bache is an investment adviser registered under the Advisers Act and plans to provide advisory services to Funds in the near future. Pruco, PAD, and PIMS LLC are broker-dealers registered under the Securities Exchange Act of 1934 ("Exchange Act") and serve as a principal underwriter to open-end Funds and Funds that are unit investment trusts ("UITs"). Prudential Insurance, Pruco Life, Pruco Life NJ, PALAC and PRIAC serve as depositors for registered separate accounts, all of which are Funds.

2. On September 4, 2008, the United States District Court for the District of New Jersey entered the Injunction against Prudential in a matter brought by the Commission.² The Commission alleged in the complaint ("Complaint") that Prudential violated 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 under the Exchange Act, in connection with Prudential's accounting and public reporting practices. The Complaint relates to Prudential's inaccurate recording of income for 2000, 2001, and 2002 in the consolidated financial statements included in its periodic and other filings for the years 2001, 2002 and 2003. The inaccuracies in the financial statements related to recorded

² Securities and Exchange Commission v. Prudential Financial, Inc., Final Judgment on Consent Against Defendant Prudential Financial, Inc., 08-cv-03916 (PGS) (D.N.J. Sept. 4, 2008).

income from a series of purported reinsurance contracts entered into from 1997 to 2002 between the General Reinsurance Company and two former property and casualty subsidiaries of Prudential. The Complaint alleged that Prudential violated the financial reporting, books and records, and internal controls provisions of the Exchange Act. Without admitting or denying any of the allegations in the Complaint, except as to jurisdiction, Prudential consented to the entry of the Injunction.

Applicants' Legal Analysis:

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security, or in connection with activities as an affiliated person of any insurance company, from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust, or registered face-amount certificate company.

Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines "affiliated person" to include, among others, any person directly or indirectly controlling, controlled by, or under common control, with the other person and any person directly or indirectly owning, controlling, or holding with the power to vote, 5 percent or more of the outstanding voting securities of such other person. Applicants state that Prudential is an affiliated person of each of the other Applicants within the meaning of section 2(a)(3).

Applicants state that, as a result of the Injunction, they would be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a) of the Act if it is established

that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the conduct of the Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking temporary and permanent orders exempting them from the disqualification provisions of section 9(a).

3. Applicants believe that they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that it would not be against the public interest or the protection of investors to grant the requested exemption from section 9(a).

4. Applicants state that the alleged conduct giving rise to the Injunction did not involve any of the Applicants acting in the capacity of investment adviser, subadviser, depositor or principal underwriter for any Fund. Applicants note that none of the current or former directors, officers, or employees of the Applicants (other than Prudential itself) had any involvement in the conduct alleged in the Complaint. Applicants further state that the personnel at Prudential who were involved in the violations alleged in the complaint have had no and will not have any future involvement in providing advisory, subadvisory, depository, or underwriting services to Funds. In addition, Applicants represent that no Fund to which any Fund Servicing Applicant provides investment advisory, depository or underwriting services bought or held any securities issued by Prudential during the period covered by the Complaint, other than with respect to index funds and routine trade errors that were promptly corrected.

5. Applicants state that their inability to continue to provide advisory and underwriting services to the Funds and to serve as depositor to Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants state that they will distribute written materials, including an offer to meet in person to discuss the materials, to the boards of

directors of the Funds (the "Boards"), including the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, of such Funds, and their independent legal counsel as defined in rule 0-1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds, and the application. Applicants state that they will provide the Boards with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also state that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an expertise in advising, subadvising, and distributing the Funds, and acting as a depositor to registered separate accounts. Applicants further state that prohibiting them from providing advisory and distribution services or acting as a depositor to the registered separate accounts would not only adversely affect their businesses, but would also adversely affect over 2000 employees that are involved in those activities. Applicants state that they have not previously applied for an exemptive order under section 9(c) of the Act. Applicants state that an affiliate of Prudential previously obtained an order under section 9(c) of the Act.³

³ In the Matter of Prudential Securities Incorporated, Investment Company Act Rel. Nos. 18031 (Mar. 6, 1991) (notice) and 18096 (Apr. 15, 2005) (order).

Applicants' Condition:

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application, or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order:

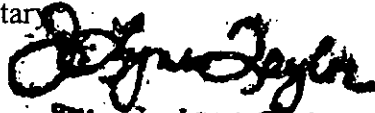
The Commission has considered the matter and finds that the Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

IT IS HEREBY ORDERED, pursuant to section 9(c) of the Act, that Applicants and any other Covered Persons are granted a temporary exemption from the provisions of section 9(a), solely with respect to the Injunction, subject to the condition in the application, from September 5, 2008, until the Commission takes final action on their application for a permanent order.

By the Commission.

Florence E. Harmon
Acting Secretary


By: J. Lynn Taylor
Assistant Secretary

FOIN

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 58534 / September 12, 2008

ACCOUNTING AND AUDITING ENFORCEMENT

Release No. 2876 / September 12, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13190

In the Matter of

Mark David Shapiro (CPA),

Respondent.

ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO RULE
102(e) OF THE COMMISSION'S RULES OF
PRACTICE, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Mark David Shapiro ("Respondent" or "Shapiro") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.¹

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the

¹ Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

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purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Shapiro, age 48, is and has been a certified public accountant licensed to practice in the State of New York. He served as the principal accounting officer and senior vice president of finance and operations of Fleming Companies, Inc. during the relevant period. He was promoted to chief financial officer shortly before Fleming's April 2003 bankruptcy.

2. Fleming Companies, Inc. was, at all relevant times, an Oklahoma corporation headquartered in Lewisville, Texas, prior to filing Chapter 11 bankruptcy proceedings in April 2003. Before that, Fleming's stock traded on the New York Stock Exchange and, at one time, the company was the nation's largest grocery wholesaler.

3. On September 15, 2005, the Commission filed a complaint against Shapiro in SEC v. Mark David Shapiro, et al. (Civil Action No. 4:05-CV-0364), in the United States District Court for the Eastern District of Texas, Sherman Division. On August 15, 2008, the court entered an order permanently enjoining Shapiro, by consent, from 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 promulgated thereunder, and from aiding and abetting violations of 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, 13a-13, 13b2-1 and 13b2-2 thereunder. Shapiro was also ordered to pay a \$135,000 civil money penalty.

4. The Commission's complaint alleged, among other things, that Shapiro engaged in a fraudulent scheme that resulted in Fleming filing materially false and misleading financial statements in 2001 and 2002. The Complaint alleged that Shapiro engaged in a number of improper accounting practices that materially increased Fleming's annual and quarterly revenue and net income in a departure from generally accepted accounting principles. These practices included, among other things, prematurely recognizing rebates as income, and directing the release of accounting reserves without justification or disclosure. In addition, the complaint alleged that Shapiro made material misrepresentations to Fleming's independent auditor about certain of the company's accounting practices.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Shapiro is suspended from appearing or practicing before the Commission as an accountant.

B. After three years from the date of this order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Respondent, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the respondent's or the firm's quality control system that would indicate that the respondent will not receive appropriate supervision;

(c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

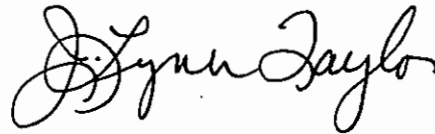
(d) Respondent acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will

consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Florence E. Harmon
Acting Secretary

A handwritten signature in cursive script, reading "J. Lynn Taylor". The signature is written in dark ink and is positioned above the typed name of the Assistant Secretary.

By: J. Lynn Taylor
Assistant Secretary



SECURITIES AND EXCHANGE COMMISSION

This file is maintained pursuant to the Freedom of Information Act (5 U.S.C. 552). It contains a copy of each decision, order, rule or similar action of the Commission, for September 2008, with respect to which the final votes of individual Members of the Commission are required to be made available for public inspection pursuant to the provisions of that Act.

Unless otherwise noted, each of the following individual Members of the Commission voted affirmatively upon each action of the Commission shown in the file:

CHRISTOPHER COX, CHAIRMAN

KATHLEEN L. CASEY, COMMISSIONER

ELISSE B. WALTER, COMMISSIONER

LUIS A. AGUILAR, COMMISSIONER

TROY A. PAREDES, COMMISSIONER

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7-8-08
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

September 3, 2008

IN THE MATTER OF

**Continental Beverage and Nutrition,
Inc.**

File No. 500-1

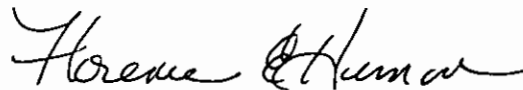
**ORDER OF SUSPENSION
OF TRADING**

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Continental Beverage and Nutrition, Inc. ("Continental") because it has not filed any periodic reports since it filed a Form 10-QSB for the period ended November 30, 2006.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Continental.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Continental is suspended for the period from 9:30 a.m. EDT on September 3, 2008, through 11:59 p.m. EDT on September 16, 2008.

By the Commission.



Florence E. Harmon
Acting Secretary

*Commissioner Watter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58451 / September 3, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13157

In the Matter of

Tracinda Corporation,

Respondent.

ORDER INSTITUTING CEASE-
AND-DESIST PROCEEDINGS
PURSUANT TO SECTION 21C
OF THE SECURITIES
EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND
IMPOSING A CEASE-AND-
DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Tracinda Corporation ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Respondent

1. **Tracinda Corporation** is a Nevada company with its headquarters in Beverly Hills, California. The principal business of Tracinda is buying, holding and selling equity securities. Kirk Kerkorian is the sole shareholder and director of Tracinda.

Summary

2. This matter concerns violations of the reporting provisions of Section 13(d) of the Exchange Act by Tracinda in connection with its ownership of 56 million shares, or 9.9%, of General Motors Corporation ("GM") common stock. By November 20, 2006, Respondent had a plan to sell 28 million shares of GM stock. On that day, Respondent proposed selling 28 million shares of GM stock to a broker-dealer, but only sold 14 million shares because the bid offered by the broker-dealer for 28 million shares reflected a much deeper discount than Kerkorian was expecting. In Amendment No. 12 to its Schedule 13D filed on November 22, 2006, Respondent reported this sale of 14 million shares, but omitted to disclose its plan and proposal to sell the 28 million shares. This omission was material and violated Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder because Respondent did not comply with Item 4(a) of Schedule 13D. Further, that amendment was materially misleading and violated Exchange Act Rule 12b-20 because it stated that Respondent might purchase or sell more GM stock, when there was only a remote possibility that it would buy any GM stock at that time.

Relevant Facts

Respondent's Investment in GM

3. In February 2005, Kerkorian asked a trusted business associate and advisor to analyze GM as a possible investment. On April 1, 2005, the advisor completed his report and told Kerkorian that he thought an investment in GM at that time was a "no-brainer."

4. On April 19, 2005, Tracinda and 250 Rodeo, Inc.² began purchasing GM stock. On May 9, 2005, Tracinda commenced a partial tender offer for up to 28,000,000 shares of GM common stock. Through the tender offer, Tracinda purchased 18,761,152 shares of GM stock giving it a total of 40,761,152 shares. From four subsequent purchases of GM stock in August, September and October, Respondent ultimately held

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

² 250 Rodeo, Inc., a Delaware corporation owned by Kerkorian and Tracinda, also purchased and sold GM stock. 250 Rodeo was dissolved in December 2006.

56 million shares of GM stock, representing approximately 9.9% of the total outstanding common stock of GM.

5. In the fall of 2005, Kerkorian became concerned about Tracinda's investment and sought representation on GM's board of directors. Tracinda's nominee was subsequently appointed to the board. Tracinda also wanted GM to consider a possible alliance with Nissan Motor Company Ltd. and Renault, S.A. (collectively "Nissan/Renault"). Over the next several months, Tracinda requested that GM explore a possible alliance with Nissan/Renault.

6. Eventually, GM's board of directors considered the proposed alliance, but announced, on October 4, 2006, that it would not pursue any further discussions concerning the alliance. Two days later, Tracinda's representative resigned from GM's board.

Respondent Sells Its GM Stock

7. On November 16, 2006, Kerkorian met with Tracinda's closest advisors to discuss Respondent's investment in GM. In the meeting, Tracinda's key advisor expressed his view that the price of GM stock would likely fall after the second quarter of 2007. The discussion concerned, among other things, whether Respondent should sell half of its GM holdings.

8. By November 20, 2006, Respondent had a plan to sell 28 million shares of its GM holdings.

9. On November 20, 2006, Respondent contacted a broker-dealer and offered to sell 28 million shares of GM stock. That firm was willing to buy 28 million shares, but only at a significant discount to the then-current market price. Respondent was not willing to sell at that price at that time. Instead, Respondent asked for a bid on 14 million shares. This time the price was higher and Respondent executed the transaction that day.

10. On November 22, 2006, Respondent filed Amendment No. 12 to its Schedule 13D announcing the sale of 14 million shares. That amendment did not disclose that Respondent had a plan to sell 28 million shares of its GM stock. Nor did Respondent disclose that it had proposed a sale of 28 million shares of GM stock. Instead, the amendment stated that the Respondent "may determine, based on market and general economic conditions, the business affairs and financial condition of General Motors, the market price of its shares and other factors deemed relevant by the Filing Persons, to acquire or dispose of additional shares."

11. On November 28, 2006, Respondent sold an additional 14 million shares of GM stock to another broker-dealer. This sale reduced its holdings in GM to 4.95%. Then, on November 30, 2006, Respondent sold its remaining shares of GM stock.

Legal Discussion

12. Section 13(d)(1) of the Exchange Act and Rule 13d-1 thereunder require any person who acquires more than five percent of any voting class of a Section 12 registered equity security to file, within 10 days of the acquisition, a statement with the Commission containing the information required by Schedule 13D. This statement must be complete and accurate. SEC v. Savoy Industries, Inc., 587 F.2d 1149, 1165 (D.C. Cir. 1978), cert. denied, 440 U.S. 913 (1979); In re Payson, Exchange Act Release No. 50589 (Oct. 26, 2004); In re Kass, Exchange Act Release No. 31046 (Aug. 17, 1992).

13. Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder require a filer to amend a Schedule 13D promptly as material changes occur in disclosures previously made. A disposition of one percent or more of a class of securities is deemed material for purposes of Rule 13d-2. Scierter is not required to establish a violation of Section 13(d) of the Exchange Act. Savoy Industries, 587 F.2d at 1167; SEC v. Levy, 706 F. Supp. 61, 69 (D.D.C. 1989). Section 13(d) is the key provision that allows shareholders and potential investors to evaluate changes in substantial shareholdings. See 113 Cong. Rec. 855 (1967).

14. Item 4(a) of Schedule 13D provides that a reporting person must disclose any plans or proposals relating to the disposition of securities of the issuer. Item 4(a) of Schedule 13D is broader than Rule 13d-2(a) and requires separate analysis to determine whether additional disclosures are required prior to any such purchase or sale.

15. Rule 12b-20 requires that a filer provide "such further material information, if any, as may be necessary to make the required statements . . . not misleading." It is a violation of Rule 12b-20 to file a Schedule 13D that includes any material omissions. Kass, Exchange Act Release No. 31046. Boilerplate disclosures must also be accurate. Payson, Exchange Act Release No. 50589 (statement that shareholder "may at any time and from time to time sell or otherwise transfer shares or acquire additional shares" did not adequately disclose his actual plan to sell shares as soon as the next trading window opened for corporate insiders); see also In re Wilkerson, Exchange Act Release No. 48703 (Oct. 27, 2003) (disclosure of possible future actions did not adequately disclose specific plans).

16. Respondent filed an amendment to its Schedule 13D announcing the sale of 14 million shares on November 20, 2006. In that filing, Respondent did not disclose that by November 20, 2006, it had a plan to sell half (28 million) of the GM shares it owned or that it had made a proposal to sell 28 million GM shares to the broker-dealer on November 20, 2006. Because the amendment that was filed did not disclose the plan and proposal to sell 28 million shares of GM stock and no other amendment was promptly filed to disclose this material change to a previously filed Schedule 13D, Respondent violated Section 13(d)(2) of the Exchange Act and Rule 13d-2(a) thereunder. In that same filing, Respondent also said that it might sell or acquire additional shares of GM stock, when there was only a remote possibility that it would purchase any GM stock at that time, which resulted in a violation of Exchange Act Rule 12b-20.

Tracinda's Violations

17. As a result of the conduct described above, Tracinda violated Section 13(d)(2) of the Exchange Act and Rules 12b-20 and 13d-2(a) thereunder.

Tracinda's Cooperation

18. In determining to accept the Offer, the Commission considered the cooperation afforded the Commission staff.

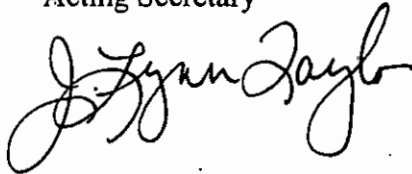
IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that Respondent Tracinda Corporation cease and desist from committing or causing any violations, and any future violations, of Section 13(d)(2) of the Exchange Act and Rules 12b-20 and 13d-2(a) thereunder.

By the Commission.

Florence E. Harmon
Acting Secretary

A handwritten signature in cursive script, appearing to read "J. Lynn Taylor".

By: J. Lynn Taylor
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 3, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13158

In the Matter of

Continental Beverage and Nutrition,
Inc.,

Respondent.

**ORDER INSTITUTING PROCEEDINGS
AND NOTICE OF HEARING PURSUANT
TO SECTION 12(j) OF THE SECURITIES
EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Continental Beverage and Nutrition, Inc. ("Continental").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Continental Beverage and Nutrition, Inc. (CIK No.0001074075) is a Delaware corporation located in Garden City, New York. Its common stock, symbol COBN, is registered with the Commission pursuant to Section 12(g) of the Exchange Act. As of June 28, 2008, the company's stock was traded on the Pink Sheets, operated by the Pink OTC Markets Inc. ("Pink Sheets"), had nine market makers, and was eligible for the "piggyback" exception under Rule 15c2-11(f)(3) of the Exchange Act.

B. DELINQUENT PERIODIC FILINGS

2. Continental is delinquent in its periodic filings with the Commission and has repeatedly failed to meet its obligation to file timely reports, having not filed any periodic or other required reports since it filed, on January 20, 2007, a Form 10-QSB for the third quarter ended November 30, 2006. (See Chart of Delinquent Filings, attached hereto as Appendix 1). Continental also failed to file a timely report disclosing that its auditor resigned on February 9, 2007. Further, Continental failed to heed a delinquency

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letter sent to it by the Division of Corporation Finance requesting compliance with its periodic filing obligations or, through its failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letter.

3. Section 13(a) of the Exchange Act and the rules promulgated thereunder require issuers of securities registered pursuant to Section 12 of the Exchange Act to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports (Forms 10-K or 10-KSB), and Rule 13a-13 requires issuers to file quarterly reports (Forms 10-Q or 10-QSB). In addition, Rule 13a-11 and the provisions of Form 8-K require issuers to file a Form 8-K to report certain events, including the resignation of an auditor.

4. As a result of the foregoing, Continental failed to comply with Exchange Act Section 13(a) and Rules 13a-1, 13a-11, and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II. are true and, in connection therewith, to afford Continental an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend, for a period not exceeding twelve months, or revoke the registration of each class of securities of Continental identified in Section II. and registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III. hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Continental shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Continental fails to file the directed Answer, or fails to appear at a hearing after being duly notified, Continental may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the

Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Continental personally or by certified or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.



Florence E. Harmon
Acting Secretary

Attachment

Appendix 1

**Chart of Delinquent Filings
Continental Beverage and Nutrition, Inc.**

	<u>Form Type</u>	<u>Period Ended</u>	<u>Due Date</u>	<u>Date Rec'd</u>	<u>Months Delinquent (rounded up)</u>	
	8-K	02/09/07	02/15/07	Not filed	16	
	10-KSB	02/28/07	05/29/07	Not filed	13	
	10-QSB	05/31/07	07/16/07	Not filed	11	
	10-QSB	08/31/07	10/15/07	Not filed	8	
	10-QSB	11/30/07	01/14/08	Not filed	5	
	10-KSB	02/28/08	05/28/08	Not filed	2	
	10-Q	05/31/08	07/15/08	Not filed	1	
				Total: 7		

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 4, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13159

In the Matter of

JOSEPH YURKIN,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO SECTION
15(b) OF THE SECURITIES EXCHANGE
ACT OF 1934 AND NOTICE OF HEARING**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"), against Joseph Yurkin ("Respondent" or "Yurkin").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Respondent Yurkin, age 48, resides in Boca Raton, Florida. Yurkin was the vice president of "Investor Relations" and a telemarketer for Homeland Communications Corp. ("Homeland"), a purported wireless telecommunications company.

**B. VIOLATIONS OF THE BROKER-DEALER
REGISTRATION PROVISION**

2. From at least June 2006 through September 2007, Yurkin offered and sold Homeland's unregistered securities to the public and received transaction-based compensation. Specifically, Yurkin solicited securities transactions on behalf of Homeland and induced investors to purchase securities in the company. Yurkin was one of Homeland's most active telemarketers and he received at least \$345,000 in commissions that were based on the sale of Homeland's securities. During the period that Yurkin engaged in these sales activities, he was not registered with the Commission as a broker-dealer or associated with a registered broker-dealer.

3. As a result of the conduct described above, Yurkin willfully violated Section 15(a)(1) of the Exchange Act which prohibits the using the mails or any means or

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instrumentality of interstate commerce to engage in the business of effecting transactions in, or inducing or attempting to induce the purchase or sale of, securities for the accounts of others or for his own account without registering as a broker-dealer with the Commission or without associating with a broker-dealer registered with the Commission

C. ENTRY OF THE INJUNCTION

4. On November 16, 2007, a judgment was entered by consent against Yurkin, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Homeland Communications Corp., et al., Civil Action Number 07-80802-CIV-MARRA/JOHNSON (filed Sept. 5, 2007) in the United States District Court for the Southern District of Florida.

5. The Commission's complaint alleged that from at least May 2005 through September 2007, Homeland raised at least \$1.13 million from approximately 93 investors by offering and selling unregistered securities. In connection with the Homeland offering, Yurkin and others made numerous material misrepresentations and omissions to investors through Homeland's website, its private placement memorandum ("PPM"), and oral statements made to investors. Specifically, Yurkin and others distributed to investors Homeland's PPM that contained, among other things, false or misleading statements about its assets and licenses, its acquisition of another company, and its future profitability, and omitted to state information about Homeland's regulatory history. Yurkin and others also falsely told prospective investors that a public offering of Homeland's stock was imminent and that the stock would go public at a price above the price offered to investors.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. Whether Respondent willfully violated section 15(a)(1) of the Exchange Act by using the mails or any means or instrumentality of interstate commerce to engage in the business of effecting transactions in, or inducing or attempting to induce the purchase or sale of, securities for the accounts of others or for his own account without registering as a broker-dealer with the Commission or without associating with a broker-dealer registered with the Commission; and

C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b)(6) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

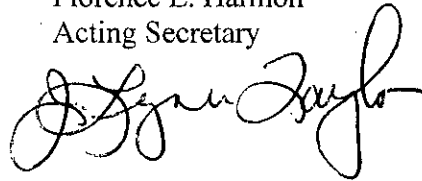
This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary



By: J. Lynn Taylor
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 240 and 249

[RELEASE NO. 34-58465; INTERNATIONAL SERIES RELEASE NO. 1309;

FILE NO. S7-04-08]

RIN 3235-AK04

**EXEMPTION FROM REGISTRATION UNDER SECTION 12(g) OF THE
SECURITIES EXCHANGE ACT OF 1934 FOR FOREIGN PRIVATE ISSUERS**

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting amendments to the rule that exempts a foreign private issuer from having to register a class of equity securities under Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act") based on the submission to the Commission of certain information published by the issuer outside the United States. The exemption allows a foreign private issuer to have its equity securities traded in the U.S. over-the-counter market without registration under Section 12(g). The adopted rule amendments will eliminate the current written application and paper submission requirements under Rule 12g3-2(b) by automatically exempting from Exchange Act Section 12(g) a foreign private issuer that meets specified conditions. Those conditions will require an issuer to maintain a listing of its equity securities in its primary trading market located outside the United States, and require it to publish electronically in English specified non-United States disclosure documents. As a result, the adopted amendments should make it easier for U.S. investors to gain access to a foreign private issuer's material non-United States disclosure documents and thereby to make better

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informed decisions regarding whether to invest in that issuer's equity securities through the over-the-counter market in the United States or otherwise. As is currently the case, issuers must continue to register their securities under the Exchange Act to have them listed on a national securities exchange or traded on the OTC Bulletin Board.

EFFECTIVE DATE: [Insert date 30 days after publication in the Federal Register.]

FOR FURTHER INFORMATION CONTACT: Elliot Staffin, Special Counsel, at (202) 551-3450, in the Office of International Corporate Finance, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-3628.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Commission Rules 12g3-2¹ and 15c2-11² under the Exchange Act,³ Forms 15F,⁴ 40-F,⁵ and 6-K⁶ under the Exchange Act, and Form F-6⁷ under the Securities Act of 1933 ("Securities Act").⁸

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¹ 17 CFR 240.12g3-2.

² 17 CFR 240.15c2-11.

³ 15 U.S.C. 78a *et seq.*

⁴ 17 CFR 249.324.

⁵ 17 CFR 249.240f

⁶ 17 CFR 249.306.

⁷ 17 CFR 239.36.

⁸ 15 U.S.C. 77a *et seq.*

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I. EXECUTIVE SUMMARY AND BACKGROUND

A. Introduction

Exchange Act Rule 12g3-2(b)⁹ exempts a foreign private issuer¹⁰ from Section 12(g) registration¹¹ if, among other requirements, the issuer furnishes to the Commission on an ongoing basis information it has made public or is required to make public under the laws of its jurisdiction of incorporation, organization or domicile, pursuant to its non-U.S. stock exchange filing requirements, or that it has distributed or is required to distribute to its security holders (collectively, its "non-U.S. disclosure

⁹ 17 CFR 240.12g3-2(b).

¹⁰ See the definition of foreign private issuer at Exchange Act Rule 3b-4(c) (17 CFR 240.3b-4(c)).

¹¹ When read in conjunction with Exchange Act Rules 12g-1 (17 CFR 240.12g-1) and 12g3-2(a) (17 CFR 240.12g3-2(a)), Exchange Act Section 12(g) requires an issuer to file an Exchange Act registration statement regarding a class of equity securities within 120 days of the last day of its fiscal year if, on that date, the number of its record holders is 500 or greater, the number of its U.S. resident holders is 300 or more, and the issuer's total assets exceed \$10 million.

documents").¹² The Commission adopted Rule 12g3-2(b) more than 40 years ago in order to exempt from Section 12(g) registration foreign companies that have not obtained a listing on a national securities exchange or otherwise sought a public market for their equity securities in the United States.¹³

Acquiring the Rule 12g3-2(b) exemption enables a foreign private issuer to have its equity securities traded on a limited basis in the over-the-counter market in the United States while avoiding registration under Exchange Act Section 12(g). Typically a foreign private issuer obtains the Rule 12g3-2(b) exemption in order to have established an unlisted, sponsored or unsponsored depositary facility for its American Depositary Receipts ("ADRs").¹⁴ Establishing the Rule 12g3-2(b) exemption also permits registered broker-dealers to fulfill their current information obligations concerning foreign private issuers' securities for which they seek to publish quotations.¹⁵ It further facilitates resales

¹² Current Exchange Act Rule 12g3-2(b)(1)(iii) (17 CFR 240.12g3-2(b)(1)(iii)).

¹³ Release No. 34-8066 (April 28, 1967). For additional background on the initial adoption of Rule 12g3-2(b), see Part I.A of Release No. 34-57350 (February 19, 2008), 73 FR 10102 (February 25, 2008) ("Proposing Release").

¹⁴ An ADR is a negotiable instrument that represents an ownership interest in a specified number of securities, which the securities holder has deposited with a designated bank depositary. The filing of Securities Act Form F-6 (17 CFR 239.36) is required in order to establish an ADR facility. The eligibility criteria for the use of Form F-6 include the requirement that the issuer of the deposited securities have a reporting obligation under Exchange Act Section 13(a) or have established the exemption under Rule 12g3-2(b). See General Instruction I.A.3 of Form F-6. While required to be registered on Form F-6 under the Securities Act, ADRs are exempt from registration under Exchange Act Section 12(g) pursuant to current Exchange Act Rule 12g3-2(c) (17 CFR 240.12g3-2(c)).

¹⁵ Brokers currently can comply with their obligations under Exchange Act Rule 15c2-11 (17 CFR 240.15c2-11) when a foreign company has established and maintains the Rule 12g3-2(b) exemption by, in part, reviewing the information furnished to the Commission under the exemption. See Rule 15c2-11(a)(4) (17 CFR 240.15c2-11(a)(4)).

of an issuer's securities to qualified institutional buyers ("QIBs") under Rule 144A.¹⁶

1. Current Rule 12g3-2(b) Requirements

Currently, in order to establish the Exchange Act Rule 12g3-2(b) exemption, a foreign private issuer must initially submit to the Commission a list of its non-U.S. disclosure requirements as well as copies of its non-U.S. disclosure documents published since the beginning of its last fiscal year.¹⁷ An issuer must further submit its non-U.S. disclosure documents on an ongoing basis in order to maintain the exemption. The current Rule provides that an issuer need only submit copies of information that is material to an investment decision for the purpose of obtaining or maintaining the exemption.¹⁸ At the time of the initial submission, an issuer must also provide the Commission with the number of U.S. holders of its equity securities and the percentage held by them, as well as a brief description of how its U.S. holders acquired those shares.¹⁹

¹⁶ See Securities Act Rule 144A(d)(4) (17 CFR 230.144A(d)(4)).

¹⁷ Current Exchange Act Rule 12g3-2(b)(1)(i) (17 CFR 240.12g3-2(b)(1)(i)). Historically, an issuer has submitted its home jurisdiction materials as part of a letter application to the Commission, which has been processed through the Office of International Corporate Finance in the Division of Corporation Finance. The written application process does not apply to an issuer that receives the Rule 12g3-2(b) exemption upon the effectiveness of its Exchange Act deregistration pursuant to Exchange Act Rule 12h-6 (17 CFR 240.12h-6).

¹⁸ Current Exchange Act Rule 12g3-2(b)(3) (17 CFR 240.12g3-2(b)(3)). As examples of material information, the Rule lists an issuer's financial condition or results of operations, changes in its business, the acquisition or disposition of assets, the issuance, redemption or acquisition of securities, changes in management or control, the granting of options or other payment to directors or officers, and transactions with directors, officers or principal security holders.

¹⁹ Current Exchange Act Rule 12g3-2(b)(1)(v) (17 CFR 240.12g3-2(b)(1)(v)). An issuer must also disclose the dates and circumstances of the most recent public distribution of securities by the issuer or an affiliate.

Rule 12g3-2(b) currently requires that an applicant submit all of the necessary non-U.S. disclosure documents and other information before the date that a registration statement would otherwise become due under Section 12(g).²⁰ Once an issuer has timely submitted its application and obtained the exemption, the issuer may surpass any of the record holder, U.S. resident holder, or asset thresholds that would otherwise trigger an obligation to register a class of securities under Section 12(g) or the rules thereunder, as long as it maintains the exemption by submitting the required non-U.S. disclosure documents.

For most of its 40-year history, the Rule 12g3-2(b) disclosure regime has mandated paper submissions. Even after the adoption of EDGAR filing rules for foreign private issuers, the Commission has required a foreign private issuer to submit its initial Rule 12g3-2(b) supporting materials in paper.²¹ The Commission has based this treatment of Rule 12g3-2(b) materials on the analogous treatment of applications for an exemption from Exchange Act reporting obligations filed pursuant to Exchange Act Section 12(h).²²

In March 2007, the Commission voted to adopt amendments to Rule 12g3-2, which enable a foreign private issuer to claim the Rule 12g3-2(b) exemption immediately upon the effectiveness of its termination of Exchange Act registration and reporting

²⁰ Current Exchange Act Rule 12g3-2(b)(2) (17 CFR 240.12g3-2(b)(2)).

²¹ See Release No. 33-8099 (May 14, 2002), 67 FR 36678 (May 24, 2002).

²² 15 U.S.C. 78j(h). We require the filing of Section 12(h) exemptive applications in paper pursuant to Regulation S-T Rule 101(c)(16) (17 CFR 232.101(c)(16)).

pursuant to contemporaneously adopted Exchange Act Rule 12h-6.²³ The March 2007 amendments require an issuer that has obtained the Rule 12g3-2(b) exemption, upon the effectiveness of its termination of registration and reporting pursuant to Rule 12h-6, to publish specified non-U.S. disclosure documents in English on an ongoing basis on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market, rather than submit that information in paper to the Commission.²⁴ The amendments further permit, but do not require, a foreign private issuer that has obtained or will obtain the Rule 12g3-2(b) exemption, upon application to the Commission and not pursuant to Rule 12h-6, to publish electronically in the same manner its non-U.S. disclosure documents required to maintain the exemption.²⁵

The March 2007 amendments further clarified the English translation requirements under Rule 12g3-2(b).²⁶ The amendments provide that, when electronically publishing its non-U.S. disclosure documents required to maintain the Rule 12g3-2(b) exemption, at a minimum, a foreign private issuer must electronically publish English translations of the following documents if in a foreign language:

- its annual report, including or accompanied by annual financial statements;

²³ See Release No. 34-55540 (March 27, 2007), 72 FR 16934 (April 5, 2007).

²⁴ Current Exchange Act Rule 12g3-2(e) (17 CFR 240.12g3-2(e)).

²⁵ Current Exchange Act Rule 12g3-2(f) (17 CFR 240.12g3-2(f)).

²⁶ Current Exchange Act Rule 12g3-2(b)(4) (17 CFR 240.12g3-2(b)(4)) provides that copies furnished to the Commission of press releases and any materials distributed directly to security holders must be in English, and states that English summaries and versions may be used instead of English translations. However, the rule does not specify what other documents must be translated fully into English, and when summaries or versions may be used.

- interim reports that include financial statements;
- press releases; and
- all other communications and documents distributed directly to security holders of each class of securities to which the exemption relates.²⁷

2. Proposed Rule 12g3-2 Amendments

In February 2008, we proposed amendments to Rule 12g3-2(b) in order to adapt that exemptive regime to the several significant developments occurring since its initial adoption four decades ago.²⁸ Those developments include the increased globalization of securities markets, advances in information technology, and the increased use of ADR facilities by foreign companies to trade their securities in the United States, which have multiplied the number of foreign companies engaged in cross-border activities, as well as increased the amount of U.S. investor interest in the securities of foreign companies. Just as those developments led us to re-evaluate and revise the Commission rules governing when a foreign private issuer may terminate its Exchange Act registration and reporting obligations, so those same factors have led us to reconsider as well the Commission rules that determine when a foreign private issuer must enter the Section 12(g) registration regime.

We proposed to amend Exchange Act Rule 12g3-2 to permit a foreign private issuer to claim the Rule 12g3-2(b) exemption, without having to submit an application to, or otherwise notify, the Commission, as long as:

²⁷ Note 1 to Current Exchange Act Rule 12g3-2(e).

²⁸ Release No. 34-57350.

- the issuer is not required to file or furnish reports under Exchange Act Section 13(a)²⁹ or 15(d);
- the issuer currently maintains a listing of the subject class of securities on one or more exchanges in a foreign jurisdiction that, either singly or together with the trading of the same class of the issuer's securities in another foreign jurisdiction, constitutes the primary trading market for those securities;
- either:
 - the average daily trading volume ("ADTV") of the subject class of securities in the United States for the issuer's most recently completed fiscal year has been no greater than 20 percent of the average daily trading volume of that class of securities on a worldwide basis for the same period; or
 - the issuer has terminated its registration of a class of securities under Exchange Act Section 12(g), or terminated its obligation to file or furnish reports under Exchange Act Section 15(d), pursuant to Exchange Act Rule 12h-6; and
- unless claiming the exemption in connection with or following its recent Exchange Act deregistration, the issuer has published specified non-U.S. disclosure documents, required to be made public from the first day of its most recently completed fiscal year, in English on its Internet Web site or through an

²⁹ 15 U.S.C. 78m(a).

electronic information delivery system generally available to the public in its primary trading market.

As proposed, a foreign private issuer that met the above requirements would be immediately exempt from Exchange Act registration under Rule 12g3-2(b) even if, on the last day of its most recently completed fiscal year, it exceeded the asset and shareholder thresholds for Section 12(g) registration, and although the 120-day window for filing a registration statement under Section 12(g) had elapsed. Further, as proposed, an issuer could immediately claim the Rule 12g3-2(b) exemption upon the effectiveness of, or following its recent Exchange Act deregistration, whether pursuant to the older exit rules of Rule 12g-4 or 12h-3,³⁰ or Rule 12h-6, or the suspension of its reporting obligations under Section 15(d),³¹ if it met the above requirements other than the electronic publication condition for its most recently completed fiscal year.

The proposed rules would require any issuer, whether a prior registrant or not, to maintain the Rule 12g3-2(b) exemption by publishing its specified non-U.S. disclosure documents on an ongoing basis and for each subsequent fiscal year, in English, on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market. The proposed rules would require

³⁰ 17 CFR 240.12g-4 or 240.12h-3. Both Rules 12g-4 and 12h-3 permit an issuer to exit the Exchange Act reporting regime following the filing of a Form 15 (17 CFR 249.323), which certifies that the issuer has fewer than 300 record holders or less than 500 record holders and total assets not exceeding \$10 million on the last day of each of its most recent 3 fiscal years.

³¹ An issuer may suspend its Section 15(d) reporting obligations under Rule 12h-3 or Section 15(d) itself. The statutory section provides that suspension occurs if, on the first day of the fiscal year, other than the year in which the issuer's registration statement went effective, the issuer's record holders number less than 300.

the electronic publication in English of the same types of information required under the March 2007 amendments.

As proposed, the Rule 12g3-2(b) exemption would remain in effect until:

- the issuer no longer satisfies the electronic publication condition;
- the issuer no longer maintains a listing for the subject class of securities on one or more exchanges in its primary trading market;
- the ADTV of the subject class of securities in the United States exceeds 20 percent of the average daily trading volume of that class of securities on a worldwide basis for the issuer's most recently completed fiscal year, other than the year in which the issuer first claims the exemption; or
- the issuer registers a class of securities under Exchange Act Section 12 or incurs reporting obligations under Exchange Act Section 15(d).

B. Principal Comments Regarding the Proposed Rule Amendments

We received letters from 32 commenters, including law firms, business, industry and legal trade associations, depositary banks, financial advisory firms, and an OTC market participant. Most commenters strongly supported the Commission's proposals to eliminate the written application process for the Exchange Act Rule 12g3-2(b) exemption and replace the paper submission process for an issuer's non-U.S. disclosure documents with mandated electronic publication as a condition to claiming and maintaining the exemption.

However, most commenters were critical of the proposal that, as a condition to claiming and maintaining the Rule 12g3-2(b) exemption, a foreign private issuer's U.S. ADTV must be no greater than 20% of its worldwide ADTV for the issuer's most

recently completed fiscal year. Those commenters urged us either to eliminate the trading volume condition in its entirety or else increase the U.S. ADTV threshold to a higher percentage, such as 35%, 40% or 50% of worldwide ADTV. Some commenters also requested that we impose a trading volume condition only as an initial requirement for claiming the exemption, and not as a condition for continued use in subsequent years.

Other areas receiving comment included whether:

- to adopt the foreign listing condition as a requirement for either initially claiming the exemption or maintaining it in subsequent years;
- to permit an issuer to publish English summaries, brief English descriptions, or English versions instead of English translations of its non-U.S. disclosure documents;
- to provide a period of time for an issuer to cure a deficiency in its compliance with one or more conditions before it would be required to register under the Exchange Act;
- to require an issuer to provide some form of public notice that it was claiming and intended to rely on the Rule 12g3-2(b) exemption;
- to modify Form F-6 in light of the rule amendments, including whether to adopt provisions regarding unsponsored ADR facilities; and
- to grandfather any issuer having the Rule 12g3-2(b) exemption before the effective date of the rule amendments.

C. Summary of the Adopted Rule Amendments

We have carefully considered commenters' concerns regarding the proposed amendments to Rule 12g3-2(b), and have addressed many of them in the rule

amendments that we are adopting today. Most notably, we have determined to adopt a trading volume measure solely as part of the foreign listing/primary trading market condition, and not as a separate condition. As adopted, the rule amendments will enable a foreign private issuer to claim the Rule 12g3-2(b) exemption,³² without having to submit a written application to the Commission, as long as the issuer:

- currently maintains a listing of the subject class of securities on one or more exchanges in its primary trading market, which is defined to mean, as proposed, that:
 - at least 55 percent of the trading in the subject class of securities on a worldwide basis took place in, on or through the facilities of a securities market or markets in a single foreign jurisdiction or in no more than two foreign jurisdictions during the issuer's most recently completed fiscal year; and
 - if a foreign private issuer aggregates the trading of its subject class of securities in two foreign jurisdictions, the trading for the issuer's securities in at least one of the two foreign jurisdictions is greater than the trading in the United States for the same class of the issuer's securities;
- the issuer is not required to file or furnish reports under Exchange Act Section 13(a) or 15(d), as proposed; and

³² By the use of the term "claim" in this release, we do not mean to imply that a foreign private issuer must apply for or provide notice of the Rule 12g3-2(b) exemption in order to qualify for that exemption. Rather, as amended, the Rule 12g3-2(b) exemptive regime is meant to be self-executing.

- unless claiming the exemption upon or following its recent Exchange Act deregistration, the issuer has published in English specified non-U.S. disclosure documents, from the first day of its most recently completed fiscal year, on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market.³³

The adopted rule amendments will require an issuer to maintain the Rule 12g3-2(b) exemption by electronically publishing the specified non-U.S. disclosure documents for subsequent years. An issuer will lose the exemption if it:

- fails to publish electronically the required non-U.S. disclosure documents;
- no longer meets the foreign listing/primary trading market condition; or
- incurs Exchange Act reporting obligations.

We are adopting the rule amendments regarding English translation requirements, as proposed. While we decline to permit the use of "brief English descriptions" or "English versions," we have clarified that, generally, an issuer may provide an English summary for a non-U.S. disclosure document if such a summary would be permitted for a document submitted under cover of Form 6-K³⁴ or Exchange Act Rule 12b-12(d)(3).³⁵

We are adopting conforming amendments to Form F-6 and Rule 15c2-11. Other adopted rule amendments include eliminating, as proposed:

³³ These rule amendments relate solely to the application of Exchange Act Section 12(g) and not to antifraud or other provisions of the U.S. federal securities laws.

³⁴ 17 CFR 249.306.

³⁵ 17 CFR 240.12b-12(d)(3).

- the current provision that generally prohibits the Rule 12g3-2(b) exemption to successor issuers;
- the rarely used ability of a Canadian issuer filing under the Multijurisdictional Disclosure System ("MJDS") to obtain the Rule 12g3-2(b) exemption for a class of equity securities while having Exchange Act reporting obligations regarding a class of debt securities;
- the current provision that prohibits an issuer from relying on the Rule 12g3-2(b) exemption if its securities are traded through an automated inter-dealer quotation system; and
- the related provision grandfathering Nasdaq-traded companies meeting specified conditions from Rule 12g3-2(b)'s automated inter-dealer quotation system prohibition.

While the adopted rule amendments do not include a grandfathering provision, we are establishing, as proposed, a three-year transition period to provide sufficient time for any current Rule 12g3-2(b)-exempt issuer, which will no longer qualify for the exemption under the rule amendments, either to comply with all of the conditions of amended Rule 12g3-2(b) or register under the Exchange Act. We also are establishing, as proposed, a three-month transition period following the effectiveness of the rule amendments during which the Commission will accept and process any non-U.S. disclosure documents submitted in paper by Rule 12g3-2(b)-exempt issuers. Thereafter, the Commission will no longer process paper Rule 12g3-2(b) submissions.

By enabling a qualified foreign private issuer to claim the Rule 12g3-2(b) exemption automatically, and without regard to the number of its U.S. shareholders, the

adopted rule amendments should encourage more foreign private issuers to claim the Rule 12g3-2(b) exemption. That would enable the establishment of additional ADR facilities, make it easier for broker-dealers to fulfill their obligations under Exchange Act Rule 15c2-11 with respect to the equity securities of a non-reporting foreign private issuer, and facilitate the resale of a foreign company's securities to QIBs in the United States under Securities Act Rule 144A. Consequently, the adopted rule amendments should foster the increased trading of a foreign private issuer's securities in the U.S. over-the-counter market.

By requiring the electronic publication in English of specified non-U.S. disclosure documents for an issuer claiming the Rule 12g3-2(b) exemption, the adopted amendments should make it easier for U.S. investors to gain access to a foreign private issuer's material non-U.S. disclosure documents, and make better informed decisions regarding whether to invest in that issuer's equity securities through the over-the-counter market in the United States or otherwise. Thus, the adopted amendments should foster increased efficiency in the trading of the issuer's securities for U.S. investors.

II. DISCUSSION

A. Foreign Listing Condition

We are adopting, as proposed, the condition that, in order to be eligible to claim the Rule 12g3-2(b) exemption, an issuer must currently maintain a listing of the subject class of securities on one or more exchanges in a foreign jurisdiction that, either singly or together with the trading of the same class of the issuer's securities in another foreign jurisdiction, constitutes the primary trading market for those securities.³⁶ This condition

³⁶ Exchange Act Rule 12g3-2(b)(1)(ii) (17 CFR 240.12g3-2(b)(1)(ii)).

is substantially similar to the foreign listing condition adopted as part of the March 2007 amendments.³⁷

The purpose of the foreign listing condition is to help assure that there is a non-U.S. jurisdiction that principally regulates and oversees the trading of the issuer's securities and the issuer's disclosure obligations to investors. This foreign listing condition increases the likelihood that the principal pricing determinants for a foreign private issuer's securities are located outside the United States, and makes more likely the availability of a set of non-U.S. securities disclosure documents to which a U.S. investor may turn for material information when making investment decisions about the issuer's securities in the U.S. over-the-counter market.

Several commenters supported the proposed foreign listing condition substantially as proposed or at least in principle.³⁸ Some commenters supported a condition that would require an issuer to be subject to a recognized foreign regulatory authority and a set of public disclosure obligations, but would not require a foreign listing.³⁹ We decline to adopt such a provision because, among other factors, we believe it could be difficult for market participants to determine whether an issuer is in fact subject to a complying foreign regulatory regime. In addition, a listing on a securities market generally involves the affirmative action of an issuer to be traded on that market and to be subject to the listing requirements of that market, including applicable ongoing disclosure

³⁷ Exchange Act Rule 12h-6(a)(3) (17 CFR 240.12h-6(a)(3)).

³⁸ See, for example, the letter of the Bank of New York ("BNY"), dated April 25, 2008. This letter, along with other comment letters, is available at <http://www.sec.gov/comments/s7-04-08/s70408.shtml>.

³⁹ See, for example, the letter of Sullivan & Cromwell, dated April 25, 2008.

requirements. The foreign listing requirement therefore supports one of the underlying purposes of the Rule 12g3-2(b) exemption--to make material information available to investors.

A few commenters opposed the foreign listing condition on the grounds that it would impose costs on those issuers that have not yet obtained a foreign listing, and which are likely to be smaller companies.⁴⁰ As we noted when proposing the rule amendments, the foreign listing condition is consistent with the Commission staff's past and current practice of administering the Rule 12g3-2(b) exemption. Any issuer, regardless of size, has had to obtain a foreign listing before it could receive the exemption. Accordingly, the adopted rule should impose no new burdens in this regard.⁴¹

1. The Primary Trading Market Definition

The adopted rule amendments define primary trading market, as proposed, to mean that at least 55 percent of the worldwide trading in the issuer's subject class of securities took place in, on or through the facilities of a securities market or markets in a single foreign jurisdiction or in no more than two foreign jurisdictions during the issuer's most recently completed fiscal year. The rule amendments further instruct that, if a

⁴⁰ See, for example, the letter of the American Bar Association, Business Law Section ("ABA"), dated April 30, 2008.

⁴¹ As is currently the case, an issuer that, on the last day of its most recently completed fiscal year, has not exceeded the 500 worldwide holder threshold under Exchange Act Section 12(g), the 300 U.S. holder threshold under Rule 12g3-2(a), or the \$10 million annual asset threshold under Rule 12g-1, could claim an exemption from Section 12(g) registration for a class of equity securities based upon one or more of those provisions, and would not have to comply with Rule 12g3-2(b)'s foreign listing or other conditions, if it chose not to rely on that rule for its exemption from Section 12(g) registration. However, such an issuer would have to claim the Rule 12g3-2(b) exemption, and satisfy all of its conditions, if it sought to have established an ADR facility for its equity securities. ADRs must be registered on a Form F-6, which requires an issuer of the deposited securities to be either an Exchange Act reporting company or have the Rule 12g3-2(b) exemption.

foreign private issuer aggregates the trading of its subject class of securities in two foreign jurisdictions for that purpose, the trading for the issuer's securities in at least one of the two foreign jurisdictions must be larger than the trading in the United States for the same class of the issuer's securities.⁴²

As proposed, we have based the adopted definition on the definition of primary trading market under the March 2007 amendments. Like the earlier amendments, the amendments we are adopting today will permit an issuer to aggregate its securities over multiple markets in one or two foreign jurisdictions in recognition that many foreign private issuers have listings on more than one exchange in one or more non-U.S. markets.⁴³

Some commenters urged the Commission to adopt a primary trading market definition that would permit an issuer to aggregate its trading over an unlimited number of foreign jurisdictions or permit an issuer's trading in its primary foreign markets to comprise less than 55 percent of its worldwide trading.⁴⁴ We decline to adopt these suggestions because, by defining an issuer's primary trading market to comprise no more

⁴² Note 1 to Rule 12g3-2(b)(1) (17 CFR 240.12g3-2(b)(1)).

⁴³ As under the earlier amendments, measurement for the primary trading market determination will be by reference to ADTV as reported by the relevant market. An issuer would measure the ADTV of on-exchange transactions in its securities aggregated over one or two foreign jurisdictions against its worldwide trading volume. The issuer could include in this measure off-exchange transactions in those jurisdictions comprising the numerator only if it includes those off-exchange transactions when calculating worldwide trading volume in the denominator. This denominator would consist of U.S. ADTV, which must include both on-exchange and off-exchange transactions, and non-U.S. ADTV, which must include on-exchange transactions, but could also include off-exchange transactions. See Note 1 to Rule 12g3-2(b)(1) and Release No. 34-55540 at 72 FR 16934, 16939.

⁴⁴ See, for example, the letters of JPMorgan Chase Bank ("JPMorganChase"), dated April 18, 2008, and the Organization for International Investment ("OFII"), dated April 23, 2008.

than two foreign jurisdictions, it becomes more likely that an eligible issuer will be subject to an overseas regulator with principal authority for regulating the issuance and trading of the issuer's securities and the issuer's disclosure to investors. Similarly, requiring an issuer's primary non-U.S. trading to constitute no less than 55 percent of its worldwide trading helps assure that a clear majority of an issuer's securities trading occurs outside the United States. If the United States was the sole or principal market for a foreign private issuer's securities, then the Commission would have a greater regulatory interest in subjecting the foreign company to the Exchange Act reporting regime.

The adopted rule amendments will not require an issuer establishing the exemption, but not deregistering, to have maintained a foreign listing for the previous twelve months, or for some other specified period of time, as was required under the March 2007 amendments. As noted in the Proposing Release, we see no reason to exclude newly listed foreign companies from eligibility. Many foreign exchanges require substantial initial disclosure before a listing is accepted. Moreover, there is currently no similar requirement for a non-reporting company applying for the Rule 12g3-2(b) exemption.

Under Rule 12h-6, an issuer must certify that, at the time it files its Form 15F,⁴⁵ it meets that rule's foreign listing requirement. That issuer will also have to meet Rule 12g3-2(b)'s foreign listing requirement upon the effectiveness of its Exchange Act termination of registration and reporting under Rule 12h-6 in order to be able to claim the Rule 12g3-2(b) exemption. Since typically that effectiveness occurs 90 days from the

⁴⁵ 17 CFR 249.324. Similar to a Form 15, Form 15F is the form that a foreign private issuer must file to certify that it meets the conditions for terminating its Exchange Act registration and reporting obligations under Rule 12h-6.

date of filing of the Form 15F, we expect most Form 15F filers will satisfy the adopted foreign listing requirement under Rule 12g3-2(b).⁴⁶

2. Elimination of the Proposed 20 Percent Trading Volume Condition

In addition to the trading volume standard under the primary trading market definition, we proposed that an issuer's U.S. ADTV must be no greater than 20 percent of its worldwide ADTV for its most recently completed fiscal year. We have determined not to adopt this separate trading volume condition.

Most commenters opposed the 20 percent trading volume condition. Several commenters maintained that a foreign private issuer cannot control the level of U.S. trading of its equity securities because U.S. investors are able to purchase a foreign private issuer's securities in the issuer's home market and subsequently trade them in the United States, or purchase the issuer's securities through unsponsored ADR facilities in the United States. According to these commenters, those factors could cause an issuer's U.S. trading volume to exceed the proposed trading volume threshold and thereby require the issuer to register its securities in the United States although it has not voluntarily sought a public market there.⁴⁷

Some commenters further stated that the proposed trading volume condition would likely discourage foreign private issuers from establishing or maintaining sponsored ADR facilities or engaging in exempted offerings in the U.S., such as private

⁴⁶ Unless the Commission objects, termination of an issuer's reporting and registration under Rule 12h-6 is effective 90 days after the filing of its Form 15F. Exchange Act Rule 12h-6(g)(1) (17.CFR 240.12h-6(g)(1)).

⁴⁷ See, for example, the letters of Cleary Gottlieb Steen & Hamilton LLP ("Cleary Gottlieb"), dated April 25, 2008, and EuropeanIssuers, dated April 25, 2008.

placements and Rule 144A resales, to the detriment of U.S. investors.⁴⁸ In addition, commenters noted that the proposed trading volume condition would be unnecessary should the Commission adopt the proposed foreign listing condition and accompanying definition of primary trading market.⁴⁹

After consideration of the comments, we have determined that adopting these amendments without the 20 percent trading volume condition is consistent with the protection of U.S. investors. Most of the foreign private issuers that currently claim the Rule 12g3-2(b) exemption have U.S. trading volumes that fall below the proposed 20 percent threshold although there is no mandatory trading volume condition.⁵⁰ We expect that the primary trading market provision will serve to protect U.S. investors by making it more likely that foreign companies claiming the exemption will be subject to disclosure requirements where they are listed.

3. Treatment of Compensatory Stock Options

Currently, the scope of the exemption afforded to a class of equity securities under Rule 12g3-2(b) may include compensatory stock options that relate to that class of equity securities.⁵¹ Some commenters expressed their concern that, as proposed, the scope of the amended rule would not include compensatory stock options since the exemption extends to a class of equity securities, the compensatory stock options would

⁴⁸ See, for example, the letters of the International Bar Association, dated April 25, 2008, and Linklaters, dated April 24, 2008.

⁴⁹ See, for example, the letters of BNY and O'Melveny & Myers LLP, dated April 25, 2008.

⁵⁰ See the Memo by Jennifer Marietta-Westberg, Office of Economic Analysis, dated March 10, 2008, which is available at <http://www.sec.gov/comments/s7-04-08/s70408-2.pdf>.

⁵¹ See current Exchange Act Rule 12g3-2(b)(1), which states that "securities" of a foreign private issuer shall be exempt from Section 12(g) if the rule's conditions are met.

likely be deemed a separate class, and the compensatory stock options would typically not be listed in the issuer's primary trading market.⁵²

It is not our intention to change the scope of Rule 12g3-2(b) in this regard.

Accordingly, we have added a note to the amended rule to clarify that compensatory stock options for which the underlying securities are in a class exempt under Rule 12g3-2(b) are also exempt under that rule.⁵³

B. Non-Exchange Act Reporting Condition

We are adopting the condition, as proposed, that in order to be eligible for the Rule 12g3-2(b) exemption, an issuer must not have any reporting obligations under Exchange Act Section 13(a) or 15(d).⁵⁴ Like the current non-Exchange Act reporting condition of Rule 12g3-2(b),⁵⁵ the purpose of this provision is to prevent an issuer from claiming the Rule 12g3-2(b) exemption when it already has incurred active Exchange Act reporting obligations.

1. Non-Reporting Issuers

A foreign private issuer will satisfy the proposed non-reporting condition if it does not already have reporting obligations under either Exchange Act Section 13(a) or 15(d). Since Section 13(a) imposes reporting obligations on an issuer that has registered a class of securities under Section 12, a foreign private issuer that has an effective

⁵² See the letter of Gloria W. Nusbacher and 24 other attorneys.

⁵³ Note 3 to Exchange Act Rule 12g3-2(b)(1).

⁵⁴ Exchange Act Rule 12g3-2(b)(1)(i) (17 CFR 240.12g3-2(b)(1)(i)).

⁵⁵ Current Exchange Act Rule 12g3-2(d)(1) (17 CFR 240.12g3-2(d)(1)).

registration statement filed with the Commission under Section 12(b),⁵⁶ for example, covering a class of debt securities, or Section 12(g), covering a particular class of equity securities, would be ineligible to claim the exemption. This treatment is consistent with the current Exchange Act reporting prohibition under Rule 12g3-2(b).⁵⁷

We received relatively few comments on the proposed non-reporting condition. While some commenters supported the proposed condition,⁵⁸ others requested that, in the interest of increasing the flexibility of capital raising in the United States for foreign private issuers, we permit an issuer to claim the Rule 12g3-2(b) exemption with respect to a particular class of equity securities although it has Exchange Act reporting obligations regarding a class of debt securities or a different class of equity securities.⁵⁹ We decline to adopt this suggested modification because we believe that it could cause confusion for investors and other market participants regarding the scope of an issuer's Exchange Act reporting obligations and the protections available under the Exchange Act.

Currently an issuer may apply for the Rule 12g3-2(b) exemption, although it may have exceeded the Section 12(g) shareholder thresholds on the last day of its most recently completed fiscal year, as long as the statutory 120-day period for filing a Section 12(g) registration statement has not lapsed.⁶⁰ We proposed to eliminate this

⁵⁶ 15 U.S.C. 78l(b).

⁵⁷ Current Exchange Act Rule 12g3-2(d)(1).

⁵⁸ See, for example, the letter of Sullivan & Cromwell.

⁵⁹ See, for example, the letter of OFII.

⁶⁰ Current Exchange Act Rule 12g3-2(b)(2) (17 CFR 240.12g3-2(b)(2)).

120-day submission requirement because, under the revised Rule 12g3-2(b) exemptive scheme, we did not believe that this requirement would be necessary to protect investors.

The revised exemption does not depend on an issuer's determination of the number of its worldwide or U.S. shareholders, and does not require that it submit a written application disclosing that information. Instead, it affirmatively requires a foreign private issuer to meet a foreign listing requirement and electronically publish specified material non-U.S. disclosure documents in English. If we also required an issuer to claim the exemption within the 120-day period, we believe some issuers, particularly smaller ones, would be unable to meet that deadline.⁶¹ Those issuers would have to wait until the end of their current fiscal year and the start of a new 120-day period before they could claim the exemption. We see little benefit in requiring issuers to wait several months before being able to claim the exemption. On the other hand, providing the exemption and encouraging these issuers to publish their material non-U.S. disclosure documents in English should benefit U.S. investors. Commenters uniformly agreed with our assessment on this issue. Therefore, we are eliminating the 120-day requirement for issuers under Rule 12g3-2(b), as proposed.

2. Deregistered Issuers

Under the adopted, revised exemptive scheme, a foreign private issuer that has suspended its Exchange Act reporting obligations upon the filing of Form 15, pursuant to Rule 12g-4 or 12h-3, or Form 15F, pursuant to Rule 12h-6, will satisfy the non-reporting requirement upon the effectiveness of its deregistration, assuming that it has not otherwise incurred additional Exchange Act reporting obligations. Similarly, a foreign

⁶¹ Under current Rule 12g3-2(b), several issuers have applied for the exemption although the 120-day period has lapsed.

private issuer that has suspended its reporting obligations pursuant to the statutory terms of Section 15(d) will satisfy the non-reporting condition immediately upon its determination that it had less than 300 shareholders as of the beginning of its most recent fiscal year.

Thus, unlike the current rule, the adopted rule amendments will not require an issuer to look back over the previous eighteen months and determine whether it had Exchange Act reporting obligations during that period.⁶² We eliminated the eighteen month requirement when adopting the March 2007 rule amendments that granted the Rule 12g3-2(b) exemption automatically to a foreign private issuer upon the effectiveness of its termination of Exchange Act registration and reporting pursuant to Rule 12h-6. We see no reason to treat differently foreign private issuers that have terminated their Section 12(g) registration under the older Rule 12g-4 or suspended their Section 15(d) reporting obligations pursuant to that statutory section or under Rule 12h-3 and following the filing of Form 15. Elimination of a lengthy waiting period will hasten the electronic publication of a foreign private issuer's non-U.S. disclosure documents required under the exemption and, thus, help improve the ability of U.S. investors to make informed decisions regarding that issuer's securities. Commenters uniformly supported this revision, which we are adopting as proposed.

⁶² Current Exchange Act Rule 12g3-2(d)(1) provides that the Rule 12g3-2(b) exemption is generally not available to a foreign private issuer that, during the preceding 18 months, has registered a class of securities under Exchange Act Section 12 or had an active or suspended Section 15(d) reporting obligation.

C. Electronic Publishing of Non-U.S. Disclosure Documents

1. Electronic Publishing Requirement to Claim Exemption

We are adopting, as proposed, the requirement that, unless in connection with or following a recent Exchange Act deregistration, in order to claim the Rule 12g3-2(b) exemption, an issuer must have published in English, on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market, information that, from the first day of its most recently completed fiscal year, it:

- has made public or been required to make public pursuant to the laws of the country of its incorporation, organization or domicile;
- has filed or been required to file with the principal stock exchange in its primary trading market on which its securities are traded and which has been made public by that exchange; and
- has distributed or been required to distribute to its security holders.⁶³

These are the same categories of information that the Commission has historically required a non-reporting company to submit in paper when applying for the exemption under Rule 12g3-2(b).⁶⁴ They also are the same non-U.S. disclosure documents that, more recently, the Commission has required an issuer to publish electronically in order to maintain its Rule 12g3-2(b) exemption claimed upon the effectiveness of its

⁶³ Exchange Act Rule 12g3-2(b)(1)(iii) (17 CFR 240.12g3-2(b)(1)(iii)) and Note 2 to Exchange Act Rule 12g3-2(b)(1). As proposed, the adopted amendments do not require a deregistered issuer to satisfy the non-U.S. publication requirement in order to claim the Rule 12g3-2(b) exemption since that issuer will have filed Exchange Act reports for the prior fiscal year upon which investors may rely.

⁶⁴ Current Exchange Act Rule 12g3-2(b)(1)(i).

deregistration under Rule 12h-6.⁶⁵ Commenters strongly supported this electronic publication requirement.⁶⁶

The purpose of this non-U.S. electronic publication condition is to provide U.S. investors with ready access to material information when trading in the issuer's equity securities in the over-the-counter market.⁶⁷ This condition also will assist U.S. investors who are interested in trading the issuer's securities in its primary securities market. Moreover, having a foreign private issuer's key non-U.S. disclosure documents electronically published in English will assist broker-dealers in meeting their Rule 15c2-11 obligations and facilitate resales of that issuer's securities to QIBs under Rule 144A.

As under the current rule, the adopted amendments will require an issuer only to publish electronically information that is material to an investment decision regarding the subject securities,⁶⁸ such as:

- results of operations or financial condition;
- changes in business;

⁶⁵ Current Exchange Act Rule 12g3-2(e)(2).

⁶⁶ While commenters uniformly supported the electronic publication condition, some questioned the proposed requirement to provide English translations of specified non-U.S. disclosure documents. See Part II.C.3 of this release.

⁶⁷ Any trading of a foreign private issuer's Rule 12g3-2(b)-exempt securities in the United States would have to occur through an over-the-counter market such as that maintained by the Pink Sheets, LLC since, as of April, 1998, the NASD has required a foreign private issuer to register a class of securities under Exchange Act Section 12 before its securities could be traded through the electronic over-the-counter bulletin board administered by Nasdaq. See, for example, NASD Notice to Members (January 1998).

⁶⁸ Exchange Act Rule 12g3-2(b)(3)(i) (17 CFR 240.12g3-2(b)(3)(i)). Although the substantive requirements are the same, we have made conforming changes to General Instruction E and Part II, Item 9 of Form 15F to reflect the renumbering of the non-U.S. publication requirements of Rule 12g3-2(b).

- acquisitions or dispositions of assets;
- the issuance, redemption or acquisition of securities;
- changes in management or control;
- the granting of options or the payment of other remuneration to directors or officers; and
- transactions with directors, officers or principal security holders.⁶⁹

2. Electronic Publishing Requirement to Maintain Exemption

In order to maintain the Rule 12g3-2(b) exemption, the adopted amendments will require an issuer to publish the same information specified in the prior fiscal year provision, on an ongoing basis and for subsequent fiscal years, on its Internet Web site or through an electronic information delivery system in its primary trading market.⁷⁰ This requirement will apply to any issuer claiming the exemption, whether or not a former Exchange Act registrant. Like the prior fiscal year publication condition, this ongoing publication condition will help assure that investors and other market participants have access to an issuer's specified non-U.S. disclosure documents, in English, which are material to an investment decision. Most commenters strongly supported this ongoing non-U.S. electronic publication condition.

Similar to the current rule,⁷¹ the adopted rule amendments will require an issuer to publish electronically its non-U.S. disclosure documents promptly after the information

⁶⁹ These are the same types of information specified in current Exchange Act Rule 12g3-2(b)(3) (17 CFR 240.12g3-2(b)(3)).

⁷⁰ Exchange Act Rule 12g3-2(b)(2)(i) (17 CFR 240.12g3-2(b)(2)(i)).

⁷¹ Current Exchange Act Rule 12g3-2(b)(1)(iii).

has been made public, pursuant to its home jurisdiction laws, non-U.S. stock exchange rules, or shareholder meeting rules and practices.⁷² As under current Commission staff practice, what constitutes "promptly" will depend on the type of document and the amount of time required to prepare an English translation. Currently an issuer typically must electronically publish or submit in paper a copy of a material press release on or around the same business day of its original publication.

The adopted amendments will permit an issuer to meet Rule 12g3-2(b)'s electronic publication requirement concurrently with the publishing in English of a non-U.S. disclosure document through an electronic information delivery system generally available to the public in its primary trading market. Thus, if an issuer's non-U.S. stock exchange or securities regulatory authority permits the issuer to publish electronically a required report on its electronic delivery system, and the public has ready access to the report and other documents maintained on the system,⁷³ that electronic publication solely will satisfy the proposed Rule 12g3-2(b)'s electronic publishing requirements.

3. English Translation Requirement

We are adopting, as proposed, the condition that, in order to claim or maintain the Rule 12g3-2(b) exemption, an issuer must publish electronically, at a minimum, English translations of the following documents if in a foreign language:

- its annual report, including or accompanied by annual financial statements;

⁷² Exchange Act Rule 12g3-2(b)(2)(ii) (17 CFR 240.12g3-2(b)(2)(ii)). Form 6-K imposes a similar requirement.

⁷³ An example of such a system is the System for Electronic Document Analysis and Retrieval ("SEDAR") maintained by the Canadian Securities Administrators.

- interim reports that include financial statements;
- press releases; and
- all other communications and documents distributed directly to security holders of each class of securities to which the exemption relates.⁷⁴

These are the same documents for which an issuer that has deregistered under Rule 12h-6 must currently provide English translations.⁷⁵

Some commenters requested that we permit an issuer to provide brief English descriptions or English versions of specified non-U.S. disclosure documents instead of English translations.⁷⁶ We decline to adopt this suggestion because, as we stated in the Proposing Release, the specified non-U.S. disclosure documents are the same documents for which the Commission staff has historically required English translations because of their importance to investors.⁷⁷

Some commenters also requested that we provide guidance regarding when an issuer may provide an English summary instead of an English translation.⁷⁸ Generally, if, as a registrant, an issuer could submit an English summary for a non-U.S. disclosure

⁷⁴ Exchange Act Rule 12g3-2(b)(3)(ii) (17 CFR 240.12g3-2(b)(3)(ii)).

⁷⁵ Note 1 to Current Exchange Act Rule 12g3-2(e) (17 CFR 240.12g3-2(e)).

⁷⁶ See, for example, the letters of Sullivan & Cromwell and Simpson Thacher & Bartlett ("Simpson Thacher"), dated April 18, 2008.

⁷⁷ See Part II.D.1 of the Proposing Release. We similarly eliminated the ability of foreign registrants to provide English versions or brief English descriptions of specified non-U.S. documents submitted under cover of Form 6-K because of the vagueness and lack of utility of such versions and descriptions submitted to the Commission. See Release No. 33-8099 (May 14, 2002), 67 FR 36678 (May 24, 2002).

⁷⁸ See, for example, the letters of Shearman & Sterling, dated April 25, 2008, and Sullivan & Cromwell.

document under cover of Form 6-K or pursuant to Exchange Act Rule 12b-12(d)(3), it can do so when claiming or maintaining the Rule 12g3-2(b) exemption.

D. Elimination of the Written Application Requirement

The adopted rule amendments eliminate the current requirement that, in order to obtain the Rule 12g3-2(b) exemption, if not proceeding under Rule 12h-6, a foreign private issuer must submit written materials, typically in the form of a letter application, to the Commission. These materials currently include a list of the issuer's non-U.S. disclosure requirements, the number of U.S. holders of its subject securities and the percentage of outstanding shares held by them, the circumstances in which its U.S. holders acquired those securities, and the date and circumstances of the most recent public distribution of the securities of the issuer or its affiliate.⁷⁹ As long as an issuer satisfies the adopted rule's conditions, it no longer has to submit these materials to the Commission. Commenters strongly supported eliminating the written application process.

Elimination of Rule 12g3-2(b)'s written application process for all foreign private issuers is consistent with our adoption of an automatic application of the Rule 12g3-2(b) exemption upon the effectiveness of an issuer's deregistration under Rule 12h-6. Moreover, since the adopted rule amendments permit an issuer to claim the Rule 12g3-2(b) exemption based on a foreign listing/primary trading market condition, regardless of the number of its U.S. shareholders, the current shareholder information requirement would be of marginal use. Further, since, as adopted, as a condition to

⁷⁹ Current Exchange Act Rules 12g3-2(b)(1), (2) and (5). As part of the written application process, an issuer must also submit paper copies of its non-U.S. disclosure documents published since the first day of its most recently completed fiscal year.

claiming and maintaining the Rule 12g3-2(b) exemption, an issuer will have to publish electronically its non-U.S. disclosure documents, investors should be able to ascertain many of the issuer's non-U.S. disclosure requirements from a review of those publicly available documents.

From time to time, the Commission has published a list of issuers claiming the Rule 12g3-2(b) exemption that have submitted relatively current information pursuant to that rule.⁸⁰ Commission staff has compiled this list based on a review of submitted paper documents. As we stated in the Proposing Release, as part of the streamlining of the Rule 12g3-2(b) process that the adopted rule amendments are intended to effect, the Commission anticipates it will no longer publish these lists subsequent to the effective date of the new rules.⁸¹

Some commenters suggested that, as a substitute for these lists, we adopt a requirement that an issuer must notify the Commission and other market participants that it is claiming and intends to rely on the Rule 12g3-2(b) exemption.⁸² We decline to adopt such a notice requirement because we believe that, as other commenters have noted, a notice requirement could run contrary to the goal of encouraging an issuer to claim the Rule 12g3-2(b) exemption and electronically disseminate its non-U.S. disclosure documents in English.⁸³ Nevertheless, an issuer that wants to provide notice to investors, broker-dealers and other market participants may do so by, for example, stating on its

⁸⁰ See, for example, Release No. 34-51893 (June 21, 2005), 70 FR 37128 (June 28, 2005).

⁸¹ See the Proposing Release at n. 86.

⁸² See, for example, the letters of Simpson Thacher and Sullivan & Cromwell.

⁸³ See the letters of Ziegler, Ziegler & Associates, dated April 28, 2008, and BNY.

Internet Web site that it has electronically published specified non-U.S. disclosure documents in order to claim or maintain the Rule 12g3-2(b) exemption.

E. Duration of the Amended Rule 12g3-2(b) Exemption

As adopted, the amended Rule 12g3-2(b) exemption will remain in effect until an issuer:

- no longer electronically publishes the specified non-U.S. disclosure documents required to maintain the exemption;
- no longer maintains a listing for the subject class of securities on one or more exchanges in a primary trading market, as defined by the rule; or
- registers a class of securities under Section 12 of the Exchange Act or incurs reporting obligations under Section 15(d) of the Exchange Act.⁸⁴

The duration of the amended Rule 12g3-2(b) exemption is similar to the duration of the current exemption. Both depend on an issuer's continued compliance with the requirement to publish its non-U.S. disclosure documents. Under both provisions, Section 12 registration or the incurrence of Section 15(d) reporting obligations terminates the exemption.⁸⁵ Moreover, currently, if an issuer can no longer claim the Rule 12g3-2(b) exemption because it has not complied with the rule's publication requirements, it must determine on the last day of the fiscal year whether, because of its record holder

⁸⁴ Exchange Act Rule 12g3-2(c) (17 CFR 240.12g3-2(c)).

⁸⁵ See, for example, current Exchange Act Rule 12g3-2(e)(3). A Rule 12g3-2(b)-exempt issuer that acquires an Exchange Act reporting company following an exchange of shares, and thereby succeeds to the target company's Exchange Act reporting obligations under Exchange Act Rule 12g-3 (17 CFR 240.12g-3) or Exchange Act Rule 15d-5 (17 CFR 240.15d-5), would lose the Rule 12g3-2(b) exemption upon succession. If such successor issuer qualified for deregistration under Exchange Act Rule 12h-6, it could claim the Rule 12g3-2(b) exemption upon deregistration.

count, it would be required to register a class of securities under Section 12(g). The same would hold true under the rule amendments for a non-compliant issuer.

We are also adopting the provision, as proposed, that an issuer will lose the Rule 12g3-2(b) exemption if it no longer meets the foreign listing condition. An issuer will no longer satisfy the foreign listing condition either because it is no longer listed in its primary trading market, or because the one or two foreign jurisdictions in which it trades no longer qualifies as its primary trading market, as defined by the rule. Since the definition of primary trading market uses a trading volume standard for the issuer's most recently completed fiscal year, an issuer will have to redetermine its relative U.S. and foreign trading volumes on an annual basis.

Some commenters opposed basing the duration of the Rule 12g3-2(b) exemption on whether an issuer remains listed in its primary trading market.⁸⁶ We believe this provision is necessary in order to help ensure the continued availability of a set of non-U.S. disclosure documents to which investors may turn when making decisions regarding an issuer's securities. It is also necessary to help make sure that an issuer's principal trading market has not become the U.S. market, which would require the issuer to register and report under the Exchange Act.

Some commenters requested that we at least establish a "cure" period, such as six or twelve months, during which an issuer would either have to correct any deficiency or else register under the Exchange Act.⁸⁷ We decline to adopt a specific cure period. We

⁸⁶ See the letters of the ABA and Sullivan & Cromwell. The primary objection was that adherence to the electronic publication condition should be a sufficient basis for maintaining the exemption as it is under the current rule.

⁸⁷ See, for example, the letter of the OFII.

believe that in order to best protect investors, an issuer that finds itself not in compliance with any of the conditions required to maintain the Rule 12g3-2(b) exemption must either re-establish compliance with the rule in a reasonably prompt manner or else register under the Exchange Act.

There is no cure period for domestic issuers that find they are subject to registration under Section 12(g). Thus, foreign private issuers are treated in a similar manner as domestic issuers in this respect. As noted, foreign private issuers may be able to avoid registration by re-establishing compliance with Rule 12g3-2(b), for example, by relisting its securities in its primary trading market.

F. Elimination of the Successor Issuer Prohibition

The adopted rule amendments will eliminate the provision that precludes an issuer from obtaining the Rule 12g3-2(b) exemption if, following the issuance of shares to acquire by merger, consolidation, exchange of securities or acquisition of assets, it has succeeded to the Exchange Act reporting obligations of another issuer.⁸⁸ Until recently, the sole exception to this successor issuer prohibition was for Canadian companies that registered the securities to be issued in the transaction on specified MJDS registration statements under the Securities Act.⁸⁹

As part of the March 2007 rule amendments, we adopted a provision that permits a successor issuer to terminate its newly acquired Exchange Act reporting obligations as long as it meets Rule 12h-6's substantive requirements for equity or debt securities

⁸⁸ Current Exchange Act Rule 12g3-2(d)(2). An issuer succeeds to the Exchange Act reporting obligations of another either under Exchange Act Rule 12g-3 (17 CFR 240.12g-3) or 15d-5 (17 CFR 240.15d-5).

⁸⁹ The specified MJDS registration statements are Forms F-8, F-9, F-10 and F-80 (17 CFR 239.38, 239.39, 239.40, and 239.41).

issuers.⁹⁰ We also amended Exchange Act Rule 12g3-2 to permit a successor issuer to claim the Rule 12g3-2(b) exemption upon the effectiveness of its termination of Exchange Act registration and reporting under Rule 12h-6. We see no reason to treat differently a successor issuer that qualifies for deregistration under one of the older exit rules, Rule 12g-4 or 12h-3, or under Section 15(d).

Elimination of the successor issuer prohibition will help encourage a successor issuer to claim the Rule 12g3-2(b) exemption and electronically publish its specified non-U.S. disclosure documents in English. No commenter opposed the proposed elimination of the successor issuer prohibition. Accordingly, we are removing the successor issuer prohibition under Rule 12g3-2(b), as proposed.

G. Elimination of the Rule 12g3-2(b) Exception for MJDS Filers

The adopted rule amendments will eliminate the Rule 12g3-2 provisions that make the Rule 12g3-2(b) exemption available to Canadian issuers that have only filed with the Commission specified registration statements under the MJDS,⁹¹ although they may have filed those registration statements within the previous 18 months or to effect transactions in which they would succeed to Exchange Act reporting obligations.⁹²

⁹⁰ 17 CFR 240.12h-6(d). Under that rule, a non-Exchange Act reporting foreign private issuer that has acquired a reporting foreign private issuer in a transaction exempt under the Securities Act, for example, under Rule 802 (17 CFR 230.802), or Securities Act Section 3(a)(10) (15 U.S.C. 77c(a)(10)), may qualify immediately for termination of its Exchange Act reporting obligations under Rule 12h-6, without having to file an Exchange Act annual report, as long as the acquired company's reporting history fulfills Rule 12h-6's prior reporting condition and the successor issuer meets the rule's other conditions.

⁹¹ The Commission adopted the Rule 12g3-2 provisions when adopting the MJDS in order to encourage Canadian issuers to use the MJDS. See Release No. 33-6879 (October 22, 1990), 55 FR 462881 (November 2, 1990), as adopted in Release No. 33-6902 (June 21, 1991), 56 FR 30036 (July 1, 1991). The MJDS generally permits a qualified Canadian issuer to file with the Commission its Canadian registration statements and reports under cover of the MJDS forms.

⁹² Current Exchange Act Rules 12g3-2(d)(1) and (2).

Because the adopted amendments will eliminate the 18 month and successor issuer prohibitions under Rule 12g3-2(b), they will remove as unnecessary the MJDS filer exceptions to those prohibitions.

The adopted rule amendments will also eliminate the current ability of a Canadian issuer that already has the Rule 12g3-2(b) exemption, but that subsequently acquires Exchange Act reporting obligations as a MJDS filer, for example, with regard to a class of debt securities, to retain the Rule 12g3-2(b) exemption for its equity securities. Such a MJDS filer currently may submit its non-U.S. disclosure documents simultaneously to fulfill its Exchange Act reporting obligations under the MJDS and its non-U.S. publication obligations under Rule 12g3-2(b).⁹³

We proposed to eliminate this ability of a MJDS filer simultaneously to maintain the Rule 12g3-2(b) exemption both because few issuers have ever used that ability and because it no longer is the case that a MJDS filer must file the same documents to fulfill its obligations under the Exchange Act and Rule 12g3-2(b). Since the enactment of the Sarbanes-Oxley Act,⁹⁴ and Commission rules adopted under that Act, Canadian issuers must respond to several U.S. disclosure requirements when preparing their Form 40-F annual reports.⁹⁵

⁹³ Under the current rules, a Canadian issuer that checks the appropriate box on the cover of each filed Form 40-F and submitted Form 6-K is able to use those Exchange Act reports to maintain its Rule 12g3-2(b) exemption as well.

⁹⁴ Pub. L. 107-204, 116 Stat. 745 (2002).

⁹⁵ See, for example, Form 40-F's certifications required concerning an issuer's disclosure controls and procedures and its internal controls over financial reporting, and the disclosure required concerning its audit committee financial expert, its code of ethics, and its off-balance sheet arrangements.

Only one commenter opposed eliminating this rarely used ability to be a MJDS filer while simultaneously claiming the Rule 12g3-2(b) exemption.⁹⁶ The primary ground for objection was that some issuers may already be relying on the ability to use MJDS reports for this dual purpose. We continue to believe that this ability is rarely used if at all. Moreover, as explained below, we are adopting a three-year transition period following effectiveness of the adopted rule amendments, that will provide ample time for a MJDS registrant of debt securities, which has simultaneously claimed the Rule 12g3-2(b) exemption for a class of equity securities, to register that class of securities under the Exchange Act.⁹⁷

Accordingly, we are adopting the elimination of this MJDS provision, as proposed.⁹⁸ Under the adopted rule amendments, a MJDS registrant will be eligible to claim the Rule 12g3-2(b) exemption on the same grounds as other foreign registrants. If it has recently exited the Exchange Act reporting regime under Rule 12h-6, 12g-4 or 12h-3 or Section 15(d), it can claim the exemption, assuming it satisfies the rule amendments' other conditions. Otherwise, the filing of a MJDS registration statement under the Securities Act or Exchange Act will trigger Exchange Act reporting obligations and preclude that issuer from claiming the exemption.

⁹⁶ See the letter of Osler, Hoskins & Harcourt, dated April 28, 2008.

⁹⁷ See Part II.K.1 below.

⁹⁸ The adopted rule amendments remove the instruction on the cover page of Form 40-F and Form 6-K requiring a registrant to indicate whether it also is furnishing the materials pursuant to Rule 12g3-2(b).

H. Elimination of the "Automated Inter-Dealer Quotation System" Prohibition and Related Grandfathering Provision

The adopted amendments will also eliminate the provision generally prohibiting a foreign private issuer from claiming the Rule 12g3-2(b) exemption if it has securities or ADRs quoted in the United States on an automated inter-dealer quotation system,⁹⁹ which, until recently, referred to the inter-dealer quotation system administered by the National Association of Securities Dealers Inc., and known as Nasdaq. The Commission initially adopted this prohibition in 1983 because of its belief that, since its establishment in 1971, Nasdaq had so matured into a trading system with substantial similarities to a national securities exchange that Nasdaq-traded foreign private issuers should be required to meet the same disclosure standards as exchange-traded foreign private issuers.¹⁰⁰ We are eliminating this prohibition, as proposed, because Nasdaq has since become a national securities exchange.¹⁰¹

When the Commission adopted the automatic inter-dealer quotation system prohibition, it recognized that the general prohibition could cause some Nasdaq-quoted foreign companies that already had obtained the Rule 12g3-2(b) exemption to withdraw from Nasdaq. Therefore, the Commission excepted from that prohibition securities that:

- were quoted on Nasdaq on October 5, 1983 and have been continuously traded since;

⁹⁹ Current Exchange Act Rule 12g3-2(d)(3) (17 CFR 12g3-2(d)(3)).

¹⁰⁰ Release No. 34-20264 (October 6, 1983), 48 FR 46736 (October 14, 1983).

¹⁰¹ Nasdaq ceased operations as an automated inter-dealer quotation system and became a national securities exchange effective August 1, 2006. See Release No. 34-53128 (January 13, 2006), 71 FR 3550 (January 23, 2006).

- were exempt under Rule 12g3-2(b) on October 5, 1983 and have remained so since; and
- after January 2, 1986, were issued by a non-Canadian company.¹⁰²

The adopted rule amendments will eliminate this grandfathering provision because, as we stated in the Proposing Release, due to developments occurring since its adoption, we no longer believe the grandfathering provision is necessary. Only nine of the grandfathered issuers remain listed on Nasdaq.¹⁰³ Pursuant to Commission order, Nasdaq is now a national securities exchange, and those issuers must register their securities under Exchange Act Section 12(b) by August 1, 2009 if they wish to remain listed on Nasdaq.¹⁰⁴ Pursuant to the terms of the Commission order, as long as the nine grandfathered issuers continue to comply with the conditions of Rule 12g3-2(b), brokers and dealers may trade their securities in reliance on the Rule 12g3-2(b) exemption until the above deadline for Exchange Act registration. Those few commenters that addressed the issue supported the proposed elimination of the grandfathering provision.¹⁰⁵ Accordingly, we are adopting the elimination, as proposed.

¹⁰² Current Exchange Act Rule 12g3-2(d)(3). The Commission based the more limited grandfathering of Canadian securities on the more active U.S. market for those securities, which had led to abuses under Rule 12g3-2(b). Release No. 34-20264.

¹⁰³ Letter from Edward S. Knight to Nancy M. Morris (July 31, 2006), attached to Release No. 34-54240 (July 31, 2006), 71 FR 45246 (August 8, 2006).

¹⁰⁴ Release No. 34-54241 (July 31, 2006), 71 FR 45359 (August 8, 2006). The Commission granted the grandfathered issuers an additional three years to register their securities under Section 12(b) in order to avoid disruptions in the trading of their securities caused by their delisting from Nasdaq and to provide them with time to meet U.S. disclosure requirements.

¹⁰⁵ See the ABA letter and the letter of the Pink OTC Markets Inc. ("Pink OTC"), dated April 10, 2008.

I. Revisions to Form F-6

Currently, a registrant of ADRs must state on Form F-6, the registration statement used to register ADRs under the Securities Act, that the issuer of the deposited securities against which the ADRs will be issued is either an Exchange Act reporting company or furnishes public reports and other documents to the Commission pursuant to Rule 12g3-2(b).¹⁰⁶ We proposed to require a Form F-6 registrant to state that, if the issuer of deposited securities is not an Exchange Act reporting company, such issuer publishes information in English required to maintain the Rule 12g3-2(b) exemption on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market. The registrant would also have to disclose the issuer's address of its Internet Web site or the electronic information delivery system in its primary trading market.¹⁰⁷

Some commenters stated that, if the Commission elects not to publish an annual list of Rule 12g3-2(b)-exempt issuers, it will be difficult for a depository of an unsponsored ADR facility¹⁰⁸ to determine that the issuer of the subject securities has complied with the electronic publication condition of Rule 12g3-2(b). Those commenters requested that, for unsponsored facilities, we either eliminate the Form F-6 condition that

¹⁰⁶ Part I, Item 2 of Form F-6. Form F-6 states that the registrant is the legal entity created by the deposit agreement for the issuance of ADRs for the deposited securities.

¹⁰⁷ A registrant that has effected a Form F-6 registration statement before the effective date of these final rules would not have to amend the Form F-6 to provide the issuer's Internet Web site address until the registrant's first substantive amendment of the Form F-6. However, once a registrant has disclosed the issuer's Internet address on the Form F-6, it should promptly amend the Form F-6 to disclose a subsequent change in that address.

¹⁰⁸ Currently an ADR facility may be either sponsored or unsponsored. With a sponsored facility, the issuer of the deposited securities is a party to the deposit agreement along with the depository and is able to exercise some control regarding the terms and operations of the facility. With an unsponsored facility, the depository solely controls the terms and operations of the facility.

an issuer must be subject to Exchange Act reporting or must furnish reports required under Rule 12g3-2(b),¹⁰⁹ or revise the proposed Form F-6 amendment to permit the depositary to base its representation concerning an issuer's Rule 12g3-2(b) electronic publication upon the depositary's reasonable, good faith belief.¹¹⁰

We are not revising the requirement under Form F-6 that the issuer of the deposited securities be either an Exchange Act reporting company or be exempt from registration under Rule 12g3-2(b) because such revision would eliminate any ongoing disclosure obligations as a condition of Form F-6 registration, which would not be in the best interest of investors. However, we are amending Form F-6 to state that, in the case of an unsponsored ADR facility, a Form F-6 filer may base its representation that the issuer publishes information in English required to maintain the exemption from registration under Exchange Act Rule 12g3-2(b) upon the filer's reasonable, good faith belief after exercising reasonable diligence.¹¹¹ Except for this one change, we are adopting the Form F-6 amendment, as proposed.

Currently an issuer that does not seek to have its securities traded in the United States in the form of ADRs is able, by not formally establishing the Rule 12g3-2(b) exemption and submitting documents to the Commission, to restrict the ability of ADR depositary banks to establish unsponsored ADR facilities. Because the adopted rule amendments will expand the availability of the Rule 12g3-2(b) exemption by making it available to all otherwise eligible foreign private issuers that post materials to their Web

¹⁰⁹ See the letter of JPMorganChase.

¹¹⁰ See the letters of Ziegler, Ziegler & Associates and BNY.

¹¹¹ See the Note to Form F-6, Part I, Item 2.

sites or publish them through an electronic information delivery system in their primary trading market, ADR depositaries will be able to establish unsponsored ADRs on this expanded group of foreign private issuers based upon their reasonable, good faith belief, after exercising reasonable diligence, that those issuers comply with Rule 12g3-2(b).¹¹²

We solicited comment on whether, because of the expanded availability of the Rule 12g3-2(b) exemption under the proposed rule amendments, we should require, as a condition to the registration of ADRs on Form F-6, that the issuer give its consent to the depositary, or at least that the depositary must have notified the issuer of its intention to register ADRs and must not have received an affirmative statement of objection from the issuer. Those few commenters that addressed this matter disagreed on whether imposing such additional conditions on the creation of unsponsored ADR facilities was necessary or advisable.¹¹³ Given this disagreement, and because we concur with those commenters who stated that imposing such additional conditions could run counter to the goal of streamlining the Rule 12g3-2(b) regime for the benefit of investors and issuers,¹¹⁴ we are not adopting at this time any additional conditions regarding the formation of unsponsored ADR facilities.

¹¹² ADR depositaries will also be able to establish sponsored ADR facilities with foreign private issuers that choose to have their shares represented by ADRs in the United States.

¹¹³ See the letters of Cleary Gottlieb and European Issuers, both of which favored requiring a depositary to notify an issuer before establishing an unsponsored ADR facility, and requiring it to terminate an unsponsored facility created without the consent of an issuer if the issuer decides to create a sponsored facility. But see the letters of BNY and Pink OTC, both of which opposed the adoption of a condition requiring a depositary to obtain the consent of an issuer before establishing an unsponsored ADR facility, and the letter of Deutsche Bank, dated April 21, 2008, which stated that, because, in practice, depositary banks typically obtain the issuer's consent before establishing an unsponsored ADR facility, a rule requiring such consent was not necessary.

¹¹⁴ See the letters of BNY and Pink OTC.

J. Amendment of Exchange Act Rule 15c2-11

Exchange Act Rule 15c2-11¹¹⁵ contains requirements that are intended to deter broker-dealers from initiating or resuming quotations for covered over-the-counter securities that may facilitate a fraudulent or manipulative scheme. The Rule currently prohibits a broker-dealer from publishing (or submitting for publication) a quotation for a covered over-the-counter security in a quotation medium unless it has obtained and reviewed current information about the issuer.¹¹⁶ One of the specified types of information satisfying this Rule 15c2-11 obligation is information furnished to the Commission pursuant to Rule 12g3-2(b). A broker-dealer must make this information reasonably available upon request to any person expressing an interest in a proposed transaction involving the security with the broker-dealer.¹¹⁷

We proposed to amend Rule 15c2-11 to conform to the proposed rule amendments so that a broker-dealer must have available the information that, since the beginning of its last fiscal year, the issuer has published pursuant to the Rule 12g3-2(b) exemption. We further proposed to permit a broker-dealer to fulfill its Rule 15c2-11 obligation to make reasonably available upon request the information published pursuant to Rule 12g3-2(b) by providing the requesting person with appropriate instructions regarding how to obtain the information electronically. This reflects our view that most

¹¹⁵ 17 CFR 240.15c2-11.

¹¹⁶ Rule 15c2-11(a) (17 CFR 240.15c2-11(a)). The broker-dealer must also have a reasonable basis for believing that the issuer information, when considered along with any supplemental information, is accurate and is from a reliable source.

¹¹⁷ Rule 15c2-11(a)(4) (17 CFR 240.15c2-11(a)(4)).

investors will have ready access to the electronically published documents of Rule 12g3-2(b)-exempt issuers.

The proposed amendment of Rule 15c2-11 received little comment. Because this proposal will make it easier for broker-dealers to fulfill their Rule 15c2-11 obligations for the benefit of investors, we are adopting it, as proposed. Because some issuers currently still make paper submissions to maintain their Rule 12g3-2(b) exemption, we expect that, during the first year of the amended rules' effectiveness, a broker-dealer may have to resort to both paper submissions and electronically published materials in order to fulfill its Rule 15c2-11 obligations regarding a particular issuer. Eventually, however, a broker-dealer will only have to look to an issuer's electronically published materials for the purpose of Rule 15c2-11.

K. Transition Periods

1. Regarding Section 12 Registration

While we believe most issuers that currently have the Rule 12g3-2(b) exemption will continue to be able to claim the exemption upon the effectiveness of the adopted rule amendments, some may not be able to do so because, for example, they no longer maintain a foreign listing or their principal foreign trading market comprises less than 55 percent of their worldwide trading and, therefore, does not meet the definition of primary trading market under the amended rule. Those issuers will have to file a Section 12 registration statement if they are unable to meet all of the amended rule's conditions or fail to qualify under another exemption from Section 12(g). In order to provide those issuers with sufficient time to prepare for and complete the Section 12 registration process, including obtaining required audited financial statements, we are adopting a

three-year transition period, as proposed. Those issuers must become Exchange Act registrants no later than three years from the effective date of the adopted rule amendments if they are unable to comply fully with all of the amended rule's conditions.¹¹⁸

We believe this three-year transition period is necessary for the benefit not just of issuers, but of broker-dealers and investors as well. If a currently exempt issuer is unable to claim the Rule 12g3-2(b) exemption upon the effectiveness of the rule amendments because it no longer has a foreign listing or cannot meet the primary trading market definition, but continues to comply with the electronic publishing condition, a broker-dealer will be able to rely on that issuer's electronic postings to meet its Rule 15c2-11 obligations to investors and to facilitate resales of that issuer's securities in Rule 144A transactions during the transition period.

Several commenters urged the Commission to grandfather indefinitely current Rule 12g3-2(b)-exempt companies.¹¹⁹ Most of those issuers also stated their support for a three-year transition period as an alternative to a grandfathering provision.¹²⁰ We decline to adopt a grandfathering provision because, in the interest of protecting investors, we believe that any issuer that claims the Rule 12g3-2(b) exemption must comply fully with the foreign listing condition and definition of primary trading market.

¹¹⁸ We adopted a similar three-year transition period to enable those grandfathered Nasdaq-traded foreign companies that were Rule 12g3-2(b)-exempt to register under Section 12(b) after Nasdaq became an exchange. See Release No. 34-54241 (July 31, 2006), 71 FR 45359 (August 8, 2006).

¹¹⁹ See the letters of the ABA, BNY, JPMorganChase, Pink OTC, and Shearman & Sterling.

¹²⁰ The ABA suggested a five-year transition period.

Adoption of a three-year transition period will enable issuers to achieve full compliance with Rule 12g3-2(b) or Exchange Act registration without unduly burdening them.

2. Regarding Processing of Paper Submissions

We expect that, following the effectiveness of the adopted rule amendments, some Rule 12g3-2(b)-exempt companies will continue to submit their non-U.S. disclosure documents in paper to the Commission either because they are unaware of the amendments or lack electronic publishing capabilities. In order to assist those companies in complying with the new amendments, and because there may also be some investors who currently do not have ready access to the Internet, we are adopting a three-month transition period, as proposed. During this period, the Commission will continue to process paper Rule 12g3-2(b) submissions and make them publicly available in the Public Reference Room for three months following the effectiveness of the rule amendments. Thereafter, the Commission will no longer process paper Rule 12g3-2(b) submissions. An issuer that continues to make Rule 12g3-2(b) submissions in paper after this three-month period, and does not publish the submitted documents electronically as required, will no longer be able to claim the Rule 12g3-2(b) exemption.

Those commenters that addressed the matter supported such a transition period,¹²¹ although one commenter suggested a one-year period instead of a three-month period.¹²² Because of recent advances in information technology, we continue to believe that three months will be sufficient time for all Rule 12g3-2(b)-exempt issuers to develop the capabilities to publish electronically their non-U.S. disclosure documents, and for

¹²¹ See the letters of the ABA, BNY and Pink OTC.

¹²² See the BNY letter.

investors and other interested persons to determine how and where to access those electronically published documents.

III. PAPERWORK REDUCTION ACT

The final rule amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").¹²³ The title of the affected collections of information are submissions under Exchange Act Rule 12g3-2 (OMB Control No. 3235-0119) and Securities Act Form F-6 (OMB Control No. 3235-0292). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Compliance with the amendments to Rule 12g3-2 and Form F-6 is mandatory.

Exchange Act Rule 12g3-2 is an exemptive rule that, under paragraph (b) of that rule, provides an exemption from Exchange Act Section 12(g) registration for a foreign private issuer that, on an ongoing basis, either submits copies of its material non-U.S. disclosure documents to the Commission in paper or publishes those documents on its Internet Web site or through an electronic information delivery system in its primary trading market. We adopted paragraph (b) of Rule 12g3-2 in order to provide information for U.S. investors concerning foreign private issuers with limited securities trading in U.S. capital markets.

Securities Act Form F-6 is the form used to register ADRs, which are a special type of security issued by a U.S. bank, representing a specified amount of securities issued by a foreign company that are deposited with the bank. We adopted Form F-6 in order to provide investors with information concerning a foreign company's ADRs, as

¹²³ 44 U.S.C. 3501 et seq.

disclosed in the deposit agreement, which must be attached as an exhibit to the Form F-6.

The hours and costs associated with making submissions under Exchange Act Rule 12g3-2(b) and preparing and filing Form F-6 constitute reporting and cost burdens imposed by those collections of information. We based our estimates of the effects that the final rule amendments will have on those collections of information primarily on our review of the most recently completed PRA submissions for Rule 12g3-2(b) documents and Form F-6, on the particular requirements for those submissions and form, and on other information, for example, concerning relative U.S. and foreign trading volume for foreign private issuers whose equity securities trade in the U.S. over-the-counter market.

The final rule amendments to Exchange Act Rule 12g3-2 will permit a foreign private issuer to claim the Rule 12g3-2(b) exemption, without having to submit paper copies of written materials to the Commission, if, among other requirements, it maintains a listing of the subject class of securities on one or more exchanges in its primary trading market. The final rule amendments define primary trading market to mean that at least 55 percent of the trading in the issuer's subject class of securities on a worldwide basis took place in, on or through the facilities of a securities market or markets in a single foreign jurisdiction or in no more than two foreign jurisdictions during the issuer's most recently completed fiscal year. The final rule amendments also provide that, if a foreign private issuer aggregates the trading of its subject class of securities in two foreign jurisdictions for the purpose of meeting the primary trading market definition, the trading for the issuer's securities in at least one of the two foreign jurisdictions must be larger than the trading in the United States for the same class of the issuer's securities.

The final rule amendments further require that, as a condition to claiming the Rule 12g3-2(b) exemption, a non-Exchange Act reporting issuer must publish in English specified non-U.S. disclosure documents required by Rule 12g3-2(b) for its most recently completed fiscal year on its Internet Web site or through an electronic information delivery system in its primary trading market, instead of requiring their submission in paper as part of a written application to the Commission. The final rule amendments also require an issuer similarly to publish electronically specified non-U.S. disclosure documents in English on an ongoing basis for subsequent fiscal years as a condition to maintaining the Rule 12g3-2(b) exemption, rather than permitting their submission in paper to the Commission.

The final amendments to Form F-6 will require a registrant to state that the issuer of the deposited securities, which is not an Exchange Act reporting company, publishes information in English required to maintain the Rule 12g3-2(b) exemption on the issuer's Internet Web site or through its primary trading market's electronic information delivery system.¹²⁴ The final amendments will also require the registrant to disclose the address of the issuer's Internet Web site or electronic information delivery system. A registrant that already has an effective Form F-6 will have to disclose the address of where the issuer electronically publishes its non-U.S. disclosure documents under Rule 12g3-2(b) when the registrant first amends its Form F-6 following the effective date of the final rule amendments.

¹²⁴ The final amendments provide that the registrant of an unsponsored ADR facility may make the required representation based upon its reasonable good faith belief after exercising reasonable diligence.

We have prepared the annual burden and cost estimates of the final rule amendments on Rule 12g3-2(b) submissions or publications and Form F-6 based on the following current estimates and assumptions:

- a foreign private issuer incurs 75% of the burden required to produce each Rule 12g3-2(b) submission or publication, excluding the initial application for the Rule 12g3-2(b) exemption and English translation work, and 25% of the burden required to perform work for the initial application and English translation for the Rule 12g3-2(b) submissions or publications;
- outside firms, including legal counsel, accountants and other advisors incur 25% of the burden required to produce each Rule 12g3-2(b) submission or publication, not including the initial application for the Rule 12g3-2(b) exemption and English translation work, at an average cost of \$400 per hour, and 75% of the burden required to produce the initial application at an average cost of \$400 per hour, and 75% of the burden resulting from English translation work at an average cost of \$125 per hour;
- English translation work constitutes on average 25% of the total work required for the Rule 12g3-2(b) submissions;
- a registrant satisfies 25% of the burden required to produce each Form F-6; and
- outside firms, including legal counsel, accountants and other advisors, satisfy 75% of the burden required to produce each Form F-6 at an average cost of \$400 per hour.

We published a notice requesting comment on the collection of information requirements in the Proposing Release and submitted these requirements to the Office of

Management and Budget ("OMB") for review in accordance with the PRA.¹²⁵ We received several comment letters regarding the proposed rule amendments, although none addressed their estimated effects on the collection of information requirements. We have revised the proposed rule amendments in response to those comments. As a result, we have revised the estimated reporting and cost burdens of the rule amendments, as discussed below.

A. Rule 12g3-2(b) Submissions or Publications

We estimate that, currently under Rule 12g3-2(b), on an annual basis:

- 1,036 foreign private issuers claim the Rule 12g3-2(b) exemption;
- each issuer makes on average 12 submissions or publications, for a total of 12,432 submissions or publications under Rule 12g3-2(b);
- production of those Rule 12g3-2(b) submissions or publications requires a total of 49,728 burden hours, or an average of 4 burden hours per submission or publication (for all work performed by foreign private issuers and outside firms);
- of those total burden hours, 13,700 hours result from work incurred by 685 issuers to produce their initial Rule 12g3-2(b) applications;¹²⁶

¹²⁵ 44 U.S.C. 3507(d) and 5 CFR 1320.11.

¹²⁶ We previously estimated that 685 issuers obtained the Rule 12g3-2(b) exemption before the adoption of Rule 12h-6, which eliminated the application process for issuers that deregister pursuant to that new rule. See Release No. 34-55540. All of the 685 issuers obtained the Rule 12g3-2(b) exemption after having submitted a letter application to the Commission. Based on a review of several Rule 12g3-2(b) applications, and an assessment of Rule 12g3-2(b)'s requirements and current practice, we estimated then, and continue to estimate, that it takes approximately 20 hours on average to complete a Rule 12g3-2(b) letter application. 685 x 20 hrs. = 13,700 hrs.

- foreign private issuers incur a total of 25,943 burden hours¹²⁷ to produce the Rule 12g3-2(b) submissions or publications, or an average of 2.1 burden hours per submission or publication,¹²⁸ and
- outside firms perform service at a total cost of \$7,656,375¹²⁹ to produce the Rule 12g3-2(b) submissions or publications.¹³⁰

We estimate that, on an annual basis, up to 350 additional foreign private issuers could claim the Rule 12g3-2(b) exemption as a result of the amendments to Rule 12g3-2 we are adopting today.¹³¹ This increase in the number of Rule 12g3-2(b)-exempt issuers would cause:

¹²⁷ 49,728 hrs. - 13,700 hrs. = 36,028 hrs. for work excluding application work. 36,028 hrs. x .25 = 9,007 hrs. for English translation work. 36,028 hrs. - 9,007 hrs. = 27,021 hrs. x .75 = 20,266 hrs. for non-English translation work. 9,007 hrs. x .25 = 2,252 hrs. for English translation work. 13,700 hrs. x .25 = 3,425 hrs. for application work. 20,266 hrs. + 2,252 hrs. + 3,425 hrs. = 25,943 hrs. for total work performed by foreign private issuers. 25,943 hrs./12,432 = 2.1 hrs per submission or publication.

¹²⁸ The last OMB-approved submission for Rule 12g3-2(b) reported 31,080 burden hours for foreign private issuers. Our current estimate of 25,943 burden hours is due to our assessment of the average annual burden hours required to produce written applications under Rule 12g3-2(b), most of which are incurred by outside firms. The decrease in hours represents an adjustment to the previous OMB-approved burden estimate for Rule 12g3-2(b), which we noted when submitting the PRA estimate for the Proposing Release.

¹²⁹ 27,021 hrs. x .25 = 6,755 hrs. x \$400/hr. = \$2,702,000 for non-English translation work. 9,007 hrs. x .75 = 6,755 hrs. x \$125/hr. = \$844,375 for English translation work. 13,700 hrs. x .75 = 10,275 hrs. x \$400/hr. = \$4,110,000 for application work. \$2,702,000 + \$844,375 + \$4,110,000 = \$7,656,375 for total work performed by outside firms.

¹³⁰ The last OMB-approved submission for Rule 12g3-2(b) reported \$4,895,100 in total costs for outside firms. Our current estimate of \$7,656,375 is due to the previously noted assessment of the average annual burden hours required to produce written applications under Rule 12g3-2(b). This increase in costs represents an adjustment to the previous OMB-approved cost estimate for Rule 12g3-2(b), which we noted when submitting the PRA estimate for the Proposing Release.

¹³¹ We previously estimated that the proposed rule amendments would cause an additional 150 issuers to claim the Rule 12g3-2(b) exemption. We have increased the estimated number of issuers affected by the final rule amendments in part due to the elimination of the proposed condition that would have required an issuer to have its U.S. trading volume no greater than 20 percent of its worldwide trading volume for its last fiscal year. Under the final rule amendments,

- the number of issuers claiming the Rule 12g3-2(b) exemption to total 1,386;
- the number of Rule 12g3-2(b) publications to total 16,632;¹³²
- the number of burden hours required to produce these Rule 12g3-2(b) publications to total 59,528 hours (for all work performed by issuers and outside firms);¹³³
- the number of burden hours incurred by foreign private issuers to produce the Rule 12g3-2(b) publications to total 37,206 hours, or 2.2 burden hours per publication;¹³⁴ and
- outside firms perform services at a total cost of \$5,860,050¹³⁵ to produce the

an issuer must still meet the foreign listing/primary trading market condition, which effectively limits the issuer's U.S. trading volume to no greater than 45%. The increase in the estimated number of issuers affected by the final rule amendments is also due to a reconsideration of the number of unsponsored ADR facilities that could result from the amended rules.

¹³² $1,386 \times 12 = 16,632$ publications.

¹³³ $16,632 \times 4 \text{ hrs.} = 66,528 \text{ hrs.}$ $350 \times 20 \text{ hrs.} = 7,000 \text{ hrs.}$ of work saved by the elimination of the written application requirement. $66,528 \text{ hrs.} - 7,000 \text{ hrs.} = 59,528 \text{ hrs.}$

¹³⁴ $59,528 \text{ hrs.} \times .25 = 14,882 \text{ hrs.}$ for English translation work. $59,528 \text{ hrs.} - 14,882 \text{ hrs.} = 44,646 \text{ hrs.}$; $44,646 \text{ hrs.} \times .75 = 33,485 \text{ hrs.}$ for non-English translation work; $14,882 \text{ hrs.} \times .25 = 3,721 \text{ hrs.}$ for English translation work; $33,485 \text{ hrs.} + 3,721 \text{ hrs.} = 37,206 \text{ total hrs.}$ incurred by foreign private issuers. $37,206 \text{ hrs.} / 16,632 = 2.2 \text{ hrs. per publication.}$ This represents an increase of 6,126 hrs. from the most recent OMB-approved burden estimate for Rule 12g3-2(b) submissions or publications. Using a rate of \$175/hr. for in-house work, the adopted amendments could result in \$6,511,050 of in-house costs incurred by foreign private issuers compared to \$5,439,000 of in-house costs based on the previous OMB-approved burden estimate for Rule 12g3-2(b) submissions or publications. $37,206 \text{ hrs.} \times \$175/\text{hr.} = \$6,511,050.$ $31,080 \text{ hrs.} \times \$175/\text{hr.} = \$5,439,000.$

¹³⁵ $44,646 \text{ hrs.} \times .25 = 11,162 \text{ hrs.} \times \$400/\text{hr.} = \$4,464,800$ for non-English translation work; $14,882 \text{ hrs.} \times .75 = 11,162 \text{ hrs.} \times \$125/\text{hr.} = \$1,395,250$ for English translation work; $\$4,464,800 + \$1,395,250 = \$5,860,050$ for total costs incurred by outside firms. This represents an increase of \$964,950 from the most recent OMB-approved cost estimate for Rule 12g3-2(b) submissions or publications.

Rule 12g3-2(b) publications.¹³⁶

B. Form F-6

We currently estimate that, on an annual basis:

- 150 registrants file Form F-6;
- each registrant files one Form F-6, for a total of 150 Form F-6s;
- production of these Form F-6s requires 150 burden hours, or one burden hour per Form F-6 (for all work performed by registrants and outside firms);
- of those total hours, registrants incur 38 hours to produce the Form F-6s, or an average of .25 hours per Form F-6;¹³⁷ and
- outside firms perform services at a total cost of \$45,000 to produce the Form F-6s.¹³⁸

We estimate that, on an annual basis, approximately 350 additional registrants could file Form F-6 as a result of the final rule amendments. We further estimate that, as a result of the final rule amendments, the burden required to produce each Form F-6 would increase by .5 hours. This increase in the number of Form F-6s and burden hours would cause:

- the number of Form F-6s filed to increase by 350 for a total of 500;

¹³⁶ Based on the above estimates, the amendments could result in a \$2,037,000 increase in Rule 12g3-2(b) costs. $\$6,511,050 + \$5,860,050 = \$12,371,100$ in total post-amendment Rule 12g3-2(b) costs. $\$5,439,000 + \$4,895,100 = \$10,334,100$ in total pre-amendment Rule 12g3-2(b) costs. $\$12,371,100 - \$10,334,100 = \$2,037,000$ increase in Rule 12g3-2(b) costs.

¹³⁷ $150 \text{ hrs.} \times .25 = 38 \text{ hrs.}$

¹³⁸ $150 \text{ hrs.} \times .75 \times \$400/\text{hr.} = \$45,000.$

- the total hours required to produce the Form F-6s to increase by 525 hours for a total of 675 hours, or 1.35 hours per Form F-6;¹³⁹
- the number of burden hours incurred by registrants to produce the Form F-6s to increase by 131 hours to 169 hours, or .34 hours per Form F-6;¹⁴⁰ and
- outside firms to perform services at a total cost of \$202,400 (an increase of \$157,400)¹⁴¹ to produce the Form F-6s.¹⁴²

IV. COST-BENEFIT ANALYSIS

A. Expected Benefits

The adopted rule amendments are designed to encourage more foreign companies, which have not listed or otherwise publicly sold their securities in the United States, to claim the Rule 12g3-2(b) exemption, and thereby require them to publish on the Internet material disclosure documents in English, enhancing the ability of U.S. investors to trade equity securities of such companies in the U.S. over-the-counter market. The Rule 12g3-2(b) exemption permits a foreign company to have established an unlisted ADR facility

¹³⁹ For the additional 350 filers: $350 \times 1.5 \text{ hrs.} = 525 \text{ hrs.}$, $525 \text{ hrs.} + 150 \text{ hrs.} = 675 \text{ hrs.}$, $675 \text{ hrs.}/500 = 1.35 \text{ hrs. per Form F-6.}$

¹⁴⁰ $675 \text{ hrs.} \times .25 = 169 \text{ hrs.}$, $169 \text{ hrs.} - 38 \text{ hrs.} = 131 \text{ hrs.}$, $169 \text{ hrs.}/500 = .34 \text{ hr. per Form F-6.}$ Using a rate of \$175/hr. for in-house work, the adopted amendments could result in \$29,575 of in-house costs incurred by foreign private issuers compared to \$6,650 of pre-amendment in-house costs. $169 \text{ hrs.} \times \$175/\text{hr.} = \$29,575$. $38 \text{ hrs.} \times \$175/\text{hr.} = \$6,650$.

¹⁴¹ $675 \text{ hrs.} \times .75 = 506 \text{ hrs.} \times \$400/\text{hr.} = \$202,400$. $\$202,400 - \$45,000 = \$157,400$.

¹⁴² Based on the above estimates, the amendments could result in a \$180,325 increase in Form F-6 costs. $\$29,575 + \$202,400 = \$231,975$ in total post-amendment Form F-6 costs. $\$6,650 + \$45,000 = \$51,650$ in total pre-amendment Form F-6 costs. $\$231,975 - \$51,650 = \$180,325$ increase in Form F-6 costs. Thus, considering the estimated effects on both Rule 12g3-2(b) submissions and publications and Form F-6, the amendments could result in a \$2,217,325 increase in total costs. $\$2,037,000 + \$180,325 = \$2,217,325$.

under which its equity securities are traded as ADRs in the U.S. over-the-counter market for the convenience of U.S. investors, even if its U.S. investors exceed the Section 12(g) shareholder thresholds.¹⁴³ The Rule 12g3-2(b) exemption also permits a foreign company to have its equity securities traded in the form of ordinary shares through the U.S. over-the-counter market, makes it easier for broker-dealers to fulfill their obligations under Exchange Act Rule 15c2-11, and facilitates the resale of a foreign company's securities to qualified institutional buyers in the United States under Securities Act Rule 144A.

The adopted rule amendments should result in new investment opportunities in foreign securities for U.S. investors by encouraging more foreign companies to claim the Rule 12g3-2(b) exemption and thereby have their securities traded in the United States over-the-counter market. The new investment opportunities in foreign securities may also lead to improved diversification in the portfolios of U.S. investors.

The adopted rule amendments will encourage more foreign companies to claim the Rule 12g3-2(b) exemption by reducing the costs of obtaining that exemption for foreign private issuers in two ways. First, the rule amendments will enable an otherwise eligible issuer to claim the Rule 12g3-2(b) exemption, regardless of the number of its U.S. security holders, as long as it maintains a listing of the subject class of equity securities on one or more exchanges in no more than two foreign jurisdictions constituting its primary trading market. The rule amendments define "primary trading market" to mean

¹⁴³ Use of an ADR facility makes it easier for a U.S. investor to receive dividends in U.S. dollars. Moreover, because the clearance and settlement process for ADRs generally is the same for securities of domestic companies that are traded in U.S. markets, a U.S. holder of an ADR is able to hold securities of a foreign company that trades, clears and settles within automated U.S. systems and within U.S. time periods.

that at least 55 percent of the worldwide trading volume of the issuer's subject class of securities occurs in no more than two foreign jurisdictions, and the trading volume in one of the foreign jurisdictions must be larger than the U.S. trading volume for the same class of securities. Currently Rule 12g3-2(b) requires an issuer to disclose the number of its U.S. security holders and the percentage of its outstanding securities held by them when applying for the Rule's exemption from Exchange Act registration.¹⁴⁴ Since it is typically more difficult for a foreign company to calculate the number of its U.S. holders than to determine its U.S. or foreign trading volume, the adopted rule amendments should make it easier for more foreign companies to claim the exemption and thereby have their securities traded in the U.S. over-the-counter market for the benefit of U.S. investors.

Second, the adopted rule amendments will eliminate the current written application process that requires an issuer to submit in paper specified information concerning, for example, its non-U.S. disclosure requirements, along with paper copies of its non-U.S. disclosure documents published since the beginning of its last fiscal year. Since outside law firms typically perform most of the work required for the application, the rule amendments should reduce Rule 12g3-2(b) costs for foreign companies and encourage more of them to have their securities traded in the U.S. over-the-counter market pursuant to the Rule 12g3-2(b) exemption for the benefit of U.S. investors.

The adopted rule amendments will further benefit U.S. investors by requiring any foreign company that claims the Rule 12g3-2(b) exemption to publish in English specified non-U.S. disclosure documents on its Internet Web site or through an electronic

¹⁴⁴ An issuer must also currently recalculate the number of its U.S. security holders when applying for reinstatement of the Rule 12g3-2(b) exemption should it lose that exemption due to non-compliance with the Rule's ongoing requirements.

information delivery system that is generally available to the public in its primary trading market. Currently an issuer that has obtained the Rule 12g3-2(b) exemption upon application may submit its non-U.S. documents on an ongoing basis in paper to the Commission. By requiring the electronic publication in English of specified non-U.S. documents for any issuer claiming the Rule 12g3-2(b) exemption, the adopted amendments should make it easier for U.S. investors to gain access to a foreign private issuer's material non-U.S. disclosure documents and make better informed decisions regarding whether to invest in that issuer's equity securities.

B. Expected Costs

Investors will incur costs from the adopted rule amendments to the extent that the amendments encourage more foreign companies, which otherwise would be required to register their equity securities under the Exchange Act, to claim the Rule 12g3-2(b) exemption, where the information, enforcement remedies, and other effects of registration are valuable to investors. We estimate that, on an annual basis, approximately 350 additional foreign private issuers could claim the Rule 12g3-2(b) exemption as a result of the adopted amendments to Rule 12g3-2. Some less technologically capable investors may also incur costs resulting from the search and retrieval of a foreign company's electronically published documents. However, we expect those costs to be less than the costs that investors currently must incur to obtain written copies of a foreign company's non-U.S. disclosure documents submitted in paper to the Commission.

A foreign company will incur costs resulting from the amended rule's requirement to publish electronically specified non-U.S. disclosure documents in English

to the extent that it is not already required to, or does not already, do so pursuant to any applicable law or rule. A foreign private issuer will also incur costs resulting from its required annual determination regarding whether it is still in compliance with the amended rule's primary trading market provision. However, those costs will likely be less than the costs that an issuer currently must incur when calculating the number of its U.S. holders pursuant to Rule 12g3-2(b).

If, because of those costs, the foreign company does not claim or maintain the Rule 12g3-2(b) exemption, U.S. investors interested in trading in the securities of that company would have to resort to trading in the company's non-U.S. primary trading market. Those U.S. investors could incur costs associated with finding and contracting with a broker-dealer who is able to trade in the foreign reporting company's primary trading market. U.S. investors could also face additional costs resulting from currency conversion and higher transaction costs trading the securities in a foreign market. U.S. investors would also incur costs from lost investment opportunities and possibly lost diversification benefits to the extent that they choose not to trade in a foreign company's securities that are not available in the U.S. over-the-counter market.

V. CONSIDERATION OF IMPACT ON THE ECONOMY, BURDEN ON COMPETITION AND PROMOTION OF EFFICIENCY, COMPETITION AND CAPITAL FORMATION ANALYSIS

When adopting rules under the Exchange Act, Section 23(a)(2) of the Exchange Act¹⁴⁵ requires us to consider the impact that any new rule will have on competition. Section 23(a)(2) also prohibits us from adopting any rule that will impose a burden on

¹⁴⁵ 15 U.S.C. 78w(a)(2).

competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Furthermore, when engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, Section 2(b)¹⁴⁶ of the Securities Act and Section 3(f) of the Exchange Act¹⁴⁷ require the Commission to consider whether the action will promote efficiency, competition and capital formation.

In the Proposing Release, we considered the proposed rule amendments in light of the standards set forth in the above statutory sections. We solicited comment on whether, if adopted, the proposed rule amendments would result in any anti-competitive effects or promote efficiency, competition and capital formation. We further encouraged commenters to provide empirical data or other facts to support their views on any anti-competitive effects or any burdens on efficiency, competition or capital formation that might result from adoption of the proposed amendments.

We did not receive any comments or any empirical data in this regard concerning the proposed amendments. Accordingly, since the adopted rule amendments are similar to the proposed rule amendments, we continue to believe the amended rules will contribute to efficiency, competition and capital formation.

The adopted amendments revise the rules that determine when a foreign private issuer may claim the exemption from Exchange Act Section 12(g) registration under Exchange Act Rule 12g3-2(b). That exemption permits limited trading of an issuer's exempted equity securities in the over-the-counter market in the United States as long as

¹⁴⁶ 15 U.S.C. 77b(b).

¹⁴⁷ 15 U.S.C. 78c(f).

the issuer submits its non-U.S. disclosure documents to the Commission, notwithstanding that the issuer exceeds the Section 12(g) registration thresholds. Many foreign private issuers rely on the Rule 12g3-2(b) exemption to have established ADR facilities, which make it easier for U.S. investors to trade in those issuers' equity securities. The Rule 12g3-2(b) exemption also makes it easier for broker-dealers to meet their Exchange Act Rule 15c2-11 obligations, and effect the resale of a foreign private issuer's securities to QIBs under Securities Act Rule 144A.

The adopted rule amendments will permit a foreign private issuer to claim the Rule 12g3-2(b) exemption without having to submit a paper application to the Commission, as is currently required, if, among other conditions, the issuer maintains a listing on one or more exchanges in no more than two foreign jurisdictions that constitute its primary trading market. The adopted rule amendments will also require an issuer to publish in English specified non-U.S. disclosure documents on its Internet web site or through an electronic information delivery system that is generally available to the public in its primary trading market. Currently an issuer that has obtained the Rule 12g3-2(b) exemption by application may submit its non-U.S. disclosure documents in paper to the Commission.

By enabling a qualified foreign private issuer to claim the Rule 12g3-2(b) exemption automatically, and without regard to the number of its U.S. shareholders, as is currently the case, the adopted rule amendments should encourage more foreign private issuers to claim the Rule 12g3-2(b) exemption by lowering the costs of obtaining that exemption. Consequently, the adopted rule amendments should increase the efficiency of foreign private issuers' claiming the exemption and foster the trading of foreign

companies' equity securities in the U.S. over-the-counter market, for example, by enabling the establishment of additional ADR facilities and making it easier for broker-dealers to meet their Rule 15c2-11 obligations with respect to foreign securities. The enhanced ability of investors to trade foreign securities in the United States should help encourage competition between domestic and foreign firms for investors in the U.S. over-the-counter-market.

Moreover, by requiring the electronic publication in English of specified non-U.S. disclosure documents for any issuer claiming the Rule 12g3-2(b) exemption, the adopted amendments should make it easier for U.S. investors to gain access to a foreign private issuer's material non-U.S. disclosure documents and make better informed decisions regarding whether to invest in that issuer's equity securities. Thus, the proposed amendments should foster increased efficiency in the trading of the issuer's securities.

VI. REGULATORY FLEXIBILITY ACT CERTIFICATION

Under Section 605(b) of the Regulatory Flexibility Act,¹⁴⁸ we certified that, when adopted, the proposed rule amendments would not have a significant economic impact on a substantial number of small entities. We included this certification in Part VI of the Proposing Release. While we encouraged written comments regarding this certification, no commenters responded to this request.

VII. STATUTORY BASIS AND TEXT OF RULE AMENDMENTS

We are adopting the amendments to Securities Act Form F-6, Exchange Act Rules 12g3-2 and 15c2-11, and Exchange Act Forms 40-F, 6-K, and 15F under the

¹⁴⁸ 5 U.S.C. 605(b).

authority in Sections 6, 7, 10 and 19 of the Securities Act¹⁴⁹ and Sections 3(b), 12, 13, 23 and 36 of the Exchange Act.¹⁵⁰

TEXT OF RULE AMENDMENTS

List of Subjects

17 CFR Parts 239, 240 and 249

Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, we are amending Title 17, Chapter II of the Code of Federal Regulations as follows.

PART 239 - FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss; 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

2. Amend Form F-6 (referenced in §239.36) by revising Item 2 of Part I to read as follows:

Note: The text of Form F-6 does not and this amendment will not appear in the Code of Federal Regulations.

¹⁴⁹ 15 U.S.C. 77f, 77g, 77h, 77j, and 77s.

¹⁵⁰ 15 U.S.C. 78c, 78l, 78m, 78w, and 78mm.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM F-6

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933
FOR DEPOSITARY SHARES EVIDENCED BY AMERICAN DEPOSITARY
RECEIPTS

* * * * *

PART I - INFORMATION REQUIRED IN PROSPECTUS

* * * * *

Item 2. Available Information

Provide the information in either (a) or (b) below, whichever is applicable.

(a) State that the foreign issuer publishes information in English required to maintain the exemption from registration under Rule 12g3-2(b) under the Securities Exchange of 1934 on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market. Then disclose the address of the foreign issuer's Internet Web site or the electronic information delivery system in its primary trading market.

(b) State that the foreign issuer is subject to the periodic reporting requirements of the Securities Exchange Act of 1934 and accordingly files reports with the Commission. Then disclose that these reports are available for inspection and copying through the Commission's EDGAR system or at public reference facilities maintained by the Commission in Washington, D.C.

Note to Item 2: In the case of an unsponsored ADR facility, you may base your representation that the issuer publishes information in English required to maintain the

exemption from registration under Exchange Act Rule 12g3-2(b) upon your reasonable, good faith belief after exercising reasonable diligence.

* * * * *

**PART 240 - GENERAL RULES AND REGULATIONS, SECURITIES
EXCHANGE ACT OF 1934**

3. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

4. Amend §240.12g3-2 by revising paragraphs (b), (c), and (d), and removing paragraphs (e) and (f), to read as follows:

§240.12g3-2 Exemptions for American depositary receipts and certain foreign securities.

* * * * *

(b)(1) A foreign private issuer shall be exempt from the requirement to register a class of equity securities under section 12(g) of the Act (15 U.S.C. 78l(g)) if:

(i) The issuer is not required to file or furnish reports under section 13(a) of the Act (15 U.S.C. 78m(a)) or section 15(d) of the Act (15 U.S.C. 78o(d));

(ii) The issuer currently maintains a listing of the subject class of securities on one or more exchanges in a foreign jurisdiction that, either singly or together with the trading of the same class of the issuer's securities in another foreign jurisdiction, constitutes the primary trading market for those securities; and

(iii) The issuer has published in English, on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market, information that, since the first day of its most recently completed fiscal year, it:

(A) Has made public or been required to make public pursuant to the laws of the country of its incorporation, organization or domicile;

(B) Has filed or been required to file with the principal stock exchange in its primary trading market on which its securities are traded and which has been made public by that exchange; and

(C) Has distributed or been required to distribute to its security holders.

Note 1 to Paragraph (b)(1): For the purpose of paragraph (b) of this section, primary trading market means that at least 55 percent of the trading in the subject class of securities on a worldwide basis took place in, on or through the facilities of a securities market or markets in a single foreign jurisdiction or in no more than two foreign jurisdictions during the issuer's most recently completed fiscal year. If a foreign private issuer aggregates the trading of its subject class of securities in two foreign jurisdictions for the purpose of this paragraph, the trading for the issuer's securities in at least one of the two foreign jurisdictions must be larger than the trading in the United States for the same class of the issuer's securities. When determining an issuer's primary trading market under this paragraph, calculate average daily trading volume in the United States and on a worldwide basis as under Rule 12h-6 under the Act (§240.12h-6).

Note 2 to Paragraph (b)(1): Paragraph (b)(1)(iii) of this section does not apply to an issuer when claiming the exemption under paragraph (b) upon the effectiveness of the

termination of its registration of a class of securities under section 12(g) of the Act, or the termination of its obligation to file or furnish reports under section 15(d) of the Act.

Note 3 to Paragraph (b)(1): Compensatory stock options for which the underlying securities are in a class exempt under paragraph (b) of this section are also exempt under that paragraph.

(2)(i) In order to maintain the exemption under paragraph (b) of this section, a foreign private issuer shall publish, on an ongoing basis and for each subsequent fiscal year, in English, on its Internet Web site or through an electronic information delivery system generally available to the public in its primary trading market, the information specified in paragraph (b)(1)(iii) of this section.

(ii) An issuer must electronically publish the information required by paragraph (b)(2) of this section promptly after the information has been made public.

(3)(i) The information required to be published electronically under paragraph (b) of this section is information that is material to an investment decision regarding the subject securities, such as information concerning:

- (A) Results of operations or financial condition;
- (B) Changes in business;
- (C) Acquisitions or dispositions of assets;
- (D) The issuance, redemption or acquisition of securities;
- (E) Changes in management or control;
- (F) The granting of options or the payment of other remuneration to directors or officers; and
- (G) Transactions with directors, officers or principal security holders.

(ii) At a minimum, a foreign private issuer shall electronically publish English translations of the following documents required to be published under paragraph (b) of this section if in a foreign language:

- (A) Its annual report, including or accompanied by annual financial statements;
- (B) Interim reports that include financial statements;
- (C) Press releases; and
- (D) All other communications and documents distributed directly to security

holders of each class of securities to which the exemption relates.

(c) The exemption under paragraph (b) of this section shall remain in effect until:

(1) The issuer no longer satisfies the electronic publication condition of paragraph (b)(2) of this section;

(2) The issuer no longer maintains a listing of the subject class of securities on one or more exchanges in a primary trading market, as defined under paragraph (b)(1) of this section; or

(3) The issuer registers a class of securities under section 12 of the Act or incurs reporting obligations under section 15(d) of the Act.

(d) Depositary shares registered on Form F-6 (§239.36 of this chapter), but not the underlying deposited securities, are exempt from section 12(g) of the Act under this paragraph.

5. Amend §240.15c2-11 by revising paragraph (a)(4) to read as follows:

§240.15c2-11 Initiation or resumption of quotations without specific information.

* * * * *

(a) * * *

(4) The information that, since the beginning of its last fiscal year, the issuer has published pursuant to §240.12g3-2(b), and which the broker or dealer shall make reasonably available upon the request of a person expressing an interest in a proposed transaction in the issuer's security with the broker or dealer, such as by providing the requesting person with appropriate instructions regarding how to obtain the information electronically; or

* * * * *

PART 249 - FORMS, SECURITIES EXCHANGE ACT OF 1934

6. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a et seq. and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

7. Amend Form 40-F (referenced in §249.240f), the cover page, by removing the second to last paragraph, which pertains to information furnished pursuant to Rule 12g3-2(b), including the check boxes.

Note: The text of Form 40-F does not and this amendment will not appear in the Code of Federal Regulations.

8. Amend Form 6-K (referenced in §249.306), the cover page, by removing the two paragraphs, which pertain to information furnished pursuant to Rule 12g3-2(b), following the second Note, including the check boxes.

Note: The text of Form 6-K does not and this amendment will not appear in the Code of Federal Regulations.

9. Amend Form 15F (referenced in §249.324) by revising General Instruction E and Item 9 of Part II to read as follows:

Note: The text of Form 15F does not and this amendment will not appear in the Code of Federal Regulations.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

FORM 15F

**CERTIFICATION OF A FOREIGN PRIVATE ISSUER'S TERMINATION OF
REGISTRATION OF A CLASS OF SECURITIES UNDER SECTION 12(g) OF
THE SECURITIES EXCHANGE ACT OF 1934 OR ITS TERMINATION OF
THE DUTY TO FILE REPORTS UNDER SECTION 13(a) OR SECTION 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934**

GENERAL INSTRUCTIONS

E. Rule 12g3-2(b) Exemption

Regardless of the particular Rule 12h-6 provision under which it is proceeding, a foreign private issuer that has filed a Form 15F regarding a class of equity securities shall receive the exemption under Rule 12g3-2(b) (17 CFR 240.12g3-2(b)) for the subject class of equity securities immediately upon the effective date of its termination of registration and reporting under Rule 12h-6. Refer to Rules 12g3-2(b)(2) and (b)(3) (17 CFR 240.12g3-2(b)(2) and (b)(3)) and Rule 12g3-2(c) (17 CFR 240.12g3-2(c)) for the conditions that a foreign private issuer must meet in order to maintain the Rule 12g3-2(b) exemption following its termination of Exchange Act registration and reporting.

PART II**Item 9. Rule 12g3-2(b) Exemption**

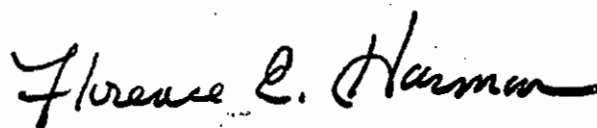
Disclose the address of your Internet Web site or of the electronic information delivery system in your primary trading market on which you will publish the information required to maintain the exemption under Rule 12g3-2(b).

Instruction to Item 9.

Refer to Rule 12g3-2(b)(3)(ii) (17 CFR 240.12g3-2(b)(3)(ii)) for instructions regarding providing English translations of documents required to maintain the Rule 12g3-2(b) exemption.

* * * * *

By the Commission.



Florence E. Harmon
Acting Secretary

Dated: September 5, 2008

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 8, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13171

In the Matter of

**Paladin International Corp.,
Pantheon Industries, Inc.,
Parts.com, Inc.,
Pathfinder Data Group, Inc., and
Pavichevich Brewing Co.,**

Respondents.

**ORDER INSTITUTING
PROCEEDINGS AND NOTICE OF
HEARING PURSUANT TO SECTION
12(j) OF THE SECURITIES
EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Paladin International Corp., Pantheon Industries, Inc., Parts.com, Inc., Pathfinder Data Group, Inc., and Pavichevich Brewing Co.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Paladin International Corp. ("Paladin") (CIK No. 1121279) is a Nevada corporation located in Houston, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Paladin is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on October 11, 2000, which reported a net loss of \$34,439 for the six months ended June 30, 2000.

2. Pantheon Industries, Inc. ("Pantheon") (CIK No. 763733) is a Colorado corporation located in Arlington, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Pantheon is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a

Form 10-QSB for the period ended August 31, 1994, which reported a net loss of over \$1.14 million for the prior nine months. On October 27, 1994, the Commission issued a cease-and-desist order against Pantheon prohibiting it from any future violations of the reporting, fraud, record-keeping, and internal control provisions of the federal securities laws. *Pantheon Industries, Inc.*, Securities Exchange Act of 1934 Rel. No. 34907. On March 2, 1998, Pantheon filed a Chapter 7 petition in the U.S. Bankruptcy Court for the Northern District of Texas, and the case was closed on March 24, 1999. As of September 5, 2008, the company's common stock (symbol "PNTH") was traded on the over-the-counter markets.

3. Parts.com, Inc. ("Parts.com") (CIK No. 1096494) is a defaulted Nevada corporation located in Sanford, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Parts.com is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB/A for the period ended March 31, 2002. On November 30, 2005, Parts.com filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Central District of California, and the case was closed on September 14, 2007. As of September 5, 2008, the company's common stock (symbol "PART") was traded on the over-the-counter markets.

4. Pathfinder Data Group, Inc. ("Pathfinder") (CIK No. 718499) is a Colorado corporation located in Bedford, New Hampshire with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Pathfinder is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended July 31, 2000, which reported no assets or revenues for the prior three months.

5. Pavichevich Brewing Co. ("Pavichevich") (CIK No. 818786) is an Illinois corporation located in Elmhurst, Illinois with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Pavichevich is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended October 31, 1995, which reported a net loss of \$48,859 for the prior three months. On April 25, 1997, Pavichevich filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Northern District of Illinois, and the case was closed on June 30, 1998. As of September 5, 2008, the company's common stock (symbol "BRAU") was traded on the over-the-counter markets.

B. DELINQUENT PERIODIC FILINGS

6. As discussed in more detail above, all of the respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

7. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires domestic issuers to file quarterly reports.

8. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.



Florence E. Harmon
Acting Secretary

Attachment

Appendix 1

Chart of Delinquent Filings *In the Matter of Paladin International, Corp., et al.*

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Paladin International Corp.	10-QSB	09/30/00	01/24/01	Not filed	92
	10-KSB	12/31/00	04/02/01	Not filed	89
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-QSB	06/30/01	08/14/01	Not filed	85
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
<i>Paladin International Corp.</i>					
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent	32				

Pantheon Industries, Inc.

10-KSB	11/30/94	02/28/95	Not filed	163
10-QSB	02/28/95	04/14/95	Not filed	161
10-QSB	05/31/95	07/17/95	Not filed	158
10-QSB	08/31/95	10/16/95	Not filed	155
10-KSB	11/30/95	02/28/96	Not filed	151
10-QSB	02/28/96	04/15/96	Not filed	149
10-QSB	05/31/96	07/15/96	Not filed	146
10-QSB	08/31/96	10/15/96	Not filed	143
10-KSB	11/30/96	02/28/97	Not filed	139
10-QSB	02/28/97	04/14/97	Not filed	137
10-QSB	05/31/97	07/15/97	Not filed	134
10-QSB	08/31/97	10/15/97	Not filed	131
10-KSB	11/30/97	03/02/98	Not filed	126
10-QSB	02/28/98	04/14/98	Not filed	125
10-QSB	05/31/98	07/15/98	Not filed	122
10-QSB	08/31/98	10/15/98	Not filed	119
10-KSB	11/30/98	03/01/99	Not filed	114
10-QSB	02/28/99	04/14/99	Not filed	113

*Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
<i>Pantheon Industries, Inc.</i>					
	<i>10-QSB</i>	05/31/99	07/15/99	Not filed	110
	<i>10-QSB</i>	08/31/99	10/15/99	Not filed	107
	<i>10-KSB</i>	11/30/99	02/28/00	Not filed	103
	<i>10-QSB</i>	02/29/00	04/14/00	Not filed	101
	<i>10-QSB</i>	05/31/00	07/17/00	Not filed	98
	<i>10-QSB</i>	08/31/00	10/16/00	Not filed	95
	<i>10-KSB</i>	11/30/00	02/28/01	Not filed	91
	<i>10-QSB</i>	02/28/01	04/16/01	Not filed	89
	<i>10-QSB</i>	05/31/01	07/16/01	Not filed	86
	<i>10-QSB</i>	08/31/01	10/15/01	Not filed	83
	<i>10-KSB</i>	11/30/01	02/28/02	Not filed	79
	<i>10-QSB</i>	02/28/02	04/15/02	Not filed	77
	<i>10-QSB</i>	05/31/02	07/15/02	Not filed	74
	<i>10-QSB</i>	08/31/02	10/15/02	Not filed	71
	<i>10-KSB</i>	11/30/02	02/28/03	Not filed	67
	<i>10-QSB</i>	02/28/03	04/14/03	Not filed	65
	<i>10-QSB</i>	05/31/03	07/15/03	Not filed	62
	<i>10-QSB</i>	08/31/03	10/15/03	Not filed	59
	<i>10-KSB</i>	11/30/03	03/01/04	Not filed	54
	<i>10-QSB</i>	02/29/04	04/14/04	Not filed	53
	<i>10-QSB</i>	05/31/04	07/15/04	Not filed	50
	<i>10-QSB</i>	08/31/04	10/15/04	Not filed	47
	<i>10-KSB</i>	11/30/04	02/28/05	Not filed	43
	<i>10-QSB</i>	02/28/05	04/14/05	Not filed	41
	<i>10-QSB</i>	05/31/05	07/15/05	Not filed	38
	<i>10-QSB</i>	08/31/05	10/17/05	Not filed	35
	<i>10-KSB</i>	11/30/05	02/28/06	Not filed	31
	<i>10-QSB</i>	02/28/06	04/14/06	Not filed	29
	<i>10-QSB</i>	05/31/06	07/17/06	Not filed	26
	<i>10-QSB</i>	08/31/06	10/16/06	Not filed	23

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Pantheon Industries, Inc.					
	10-KSB	11/30/06	02/28/07	Not filed	19
	10-QSB	02/28/07	04/16/07	Not filed	17
	10-QSB	05/31/07	07/16/07	Not filed	14
	10-QSB	08/31/07	10/15/07	Not filed	11
	10-KSB	11/30/07	02/28/08	Not filed	7
	10-Q ¹	02/28/08	04/14/08	Not filed	5
	10-Q ¹	05/31/08	07/15/08	Not filed	2
Total Filings Delinquent	55				

Parts.com, Inc.

10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
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Parts.com, Inc.

10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-KSB	12/31/07	03/31/08	Not filed	6
10-Q ¹	03/31/08	05/15/08	Not filed	4
10-Q ¹	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent	25
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Pathfinder Data Group, Inc.

10-QSB	10/31/00	12/15/00	Not filed	93
10-QSB	01/31/01	03/19/01	Not filed	90
10-KSB	04/30/01	07/30/01	Not filed	86
10-QSB	07/31/01	09/14/01	Not filed	84
10-QSB	10/31/01	12/17/01	Not filed	81
10-QSB	01/31/02	03/18/02	Not filed	78
10-KSB	04/30/02	07/29/02	Not filed	74
10-QSB	07/31/02	09/16/02	Not filed	72
10-QSB	10/31/02	12/16/02	Not filed	69
10-QSB	01/31/03	03/17/03	Not filed	66
10-KSB	04/30/03	07/29/03	Not filed	62
10-QSB	07/31/03	09/15/03	Not filed	60
10-QSB	10/31/03	12/15/03	Not filed	57
10-QSB	01/31/04	03/16/04	Not filed	54
10-KSB	04/30/04	07/29/04	Not filed	50
10-QSB	07/31/04	09/14/04	Not filed	48
10-QSB	10/31/04	12/15/04	Not filed	45
10-QSB	01/31/05	03/17/05	Not filed	42
10-KSB	04/30/05	07/29/05	Not filed	38
10-QSB	07/31/05	09/14/05	Not filed	36
10-QSB	10/31/05	12/15/05	Not filed	33
10-QSB	01/31/06	03/17/06	Not filed	30
10-KSB	04/30/06	07/31/06	Not filed	26

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
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**Pathfinder Data Group,
Inc.**

10-QSB	07/31/06	09/14/06	Not filed	24
10-QSB	10/31/06	12/15/06	Not filed	21
10-QSB	01/31/07	03/19/07	Not filed	18
10-KSB	04/30/07	07/30/07	Not filed	14
10-QSB	07/31/07	09/14/07	Not filed	12
10-QSB	10/31/07	12/17/07	Not filed	9
10-QSB	01/31/08	03/17/08	Not filed	6
10-KSB	04/30/08	07/29/08	Not filed	2

Total Filings Delinquent 30

Pavichevich Brewing Co.

10-KSB	01/31/96	04/30/96	Not filed	149
10-QSB	04/30/96	06/14/96	Not filed	147
10-QSB	07/31/96	09/16/96	Not filed	144
10-QSB	10/31/96	12/16/96	Not filed	141
10-KSB	01/31/97	05/01/97	Not filed	136
10-QSB	04/30/97	06/16/97	Not filed	135
10-QSB	07/31/97	09/15/97	Not filed	132
10-QSB	10/31/97	12/15/97	Not filed	129
10-KSB	01/31/98	05/01/98	Not filed	124
10-QSB	04/30/98	06/15/98	Not filed	123
10-QSB	07/31/98	09/14/98	Not filed	120
10-QSB	10/31/98	12/15/98	Not filed	117
10-KSB	01/31/99	05/03/99	Not filed	112
10-QSB	04/30/99	06/14/99	Not filed	111
10-QSB	07/31/99	09/14/99	Not filed	108
10-QSB	10/31/99	12/15/99	Not filed	105
10-KSB	01/31/00	05/01/00	Not filed	100
10-QSB	04/30/00	06/14/00	Not filed	99
10-QSB	07/31/00	09/14/00	Not filed	96

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
<i>Pavichevich Brewing Co.</i>					
	<i>10-QSB</i>	10/31/00	12/15/00	Not filed	93
	<i>10-KSB</i>	01/31/01	05/01/01	Not filed	88
	<i>10-QSB</i>	04/30/01	06/14/01	Not filed	87
	<i>10-QSB</i>	07/31/01	09/14/01	Not filed	84
	<i>10-QSB</i>	10/31/01	12/17/01	Not filed	81
	<i>10-KSB</i>	01/31/02	05/01/02	Not filed	76
	<i>10-QSB</i>	04/30/02	06/14/02	Not filed	75
	<i>10-QSB</i>	07/31/02	09/16/02	Not filed	72
	<i>10-QSB</i>	10/31/02	12/16/02	Not filed	69
	<i>10-KSB</i>	01/31/03	05/01/03	Not filed	64
	<i>10-QSB</i>	04/30/03	06/16/03	Not filed	63
	<i>10-QSB</i>	07/31/03	09/15/03	Not filed	60
	<i>10-QSB</i>	10/31/03	12/15/03	Not filed	57
	<i>10-KSB</i>	01/31/04	04/30/04	Not filed	53
	<i>10-QSB</i>	04/30/04	06/14/04	Not filed	51
	<i>10-QSB</i>	07/31/04	09/14/04	Not filed	48
	<i>10-QSB</i>	10/31/04	12/15/04	Not filed	45
	<i>10-KSB</i>	01/31/05	05/02/05	Not filed	40
	<i>10-QSB</i>	04/30/05	06/14/05	Not filed	39
	<i>10-QSB</i>	07/31/05	09/14/05	Not filed	36
	<i>10-QSB</i>	10/31/05	12/15/05	Not filed	33
	<i>10-KSB</i>	01/31/06	05/01/06	Not filed	28
	<i>10-QSB</i>	04/30/06	06/14/06	Not filed	27
	<i>10-QSB</i>	07/31/06	09/14/06	Not filed	24
	<i>10-QSB</i>	10/31/06	12/15/06	Not filed	21
	<i>10-KSB</i>	01/31/07	05/01/07	Not filed	16
	<i>10-QSB</i>	04/30/07	06/14/07	Not filed	15
	<i>10-QSB</i>	07/31/07	09/14/07	Not filed	12
	<i>10-QSB</i>	10/31/07	12/17/07	Not filed	9
	<i>10-K¹</i>	01/31/08	04/30/08	Not filed	5
	<i>10-Q¹</i>	04/30/08	06/11/08	Not filed	3

Total Filings Delinquent

50

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 8, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13170

In the Matter of

**ARM Financial Group, Inc., and
Calex Acquisition Corp.,**

Respondents.

**ORDER INSTITUTING
PROCEEDINGS AND NOTICE OF
HEARING PURSUANT TO SECTION
12(j) OF THE SECURITIES
EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents ARM Financial Group, Inc. and Calex Acquisition Corp.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. ARM Financial Group, Inc. (CIK No. 910562) is a dissolved Delaware corporation located in Louisville, Kentucky with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 1999. On December 20, 1999, the company filed a Chapter 11 bankruptcy proceeding in the U.S. Bankruptcy Court for the District of Delaware, which terminated on October 1, 2004.

2. Calex Acquisition Corp. (CIK No. 1124874) is a revoked Nevada corporation located in Cedar Hill, Texas with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2001, which reported a net loss of \$6,000 since inception in 2000.

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B. DELINQUENT PERIODIC FILINGS

3. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

4. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

5. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.



Florence E. Harmon
Acting Secretary

Attachment

Appendix 1

Chart of Delinquent Filings *Arm Financial Group, Inc., et al.*

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
ARM Financial Group, Inc.	10-Q	03/31/00	05/15/00	Not filed	100
	10-Q	06/30/00	08/14/00	Not filed	97
	10-Q	09/30/00	11/14/00	Not filed	94
	10-K	12/31/00	04/02/01	Not filed	89
	10-Q	03/31/01	05/15/01	Not filed	88
	10-Q	06/30/01	08/14/01	Not filed	85
	10-Q	09/30/01	11/14/01	Not filed	82
	10-K	12/31/01	04/01/02	Not filed	77
	10-Q	03/31/02	05/15/02	Not filed	76
	10-Q	06/30/02	08/14/02	Not filed	73
	10-Q	09/30/02	11/14/02	Not filed	70
	10-K	12/31/02	03/31/03	Not filed	66
	10-Q	03/31/03	05/15/03	Not filed	64
	10-Q	06/30/03	08/14/03	Not filed	61
	10-Q	09/30/03	11/14/03	Not filed	58
	10-K	12/31/03	03/30/04	Not filed	54
	10-Q	03/31/04	05/17/04	Not filed	52
	10-Q	06/30/04	08/16/04	Not filed	49
	10-Q	09/30/04	11/15/04	Not filed	46
	10-K	12/31/04	03/31/05	Not filed	42
	10-Q	03/31/05	05/16/05	Not filed	40
	10-Q	06/30/05	08/15/05	Not filed	37
	10-Q	09/30/05	11/14/05	Not filed	34
	10-K	12/31/05	03/31/06	Not filed	30
	10-Q	03/31/06	05/15/06	Not filed	28
	10-Q	06/30/06	08/14/06	Not filed	25

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
ARM Financial Group, Inc.					
	10-Q	09/30/06	11/14/06	Not filed	22
	10-K	12/31/06	04/02/07	Not filed	17
	10-Q	03/31/07	05/15/07	Not filed	16
	10-Q	06/30/07	08/14/07	Not filed	13
	10-Q	09/30/07	11/14/07	Not filed	10
	10-K	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent 34

Calex Acquisition Corp.

10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
<i>Calex Acquisition Corp.</i>					
	<i>10-QSB</i>	06/30/06	08/14/06	Not filed	25
	<i>10-QSB</i>	09/30/06	11/14/06	Not filed	22
	<i>10-KSB</i>	12/31/06	04/02/07	Not filed	17
	<i>10-QSB</i>	03/31/07	05/15/07	Not filed	16
	<i>10-QSB</i>	06/30/07	08/14/07	Not filed	13
	<i>10-QSB</i>	09/30/07	11/14/07	Not filed	10
	<i>10-KSB</i>	12/31/07	03/31/08	Not filed	6
	<i>10-Q¹</i>	03/31/08	05/15/08	Not filed	4
	<i>10-Q¹</i>	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent		29			

¹Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

*Commissioner Wa Her
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58477 / September 8, 2008

INVESTMENT ADVISERS ACT OF 1940
Release No. 2774 / September 8, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13163

In the Matter of

**SHAWN F. HABER (A/K/A
LEO SCHWARTZ),**

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF
1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Shawn F. Haber (also known as Leo Schwartz) ("Haber" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Assuming the alias Leo Schwartz, Haber held himself out as an employee of unregistered broker-dealer Blue Square Management, Inc. ("Blue Square") from approximately January 2001 through March 2004. During this period, Blue Square operated as a purported New York City-based venture capital firm in the business of selling securities and specializing in underwriting initial public offerings. Blue Square was not registered in any capacity with the Commission, the National Association of Securities Dealers ("NASD," now known as FINRA), or any other regulatory authority. From January 2001 to July 2001, Haber was a registered representative at Raymond James Financial Services, Inc., which was registered with the Commission and the NASD as both a broker-dealer and an investment adviser. From May 2003 to June 2006, Haber was a registered representative at Joseph Stevens & Company, Inc., a broker-dealer registered with the Commission and the NASD. Haber, 35 years old, resided in the State of New York prior to his current incarceration.

2. On October 24, 2006, Haber pled guilty to one count of conspiracy to commit mail fraud and securities fraud in violation of Title 18 of the United States Code Section 371, before the United States District Court for the District of Connecticut, in United States v. Shawn F. Haber, Crim. Information No. 3:06-CR-80. On June 22, 2007, a judgment in the criminal case was entered against Haber. He was sentenced to a prison term of twenty-four months followed by three years of supervised release and ordered to pay restitution in the amount of \$200,000.

3. The counts of the criminal information to which Haber pled guilty alleged, among other things, that:

a. Beginning in or about January 2001 and continuing until in or about March 2004, Haber and his co-defendants cold-called potential investors across the country, claimed that they worked for a New York City-based venture capital firm called Blue Square, and solicited investments in the securities of a purported ATM management company. In telephone conversations and subsequent documents sent to investors, they falsely and fraudulently

represented that investors would make significant profits in the near future due to an expected initial public offering ("IPO") and/or buy-out of the company. In truth, the purported ATM management company was a fictitious entity with no actual operations, no profits, and no planned IPO or buy-out.

b. Haber and his co-defendants divided telephone solicitations between cold-callers such as Haber, who initially contacted potential investors and made false and fraudulent statements to them in order to generate their interest in investing with Blue Square and "qualify" them as clients, and traders, who subsequently contacted these "qualified" individuals and made additional false and fraudulent statements to them in order to sell the bogus stock of the purported ATM management company and thereby obtain their funds.

c. Haber and his co-defendants failed to invest the funds received as a result of their solicitations as represented, but instead diverted investors' funds for their own personal use and benefit.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Haber's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act, Respondent Haber be, and hereby is barred from association with any broker, dealer or investment adviser.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Florence E. Harmon
Acting Secretary

3 By: *Jill M. Peterson*
Jill M. Peterson
Assistant Secretary

*Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58476 / September 8, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13162

In the Matter of

IGOR MALYAR (A/K/A
GEORGE FALCONE AND
MICHAEL SAFIR),

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Igor Malyar (also known as George Falcone and Michael Safir) ("Malyar" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings

herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2, III.4 and III.6 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Assuming the alias Michael Safir, Malyar helped run the day-to-day operations of unregistered broker-dealer Blue Square Management, Inc. ("Blue Square"), a purported venture capital firm based in New York City's financial district, from approximately October 2002 to February 2004. In addition, assuming the alias George Falcone, Malyar held himself out as the president and CEO of unregistered broker-dealer Westwood Holdings, Inc. ("Westwood"), another purported New York City-based venture capital firm, from approximately January 2004 to January 2005. Malyar, Westwood and Blue Square were not registered in any capacity with either the Commission or the National Association of Securities Dealers ("NASD," now known as FINRA). Malyar, 35 years old, resides in Staten Island, New York.

2. On March 30, 2007, a judgment was entered by consent against Malyar, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act"), Sections 10(b), 15(a) and 15(c) of the Exchange Act and Rule 10b-5 thereunder in the civil action entitled Securities and Exchange Commission v. Viktor Novosselov, et al., Civil Action Number 3:05-CV-951, in the United States District Court for the District of Connecticut.

3. The Commission's complaint alleged, among other things, that:

a. Using the alias Michael Safir, Malyar ran day-to-day operations at the purported venture capital firm Blue Square between approximately October 2002 and February 2004. Blue Square raised \$3.7 million from over 280 people nationwide in a fraudulent offering of securities of an entirely fictitious ATM management company. Malyar reviewed mail and phone messages from investors, maintained numerous documents pertaining to the offering, compiled offering materials to be sent to investors, and deposited investor monies into Blue Square's bank accounts. By engaging in such conduct, Malyar aided and abetted Blue Square and its president's violations of the antifraud provisions of the federal securities laws.

b. Malyar then orchestrated a fraudulent offering of "pre-IPO" (pre-Initial Public Offering) stock via the purported New York City-based venture capital firm Westwood. From approximately January 2004 through at least January 2005, one or more individuals identifying themselves as George Falcone or another Westwood salesperson cold-called potential investors across the country and solicited their investments in the securities of a fictitious ATM-related company.

c. Westwood provided investors with false and misleading statements that erroneously led them to believe their investments would quickly generate high returns due to an expected initial public offering and/or buy-out proposal. In fact, neither the promised initial public offering nor the highly anticipated buy-out ever materialized, as the purported ATM-related company was entirely fictitious and had no actual operations. All told, Westwood raised at least \$1.2 million from over 80 investors nationwide.

d. Using the alias George Falcone, Malyar opened and controlled the bank accounts in which Westwood's investor funds were deposited. He quickly and systematically dissipated investors' funds by transferring the monies to several accounts and withdrawing cash from those accounts via regular check and ATM withdrawals. None of the money was used for the benefit of investors.

e. By engaging in such conduct, Malyar violated the antifraud provisions of the federal securities laws, as well as provisions of the federal securities laws requiring the registration of broker-dealers and the registration of securities offered for sale.

4. On December 15, 2005, Malyar pled guilty to one count of conspiracy to commit mail fraud, securities fraud and money laundering in violation of Title 18 of the United States Code Section 371 and one count of securities fraud in violation of Title 15 of the United States Code Sections 77q(a) and 77x, before the United States District Court for the District of Connecticut, in United States v. Igor Malyar, Crim. Information No. 3:05-CR-00019.

5. The counts of the criminal information to which Malyar pled guilty alleged, among other things, that Malyar defrauded investors and obtained money and property by means of materially false and misleading statements, that he used the United States mails to send false and misleading promotional materials and account statements, and that he caused commercial interstate carriers to deliver investors' checks to him.

6. On May 14, 2007, Malyar pled guilty to grand larceny in the second degree, in violation of New York State Penal Law Section 155.40, before the Supreme Court of the State of New York, New York County, in The People of the State of New York v. Igor Malyar, Crim. Information No. 1483/2007.

7. The People's complaint alleged, among other things, that:

a. In November 2003, Malyar and others formed Westwood, whose sole purpose was to defraud investors by selling them non-existent securities. According to the scheme which Malyar helped plan, Westwood representatives cold-called potential investors and solicited investments in the "stock" and "warrants" of a fictitious company called "ATM Express." They further induced investors to buy what were called "IPO" or "pre-IPO" securities in ATM Express. By selling stock in this and other companies in the same or similar manner, Malyar and others stole more than \$50,000 from one investor in a series of fraudulent transactions that took place from approximately February 2004 to November 2004.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Malyar's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act, Respondent Malyar be, and hereby is barred from association with any broker or dealer.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

*Commissioner Watter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 8, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13169

In the Matter of

JOHN R. BLOT (A/K/A VICTOR
MORGAN),

Respondent.

ORDER INSTITUTING PUBLIC
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
AND NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against John R. Blot, also known as Victor Morgan ("Respondent" or "Blot").

II.

After an investigation, the Division of Enforcement alleges that:

1. Blot, using the alias Victor Morgan, held himself out as an employee of the unregistered broker-dealer Blue Square Management, Inc. ("Blue Square") from approximately January 2001 through March 2004. During this period, Blue Square operated as a purported New York City-based venture capital firm in the business of selling securities and specializing in underwriting initial public offerings. From February 2004 through at least November 2004, Blot held himself as an employee of Westwood Holdings, Inc. ("Westwood"), another unregistered broker-dealer based in New York City. Neither Blue Square nor Westwood

was registered in any capacity with the Commission, the National Association of Securities Dealers ("NASD," now known as FINRA) or any other regulatory authority. From February 2001 to December 2002, Blot also was a registered representative at Salomon Grey Financial Corporation, which was registered with the Commission and the NASD as a broker-dealer and with the State of Texas as an investment adviser. From November 2004 to May 2006, Blot was a registered representative at National Securities Corporation, a broker-dealer registered with the Commission and the NASD. Blot, 29 years old, resided in the State of New York prior to his current incarceration.

2. On October 27, 2006, Blot pled guilty to one count of securities fraud in violation of Title 15 of the United States Code Sections 77q(a) and 77x, before the United States District Court for the District of Connecticut, in United States v. John R. Blot, Crim. Information No. 3:06-CR-80. On April 23, 2007, a judgment in the criminal case was entered against Blot. He was sentenced to a prison term of thirty-six months followed by three years of supervised release and ordered to pay restitution in the amount of \$1,844,000.

3. The counts of the criminal information to which Blot pled guilty alleged, among other things, that:

a. Beginning in or about January 2001 and continuing until in or about March 2004, Blot and his co-defendants cold-called potential investors across the country, claimed that they worked for a New York City-based venture capital firm called Blue Square, and solicited investments in the securities of a purported ATM management company. In telephone conversations and subsequent documents sent to investors, they falsely and fraudulently represented that investors would make significant profits in the near future due to an expected initial public offering ("IPO") and/or buy-out of the company. In truth, the purported ATM management company was a fictitious entity with no actual operations, no profits, and no planned IPO or buy-out.

b. Blot and his co-defendants divided telephone solicitations between cold-callers such as Blot, who initially contacted potential investors and made false and fraudulent statements to them in order to generate their interest in investing with Blue Square and "qualify" them as clients, and traders, who subsequently contacted these "qualified" individuals and made additional false and fraudulent statements to them in order to sell the bogus stock of the purported ATM management company and thereby obtain their funds.

c. Blot and his co-defendants failed to invest the funds received as a result of their solicitations as represented, but instead diverted investors' funds for their own personal use and benefit.

4. On June 12, 2007, Blot pled guilty to grand larceny in the third degree, in violation of New York State Penal Law Section 155.35, before the Supreme Court of the State of New York, New York County, in The People of the State of New York v. John Blot, Crim. Information No. 2834/2007. On August 21, 2007, a judgment in the state criminal case was

entered against Blot. He was sentenced to a prison term of one to three years, to run concurrently with his federal sentence.

5. The People's complaint alleged, among other things, that:

a. Beginning in December 2003, Blot and others participated in a scheme under the name of Westwood, which purported to sell legitimate stock opportunities to investors. Blot and others placed or supervised the placement of unsolicited telephone calls to numerous individuals throughout the United States. Blot and others then offered those individuals "investment opportunities," primarily in a company called "ATM Express," which was a fictitious company.

b. The individuals who agreed to invest with Westwood sent their money to Westwood's offices. Westwood's participants, including Blot, distributed the proceeds of those checks among themselves, and did not use any of those funds to pay for any legitimate investments.

c. From December 2003 through January 2005, approximately 90 people sent approximately \$1.2 million to Westwood to purchase what they thought were legitimate stocks but which were actually stocks in fictitious companies or fake stocks in real companies.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act; and

C. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 203(f) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary

Bill M. Peterson
By: **Bill M. Peterson**
Assistant Secretary

*Commissioner Watter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 8, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13168

In the Matter of

VIKTOR NOVOSSELOV
(A/K/A DAVID
MARKOWITZ),

Respondent.

ORDER INSTITUTING PUBLIC
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
AND NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Viktor Novosselov, also known as David Markowitz ("Novosselov" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

1. Assuming the alias David Markowitz, Novosselov held himself out as the president and chief executive officer of unregistered broker-dealer Blue Square Management, Inc. ("Blue Square") from approximately January 2001 through February 2004. During this period, Blue Square operated as a purported New York City-based venture capital firm specializing in underwriting initial public offerings. Neither Blue Square nor Novosselov were registered in any capacity with either the Commission or the National Association of Securities Dealers ("NASD," now known as FINRA). Novosselov, 41 years old, resided in the New York City metropolitan area prior to his current incarceration.

2. On April 9, 2007, a judgment was entered by consent against Novosselov, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities

Act of 1933 ("Securities Act"), Sections 10(b), 15(a) and 15(c) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Viktor Novosselov, et al., Civil Action Number 3:05-CV-951, in the United States District Court for the District of Connecticut.

3. The Commission's complaint alleged, among other things, that:

a. Novosselov orchestrated a fraudulent offering of "pre-IPO" stock via the purported New York City-based venture capital firm Blue Square. Between approximately January 2001 and February 2004, one or more persons identifying themselves as David Markowitz, an officer of Blue Square, cold-called potential investors across the country and solicited their investments in the securities of a fictitious ATM management company. Blue Square provided investors with false and misleading statements that erroneously led investors to believe that their investments would quickly generate high returns due to an expected initial public offering and/or buy-out proposal. In fact, neither the promised initial public offering nor the highly anticipated buy-out ever materialized, as the purported ATM management company was entirely fictitious and had no actual operations.

b. After raising approximately \$3.7 million from over 280 investors, Blue Square disconnected its phone lines and vacated its offices without leaving any forwarding information. Investors were unable to contact anyone at Blue Square after that time.

c. With the aid of a fraudulent New York State driver's license bearing the name David Markowitz and a photo image of himself, Novosselov opened and controlled Blue Square's bank accounts. Novosselov quickly and systematically dissipated investors' funds by transferring the monies to several accounts and withdrawing cash from those accounts via regular check and ATM withdrawals. None of the money was used for the benefit of investors.

d. By engaging in such conduct, Novosselov violated the antifraud provisions of the federal securities laws, as well as provisions of the federal securities laws requiring the registration of broker-dealers and the registration of securities offered for sale.

4. On November 10, 2005, Novosselov pled guilty to one count of conspiracy to commit mail fraud, securities fraud and money laundering in violation of Title 18 of the United States Code Section 371 and one count of securities fraud in violation of Title 15 of the United States Code Sections 77q(a) and 77x, before the United States District Court for the District of Connecticut, in United States v. Viktor Novosselov, Crim. Information No. 3:05-CR-00019. On April 11, 2007, a judgment in the criminal case was entered against Novosselov, and on April 24, 2007, an amended judgment was entered against him in the same case. Novosselov was sentenced to a prison term of 54 months followed by three years of supervised release and ordered to pay restitution in the amount of \$3,602,425.

5. The counts of the criminal information to which Novosselov pled guilty alleged, among other things, that Novosselov defrauded investors and obtained money and property by means of materially false and misleading statements, that he used the United States

mails to send false and misleading promotional materials and account statements, and that he caused commercial interstate carriers to deliver investors' checks to him.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within

the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

*Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58480 / September 8, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13166

In the Matter of

**SCOTT A. CIAPPETTA (A/K/A
STEVEN STILES AND
STEVEN MARKOWITZ),**

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Scott A. Ciappetta (also known as Steven Stiles and Steven Markowitz) ("Ciappetta" or "Respondent").

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II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Assuming the aliases Steven Stiles and Steven Markowitz, Ciappetta held himself out as a stock trader employed by Blue Square Management, Inc. ("Blue Square") from approximately January 2001 through March 2004. During this period, Blue Square operated as a purported New York City-based venture capital firm in the business of selling securities and specializing in underwriting initial public offerings. However, neither Blue Square nor Ciappetta was registered in any capacity with either the Commission or the National Association of Securities Dealers ("NASD," now known as FINRA). Ciappetta, 40 years old, resided in the State of New York prior to his current incarceration in connection with the below-described criminal action.

2. On October 13, 2006, Ciappetta pled guilty to one count of conspiracy to commit mail fraud and securities fraud in violation of Title 18 of the United States Code Section 371 and one count of securities fraud in violation of Title 15 of the United States Code Sections 77q(a) and 77x, before the United States District Court for the District of Connecticut, in United States v. Scott A. Ciappetta, Crim. Information No. 3:06-CR-80. On April 16, 2007, a judgment in the criminal case was entered against Ciappetta. He was sentenced to a prison term of eight years and four months followed by three years of supervised release and ordered to pay restitution in the amount of \$3,602,425.

3. The counts of the criminal information to which Ciappetta pled guilty alleged, among other things, that:

a. Beginning in or about January 2001 and continuing until in or about March 2004, Ciappetta and his co-defendants contacted potential investors across the country, represented that they worked for a New York City-based venture capital firm called Blue Square, and solicited investments in the securities of a purported ATM management company. In telephone conversations and subsequent documents sent to investors, they falsely and fraudulently represented that investors would make significant profits in the near future due to an expected initial public offering ("IPO") and/or buy-out of the company. In truth, the purported ATM

management company was a fictitious entity with no actual operations, no profits, and no planned IPO or buy-out.

b. Ciappetta and his co-defendants divided telephone solicitations between cold-callers, who made the initial unsolicited calls to potential investors in order to generate their interest in investing and purportedly "qualify" them as clients of Blue Square, and traders such as Ciappetta, who subsequently contacted these "qualified" individuals and made false and fraudulent representations to them in order to sell the bogus stock of the purported ATM management company and thereby obtain the individuals' funds.

c. Ciappetta and his co-defendants failed to invest the funds received as a result of their solicitations as represented, but instead diverted investors' funds for their own personal use and benefit.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Ciappetta's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act, Respondent Ciappetta be, and hereby is barred from association with any broker or dealer.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

*Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 8, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13167

In the Matter of

LESLIE A. JAMES (A/K/A
LES JAMES AND DARYL
MCKINNEY),

Respondent.

ORDER INSTITUTING PUBLIC
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
AND NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Leslie A. James (also known as Les James and Daryl McKinney) ("James" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

1. Assuming the alias Daryl McKinney, James held himself out as a stock trader employed by unregistered broker-dealer Blue Square Management, Inc. ("Blue Square") from approximately January 2001 through March 2004. During this period, Blue Square operated as a purported New York City-based venture capital firm in the business of selling securities and specializing in underwriting initial public offerings. James also held himself out as an employee of unregistered broker-dealer Westwood Holdings, Inc. ("Westwood"), another purported New York City-based venture capital firm, from approximately December 2003 through at least November 2004. Blue Square, Westwood and James were not registered in any capacity with the Commission, the National Association of Securities Dealers ("NASD," now known as FINRA), or any other regulatory authority. James, 48 years old, resided in the State of New York prior to his current incarceration.

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2. On October 19, 2006, James pled guilty to one count of conspiracy to commit mail fraud and securities fraud in violation of Title 18 of the United States Code Section 371 before the United States District Court for the District of Connecticut, in United States v. Leslie A. James, Crim. Information No. 3:06-CR-80. On April 16, 2007, a judgment in the criminal case was entered against James. He was sentenced to probation for a total of five years and ordered to pay restitution in the amount of \$70,000.

3. The counts of the criminal information to which James pled guilty alleged, among other things, that:

a. Beginning in or about January 2001 and continuing until in or about March 2004, James and his co-defendants contacted potential investors across the country, represented that they worked for a New York City-based venture capital firm called Blue Square, and solicited investments in the securities of a purported ATM management company. In telephone conversations and subsequent documents sent to investors, they falsely and fraudulently represented that investors would make significant profits in the near future due to an expected initial public offering ("IPO") and/or buy-out of the company. In truth, the purported ATM management company was a fictitious entity with no actual operations, no profits, and no planned IPO or buy-out.

b. James and his co-defendants divided telephone solicitations between cold-callers such as James, who made the initial unsolicited calls to potential investors in order to generate their interest in investing and purportedly "qualify" them as clients of Blue Square, and traders, who subsequently contacted these "qualified" individuals and made false and fraudulent representations to them in order to sell the bogus stock of the purported ATM management company and thereby obtain the individuals' funds.

c. James and his co-defendants failed to invest the funds received as a result of their solicitations as represented, but instead diverted investors' funds for their own personal use and benefit.

4. On September 21, 2007, James pled guilty to grand larceny in the third degree, in violation of New York State Penal Law Section 155.35, before the Supreme Court of the State of New York, New York County, in The People of the State of New York v. Les James, Crim. Information No. 4591/2007. On November 2, 2007, a judgment in the state criminal case was entered against James. He was sentenced to five years of probation, to run concurrently with his federal sentence.

5. The People's complaint alleged, among other things, that:

a. Beginning in December 2003, James and others participated in a scheme under the name of Westwood, which purported to sell legitimate stock opportunities to investors. James and others placed or supervised the placement of unsolicited telephone calls to numerous individuals throughout the United States. James and others then offered those individuals

"investment opportunities," primarily in a company called "ATM Express," which was a fictitious company.

b. The individuals who agreed to invest with Westwood sent their money to Westwood's offices. Westwood's participants, including James, distributed the proceeds of those checks among themselves, and did not use any of those funds to pay for any legitimate investments.

c. From December 2003 through January 2005, approximately 90 people sent approximately \$1.2 million to Westwood to purchase what they thought were legitimate stocks but which were actually stocks in fictitious companies or fake stocks in real companies.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

*Commissioner Watter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58479 / September 8, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13165

In the Matter of

DIGBY M. FERRERA (A/K/A
CASPER WEISS),

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Digby M. Ferrera (also known as Casper Weiss) ("Ferrera" or "Respondent").

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II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Assuming the alias Casper Weiss, Ferrera held himself out as a stock trader employed by unregistered broker-dealer Blue Square Management, Inc. ("Blue Square") from approximately January 2001 to March 2004. During this period, Blue Square operated as a purported New York City-based venture capital firm in the business of selling securities and specializing in underwriting initial public offerings. Ferrera also held himself out as an employee of unregistered broker-dealer Westwood Holdings, Inc. ("Westwood"), another purported New York City-based venture capital firm, from approximately December 2003 to January 2005. Blue Square, Westwood and Ferrera were not registered in any capacity with the Commission, the National Association of Securities Dealers ("NASD," now known as FINRA), or any other regulatory authority. Ferrera, 34 years old, resided in the State of New York prior to his current incarceration.

2. On October 18, 2006, Ferrera pled guilty to one count of conspiracy to commit mail fraud and securities fraud in violation of Title 18 of the United States Code Section 371 before the United States District Court for the District of Connecticut, in United States v. Digby M. Ferrera, Jr., Crim. Information No. 3:06-CR-80. On April 10, 2007, a judgment in the criminal case was entered against Ferrera, and on May 2, 2007, an amended judgment was entered against him. He was sentenced to a prison term of forty-two months followed by three years of supervised release and ordered to pay restitution in the amount of \$3,602,425.

3. The counts of the criminal information to which Ferrera pled guilty alleged, among other things, that:

a. Beginning in or about January 2001 and continuing until in or about March 2004, Ferrera and his co-defendants contacted potential investors across the country, represented that they worked for a New York City-based venture capital firm called Blue Square, and solicited investments in the securities of a purported ATM management company. In telephone conversations and subsequent documents sent to investors, they falsely and fraudulently represented that investors would make significant profits in the near future due to an expected

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Florence E. Harmon
Acting Secretary


By: **Jill M. Peterson**
Assistant Secretary

*Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58478 / September 8, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13164

In the Matter of

DMITRY KUPERMAN (A/K/A
JAMES KAUFMAN, A/K/A
JIMMY KAUFMAN),

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF
1934, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Dmitry Kuperman (also known as James Kaufman, also known as Jimmy Kaufman) ("Kuperman" or "Respondent").

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II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Assuming the alias James or "Jimmy" Kaufman, Kuperman held himself out as an employee of unregistered broker-dealer Blue Square Management, Inc. ("Blue Square") from approximately January 2001 through March 2004. During this period, Blue Square operated as a purported New York City-based venture capital firm in the business of selling securities and specializing in underwriting initial public offerings. Kuperman also held himself out as an employee of Westwood Holdings, Inc. ("Westwood"), another purported New York City-based venture capital firm, from approximately December 2003 through at least February 2004. Neither Blue Square nor Westwood was registered in any capacity with either the Commission or the National Association of Securities Dealers ("NASD," now known as FINRA). From January 1994 to December 1998, Kuperman was a registered representative at four broker-dealers registered with the Commission and the NASD. Kuperman, 33 years old, resided in the State of New York prior to his current incarceration.

2. On May 16, 2006, Kuperman pled guilty to one count of conspiracy to commit mail fraud, securities fraud and money laundering in violation of Title 18 of the United States Code Section 371 and one count of securities fraud in violation of Title 15 of the United States Code Sections 77q(a) and 77x, before the United States District Court for the District of Connecticut, in United States v. Dmitry Kuperman, Crim. Information No. 3:06-CR-133. On April 16, 2007, the Court entered a judgment against Kuperman, and on May 25, 2007, it entered an amended judgment against him. Kuperman was sentenced to a prison term of seven years followed by two years of supervised release and ordered to pay restitution in the amount of \$3,602,425.

3. The counts of the criminal information to which Kuperman pled guilty alleged, among other things, that:

a. From approximately January 2001 to March 2004, Kuperman and his co-conspirators cold-called potential investors across the country, represented that they worked for a purported New York City-based venture capital firm called Blue Square, and solicited investments

in the securities of a supposed ATM management company. In telephone conversations and follow-up documents sent to investors, Kuperman and his co-conspirators falsely and fraudulently represented that investors would make significant profits in the near future due to an expected initial public offering ("IPO") and/or buy-out of the company. In truth, the purported ATM management company was a fictitious entity with no actual operations, no profits, and no planned IPO or buy-out.

b. Kuperman and his co-conspirators devised the scheme to defraud investors via Blue Square and set up its physical office operations. Kuperman and one of his co-conspirators also ran the day-to-day operations of Blue Square.

c. Kuperman and his co-conspirators failed to invest the funds received as a result of their solicitations as represented, but instead diverted investors' funds for their own personal use and benefit. On at least three occasions, Kuperman received funds that had been sent to Blue Square's accounts from investors, and distributed the cash to other members of the conspiracy.

4. On May 29, 2007, Kuperman pled guilty to grand larceny in the second degree, in violation of New York State Penal Law Section 155.40, before the Supreme Court of the State of New York, New York County, in The People of the State of New York v. Dmitry Kuperman, Crim. Information No. 2620/2007. On August 7, 2007, a judgment in the state criminal case was entered against Kuperman. He was sentenced to a prison term of two-and-a-half to seven-and-a-half years, to run concurrently with his federal sentence.

5. The People's complaint alleged, among other things, that:

a. Beginning in December 2003, Kuperman and others participated in a scheme under the name of Westwood, which purported to sell legitimate stock opportunities to investors. Kuperman and others placed or supervised the placement of unsolicited telephone calls to numerous individuals throughout the United States. He and others then offered those individuals "investment opportunities," primarily in a company called "ATM Express," which was a fictitious company.

b. The individuals who agreed to invest with Westwood sent their money to Westwood's offices. Westwood's participants, including Kuperman, distributed the proceeds of those checks among themselves, and did not use any of those funds to pay for any legitimate investments.

c. From December 2003 through January 2005, approximately 90 people sent approximately \$1.2 million to Westwood to purchase what they thought were legitimate stocks but which were actually stocks in fictitious companies or fake stocks in real companies.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Kuperman's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act, Respondent Kuperman be, and hereby is barred from association with any broker or dealer.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

Fora

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 9, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13172

In the Matter of

**Axyn Corp.,
Boss Media, Inc.,
Nexstage Corp.,
Platinum Pearls, Inc., and
Quintalinux, Ltd.,**

Respondents.

**ORDER INSTITUTING
PROCEEDINGS AND NOTICE OF
HEARING PURSUANT TO SECTION
12(j) OF THE SECURITIES
EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Axyn Corp., Boss Media, Inc., Nexstage Corp., Platinum Pearls, Inc., and Quintalinux, Ltd.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Axyn Corp. (CIK No. 1092305) is a Colorado corporation located in Nepean, Ontario, Canada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended December 31, 1999, which reported a net loss of \$123,260 for the prior six months.

2. Boss Media, Inc. (CIK No. 1104193) is a permanently revoked Nevada corporation located in Vancouver, British Columbia, Canada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any

periodic reports since it filed a Form 10-SB registration statement on February 11, 2000, which reported a net loss of \$550 since inception in 1994.

3. Nexstage Corp. (CIK No. 1099262) is a defaulted Nevada corporation located in Phoenix, Arizona with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB for the period ended March 31, 2002, which reported a net loss of \$377,386.

4. Platinum Pearls, Inc. (CIK No. 1098906) is a revoked Nevada corporation located in Scottsdale, Arizona with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB/A registration statement on January 12, 2000, which reported a cumulative net loss of \$69,784.

5. Quintalinux, Ltd. (CIK No. 1110870) is a British Virgin Islands corporation located in Hong Kong with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the fiscal year ended March 31, 2001, which reported a net loss of over \$5.8 million for fiscal year 2001.

B. DELINQUENT PERIODIC FILINGS

6. As discussed in more detail above, all of the respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

7. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires domestic issuers to file quarterly reports. Rule 13a-16 requires foreign private issuers to furnish quarterly and other reports to the Commission under cover of Form 6-K if they make or are required to make the information public under the laws of the jurisdiction of their domicile or in which they are incorporated or organized; if they file or are required to file information with a stock exchange on which their securities are traded and the information was made public by the exchange; or if they distribute or are required to distribute information to their security holders.

8. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 or 13a-16 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of

the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary

Attachment

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

Appendix 1

Chart of Delinquent Filings In the Matter of Axyn Corp., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Axyn Corp.	10-QSB	03/31/00	05/15/00	Not filed	100
	10-KSB	06/30/00	09/28/00	Not filed	96
	10-QSB	09/30/00	11/14/00	Not filed	94
	10-QSB	12/31/00	02/14/01	Not filed	91
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-KSB	06/30/01	09/28/01	Not filed	84
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-QSB	12/31/01	02/14/02	Not filed	79
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-KSB	06/30/02	09/30/02	Not filed	72
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-QSB	12/31/02	02/14/03	Not filed	67
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-KSB	06/30/03	09/29/03	Not filed	60
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-QSB	12/31/03	02/17/04	Not filed	55
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-KSB	06/30/04	09/28/04	Not filed	48
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-QSB	12/31/04	02/14/05	Not filed	43
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-KSB	06/30/05	09/28/05	Not filed	36
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-QSB	12/31/05	02/14/06	Not filed	31
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-KSB	06/30/06	09/28/06	Not filed	24
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-QSB	12/31/06	02/14/07	Not filed	19
	10-QSB	03/31/07	05/16/07	Not filed	16
	10-KSB	06/30/07	09/28/07	Not filed	12
	10-QSB	09/30/07	11/14/07	Not filed	10

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Axyn Corp.					
	10-QSB	12/31/07	02/14/08	Not filed	7
	10-QSB	03/31/08	05/15/08	Not filed	4
Total Filings Delinquent	33				

Boss Media, Inc.

10-QSB	03/31/00	05/26/00	Not filed	100
10-QSB	06/30/00	08/14/00	Not filed	97
10-QSB	09/30/00	11/14/00	Not filed	94
10-KSB	12/31/00	04/02/01	Not filed	89
10-QSB	03/31/01	05/15/01	Not filed	88
10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Boss Media, Inc.					
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q*	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/15/08	Not filed	1
Total Filings Delinquent	34				
Nexstage Corp.					
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-QSB	12/31/02	02/14/03	Not filed	67
	10-KSB	03/31/03	06/30/03	Not filed	63
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-QSB	12/31/03	02/17/04	Not filed	55
	10-KSB	03/31/04	06/29/04	Not filed	51
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-QSB	12/31/04	02/14/05	Not filed	43
	10-KSB	03/31/05	06/29/05	Not filed	39
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-QSB	12/31/05	02/14/06	Not filed	31
	10-KSB	03/31/06	06/29/06	Not filed	27
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-QSB	12/31/06	02/14/07	Not filed	19
	10-KSB	03/31/07	06/29/07	Not filed	15
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-QSB	12/31/07	02/14/08	Not filed	7
	10-KSB	03/31/08	06/30/08	Not filed	3
	10-Q	06/30/08	08/15/08	Not filed	1
Total Filings Delinquent	25				

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Platinum Pearls, Inc.					
	10-KSB	12/31/99	03/30/00	Not filed	102
	10-QSB	03/31/00	05/15/00	Not filed	100
	10-QSB	06/30/00	08/14/00	Not filed	97
	10-QSB	09/30/00	11/14/00	Not filed	94
	10-KSB	12/31/00	04/02/01	Not filed	89
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-QSB	06/30/01	08/14/01	Not filed	85
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	3/31/08	Not filed	6
	10-Q*	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent

35

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Quintalinux, Ltd.					
	20-F	03/31/02	09/30/02	Not filed	72
	20-F	03/31/03	09/30/03	Not filed	60
	20-F	03/31/04	09/30/04	Not filed	48
	20-F	03/31/05	09/30/05	Not filed	36
	20-F	03/31/06	10/02/06	Not filed	23
	20-F	03/31/07	10/01/07	Not filed	11

Total Filings Delinquent 6

*Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 9, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13173

In the Matter of

**Amenity Zone, Inc.,
American ATM Corp. (n/k/a American
Wireless Web Corp.),
Digitec 2000, Inc., and
3 E International Corp.,**

Respondents.

**ORDER INSTITUTING
PROCEEDINGS AND NOTICE OF
HEARING PURSUANT TO SECTION
12(j) OF THE SECURITIES
EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Amenity Zone, Inc., American ATM Corp. (n/k/a American Wireless Web Corp.), Digitec 2000, Inc., and 3 E International Corp.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Amenity Zone, Inc. (CIK No. 1102008) is a dissolved Florida corporation located in Atlanta, Georgia with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended January 31, 2000, which reported a net loss of \$3,015 since inception in 1999.

2. American ATM Corp. (n/k/a American Wireless Web Corp.) (CIK No. 1031293) is a dissolved Florida corporation located in Boca Raton, Florida with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not

filed any periodic reports since it filed a Form 10-QSB for the period ended December 31, 1999, which reported a net loss of \$71,407 for the prior six months.

3. Digitec 2000, Inc. (CIK No. 1048729) is a revoked Nevada corporation located in New York, New York with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2002, which reported a net loss of \$2.8 million for the prior nine months.

4. 3 E International Corp. (CIK No. 1082932) is a void Delaware corporation located in Kitchener, Ontario, Canada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on March 20, 2000, which reported a net loss of \$72,188 since inception in 1997.

B. DELINQUENT PERIODIC FILINGS

5. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

6. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

7. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each

class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary

Attachment

Jill M. Peterson
By: *Jill M. Peterson*
Assistant Secretary

Appendix 1

Chart of Delinquent Filings In the Matter of Amenity Zone, Inc., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Amenity Zone, Inc.					
	10-QSB	04/30/00	06/14/00	Not filed	99
	10-QSB	07/31/00	09/14/00	Not filed	96
	10-KSB	10/31/00	01/29/01	Not filed	92
	10-QSB	01/31/01	03/19/01	Not filed	90
	10-QSB	04/30/01	06/14/01	Not filed	87
	10-QSB	07/31/01	09/14/01	Not filed	84
	10-KSB	10/31/01	01/29/02	Not filed	80
	10-QSB	01/31/02	03/18/02	Not filed	78
	10-QSB	04/30/02	06/14/02	Not filed	75
	10-QSB	07/31/02	09/16/02	Not filed	72
	10-KSB	10/31/02	01/29/03	Not filed	68
	10-QSB	01/31/03	03/17/03	Not filed	66
	10-QSB	04/30/03	06/16/03	Not filed	63
	10-QSB	07/31/03	09/15/03	Not filed	60
	10-KSB	10/31/03	01/29/04	Not filed	56
	10-QSB	01/31/04	03/16/04	Not filed	54
	10-QSB	04/30/04	06/14/04	Not filed	51
	10-QSB	07/31/04	09/14/04	Not filed	48
	10-KSB	10/31/04	01/31/05	Not filed	44
	10-QSB	01/31/05	03/17/05	Not filed	42
	10-QSB	04/30/05	06/14/05	Not filed	39
	10-QSB	07/31/05	09/14/05	Not filed	36
	10-KSB	10/31/05	01/30/06	Not filed	32
	10-QSB	01/31/06	03/17/06	Not filed	30
	10-QSB	04/30/06	06/14/06	Not filed	27
	10-QSB	07/31/06	09/14/06	Not filed	24
	10-KSB	10/31/06	01/29/07	Not filed	20
	10-QSB	01/31/07	03/19/07	Not filed	18
	10-QSB	04/30/07	06/14/07	Not filed	15

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Amenity Zone, Inc.					
	10-QSB	07/31/07	09/14/07	Not filed	12
	10-KSB	10/31/07	01/29/08	Not filed	8
	10-QSB	01/31/08	03/17/08	Not filed	6
	10-QSB	04/30/08	06/16/08	Not filed	3
Total Filings Delinquent	33				

American ATM Corp.
(n/k/a American Wireless Web Corp.)

10-QSB	03/31/00	05/15/00	Not filed	100
10-KSB	06/30/00	09/28/00	Not filed	96
10-QSB	09/30/00	11/14/00	Not filed	94
10-QSB	12/31/00	02/14/01	Not filed	91
10-QSB	03/31/01	05/15/01	Not filed	88
10-KSB	06/30/01	09/28/01	Not filed	84
10-QSB	09/30/01	11/14/01	Not filed	82
10-QSB	12/31/01	02/14/02	Not filed	79
10-QSB	03/31/02	05/15/02	Not filed	76
10-KSB	06/30/02	09/30/02	Not filed	72
10-QSB	09/30/02	11/14/02	Not filed	70
10-QSB	12/31/02	02/14/03	Not filed	67
10-QSB	03/31/03	05/15/03	Not filed	64
10-KSB	06/30/03	09/29/03	Not filed	60
10-QSB	09/30/03	11/14/03	Not filed	58
10-QSB	12/31/03	02/16/04	Not filed	55
10-QSB	03/31/04	05/17/04	Not filed	52
10-KSB	06/30/04	09/28/04	Not filed	48
10-QSB	09/30/04	11/15/04	Not filed	46
10-QSB	12/31/04	02/14/05	Not filed	43
10-QSB	03/31/05	05/16/05	Not filed	40
10-KSB	06/30/05	09/28/05	Not filed	36
10-QSB	09/30/05	11/14/05	Not filed	34

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
American ATM Corp. (n/k/a American Wireless Web Corp.)					
	10-QSB	12/31/05	02/14/06	Not filed	31
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-KSB	06/30/06	09/28/06	Not filed	24
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-QSB	12/31/06	02/14/07	Not filed	19
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-KSB	06/30/07	09/28/07	Not filed	12
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-QSB	12/31/07	02/14/08	Not filed	7
	10-QSB	03/31/08	05/15/08	Not filed	4

Total Filings Delinquent

33

Digitec 2000, Inc.

10-KSB	06/30/02	09/30/02	Not filed	72
10-QSB	09/30/02	11/14/02	Not filed	70
10-QSB	12/31/02	02/14/03	Not filed	67
10-QSB	03/31/03	05/15/03	Not filed	64
10-KSB	06/30/03	09/29/03	Not filed	60
10-QSB	09/30/03	11/14/03	Not filed	58
10-QSB	12/31/03	02/17/04	Not filed	55
10-QSB	03/31/04	05/17/04	Not filed	52
10-KSB	06/30/04	09/28/04	Not filed	48
10-QSB	09/30/04	11/15/04	Not filed	46
10-QSB	12/31/04	02/14/05	Not filed	43
10-QSB	03/31/05	05/16/05	Not filed	40
10-KSB	06/30/05	09/28/05	Not filed	36
10-QSB	09/30/05	11/14/05	Not filed	34
10-QSB	12/31/05	02/14/06	Not filed	31
10-QSB	03/31/06	05/15/06	Not filed	28
10-KSB	06/30/06	09/28/06	Not filed	24
10-QSB	09/30/06	11/14/06	Not filed	22

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
<i>Digitec 2000, Inc.</i>					
	<i>10-QSB</i>	12/31/06	02/14/07	Not filed	19
	<i>10-QSB</i>	03/31/07	05/16/07	Not filed	16
	<i>10-KSB</i>	06/30/07	09/28/07	Not filed	12
	<i>10-QSB</i>	09/30/07	11/14/07	Not filed	10
	<i>10-QSB</i>	12/31/07	02/14/08	Not filed	7
	<i>10-QSB</i>	03/31/08	05/15/08	Not filed	4
Total Filings Delinquent	24				

3 E International Corp.

	<i>10-KSB</i>	06/30/02	09/30/02	Not filed	72
	<i>10-QSB</i>	09/30/02	11/14/02	Not filed	70
	<i>10-QSB</i>	12/31/02	02/14/03	Not filed	67
	<i>10-QSB</i>	03/31/03	05/15/03	Not filed	64
	<i>10-KSB</i>	06/30/03	09/29/03	Not filed	60
	<i>10-QSB</i>	09/30/03	11/14/03	Not filed	58
	<i>10-QSB</i>	12/31/03	02/17/04	Not filed	55
	<i>10-QSB</i>	03/31/04	05/17/04	Not filed	52
	<i>10-KSB</i>	06/30/04	09/28/04	Not filed	48
	<i>10-QSB</i>	09/30/04	11/15/04	Not filed	46
	<i>10-QSB</i>	12/31/04	02/14/05	Not filed	43
	<i>10-QSB</i>	03/31/05	05/16/05	Not filed	40
	<i>10-KSB</i>	06/30/05	09/28/05	Not filed	36
	<i>10-QSB</i>	09/30/05	11/14/05	Not filed	34
	<i>10-QSB</i>	12/31/05	02/14/06	Not filed	31
	<i>10-QSB</i>	03/31/06	05/15/06	Not filed	28
	<i>10-KSB</i>	06/30/06	09/28/06	Not filed	24
	<i>10-QSB</i>	09/30/06	11/14/06	Not filed	22
	<i>10-QSB</i>	12/31/06	02/14/07	Not filed	19
	<i>10-QSB</i>	03/31/07	05/16/07	Not filed	16
	<i>10-KSB</i>	06/30/07	12/31/07	Not filed	9
	<i>10-QSB</i>	09/30/07	11/14/07	Not filed	10
	<i>10-QSB</i>	12/31/07	02/14/08	Not filed	7
	<i>10-QSB</i>	03/31/08	05/15/08	Not filed	4
Total Filings Delinquent	24				

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 9, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13175

In the Matter of

Camtek Technologies, Inc.,
Challedon, Inc.,
Cutty Sark Management, Inc.,
DMFI, Inc.,
Far Reach Holdings Ltd.,
For Sale.com, Inc.,
Hitchin Post, Inc.,
Mining, Milling, Manufacturing, &
Marketing, Inc. of Nevada, and
Western Mountain Mining, Inc.,

Respondents.

ORDER INSTITUTING
PROCEEDINGS AND NOTICE
OF HEARING PURSUANT TO
SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT
OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Camtek Technologies, Inc., Challedon, Inc., Cutty Sark Management, Inc., DMFI, Inc., Far Reach Holdings Ltd., For Sale.com, Inc., Hitchin Post, Inc., Mining, Milling, Manufacturing, & Marketing, Inc. of Nevada, and Western Mountain Mining, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Camtek Technologies, Inc. (CIK No. 1140567) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Camtek is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on June 4, 2001

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2. Challedon, Inc. (CIK No. 1130634) is an expired Utah corporation located in Salt Lake City, Utah with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Challedon is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB for the period ended December 31, 2001, which reported an accumulated deficit of \$20,072.

3. Cutty Sark Management, Inc. (CIK No. 1103180) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Cutty Sark is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB on January 14, 2000.

4. DMFI, Inc. (CIK No. 1138657) is a forfeited Texas corporation located in Alexandria, Louisiana with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). DMFI is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2001

5. Far Reach Holdings Ltd. (CIK No. 1103097) is a revoked Nevada corporation located in Palm Desert, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Far Reach is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2001, which reported an accumulated deficit of \$5,897.

6. For Sale.com, Inc. (CIK No. 1140006) is a revoked Nevada corporation located in Newport Beach, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). For Sale is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2002, which reported liabilities of \$11,738.

7. Hitchin Post, Inc. (CIK No. 1103098) is a revoked Nevada corporation located in Palm Desert, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Hitchin Post is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2001, which reported a net loss of \$7,897.

8. Mining, Milling, Manufacturing, & Marketing, Inc. of Nevada (CIK No. 1128962) is a Nevada corporation located in Salt Lake City, Utah with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Mining Milling is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB on January 2, 2001.

9. Western Mountain Mining, Inc. (CIK No. 1098420) is a revoked Nevada corporation located in Salt Lake City, Utah with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Western is delinquent in its

periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2001, which reported an accumulated deficit of \$50,075.

B. DELINQUENT PERIODIC FILINGS

10. As discussed in more detail above, all of the respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

11. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

12. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary

Attachment

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

Appendix 1

Chart of Delinquent Filings *Camtek Technologies, Inc., et al.*

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
Camtek Technologies, Inc.	10-QSB	06/30/01	09/17/01	Not filed	84
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
Camtek Technologies, Inc.					
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/15/08	Not filed	1
Total Filings Delinquent	29				

Challedon, Inc.					
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/15/08	Not filed	1
Total Filings Delinquent	26				

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
Cutty Sark Management, Inc.					
	10-KSB	12/31/99	03/30/00	Not filed	102
	10-QSB	03/31/00	05/15/00	Not filed	100
	10-QSB	06/30/00	08/14/00	Not filed	97
	10-QSB	09/30/00	11/14/00	Not filed	94
	10-KSB	12/31/00	04/02/01	Not filed	89
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-QSB	06/30/01	08/14/01	Not filed	85
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
Cutty Sark Management, Inc.					
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent

35

DMFI, Inc.

10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
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DMFI, Inc.

10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-KSB	12/31/07	03/31/08	Not filed	6
10-Q ¹	03/31/08	05/15/08	Not filed	4
10-Q ¹	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent 27

Far Reach Holdings Ltd.

10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
Far Reach Holdings Ltd.					
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/15/08	Not filed	1
Total Filings Delinquent	28				

For Sale.com, Inc.					
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/15/08	Not filed	1
Total Filings Delinquent	23				

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
Hitchin Post, Inc.					
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent 28

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
Mining, Milling, Manufacturing, & Marketing, Inc. of Nevada					

10-KSB	12/31/00	04/02/01	Not filed	89
10-QSB	03/31/01	05/15/01	Not filed	88
10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-KSB	12/31/07	03/31/08	Not filed	6
10-Q'	03/31/08	05/15/08	Not filed	4
10-Q'	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent

30

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
Western Mountain Mining, Inc.	<i>10-QSB</i>	06/30/01	08/14/01	Not filed	85
	<i>10-QSB</i>	09/30/01	11/14/01	Not filed	82
	<i>10-KSB</i>	12/31/01	04/01/02	Not filed	77
	<i>10-QSB</i>	03/31/02	05/15/02	Not filed	76
	<i>10-QSB</i>	06/30/02	08/14/02	Not filed	73
	<i>10-QSB</i>	09/30/02	11/14/02	Not filed	70
	<i>10-KSB</i>	12/31/02	03/31/03	Not filed	66
	<i>10-QSB</i>	03/31/03	05/15/03	Not filed	64
	<i>10-QSB</i>	06/30/03	08/14/03	Not filed	61
	<i>10-QSB</i>	09/30/03	11/14/03	Not filed	58
	<i>10-KSB</i>	12/31/03	03/30/04	Not filed	54
	<i>10-QSB</i>	03/31/04	05/17/04	Not filed	52
	<i>10-QSB</i>	06/30/04	08/16/04	Not filed	49
	<i>10-QSB</i>	09/30/04	11/15/04	Not filed	46
	<i>10-KSB</i>	12/31/04	03/31/05	Not filed	42
	<i>10-QSB</i>	03/31/05	05/16/05	Not filed	40
	<i>10-QSB</i>	06/30/05	08/15/05	Not filed	37
	<i>10-QSB</i>	09/30/05	11/14/05	Not filed	34
	<i>10-KSB</i>	12/31/05	03/31/06	Not filed	30
	<i>10-QSB</i>	03/31/06	05/15/06	Not filed	28
	<i>10-QSB</i>	06/30/06	08/14/06	Not filed	25
	<i>10-QSB</i>	09/30/06	11/14/06	Not filed	22
	<i>10-KSB</i>	12/31/06	04/02/07	Not filed	17
	<i>10-QSB</i>	03/31/07	05/15/07	Not filed	16
	<i>10-QSB</i>	06/30/07	08/14/07	Not filed	13

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
Western Mountain Mining, Inc.					
	<i>10-QSB</i>	09/30/07	11/14/07	Not filed	10
	<i>10-KSB</i>	12/31/07	03/31/08	Not filed	6
	<i>10-Q¹</i>	03/31/08	05/15/08	Not filed	4
	<i>10-Q¹</i>	06/30/08	08/15/08	Not filed	1
Total Filings Delinquent		29			

¹ Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

Commissioner Watter
not participating

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 58508 / September 10, 2008

Admin. Proc. File No. 3-12384

In the Matter of the Application of
NASDAQ STOCK MARKET, LLC

For Review of Action Taken by the
CONSOLIDATED TAPE ASSOCIATION

ORDER GRANTING
EXTENSION

The Chief Administrative Law Judge has moved, pursuant to Commission Rule of Practice 360(a)(3), 1/ for an extension of time for the law judge presiding over this proceeding to issue his initial decision. For the reasons set forth below, we have determined to grant the Chief Administrative Law Judge's motion.

I.

On June 30, 2006, The Nasdaq Stock Market, LLC ("Nasdaq"), a member of the Consolidated Tape Association ("CTA"), petitioned for review of an action taken by the CTA Operating Committee. By order dated June 14, 2007 (the "Order"), we accepted jurisdiction over Nasdaq's petition and directed that an administrative law judge be designated to preside over the case. In accordance with the Order, the law judge appointed to preside over the proceeding conducted a hearing on November 8 and 9, 2007, during which the parties called numerous witnesses and introduced exhibits into evidence. When post-hearing briefing was completed, the law judge transmitted the record to the Secretary for decision by the Commission, without preparing an initial decision with findings, conclusions, and supporting reasons pursuant to Rule of Practice 360(b), 2/ apparently in the belief that the Order did not require him to do so. By our

1/ 17 C.F.R. § 201.360(a)(3).

2/ 17 C.F.R. § 201.360(b) (stating that "[a]n initial decision shall include: findings and conclusions and the reasons or basis therefor, as to all the material issues of fact, law or discretion presented on the record and the appropriate order, sanction, relief, or denial thereof").

Order of April 30, 2008, we remanded the proceeding to the law judge "for issuance of an initial decision." 3/

On July 17, 2008, the Chief Administrative Law Judge filed a motion pursuant to Commission Rule of Practice 360(a)(3) 4/ requesting an extension of time of 120 days.

II.

We adopted Rules of Practice 360(a)(2) and 360(a)(3) as part of an effort to enhance the timely and efficient adjudication and disposition of Commission administrative proceedings. 5/ At that time, we determined that the adoption of mandatory deadlines for completion of administrative hearings would facilitate timely completion of the adjudication process. In adopting those guidelines, however, we recognized that a "one size fits all" approach to timely disposition is not feasible." 6/ We therefore established three different deadlines – 120, 210, or 300 days – depending on "the nature, complexity, and urgency of the subject matter, and with due regard for the public interest and the protection of investors." 7/

We further provided for the granting of extensions to those deadlines under certain circumstances. If, during the proceeding, the presiding law judge decides that the proceeding cannot be concluded in the time specified in the OIP, Rule 360(a)(3) provides that the law judge may request an extension of the stated deadline. To obtain an extension, the law judge should consult with the Chief Administrative Law Judge.

Here, the motion supports the extension request by stating that "[the presiding law judge] cannot issue the Initial Decision within the specified time because the case is complex, with a sizeable record, and may require additional evidence." Moreover, the presiding law judge is scheduled to preside over two weeks of hearings beginning on September 15, 2008. In light of the circumstances described above and the reasonableness of the requested extension, we have

3/ NASDAQ Stock Market, LLC, Securities Exchange Act Rel. No. 57741 (Apr. 30, 2008), ___ SEC Docket ____.

4/ 17 C.F.R. § 201.360(a)(3).

5/ See Adopting Release, Securities Act Rel. No. 8240 (June 11, 2003), 80 SEC Docket 1463.

6/ Id.

7/ 17 C.F.R. § 201.360(a)(2).

determined to grant the motion. We believe it is appropriate to extend the deadline for issuance of the initial decision for 120 days from the date of this order.

Accordingly, IT IS ORDERED that the deadline for issuance of the initial decision in this matter be, and it hereby is, extended until January 8, 2009.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 9, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13176

In the Matter of

**Argyle Ventures, Inc.,
California Investment Co.,
Goldcrest Corp.,
Molecular Robotics, Inc.,
Ponderosa Partners, Inc., and
Taking Life By Storm, Inc.,**

Respondents.

**ORDER INSTITUTING
PROCEEDINGS AND NOTICE OF
HEARING PURSUANT TO SECTION
12(j) OF THE SECURITIES
EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Argyle Ventures, Inc., California Investment Co., Goldcrest Corp., Molecular Robotics, Inc., Ponderosa Partners, Inc., and Taking Life By Storm, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Argyle Ventures, Inc. (CIK No. 840677) is a revoked Nevada corporation located in Los Angeles, California with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on November 29, 1999, which reported a net loss of \$2,832 since inception in 1985.

2. California Investment Co. (CIK No. 1100403) is a permanently revoked Nevada corporation located in Los Angeles, California with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company

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is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on December 10, 1999.

3. Goldcrest Corp. (CIK No. 856287) is a void Delaware corporation located in Los Angeles, California with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended December 31, 1999, which reported a net loss of \$1,500 for the prior three months.

4. Molecular Robotics, Inc. (CIK No. 1049135) is a forfeited Delaware corporation located in Encino, California with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2001, which reported a net loss of \$26 million for the prior nine months.

5. Ponderosa Partners, Inc. (CIK No. 1103631) is a defaulted Nevada corporation located in Marina Del Rey, California with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on February 11, 2000, which reported a net loss of \$9,633 since inception in 1997.

6. Taking Life By Storm, Inc. (CIK No. 1099284) is a permanently revoked Nevada corporation located in Newport Beach, California with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on November 19, 1999.

B. DELINQUENT PERIODIC FILINGS

7. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

8. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

9. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary

Attachment

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

Appendix 1

Chart of Delinquent Filings In the Matter of Argyle Ventures, Inc., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Argyle Ventures, Inc.	<i>10-QSB</i>	12/31/99	03/13/00	Not filed	102
	<i>10-QSB</i>	03/31/00	05/15/00	Not filed	100
	<i>10-QSB</i>	06/30/00	08/14/00	Not filed	97
	<i>10-KSB</i>	09/30/00	12/29/00	Not filed	93
	<i>10-QSB</i>	12/31/00	02/14/01	Not filed	91
	<i>10-QSB</i>	03/31/01	05/15/01	Not filed	88
	<i>10-QSB</i>	06/30/01	08/14/01	Not filed	85
	<i>10-KSB</i>	09/30/01	12/31/01	Not filed	81
	<i>10-QSB</i>	12/31/01	02/14/02	Not filed	79
	<i>10-QSB</i>	03/31/02	05/15/02	Not filed	76
	<i>10-QSB</i>	06/30/02	08/14/02	Not filed	73
	<i>10-KSB</i>	09/30/02	12/30/02	Not filed	69
	<i>10-QSB</i>	12/31/02	02/14/03	Not filed	67
	<i>10-QSB</i>	03/31/03	05/15/03	Not filed	64
	<i>10-QSB</i>	06/30/03	08/14/03	Not filed	61
	<i>10-KSB</i>	09/30/03	12/29/03	Not filed	57
	<i>10-QSB</i>	12/31/03	02/17/04	Not filed	55
	<i>10-QSB</i>	03/31/04	05/17/04	Not filed	52
	<i>10-QSB</i>	06/30/04	08/16/04	Not filed	49
	<i>10-KSB</i>	09/30/04	12/29/04	Not filed	45
	<i>10-QSB</i>	12/31/04	02/14/05	Not filed	43
	<i>10-QSB</i>	03/31/05	05/16/05	Not filed	40
	<i>10-QSB</i>	06/30/05	08/15/05	Not filed	37
	<i>10-KSB</i>	09/30/05	12/29/05	Not filed	33
	<i>10-QSB</i>	12/31/05	02/14/06	Not filed	31
	<i>10-QSB</i>	03/31/06	05/15/06	Not filed	28

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Argyle Ventures, Inc.					
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-KSB	09/30/06	12/29/06	Not filed	21
	10-QSB	12/31/06	02/14/07	Not filed	19
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-KSB	09/30/07	12/31/07	Not filed	9
	10-QSB	12/31/07	02/14/08	Not filed	7
	10-QSB	03/31/08	05/15/08	Not filed	4
	10-QSB	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent 35

California Investment Co.

10-QSB	12/31/99	03/24/00	Not filed	102
10-QSB	03/31/00	05/15/00	Not filed	100
10-QSB	06/30/00	08/14/00	Not filed	97
10-KSB	09/30/00	12/29/00	Not filed	93
10-QSB	12/31/00	02/14/01	Not filed	91
10-QSB	03/31/01	05/15/01	Not filed	88
10-QSB	06/30/01	08/14/01	Not filed	85
10-KSB	09/30/01	12/31/01	Not filed	81
10-QSB	12/31/01	02/14/02	Not filed	79
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-KSB	09/30/02	12/30/02	Not filed	69
10-QSB	12/31/02	02/14/03	Not filed	67
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-KSB	09/30/03	12/29/03	Not filed	57
10-QSB	12/31/03	02/17/04	Not filed	55

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
California Investment Co.					
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-KSB	09/30/04	12/29/04	Not filed	45
	10-QSB	12/31/04	02/14/05	Not filed	43
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-KSB	09/30/05	12/29/05	Not filed	33
	10-QSB	12/31/05	02/14/06	Not filed	31
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-KSB	09/30/06	12/29/06	Not filed	21
	10-QSB	12/31/06	02/14/07	Not filed	19
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-KSB	09/30/07	12/31/07	Not filed	9
	10-QSB	12/31/07	02/14/08	Not filed	7
	10-QSB	03/31/08	05/15/08	Not filed	4
	10-QSB	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent 35

Goldcrest Corp.

10-QSB	03/31/00	05/15/00	Not filed	100
10-KSB	06/30/00	09/28/00	Not filed	96
10-QSB	09/30/00	11/14/00	Not filed	94
10-QSB	12/31/00	02/14/01	Not filed	91
10-QSB	03/31/01	05/15/01	Not filed	88
10-KSB	06/30/01	09/28/01	Not filed	84
10-QSB	09/30/01	11/14/01	Not filed	82
10-QSB	12/31/01	02/14/02	Not filed	79
10-QSB	03/31/02	05/15/02	Not filed	76
10-KSB	06/30/02	09/30/02	Not filed	72

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Goldcrest Corp.					
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-QSB	12/31/02	02/14/03	Not filed	67
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-KSB	06/30/03	09/29/03	Not filed	60
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-QSB	12/31/03	02/17/04	Not filed	55
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-KSB	06/30/04	09/28/04	Not filed	48
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-QSB	12/31/04	02/14/05	Not filed	43
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-KSB	06/30/05	09/28/05	Not filed	36
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-QSB	12/31/05	02/14/06	Not filed	31
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-KSB	06/30/06	09/28/06	Not filed	24
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-QSB	12/31/06	02/14/07	Not filed	19
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-KSB	06/30/07	09/28/07	Not filed	12
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-QSB	12/31/07	02/14/08	Not filed	7
	10-QSB	03/31/08	05/15/08	Not filed	4
	10-QSB	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent 34

Molecular Robotics, Inc.

10-KSB	06/30/01	09/28/01	Not filed	84
10-QSB	09/30/01	11/14/01	Not filed	82
10-QSB	12/31/01	02/14/02	Not filed	79
10-QSB	03/31/02	05/15/02	Not filed	76
10-KSB	06/30/02	09/30/02	Not filed	72

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
<i>Molecular Robotics, Inc.</i>					
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-QSB	12/31/02	02/14/03	Not filed	67
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-KSB	06/30/03	09/29/03	Not filed	60
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-QSB	12/31/03	02/17/04	Not filed	55
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-KSB	06/30/04	09/28/04	Not filed	48
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-QSB	12/31/04	02/14/05	Not filed	43
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-KSB	06/30/05	09/28/05	Not filed	36
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-QSB	12/31/05	02/14/06	Not filed	31
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-KSB	06/30/06	09/28/06	Not filed	24
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-QSB	12/31/06	02/14/07	Not filed	19
	10-QSB	03/31/07	05/16/07	Not filed	16
	10-KSB	06/30/07	09/28/07	Not filed	12
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-QSB	12/31/07	02/14/08	Not filed	7
	10-QSB	03/31/08	05/15/08	Not filed	4

Total Filings Delinquent	28
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Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Ponderosa Partners, Inc.					
	10-QSB	03/31/00	05/26/00	Not filed	100
	10-QSB	06/30/00	08/14/00	Not filed	97
	10-QSB	09/30/00	11/14/00	Not filed	94
	10-KSB	12/31/00	04/02/01	Not filed	89
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-QSB	06/30/01	08/14/01	Not filed	85
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
<i>Ponderosa Partners, Inc.</i>					
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	3/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent	34				

Taking Life By Storm, Inc.

10-QSB	09/30/99	11/14/99	Not filed	106
10-KSB	12/31/99	03/30/00	Not filed	100
10-QSB	03/31/00	05/15/00	Not filed	97
10-QSB	06/30/00	08/14/00	Not filed	94
10-QSB	09/30/00	11/14/00	Not filed	89
10-KSB	12/31/00	04/02/01	Not filed	88
10-QSB	03/31/01	05/15/01	Not filed	85
10-QSB	06/30/01	08/14/01	Not filed	82
10-QSB	09/30/01	11/14/01	Not filed	77
10-KSB	12/31/01	04/01/02	Not filed	76
10-QSB	03/31/02	05/15/02	Not filed	73
10-QSB	06/30/02	08/14/02	Not filed	70
10-QSB	09/30/02	11/14/02	Not filed	66
10-KSB	12/31/02	03/31/03	Not filed	64

¹Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
<i>Taking Life By Storm, Inc.</i>					
	<i>10-QSB</i>	03/31/03	05/15/03	Not filed	61
	<i>10-QSB</i>	06/30/03	08/14/03	Not filed	58
	<i>10-QSB</i>	09/30/03	11/14/03	Not filed	54
	<i>10-KSB</i>	12/31/03	03/30/04	Not filed	52
	<i>10-QSB</i>	03/31/04	05/17/04	Not filed	49
	<i>10-QSB</i>	06/30/04	08/16/04	Not filed	46
	<i>10-QSB</i>	09/30/04	11/14/04	Not filed	42
	<i>10-KSB</i>	12/31/04	03/31/05	Not filed	40
	<i>10-QSB</i>	03/31/05	05/16/05	Not filed	37
	<i>10-QSB</i>	06/30/05	08/15/05	Not filed	34
	<i>10-QSB</i>	09/30/05	11/14/05	Not filed	30
	<i>10-KSB</i>	12/31/05	03/31/06	Not filed	28
	<i>10-QSB</i>	03/31/06	05/15/06	Not filed	25
	<i>10-QSB</i>	06/30/06	08/14/06	Not filed	22
	<i>10-QSB</i>	09/30/06	11/14/06	Not filed	17
	<i>10-KSB</i>	12/31/06	04/02/07	Not filed	16
	<i>10-QSB</i>	03/31/07	05/15/07	Not filed	13
	<i>10-QSB</i>	06/30/07	08/14/07	Not filed	10
	<i>10-QSB</i>	09/30/07	11/14/07	Not filed	6
	<i>10-KSB</i>	12/31/07	03/31/08	Not filed	4
	<i>10-Q¹</i>	03/31/08	05/15/08	Not filed	1
	<i>10-Q¹</i>	06/30/08	08/14/08	Not filed	0
Total Filings Delinquent	36				

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 10, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13179

In the Matter of

Oil City Petroleum, Inc.,
Oil Retrieval Systems, Inc.,
OIS Optical Imaging Systems, Inc.,
Oliver Transportation, Inc.,
On Marine Services Co., and
OnCourse Technologies, Inc.,

Respondents.

ORDER INSTITUTING
PROCEEDINGS AND NOTICE
OF HEARING PURSUANT TO
SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT
OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Oil City Petroleum, Inc., Oil Retrieval Systems, Inc., OIS Optical Imaging Systems, Inc., Oliver Transportation, Inc., On Marine Services Co., and OnCourse Technologies, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Oil City Petroleum, Inc. (CIK No. 277952) is a forfeited Texas corporation located in Tulsa, Oklahoma with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Oil City Petroleum is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended May 31, 1998, which reported a net loss of \$58,169 for the prior three months.

2. Oil Retrieval Systems, Inc. (CIK No. 87009) is a dissolved Arizona corporation located in Fort Worth, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Oil Retrieval Systems is delinquent in its periodic filings with the Commission, having not filed any periodic

reports since it filed a Form 10-Q for the period ended June 30, 1996, which reported a net loss of \$479 for the prior three months.

3. OIS Optical Imaging Systems, Inc. (CIK No. 753601) is a dissolved Delaware corporation located in Northville, Michigan with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). OIS Optical Imaging Systems is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 1999, which reported a net loss of \$15,520,408 for the nine months ended March 31, 1998.

4. Oliver Transportation, Inc. (CIK No. 900339) is a void Delaware corporation located in Mexico, Missouri with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Oliver Transportation is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 1995.

5. On Marine Services Co. (CIK No. 73918) is a Delaware corporation located in Cleveland, Ohio with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). On Marine Services is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 1998. On February 23, 2004, the company filed a Chapter 11 petition in the U.S. Bankruptcy court for the District of Delaware, and the case was terminated on August 9, 2005.

6. OnCourse Technologies, Inc. (CIK No. 1067675) is a Nevada corporation located in New Berlin, Wisconsin with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). OnCourse Technologies is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2002, which reported a net loss of \$902,293 for the prior nine months.

B. DELINQUENT PERIODIC FILINGS

7. As discussed in more detail above, all of the respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

8. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

9. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to

notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission:

Florence E. Harmon
Acting Secretary

Attachment

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Appendix 1

**Chart of Delinquent Filings
In the Matter of Oil City Petroleum, Inc., et al.**

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Oil City Petroleum, Inc.					
	10-K	08/31/98	11/30/98	Not filed	118
	10-Q	11/30/98	01/14/99	Not filed	116
	10-Q	02/28/99	04/14/99	Not filed	113
	10-Q	05/31/99	07/15/99	Not filed	110
	10-K	08/31/99	11/29/99	Not filed	106
	10-Q	11/30/99	01/14/00	Not filed	104
	10-Q	02/28/00	04/14/00	Not filed	101
	10-Q	05/31/00	07/17/00	Not filed	98
	10-K	08/31/00	11/29/00	Not filed	94
	10-Q	11/30/00	01/16/01	Not filed	92
	10-Q	02/28/01	04/16/01	Not filed	89
	10-Q	05/31/01	07/16/01	Not filed	86
	10-K	08/31/01	11/29/01	Not filed	82
	10-Q	11/30/01	01/14/02	Not filed	80
	10-Q	02/28/02	04/15/02	Not filed	77
	10-Q	05/31/02	07/15/02	Not filed	74
	10-K	08/31/02	11/29/02	Not filed	70
	10-Q	11/30/02	01/14/03	Not filed	68
	10-Q	02/28/03	04/14/03	Not filed	65
	10-Q	05/31/03	07/15/03	Not filed	62
	10-K	08/31/03	12/01/03	Not filed	57
	10-Q	11/30/03	01/14/04	Not filed	56
	10-Q	02/28/04	04/13/04	Not filed	53
	10-Q	05/31/04	07/15/04	Not filed	50
	10-K	08/31/04	11/29/04	Not filed	46
	10-Q	11/30/04	01/14/05	Not filed	44
	10-Q	02/28/05	04/14/05	Not filed	41
	10-Q	05/31/05	07/15/05	Not filed	38
	10-K	08/31/05	11/29/05	Not filed	34

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Oil City Petroleum, Inc.					
	10-Q	11/30/05	01/16/06	Not filed	32
	10-Q	02/28/06	04/14/06	Not filed	29
	10-Q	05/31/06	07/17/06	Not filed	26
	10-K	08/31/06	11/29/06	Not filed	22
	10-Q	11/30/06	01/16/07	Not filed	20
	10-Q	02/28/07	04/16/07	Not filed	17
	10-Q	05/31/07	07/16/07	Not filed	14
	10-K	08/31/07	11/29/07	Not filed	10
	10-Q	11/30/07	01/14/08	Not filed	8
	10-Q	02/28/08	04/14/08	Not filed	3
	10-Q	05/31/08	07/15/08	Not filed	2

Total Filings Delinquent 40

Oil Retrieval Systems, Inc.

10-Q	09/30/96	11/14/96	Not filed	142
10-Q	12/31/96	02/14/97	Not filed	139
10-K	03/31/97	06/30/97	Not filed	135
10-Q	06/30/97	08/14/97	Not filed	133
10-Q	09/30/97	11/14/97	Not filed	130
10-Q	12/31/97	02/17/98	Not filed	127
10-K	03/31/98	06/29/98	Not filed	123
10-Q	06/30/98	08/14/98	Not filed	121
10-Q	09/30/98	11/16/98	Not filed	118
10-Q	12/31/98	02/16/99	Not filed	115
10-K	03/31/99	06/29/99	Not filed	111
10-Q	06/30/99	08/16/99	Not filed	109
10-Q	09/30/99	11/15/99	Not filed	106
10-Q	12/31/99	02/14/00	Not filed	103
10-K	03/31/00	06/29/00	Not filed	99
10-Q	06/30/00	08/14/00	Not filed	97
10-Q	09/30/00	11/14/00	Not filed	94
10-Q	12/31/00	02/14/01	Not filed	91
10-K	03/31/01	06/29/01	Not filed	87
10-Q	06/30/01	08/14/01	Not filed	85

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Oil Retrieval Systems, Inc.	10-Q	09/30/01	11/14/01	Not filed	82
	10-Q	12/31/01	02/14/02	Not filed	79
	10-K	03/31/02	07/01/02	Not filed	74
	10-Q	06/30/02	08/14/02	Not filed	73
	10-Q	09/30/02	11/14/02	Not filed	70
	10-Q	12/31/02	02/14/03	Not filed	67
	10-K	03/31/03	06/30/03	Not filed	63
	10-Q	06/30/03	08/14/03	Not filed	61
	10-Q	09/30/03	11/14/03	Not filed	58
	10-Q	12/31/03	02/17/04	Not filed	55
	10-K	03/31/04	06/29/04	Not filed	51
	10-Q	06/30/04	08/16/04	Not filed	49
	10-Q	09/30/04	11/15/04	Not filed	46
	10-Q	12/31/04	02/14/05	Not filed	43
	10-K	03/31/05	06/29/05	Not filed	39
	10-Q	06/30/05	08/15/05	Not filed	37
	10-Q	09/30/05	11/14/05	Not filed	34
	10-Q	12/31/05	02/14/06	Not filed	31
	10-K	03/31/06	06/29/06	Not filed	27
	10-Q	06/30/06	08/14/06	Not filed	25
	10-Q	09/30/06	11/14/06	Not filed	22
	10-Q	12/31/06	02/14/07	Not filed	19
	10-K	03/31/07	06/29/07	Not filed	15
	10-Q	06/30/07	08/14/07	Not filed	13
	10-Q	09/30/07	11/14/07	Not filed	10
	10-Q	12/31/07	02/14/08	Not filed	7
	10-K	03/31/08	06/30/08	Not filed	3
	10-Q	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent

48

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
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OIS Optical Imaging Systems, Inc.

10-K	06/30/99	9/28/99	Not filed	108
10-Q	09/30/99	11/15/99	Not filed	106
10-Q	12/31/99	2/14/00	Not filed	103
10-Q	03/31/00	5/15/00	Not filed	100
10-K	06/30/00	9/28/00	Not filed	96
10-Q	09/30/00	11/14/00	Not filed	94
10-Q	12/31/00	2/14/01	Not filed	91
10-Q	03/31/01	5/15/01	Not filed	88
10-K	06/30/01	9/28/01	Not filed	84
10-Q	09/30/01	11/14/01	Not filed	82
10-Q	12/31/01	2/14/02	Not filed	79
10-Q	03/31/02	5/15/02	Not filed	76
10-K	06/30/02	9/30/02	Not filed	72
10-Q	09/30/02	11/14/02	Not filed	70
10-Q	12/31/02	2/14/03	Not filed	67
10-Q	03/31/03	5/15/03	Not filed	64
10-K	06/30/03	9/29/03	Not filed	60
10-Q	09/30/03	11/14/03	Not filed	58
10-Q	12/31/03	2/17/04	Not filed	55
10-Q	03/31/04	5/17/04	Not filed	52
10-K	06/30/04	9/28/04	Not filed	48
10-Q	12/31/04	2/14/05	Not filed	43
10-Q	03/31/05	5/16/05	Not filed	40
10-K	06/30/05	9/28/05	Not filed	36
10-Q	09/30/05	11/14/05	Not filed	34
10-Q	12/31/05	2/14/06	Not filed	31
10-Q	03/31/06	5/15/06	Not filed	28
10-K	06/30/06	9/28/06	Not filed	24
10-Q	09/30/06	11/14/06	Not filed	22
10-Q	12/31/06	2/14/07	Not filed	19
10-Q	03/31/07	5/15/07	Not filed	16
10-K	06/30/07	9/28/07	Not filed	12
10-Q	09/30/07	11/14/07	Not filed	10
10-Q	12/31/07	2/14/08	Not filed	7
10-Q	03/31/08	5/15/08	Not filed	4

Total Filings Delinquent 35

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Oliver Transportation, Inc.	10-Q	06/30/95	08/14/95	Not filed	157
	10-K	09/30/95	12/29/95	Not filed	153
	10-Q	12/31/95	02/14/96	Not filed	151
	10-Q	03/31/96	05/15/96	Not filed	148
	10-Q	06/30/96	08/14/96	Not filed	145
	10-K	09/30/96	12/30/96	Not filed	141
	10-Q	12/31/96	02/14/97	Not filed	139
	10-Q	03/31/97	05/15/97	Not filed	136
	10-Q	06/30/97	08/14/97	Not filed	133
	10-K	09/30/97	12/29/97	Not filed	129
	10-Q	12/31/97	02/17/98	Not filed	127
	10-Q	03/31/98	05/15/98	Not filed	124
	10-Q	06/30/98	08/14/98	Not filed	121
	10-K	09/30/98	12/29/98	Not filed	117
	10-Q	12/31/98	02/16/99	Not filed	115
	10-Q	03/31/99	05/17/99	Not filed	112
	10-Q	06/30/99	08/16/99	Not filed	109
	10-K	09/30/99	12/29/99	Not filed	105
	10-Q	12/31/99	02/14/00	Not filed	103
	10-Q	03/31/00	05/15/00	Not filed	100
	10-Q	06/30/00	08/14/00	Not filed	97
	10-K	09/30/00	12/29/00	Not filed	93
	10-Q	12/31/00	02/14/01	Not filed	91
	10-Q	03/31/01	05/15/01	Not filed	88
	10-Q	06/30/01	08/14/01	Not filed	85
	10-K	09/30/01	12/31/01	Not filed	81
	10-Q	12/31/01	02/14/02	Not filed	79
	10-Q	03/31/02	05/15/02	Not filed	76
	10-Q	06/30/02	08/14/02	Not filed	73
	10-K	09/30/02	12/30/02	Not filed	69
	10-Q	12/31/02	02/14/03	Not filed	67
	10-Q	03/31/03	05/15/03	Not filed	64
	10-Q	06/30/03	08/14/03	Not filed	61
	10-K	09/30/03	12/29/03	Not filed	57

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Oliver Transportation, Inc.					
	10-Q	12/31/03	02/17/04	Not filed	55
	10-Q	03/31/04	05/17/04	Not filed	52
	10-Q	06/30/04	08/16/04	Not filed	49
	10-K	09/30/04	12/29/04	Not filed	45
	10-Q	12/31/04	02/14/05	Not filed	43
	10-Q	03/31/05	05/16/05	Not filed	40
	10-Q	06/30/05	08/15/05	Not filed	37
	10-K	09/30/05	12/29/05	Not filed	33
	10-Q	12/31/05	02/14/06	Not filed	31
	10-Q	03/31/06	05/15/06	Not filed	28
	10-Q	06/30/06	08/14/06	Not filed	25
	10-K	09/30/06	12/29/06	Not filed	21
	10-Q	12/31/06	02/14/07	Not filed	19
	10-Q	03/31/07	05/15/07	Not filed	16
	10-Q	06/30/07	08/14/07	Not filed	13
	10-K	09/30/07	12/31/07	Not filed	9
	10-Q	12/31/07	02/14/08	Not filed	7
	10-Q	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent 53

On Marine Services Co.

10-K	12/31/98	03/31/99	Not filed	114
10-Q	03/31/99	05/17/99	Not filed	112
10-Q	06/30/99	08/16/99	Not filed	109
10-Q	09/30/99	11/15/99	Not filed	106
10-K	12/31/99	03/30/00	Not filed	102
10-Q	03/31/00	05/15/00	Not filed	100
10-Q	06/30/00	08/14/00	Not filed	97
10-Q	09/30/00	11/14/00	Not filed	94
10-K	12/31/00	04/02/01	Not filed	89
10-Q	03/31/01	05/15/01	Not filed	88
10-Q	06/30/01	08/14/01	Not filed	85

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
On Marine Services Co.	10-Q	09/30/01	11/14/01	Not filed	82
	10-K	12/31/01	04/01/02	Not filed	77
	10-Q	03/31/02	05/15/02	Not filed	76
	10-Q	06/30/02	08/14/02	Not filed	73
	10-Q	09/30/02	11/14/02	Not filed	70
	10-K	12/31/02	03/31/03	Not filed	66
	10-Q	03/31/03	05/15/03	Not filed	64
	10-Q	06/30/03	08/14/03	Not filed	61
	10-Q	09/30/03	11/14/03	Not filed	58
	10-K	12/31/03	03/30/04	Not filed	54
	10-Q	03/31/04	05/17/04	Not filed	52
	10-Q	06/30/04	08/16/04	Not filed	49
	10-Q	09/30/04	11/15/04	Not filed	46
	10-K	12/31/04	03/31/05	Not filed	42
	10-Q	03/31/05	05/16/05	Not filed	40
	10-Q	06/30/05	08/15/05	Not filed	37
	10-Q	09/30/05	11/14/05	Not filed	34
	10-K	12/31/05	03/31/06	Not filed	30
	10-Q	03/31/06	05/15/06	Not filed	28
	10-Q	06/30/06	08/14/06	Not filed	25
	10-Q	09/30/06	11/14/06	Not filed	22
	10-K	12/31/06	04/02/07	Not filed	17
	10-Q	03/31/07	05/15/07	Not filed	16
	10-Q	06/30/07	08/14/07	Not filed	13
	10-Q	09/30/07	11/14/07	Not filed	10
	10-K	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent	39				

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
OnCourse Technologies, Inc.	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent 23

¹Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 10, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13180

In the Matter of

**Alamo Financial Services, Inc.,
Incubus Acquisitions, Inc.
(n/k/a ECS Industries, Inc.),
Particle 1, Inc.,
Particle 2, Inc.,
Particle 3, Inc.,
Particle 4, Inc.,
Particle 5, Inc.,
Particle 6, Inc.,
Source One, Inc., and
2TheMax.Com, Inc.,**

Respondents.

**ORDER INSTITUTING
PROCEEDINGS AND NOTICE OF
HEARING PURSUANT TO SECTION
12(j) OF THE SECURITIES
EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Alamo Financial Services, Inc., Incubus Acquisitions, Inc. (n/k/a ECS Industries, Inc.), Particle 1, Inc., Particle 2, Inc., Particle 3, Inc., Particle 4, Inc., Particle 5, Inc., Particle 6, Inc., Source One, Inc., and 2TheMax.Com, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Alamo Financial Services, Inc. (CIK No. 1106009) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in

its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2000, which reported a net loss of \$2,700 since inception in 1995.

2. Incubus Acquisitions, Inc. (n/k/a ECS Industries, Inc.) (CIK No. 1102345) is a Nevada corporation located in Las Vegas, Nevada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB for the period ended December 31, 1999, which reported no assets and a net loss of \$10,550 since inception in 1995.

3. Particle 1, Inc. (CIK No. 1107941) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2000, which reported no assets.

4. Particle 2, Inc. (CIK No. 1107942) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2000, which reported no assets.

5. Particle 3, Inc. (CIK No. 1107943) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2000, which reported no assets.

6. Particle 4, Inc. (CIK No. 1107944) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2000, which reported no assets.

7. Particle 5, Inc. (CIK No. 1107946) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2000, which reported no assets.

8. Particle 6, Inc. (CIK No. 1107945) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2000, which reported no assets. The company's stock is not publicly quoted or traded.

9. Source One, Inc. (CIK No. 1051353) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB for the period ended December 31, 1999, which reported a net loss of \$7,506 for the year.

10. 2TheMax.Com, Inc. (CIK No. 1113243) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2003, which reported no assets.

B. DELINQUENT PERIODIC FILINGS

11. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

12. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

13. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary

Attachment

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

Appendix 1

Chart of Delinquent Filings In the Matter of Alamo Financial Services, Inc. et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Alamo Financial Services, Inc.	10-QSB	06/30/00	08/14/00	Not filed	97
	10-QSB	09/30/00	11/14/00	Not filed	94
	10-KSB	12/31/00	04/02/01	Not filed	89
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-QSB	06/30/01	08/14/01	Not filed	85
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Alamo Financial Services, Inc.					
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent 33

Incubus Acquisitions, Inc. (n/k/a ECS Industries, Inc.)

10-QSB	03/31/00	05/15/00	Not filed	100
10-QSB	06/30/00	08/14/00	Not filed	97
10-QSB	09/30/00	11/14/00	Not filed	94
10-KSB	12/31/00	04/02/01	Not filed	89
10-QSB	03/31/01	05/15/01	Not filed	88
10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61

¹Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
<i>Incubus Acquisitions, Inc. (n/k/a ECS Industries, Inc.)</i>					

<i>10-QSB</i>	09/30/03	11/14/03	Not filed	58
<i>10-KSB</i>	12/31/03	03/30/04	Not filed	54
<i>10-QSB</i>	03/31/04	05/17/04	Not filed	52
<i>10-QSB</i>	06/30/04	08/16/04	Not filed	49
<i>10-QSB</i>	09/30/04	11/15/04	Not filed	46
<i>10-KSB</i>	12/31/04	03/31/05	Not filed	42
<i>10-QSB</i>	03/31/05	05/16/05	Not filed	40
<i>10-QSB</i>	06/30/05	08/15/05	Not filed	37
<i>10-QSB</i>	09/30/05	11/14/05	Not filed	34
<i>10-KSB</i>	12/31/05	03/31/06	Not filed	30
<i>10-QSB</i>	03/31/06	05/15/06	Not filed	28
<i>10-QSB</i>	06/30/06	08/14/06	Not filed	25
<i>10-QSB</i>	09/30/06	11/14/06	Not filed	22
<i>10-KSB</i>	12/31/06	04/02/07	Not filed	17
<i>10-QSB</i>	03/31/07	05/15/07	Not filed	16
<i>10-QSB</i>	06/30/07	08/14/07	Not filed	13
<i>10-QSB</i>	09/30/07	11/14/07	Not filed	10
<i>10-KSB</i>	12/31/07	03/31/08	Not filed	6
<i>10-Q¹</i>	03/31/08	05/15/08	Not filed	4
<i>10-Q¹</i>	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent

34

Particle 1, Inc.

<i>10-QSB</i>	06/30/00	08/14/00	Not filed	97
<i>10-QSB</i>	09/30/00	11/14/00	Not filed	94
<i>10-KSB</i>	12/31/00	04/02/01	Not filed	89
<i>10-QSB</i>	03/31/01	05/15/01	Not filed	88
<i>10-QSB</i>	06/30/01	08/14/01	Not filed	85
<i>10-QSB</i>	09/30/01	11/14/01	Not filed	82
<i>10-KSB</i>	12/31/01	04/01/02	Not filed	77

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Particle 1, Inc.					
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	3/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent	33				

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Particle 2, Inc.					
	10-QSB	06/30/00	08/14/00	Not filed	97
	10-QSB	09/30/00	11/14/00	Not filed	94
	10-KSB	12/31/00	04/02/01	Not filed	89
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-QSB	06/30/01	08/14/01	Not filed	85
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	3/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent

33

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Particle 3, Inc.					
	10-QSB	06/30/00	08/14/00	Not filed	97
	10-QSB	09/30/00	11/14/00	Not filed	94
	10-KSB	12/31/00	04/02/01	Not filed	89
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-QSB	06/30/01	08/14/01	Not filed	85
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	3/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent

33

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Particle 4, Inc.					
	10-QSB	06/30/00	08/14/00	Not filed	97
	10-QSB	09/30/00	11/14/00	Not filed	94
	10-KSB	12/31/00	04/02/01	Not filed	89
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-QSB	06/30/01	08/14/01	Not filed	85
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	3/31/08	Not filed	6
	10-Q'	03/31/08	05/15/08	Not filed	4
	10-Q'	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent

33

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
<i>Particle 5, Inc.</i>	<i>10-QSB</i>	06/30/00	08/14/00	Not filed	97
	<i>10-QSB</i>	09/30/00	11/14/00	Not filed	94
	<i>10-KSB</i>	12/31/00	04/02/01	Not filed	89
	<i>10-QSB</i>	03/31/01	05/15/01	Not filed	88
	<i>10-QSB</i>	06/30/01	08/14/01	Not filed	85
	<i>10-QSB</i>	09/30/01	11/14/01	Not filed	82
	<i>10-KSB</i>	12/31/01	04/01/02	Not filed	77
	<i>10-QSB</i>	03/31/02	05/15/02	Not filed	76
	<i>10-QSB</i>	06/30/02	08/14/02	Not filed	73
	<i>10-QSB</i>	09/30/02	11/14/02	Not filed	70
	<i>10-KSB</i>	12/31/02	03/31/03	Not filed	66
	<i>10-QSB</i>	03/31/03	05/15/03	Not filed	64
	<i>10-QSB</i>	06/30/03	08/14/03	Not filed	61
	<i>10-QSB</i>	09/30/03	11/14/03	Not filed	58
	<i>10-KSB</i>	12/31/03	03/30/04	Not filed	54
	<i>10-QSB</i>	03/31/04	05/17/04	Not filed	52
	<i>10-QSB</i>	06/30/04	08/16/04	Not filed	49
	<i>10-QSB</i>	09/30/04	11/15/04	Not filed	46
	<i>10-KSB</i>	12/31/04	03/31/05	Not filed	42
	<i>10-QSB</i>	03/31/05	05/16/05	Not filed	40
	<i>10-QSB</i>	06/30/05	08/15/05	Not filed	37
	<i>10-QSB</i>	09/30/05	11/14/05	Not filed	34
	<i>10-KSB</i>	12/31/05	03/31/06	Not filed	30
	<i>10-QSB</i>	03/31/06	05/15/06	Not filed	28
	<i>10-QSB</i>	06/30/06	08/14/06	Not filed	25
	<i>10-QSB</i>	09/30/06	11/14/06	Not filed	22
	<i>10-KSB</i>	12/31/06	04/02/07	Not filed	17
	<i>10-QSB</i>	03/31/07	05/15/07	Not filed	16
	<i>10-QSB</i>	06/30/07	08/14/07	Not filed	13
	<i>10-QSB</i>	09/30/07	11/14/07	Not filed	10
	<i>10-KSB</i>	12/31/07	3/31/08	Not filed	6
	<i>10-Q¹</i>	03/31/08	05/15/08	Not filed	4
	<i>10-Q¹</i>	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent 33

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Particle 6, Inc.					
	10-QSB	06/30/00	08/14/00	Not filed	97
	10-QSB	09/30/00	11/14/00	Not filed	94
	10-KSB	12/31/00	04/02/01	Not filed	89
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-QSB	06/30/01	08/14/01	Not filed	85
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	3/31/08	Not filed	6
	10-Q'	03/31/08	05/15/08	Not filed	4
	10-Q'	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent

33

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Source One, Inc.					
	10-QSB	03/31/00	05/15/00	Not filed	100
	10-QSB	06/30/00	08/14/00	Not filed	97
	10-QSB	09/30/00	11/14/00	Not filed	94
	10-KSB	12/31/00	04/02/01	Not filed	89
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-QSB	06/30/01	08/14/01	Not filed	85
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent

34

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
2TheMax.Com, Inc.					
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent	20				

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 10, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13177

In the Matter of

Boochm Systems, Inc.,
J.S.J. Capital Corp.,
National Asset Acquisition, Inc., and
Park Hill Capital II Corp.,

Respondents.

ORDER INSTITUTING
PROCEEDINGS AND NOTICE
OF HEARING PURSUANT TO
SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT
OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Boochm Systems, Inc., J.S.J. Capital Corp., National Asset Acquisition, Inc., and Park Hill Capital II Corp.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Boochm Systems, Inc. (CIK No. 1102688) is an administratively dissolved Colorado corporation located in Littleton, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Boochm is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on January 7, 2000.

2. J.S.J. Capital Corporation (CIK No. 1104176) is a dissolved Nevada corporation located in Boulder, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). J.S.J. Capital is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on January 26, 2000.

3. National Asset Acquisition, Inc. (CIK No. 1102905) is a Colorado corporation located in Denver, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). National Asset is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB on January 11, 2000, which reported a net loss of \$2,000.

4. Park Hill Capital II Corp. (CIK No. 1101249) is a defaulted Nevada corporation located in Denver, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Park Hill is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended December 31, 2000.

B. DELINQUENT PERIODIC FILINGS

5. As discussed in more detail above, all of the respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

6. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

7. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary

Attachment

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

Appendix 1
Chart of Delinquent Filings
Boochm Systems, Inc., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
Boochm Systems, Inc.	10-KSB	03/31/00	06/29/00	Not filed	99
	10-QSB	06/30/00	08/14/00	Not filed	97
	10-QSB	09/30/00	11/14/00	Not filed	94
	10-QSB	12/31/00	02/14/01	Not filed	91
	10-KSB	03/31/01	06/29/01	Not filed	87
	10-QSB	06/30/01	08/14/01	Not filed	85
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-QSB	12/31/01	02/14/02	Not filed	79
	10-KSB	03/31/02	07/01/02	Not filed	74
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-QSB	12/31/02	02/14/03	Not filed	67
	10-KSB	03/31/03	06/30/03	Not filed	63
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-QSB	12/31/03	02/17/04	Not filed	55
	10-KSB	03/31/04	06/29/04	Not filed	51
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-QSB	12/31/04	02/14/05	Not filed	43
	10-KSB	03/31/05	06/29/05	Not filed	39
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-QSB	12/31/05	02/14/06	Not filed	31
	10-KSB	03/31/06	06/29/06	Not filed	27
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-QSB	12/31/06	02/14/07	Not filed	19
	10-KSB	03/31/07	06/29/07	Not filed	15
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
Boochm Systems, Inc.					
	10-Q*	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/15/08	Not filed	1
Total Filings Delinquent	34				

J.S.J. Capital Corp.

10-Q	04/30/00	06/14/00	Not filed	99
10-Q	07/31/00	09/18/00	Not filed	96
10-K	10/31/00	01/29/01	Not filed	92
10-Q	01/31/00	04/11/00	Not filed	101
10-Q	04/30/00	06/19/00	Not filed	99
10-Q	07/31/00	09/18/00	Not filed	96
10-K	10/31/00	01/29/01	Not filed	92
10-Q	01/31/01	03/19/01	Not filed	90
10-Q	04/30/01	06/18/01	Not filed	87
10-Q	07/31/01	09/17/01	Not filed	84
10-Q	01/31/02	03/18/02	Not filed	78
10-Q	04/30/02	06/14/02	Not filed	75
10-Q	07/31/02	09/16/02	Not filed	72
10-K	10/31/02	01/29/03	Not filed	68
10-Q	01/31/03	03/17/03	Not filed	66
10-Q	04/30/03	06/16/03	Not filed	63
10-Q	07/31/03	09/15/03	Not filed	60
10-K	10/31/03	01/29/04	Not filed	56
10-Q	01/31/04	03/16/04	Not filed	54
10-Q	04/30/04	06/14/04	Not filed	51
10-Q	07/31/04	09/14/04	Not filed	48
10-K	10/31/04	01/31/05	Not filed	44
10-Q	01/31/05	03/17/05	Not filed	42
10-Q	04/30/05	06/14/05	Not filed	39

* Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
J.S.J. Capital Corp.					
	10-Q	07/31/05	09/14/05	Not filed	36
	10-K	10/31/05	01/30/06	Not filed	32
	10-Q	01/31/06	03/17/06	Not filed	30
	10-Q	04/30/06	06/14/06	Not filed	27
	10-Q	07/31/06	09/14/06	Not filed	24
	10-K	10/31/06	01/30/07	Not filed	20
	10-Q	01/31/07	03/18/07	Not filed	18
	10-Q	04/30/07	06/14/07	Not filed	15
	10-Q	07/31/07	09/14/07	Not filed	12
	10-K	10/31/07	01/29/08	Not filed	8
	10-Q	01/31/08	03/17/08	Not filed	6
	10-Q	04/30/08	06/16/08	Not filed	3
	10-Q	07/31/08	09/15/08	Not filed	0
Total Filings Delinquent	35				

National Asset Acquisition, Inc.

10-KSB	12/31/99	03/30/00	Not filed	102
10-QSB	03/31/00	05/15/00	Not filed	100
10-QSB	06/30/00	08/14/00	Not filed	97
10-QSB	09/30/00	11/14/00	Not filed	94
10-KSB	12/31/00	04/02/01	Not filed	89
10-QSB	03/31/01	05/15/01	Not filed	88
10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
National Asset Acquisition, Inc.	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent 35

Park Hill Capital II Corp.

10-QSB	03/31/01	05/15/01	Not filed	88
10-QSB	06/30/01	08/14/01	Not filed	85
10-KSB	09/30/01	12/31/01	Not filed	81
10-QSB	12/31/01	02/14/02	Not filed	79
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-KSB	09/30/02	12/30/02	Not filed	69
10-QSB	12/31/02	02/14/03	Not filed	67
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-KSB	09/30/03	12/29/03	Not filed	57
10-QSB	12/31/03	02/17/04	Not filed	55
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-KSB	09/30/04	12/29/04	Not filed	45
10-QSB	12/31/04	02/14/05	Not filed	43
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-KSB	09/30/05	12/29/05	Not filed	33
10-QSB	12/31/05	02/14/06	Not filed	31
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-KSB	09/30/06	12/29/06	Not filed	21
10-QSB	12/31/06	02/14/07	Not filed	19
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-KSB	09/30/07	12/31/07	Not filed	9
10-QSB	12/31/07	02/14/08	Not filed	7

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
Park Hill Capital II Corp.					
	10-Q	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/15/08	Not filed	1
Total Filings Delinquent	30				

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58507 / September 10, 2008

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2875 / September 10, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-10354

In the Matter of Patrick A. Rossetti, CPA	:	ORDER GRANTING APPLICATION FOR REINSTATEMENT TO APPEAR AND PRACTICE BEFORE THE COMMISSION AS AN ACCOUNTANT RESPONSIBLE FOR THE PREPARATION OR REVIEW OF FINANCIAL STATEMENTS REQUIRED TO BE FILED WITH THE COMMISSION
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On May 2, 2001, Patrick A. Rossetti, CPA ("Rossetti") was denied the privilege of appearing or practicing as an accountant before the Commission as a result of settled public administrative proceedings instituted by the Commission against him pursuant to Rule 102(e) of the Commission's Rules of Practice.¹ Rossetti consented to the entry of the order without admitting or denying the findings therein. This order is issued in response to Rossetti's application for reinstatement to appear and practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission.

The Commission alleged that the financial statements of Detour Magazine, Inc. ("Detour") contained in their filings with the Commission during 1997 and 1998, as audited by Rossetti and others, materially misrepresented the company's financial condition and results of operation. Based upon his conduct during the audits of Detour's financial statement, the Commission determined that Rossetti had willfully violated Section 10A of the Securities Exchange Act of 1934 ("Exchange Act") and willfully aided and abetted Detour's violations of Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder. The Commission also determined that Rossetti engaged in improper professional conduct under Rule 102(e) of the Commission's Rules of Practice.

¹ See Accounting and Auditing Enforcement Release No. 1388 dated May 2, 2001. Rossetti was permitted, pursuant to the order, to apply for reinstatement after three years upon making certain showings.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No.

ACCOUNTING AND AUDITING ENFORCEMENT

Release No.

ADMINISTRATIVE PROCEEDING

File No. 3-10354

	:	ORDER GRANTING APPLICATION FOR
In the Matter of	:	REINSTATEMENT TO APPEAR AND PRACTICE
	:	BEFORE THE COMMISSION AS AN ACCOUNTANT
Patrick A. Rossetti, CPA	:	RESPONSIBLE FOR THE PREPARATION OR
	:	REVIEW OF FINANCIAL STATEMENTS REQUIRED
	:	TO BE FILED WITH THE COMMISSION

On May 2, 2001, Patrick A. Rossetti, CPA ("Rossetti") was denied the privilege of appearing or practicing as an accountant before the Commission as a result of settled public administrative proceedings instituted by the Commission against him pursuant to Rule 102(e) of the Commission's Rules of Practice.¹ Rossetti consented to the entry of the order without admitting or denying the findings therein. This order is issued in response to Rossetti's application for reinstatement to appear and practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission.

The Commission alleged that the financial statements of Detour Magazine, Inc. ("Detour") contained in their filings with the Commission during 1997 and 1998, as audited by Rossetti and others, materially misrepresented the company's financial condition and results of operation. Based upon his conduct during the audits of Detour's financial statement, the Commission determined that Rossetti had willfully violated Section 10A of the Securities Exchange Act of 1934 ("Exchange Act") and willfully aided and abetted Detour's violations of Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder. The Commission also determined that Rossetti engaged in improper professional conduct under Rule 102(e) of the Commission's Rules of Practice.

¹ See Accounting and Auditing Enforcement Release No. 1388 dated May 2, 2001. Rossetti was permitted, pursuant to the order, to apply for reinstatement after three years upon making certain showings.

In his capacity as a preparer or reviewer, or as a person responsible for the preparation or review, of financial statements of a public company to be filed with the Commission, Rossetti attests that he will undertake to have his work reviewed by the independent audit committee of any company for which he works, or in some other manner acceptable to the Commission, while practicing before the Commission in this capacity. Rossetti is not, at this time, seeking to appear or practice before the Commission as an independent accountant. If he should wish to resume appearing and practicing before the Commission as an independent accountant, he will be required to submit an application to the Commission showing that he has complied and will comply with the terms of the original suspension order in this regard. Therefore, Rossetti's suspension from practice before the Commission as an independent accountant continues in effect until the Commission determines that a sufficient showing has been made in this regard in accordance with the terms of the original suspension order.

Rule 102(e)(5) of the Commission's Rules of Practice governs applications for reinstatement, and provides that the Commission may reinstate the privilege to appear and practice before the Commission "for good cause shown."² This "good cause" determination is necessarily highly fact specific.

On the basis of information supplied, representations made, and undertakings agreed to by Rossetti, it appears that he has complied with the terms of the May 2, 2001 order suspending him from appearing or practicing before the Commission as an accountant, that no information has come to the attention of the Commission relating to his character, integrity, professional conduct or qualifications to practice before the Commission that would be a basis for adverse action against him pursuant to Rule 102(e) of the Commission's Rules of Practice, and that Rossetti, by undertaking to have his work reviewed by the independent audit committee of any company for which he works, or in some other manner acceptable to the Commission, in his practice before the Commission as a preparer or reviewer of financial statements required to be filed with the Commission, has shown good cause for reinstatement. Therefore, it is accordingly,

ORDERED pursuant to Rule 102(e)(5)(i) of the Commission's Rules of Practice that Patrick A. Rossetti, CPA is hereby reinstated to appear and practice before the Commission as an accountant responsible for the preparation or review of financial statements required to be filed with the Commission.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: *Jill M. Peterson*
Assistant Secretary

² Rule 102(e)(5)(i) provides:

"An application for reinstatement of a person permanently suspended or disqualified under paragraph (e)(1) or (e)(3) of this section may be made at any time, and the applicant may, in the Commission's discretion, be afforded a hearing; however, the suspension or disqualification shall continue unless and until the applicant has been reinstated by the Commission for good cause shown." 17 C.F.R. § 201.102(e)(5)(i).

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 10, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13178

In the Matter of

**Odessa Foods International, Inc.,
Omega Dynamics, Inc.,
Omni Investors Group, Inc.,
Omnicorp Ltd., and
Ongard Systems, Inc.,**

Respondents.

**ORDER INSTITUTING PROCEEDINGS
AND NOTICE OF HEARING PURSUANT
TO SECTION 12(j) OF THE SECURITIES
EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Odessa Foods International, Inc., Omega Dynamics, Inc., Omni Investors Group, Inc., Omnicorp Ltd., and Ongard Systems, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Odessa Foods International, Inc. (CIK No. 751412) is a forfeited Delaware corporation located in Jersey City, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Odessa is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 1997, which reported a net loss of \$564,118 for the prior nine months. As of September 9, 2008, the common stock of Odessa (symbol "ODSA") was traded on the over-the-counter markets.

2. Omega Dynamics, Inc. (CIK No. 1112993) is a void Delaware corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Omega is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a

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Form 10-SB registration statement on May 4, 2000. As of September 9, 2008, the common stock of Omega (symbol "OMEG") was traded on the over-the-counter markets.

3. Omni Investors Group, Inc. (CIK No. 880938) is a void Delaware corporation located in Boca Raton, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Omni Investors is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended August 31, 1993.

4. Omnicorp Ltd. (CIK No. 719775) is a void Delaware corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Omnicorp is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 1994, which reported a net loss of \$1,394,136 for the prior nine months.

5. Ongard Systems, Inc. (CIK No. 888428) is a forfeited Delaware corporation located in Hauppauge, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Ongard is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 1997, which reported a net loss of \$3,324,004 for the prior nine months. As of September 9, 2008, the common stock of Ongard (symbol "OGSS") was traded on the over-the-counter markets.

B. DELINQUENT PERIODIC FILINGS

6. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

7. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

8. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary

Attachment

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

Appendix 1

Chart of Delinquent Filings
In the Matter of Odessa Foods International, Inc., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Odessa Foods International, Inc.	10-KSB	12/31/97	03/31/98	Not filed	126
	10-QSB	03/31/98	05/15/98	Not filed	124
	10-QSB	06/30/98	08/14/98	Not filed	121
	10-QSB	09/30/98	11/16/98	Not filed	118
	10-KSB	12/31/98	03/31/99	Not filed	114
	10-QSB	03/31/99	05/17/99	Not filed	112
	10-QSB	06/30/99	08/16/99	Not filed	109
	10-QSB	09/30/99	11/15/99	Not filed	106
	10-KSB	12/31/99	03/30/00	Not filed	102
	10-QSB	03/31/00	05/15/00	Not filed	100
	10-QSB	06/30/00	08/14/00	Not filed	97
	10-QSB	09/30/00	11/14/00	Not filed	94
	10-KSB	12/31/00	04/02/01	Not filed	89
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-QSB	06/30/01	08/14/01	Not filed	85
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Odessa Foods International, Inc. (continued)	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent	43				

Omega Dynamics, Inc.

10-KSB	03/31/00	06/29/00	Not filed	99
10-QSB	06/30/00	08/14/00	Not filed	97
10-QSB	09/30/00	11/14/00	Not filed	94
10-QSB	12/31/00	02/14/01	Not filed	91
10-KSB	03/31/01	06/29/01	Not filed	87
10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-QSB	12/31/01	02/14/02	Not filed	79
10-KSB	03/31/02	07/01/02	Not filed	74
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-QSB	12/31/02	02/14/03	Not filed	67
10-KSB	03/31/03	06/30/03	Not filed	63
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-QSB	12/31/03	02/17/04	Not filed	55
10-KSB	03/31/04	06/29/04	Not filed	51
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-QSB	12/31/04	02/14/05	Not filed	43
10-KSB	03/31/05	06/29/05	Not filed	39
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-QSB	12/31/05	02/14/06	Not filed	31
10-KSB	03/31/06	06/29/06	Not filed	27
10-QSB	06/30/06	08/14/06	Not filed	25

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Omega Dynamics, Inc. (continued)	10-QSB	09/30/06	11/14/06	Not filed	22
	10-QSB	12/31/06	02/14/07	Not filed	19
	10-KSB	03/31/07	06/29/07	Not filed	15
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-QSB	12/31/07	02/14/08	Not filed	7
	10-KSB	03/31/08	06/30/08	Not filed	3
	10-Q ¹	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent

34

**Omni Investors
Group, Inc.**

10-Q	11/30/93	01/14/94	Not filed	176
10-Q	02/28/94	04/14/94	Not filed	173
10-Q	05/31/94	07/21/94	Not filed	170
10-K	08/31/94	11/29/94	Not filed	166
10-Q	11/30/94	01/17/95	Not filed	164
10-Q	02/28/95	04/14/95	Not filed	161
10-Q	05/31/95	07/17/95	Not filed	158
10-K	08/31/95	11/29/95	Not filed	154
10-Q	11/30/95	01/16/96	Not filed	152
10-Q	02/28/96	04/15/96	Not filed	149
10-Q	05/31/96	07/15/96	Not filed	146
10-K	08/31/96	11/29/96	Not filed	142
10-Q	11/30/96	01/14/97	Not filed	140
10-Q	02/28/97	04/14/97	Not filed	137
10-Q	05/31/97	07/15/97	Not filed	134
10-K	08/31/97	12/01/97	Not filed	129
10-Q	11/30/97	01/14/98	Not filed	128
10-Q	02/28/98	04/14/98	Not filed	125
10-Q	05/31/98	07/15/98	Not filed	122
10-K	08/31/98	11/30/98	Not filed	118
10-Q	11/30/98	01/14/99	Not filed	116
10-Q	02/28/99	04/14/99	Not filed	113
10-Q	05/31/99	07/15/99	Not filed	110
10-K	08/31/99	11/29/99	Not filed	106
10-Q	11/30/99	01/14/00	Not filed	104
10-Q	02/28/00	04/14/00	Not filed	101

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Omni Investors Group, Inc. (continued)	10-Q	05/31/00	07/17/00	Not filed	98
	10-K	08/31/00	11/29/00	Not filed	94
	10-Q	11/30/00	01/16/01	Not filed	92
	10-Q	02/28/01	04/16/01	Not filed	89
	10-Q	05/31/01	07/16/01	Not filed	86
	10-K	08/31/01	11/29/01	Not filed	82
	10-Q	11/30/01	01/14/02	Not filed	80
	10-Q	02/28/02	04/15/02	Not filed	77
	10-Q	05/31/02	07/15/02	Not filed	74
	10-K	08/31/02	11/29/02	Not filed	70
	10-Q	11/30/02	01/14/03	Not filed	68
	10-Q	02/28/03	04/14/03	Not filed	65
	10-Q	05/31/03	07/15/03	Not filed	62
	10-K	08/31/03	12/01/03	Not filed	57
	10-Q	11/30/03	01/14/04	Not filed	56
	10-Q	02/28/04	04/13/04	Not filed	53
	10-Q	05/31/04	07/15/04	Not filed	50
	10-K	08/31/04	11/29/04	Not filed	46
	10-Q	11/30/04	01/14/05	Not filed	44
	10-Q	02/28/05	04/14/05	Not filed	41
	10-Q	05/31/05	07/15/05	Not filed	38
	10-K	08/31/05	11/29/05	Not filed	34
	10-Q	11/30/05	01/16/06	Not filed	32
	10-Q	02/28/06	04/16/06	Not filed	29
	10-Q	05/31/06	07/17/06	Not filed	26
	10-K	08/31/06	11/29/06	Not filed	22
	10-Q	11/30/06	01/16/07	Not filed	20
	10-Q	02/28/07	04/16/07	Not filed	17
	10-Q	05/31/07	07/16/07	Not filed	14
	10-K	08/31/07	11/29/07	Not filed	10
	10-Q	11/30/07	01/14/08	Not filed	8
	10-Q	02/28/08	04/14/08	Not filed	3
	10-Q	05/31/08	07/15/08	Not filed	2
Total Filings Delinquent	59				

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Omnicorp Ltd.					
	10-KSB	12/31/94	03/31/95	Not filed	162
	10-QSB	03/31/95	05/15/95	Not filed	160
	10-QSB	06/30/95	08/14/95	Not filed	157
	10-QSB	09/30/95	11/14/95	Not filed	154
	10-KSB	12/31/95	04/01/96	Not filed	149
	10-QSB	03/31/96	05/15/96	Not filed	148
	10-QSB	06/30/96	08/14/96	Not filed	145
	10-QSB	09/30/96	11/14/96	Not filed	142
	10-KSB	12/31/96	03/31/97	Not filed	138
	10-QSB	03/31/97	05/15/97	Not filed	136
	10-QSB	06/30/97	08/14/97	Not filed	133
	10-QSB	09/30/97	11/14/97	Not filed	130
	10-KSB	12/31/97	03/31/98	Not filed	126
	10-QSB	03/31/98	05/15/98	Not filed	124
	10-QSB	06/30/98	08/14/98	Not filed	121
	10-QSB	09/30/98	11/16/98	Not filed	118
	10-KSB	12/31/98	03/31/99	Not filed	114
	10-QSB	03/31/99	05/17/99	Not filed	112
	10-QSB	06/30/99	08/16/99	Not filed	109
	10-QSB	09/30/99	11/15/99	Not filed	106
	10-KSB	12/31/99	03/30/00	Not filed	102
	10-QSB	03/31/00	05/15/00	Not filed	100
	10-QSB	06/30/00	08/14/00	Not filed	97
	10-QSB	09/30/00	11/14/00	Not filed	94
	10-KSB	12/31/00	04/02/01	Not filed	89
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-QSB	06/30/01	08/14/01	Not filed	85
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Omnicorp Ltd. (continued)	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent		55			

Ongard Systems, Inc.

10-KSB	12/31/97	03/31/98	Not filed	126
10-QSB	03/31/98	05/15/98	Not filed	124
10-QSB	06/30/98	08/14/98	Not filed	121
10-QSB	09/30/98	11/16/98	Not filed	118
10-KSB	12/31/98	03/31/99	Not filed	114
10-QSB	03/31/99	05/17/99	Not filed	112
10-QSB	06/30/99	08/16/99	Not filed	109
10-QSB	09/30/99	11/15/99	Not filed	106
10-KSB	12/31/99	03/30/00	Not filed	102
10-QSB	03/31/00	05/15/00	Not filed	100
10-QSB	06/30/00	08/14/00	Not filed	97
10-QSB	09/30/00	11/14/00	Not filed	94
10-KSB	12/31/00	04/02/01	Not filed	89
10-QSB	03/31/01	05/15/01	Not filed	88
10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Ongard Systems, Inc. (continued)	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent 43

¹Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 11, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13183

In the Matter of

Omni Nutraceuticals, Inc.,
Omnipower, Inc.,
Ontro, Inc.,
Onvantage, Inc.,
Opal Technologies, Inc., and
Optical Specialties, Inc.,

Respondents.

ORDER INSTITUTING
PROCEEDINGS AND NOTICE
OF HEARING PURSUANT TO
SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT
OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Omni Nutraceuticals, Inc., Omnipower, Inc., Ontro, Inc., Onvantage, Inc., Opal Technologies, Inc., and Optical Specialties, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Omni Nutraceuticals, Inc. (CIK No. 857353) is an expired Utah corporation located in Los Angeles, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Omni Nutraceuticals is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2001, which reported a net loss of \$7,032,000 for the prior nine months.

2. Omnipower, Inc. (CIK No. 766822) is a forfeited Delaware corporation located in Dana Point, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Omnipower is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 1995, which reported a net loss of \$582,877 for the prior nine months.

3. Ontro, Inc. (CIK No. 1037827) is a suspended California corporation located in Poway, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Ontro is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2002, which reported a net loss of \$2,346,200 for the prior nine months.

4. Onvantage, Inc. (CIK No. 1074457) is a permanently revoked Nevada corporation located in San Jose, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Onvantage is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB for the period ended December 31, 2000, which reported a net loss of \$6,706,435 for the prior year.

5. Opal Technologies, Inc. (CIK No. 826405) is a permanently revoked Nevada corporation located in Wanchai, Hong Kong, China with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Opal Technologies is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2000, which reported a net loss of \$1,540,000 for the prior nine months.

6. Optical Specialties, Inc. (CIK No. 706766) is a suspended California corporation located in Fremont, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Optical Specialties is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 30, 1996, which reported a net loss of \$295,000 for the prior nine months.

B. DELINQUENT PERIODIC FILINGS

7. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

8. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

9. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

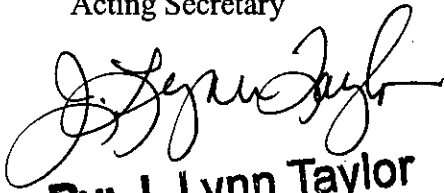
In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to

notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary

Attachment



By: J. Lynn Taylor
Assistant Secretary

Appendix 1

**Chart of Delinquent Filings
In the Matter of Omni Nutraceuticals, Inc., et al.**

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Omni Nutraceuticals, Inc.	10-K	12/31/01	04/01/02	Not filed	77
	10-Q	03/31/02	05/15/02	Not filed	76
	10-Q	06/30/02	08/14/02	Not filed	73
	10-Q	09/30/02	11/14/02	Not filed	70
	10-K	12/31/02	03/31/03	Not filed	66
	10-Q	03/31/03	05/15/03	Not filed	64
	10-Q	06/30/03	08/14/03	Not filed	61
	10-Q	09/30/03	11/14/03	Not filed	58
	10-K	12/31/03	03/30/04	Not filed	54
	10-Q	03/31/04	05/17/04	Not filed	52
	10-Q	06/30/04	08/16/04	Not filed	49
	10-Q	09/30/04	11/15/04	Not filed	46
	10-K	12/31/04	03/31/05	Not filed	42
	10-Q	03/31/05	05/16/05	Not filed	40
	10-Q	06/30/05	08/15/05	Not filed	37
	10-Q	09/30/05	11/14/05	Not filed	34
	10-K	12/31/05	03/31/06	Not filed	30
	10-Q	03/31/06	05/15/06	Not filed	28
	10-Q	06/30/06	08/14/06	Not filed	25
	10-Q	09/30/06	11/14/06	Not filed	22
	10-K	12/31/06	04/02/07	Not filed	17
	10-Q	03/31/07	05/15/07	Not filed	16
	10-Q	06/30/07	08/14/07	Not filed	13
	10-Q	09/30/07	11/14/07	Not filed	10
	10-K	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent		27			

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Omnipower, Inc.					
	<i>10-KSB</i>	12/31/95	04/01/96	Not filed	149
	<i>10-QSB</i>	03/31/96	05/15/96	Not filed	148
	<i>10-QSB</i>	06/30/96	08/14/96	Not filed	145
	<i>10-QSB</i>	09/30/96	11/14/96	Not filed	142
	<i>10-KSB</i>	12/31/96	03/31/97	Not filed	138
	<i>10-QSB</i>	03/31/97	05/15/97	Not filed	136
	<i>10-QSB</i>	06/30/97	08/14/97	Not filed	133
	<i>10-QSB</i>	09/30/97	11/14/97	Not filed	130
	<i>10-KSB</i>	12/31/97	03/31/98	Not filed	126
	<i>10-QSB</i>	03/31/98	05/15/98	Not filed	124
	<i>10-QSB</i>	06/30/98	08/14/98	Not filed	121
	<i>10-QSB</i>	09/30/98	11/16/98	Not filed	118
	<i>10-KSB</i>	12/31/98	03/31/99	Not filed	114
	<i>10-QSB</i>	03/31/99	05/17/99	Not filed	112
	<i>10-QSB</i>	06/30/99	08/16/99	Not filed	109
	<i>10-QSB</i>	09/30/99	11/15/99	Not filed	106
	<i>10-KSB</i>	12/31/99	03/30/00	Not filed	102
	<i>10-QSB</i>	03/31/00	05/15/00	Not filed	100
	<i>10-QSB</i>	06/30/00	08/14/00	Not filed	97
	<i>10-QSB</i>	09/30/00	11/14/00	Not filed	94
	<i>10-KSB</i>	12/31/00	04/02/01	Not filed	89
	<i>10-QSB</i>	03/31/01	05/15/01	Not filed	88
	<i>10-QSB</i>	06/30/01	08/14/01	Not filed	85
	<i>10-QSB</i>	09/30/01	11/14/01	Not filed	82
	<i>10-KSB</i>	12/31/01	04/01/02	Not filed	77
	<i>10-QSB</i>	03/31/02	05/15/02	Not filed	76
	<i>10-QSB</i>	06/30/02	08/14/02	Not filed	73
	<i>10-QSB</i>	09/30/02	11/14/02	Not filed	70
	<i>10-KSB</i>	12/31/02	03/31/03	Not filed	66
	<i>10-QSB</i>	03/31/03	05/15/03	Not filed	64
	<i>10-QSB</i>	06/30/03	08/14/03	Not filed	61
	<i>10-QSB</i>	09/30/03	11/14/03	Not filed	58
	<i>10-KSB</i>	12/31/03	03/30/04	Not filed	54
	<i>10-QSB</i>	03/31/04	05/17/04	Not filed	52

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Omnipower, Inc.					
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent	51				

Ontro, Inc.

10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46

¹Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
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Ontro, Inc.

10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-KSB	12/31/07	03/31/08	Not filed	6
10-Q ¹	03/31/08	05/15/08	Not filed	4
10-Q ¹	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent 23

Onvantage, Inc.

10-QSB	03/31/01	05/15/01	Not filed	88
10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Onvantage, Inc.					
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent **30**

Opal Technologies, Inc.

10-KSB	12/31/00	04/02/01	Not filed	89
10-QSB	03/31/01	05/15/01	Not filed	88
10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Opal Technologies, Inc.					
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent 31

Optical Specialties, Inc.

10-K	09/30/96	12/31/96	Not filed	141
10-Q	12/31/96	02/14/97	Not filed	139
10-Q	03/31/97	05/15/97	Not filed	136
10-Q	06/30/97	08/14/97	Not filed	133
10-K	09/30/97	12/29/97	Not filed	129
10-Q	12/31/97	02/17/98	Not filed	127
10-Q	03/31/98	05/15/98	Not filed	124
10-Q	06/30/98	08/14/98	Not filed	121

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Optical Specialties, Inc.					
	10-K	09/30/98	12/29/98	Not filed	117
	10-Q	12/31/98	02/16/99	Not filed	115
	10-Q	03/31/99	05/17/99	Not filed	112
	10-Q	06/30/99	08/16/99	Not filed	109
	10-K	09/30/99	12/29/99	Not filed	105
	10-Q	12/31/99	02/14/00	Not filed	103
	10-Q	03/31/00	05/15/00	Not filed	100
	10-Q	06/30/00	08/14/00	Not filed	97
	10-K	09/30/00	12/29/00	Not filed	93
	10-Q	12/31/00	02/14/01	Not filed	91
	10-Q	03/31/01	05/15/01	Not filed	88
	10-Q	06/30/01	08/14/01	Not filed	85
	10-K	09/30/01	12/31/01	Not filed	81
	10-Q	12/31/01	02/14/02	Not filed	79
	10-Q	03/31/02	05/15/02	Not filed	76
	10-Q	06/30/02	08/14/02	Not filed	73
	10-K	09/30/02	12/30/02	Not filed	69
	10-Q	12/31/02	02/14/03	Not filed	67
	10-Q	03/31/03	05/15/03	Not filed	64
	10-Q	06/30/03	08/14/03	Not filed	61
	10-K	09/30/03	12/29/03	Not filed	57
	10-Q	12/31/03	02/17/04	Not filed	55
	10-Q	03/31/04	05/17/04	Not filed	52
	10-Q	06/30/04	08/16/04	Not filed	49
	10-K	09/30/04	12/29/04	Not filed	45
	10-Q	12/31/04	02/14/05	Not filed	43
	10-Q	03/31/05	05/16/05	Not filed	40
	10-Q	06/30/05	08/15/05	Not filed	37
	10-K	09/30/05	12/29/05	Not filed	33
	10-Q	12/31/05	02/14/06	Not filed	31
	10-Q	03/31/06	05/15/06	Not filed	28

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Optical Specialties, Inc.					
	<i>10-Q</i>	06/30/06	08/14/06	Not filed	25
	<i>10-K</i>	09/30/06	12/29/06	Not filed	21
	<i>10-Q</i>	12/31/06	02/14/07	Not filed	19
	<i>10-Q</i>	03/31/07	05/15/07	Not filed	16
	<i>10-Q</i>	06/30/07	08/14/07	Not filed	13
	<i>10-K</i>	09/30/07	12/31/07	Not filed	9
	<i>10-Q</i>	12/31/07	02/14/08	Not filed	7
	<i>10-Q</i>	03/31/08	05/15/08	Not filed	4
	<i>10-Q</i>	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent	48				

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 11, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13182

In the Matter of

**Bay Area Holdings, Inc.,
BCC Acquisitions Corp.,
Be, Inc.,
Bear Aerospace, Inc., and
Bermuda Acquisitions, Inc.,**

Respondents.

**ORDER INSTITUTING
PROCEEDINGS AND NOTICE OF
HEARING PURSUANT TO SECTION
12(j) OF THE SECURITIES
EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Bay Area Holdings, Inc., BCC Acquisitions Corp., Be, Inc., Bear Aerospace, Inc., and Bermuda Acquisitions, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Bay Area Holdings, Inc. (CIK No. 60798) is a suspended California corporation located in Benicia, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Bay Area is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 1996, which reported a net loss of \$43,903 for the prior nine months.

2. BCC Acquisition Corp. (CIK No. 1123128) is a revoked Nevada corporation located in Newport Beach, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). BCC is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form

10-QSB for the period ended September 30, 2001, which reported a net loss of over \$2,915 for the prior nine months.

3. Be, Inc. (CIK No. 895921) is a void Delaware corporation located in Mountain View, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Be is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2003, which reported a net loss of \$545,000 from January 1, 2002 to March 15, 2002.

4. Bear Aerospace, Inc. (CIK No. 1086147) is a revoked Nevada corporation located in Calabasas, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Bear Aerospace is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB for the period ended December 31, 2002, which reported a net loss of \$514,824 for the prior twelve months.

5. Bermuda Acquisitions, Inc. (CIK No. 1140293) is a revoked Nevada corporation located in Irvine, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Bermuda is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2002, which reported a net loss of \$7,358 for the prior nine months.

B. DELINQUENT PERIODIC FILINGS

6. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

7. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

8. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

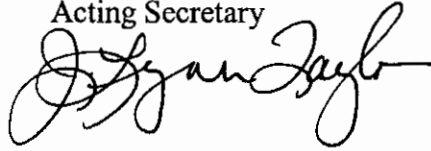
In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of

the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Attachment

Florence E. Harmon
Acting Secretary

A handwritten signature in cursive script, appearing to read "J. Lynn Taylor", written in black ink.

By: J. Lynn Taylor
Assistant Secretary

Appendix 1

Chart of Delinquent Filings *In the Matter of Bay Area Holdings, Inc., et al.*

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
<i>Bay Area Holdings, Inc.</i>					
	10-K	06/30/96	09/30/96	Not filed	144
	10-Q	09/30/96	11/14/96	Not filed	142
	10-Q	12/31/96	02/14/97	Not filed	139
	10-Q	03/31/97	05/15/97	Not filed	136
	10-K	06/30/97	09/29/97	Not filed	132
	10-Q	09/30/97	11/14/97	Not filed	130
	10-Q	12/31/97	02/17/98	Not filed	127
	10-Q	03/31/98	05/15/98	Not filed	124
	10-K	06/30/98	09/28/98	Not filed	120
	10-Q	09/30/98	11/16/98	Not filed	118
	10-Q	12/31/98	02/16/99	Not filed	115
	10-Q	03/31/99	05/17/99	Not filed	112
	10-K	06/30/99	09/28/99	Not filed	108
	10-Q	09/30/99	11/15/99	Not filed	106
	10-Q	12/31/99	02/14/00	Not filed	103
	10-Q	03/31/00	05/15/00	Not filed	100
	10-K	06/30/00	09/28/00	Not filed	96
	10-Q	09/30/00	11/14/00	Not filed	94
	10-Q	12/31/00	02/14/01	Not filed	91
	10-Q	03/31/01	05/15/01	Not filed	88
	10-K	06/30/01	09/28/01	Not filed	84
	10-Q	09/30/01	11/14/01	Not filed	82
	10-Q	12/31/01	02/14/02	Not filed	79
	10-Q	03/31/02	05/15/02	Not filed	76
	10-K	06/30/02	09/30/02	Not filed	72
	10-Q	09/30/02	11/14/02	Not filed	70
	10-Q	12/31/02	02/14/03	Not filed	67
	10-Q	03/31/03	05/15/03	Not filed	64

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Bay Area Holdings, Inc.					
	10-K	06/30/03	09/29/03	Not filed	60
	10-Q	09/30/03	11/14/03	Not filed	58
	10-Q	12/31/03	02/17/04	Not filed	55
	10-Q	03/31/04	05/17/04	Not filed	52
	10-K	06/30/04	09/28/04	Not filed	48
	10-Q	09/30/04	11/15/04	Not filed	46
	10-Q	12/31/04	02/14/05	Not filed	43
	10-Q	03/31/05	05/16/05	Not filed	40
	10-K	06/30/05	09/28/05	Not filed	36
	10-Q	09/30/05	11/14/05	Not filed	34
	10-Q	12/31/05	02/14/06	Not filed	31
	10-Q	03/31/06	05/15/06	Not filed	28
	10-K	06/30/06	09/28/06	Not filed	24
	10-Q	09/30/06	11/14/06	Not filed	22
	10-Q	12/31/06	02/14/07	Not filed	19
	10-Q	03/31/07	05/15/07	Not filed	16
	10-K	06/30/07	09/28/07	Not filed	12
	10-Q	09/30/07	11/14/07	Not filed	10
	10-Q	12/31/07	02/14/08	Not filed	7
	10-Q	03/31/08	05/15/08	Not filed	4

Total Filings Delinquent 48

BCC Acquisitions Corp.

10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
BCC Acquisitions Corp.					
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent	27				

Be, Inc.

10-K	12/31/03	03/30/04	Not filed	54
10-Q	03/31/04	05/17/04	Not filed	52
10-Q	06/30/04	08/16/04	Not filed	49
10-Q	09/30/04	11/15/04	Not filed	46
10-K	12/31/04	03/31/05	Not filed	42
10-Q	03/31/05	05/16/05	Not filed	40
10-Q	06/30/05	08/15/05	Not filed	37
10-Q	09/30/05	11/14/05	Not filed	34
10-K	12/31/05	03/31/06	Not filed	30

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
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Be, Inc.

10-Q	03/31/06	05/15/06	Not filed	28
10-Q	06/30/06	08/14/06	Not filed	25
10-Q	09/30/06	11/14/06	Not filed	22
10-K	12/31/06	04/02/07	Not filed	17
10-Q	03/31/07	05/15/07	Not filed	16
10-Q	06/30/07	08/14/07	Not filed	13
10-Q	09/30/07	11/14/07	Not filed	10
10-K	12/31/07	03/31/08	Not filed	6
10-Q	03/31/08	05/15/08	Not filed	4
10-Q	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent

19

Bear Aerospace, Inc.

10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Bear Aerospace, Inc.					
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent	22				

Bermuda Acquisitions, Inc.

10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
<i>Bermuda Acquisitions, Inc.</i>					
	<i>10-QSB</i>	03/31/07	05/15/07	Not filed	16
	<i>10-QSB</i>	06/30/07	08/14/07	Not filed	13
	<i>10-QSB</i>	09/30/07	11/14/07	Not filed	10
	<i>10-KSB</i>	12/31/07	03/31/08	Not filed	6
	<i>10-Q¹</i>	03/31/08	05/15/08	Not filed	4
	<i>10-Q¹</i>	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent 23

¹Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 11, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13184

In the Matter of

California Service Stations, Inc.,
Cozumel Corp.,
Jenson International, Inc.,
Meditecnic, Inc.
(f/k/a Viking Broadcasting Corp.),
and
Space Launches Financing, Inc.,

Respondents.

ORDER INSTITUTING
PROCEEDINGS AND NOTICE
OF HEARING PURSUANT TO
SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT
OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents California Service Stations, Inc., Cozumel Corp., Jenson International, Inc., Meditecnic, Inc., and Space Launches Financing, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. California Service Stations, Inc. (CIK No. 1090448) is a forfeited Delaware corporation located in Dana Point, California with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended December 31, 2004, which reported a net loss of \$70,421 since inception in 1994.

2. Cozumel Corp. (CIK No. 1092793) is a Delaware corporation located in Dana Point, California with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form

10-KSB for the period ended June 30, 2005, which reported a net loss of \$8,964 since inception in 1994.

3. Jenson International, Inc. (CIK No. 357049) is a permanently revoked Nevada corporation located in Hong Kong with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 1999, which reported a net loss of \$113,001 for the prior three months.

4. Meditecnic, Inc. (f/k/a Viking Broadcasting Corp.) (CIK No. 1058549) is a Delaware corporation located in Geneva, Switzerland with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2004, which reported a net loss of \$850,359 for the prior nine months.

5. Space Launches Financing, Inc. (CIK No. 1098009) is a Nevada corporation located in Geneva, Switzerland with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2002, which reported a net loss of \$191,081 since inception in February 1997.

B. DELINQUENT PERIODIC FILINGS

6. As discussed in more detail above, all of the respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporate Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

7. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

8. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

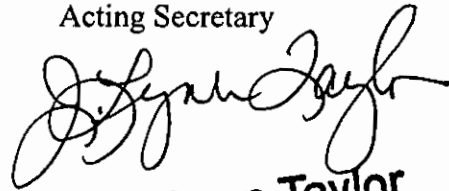
IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Attachment

Florence E. Harmon
Acting Secretary

A handwritten signature in cursive script, appearing to read "J. Lynn Taylor".

By: J. Lynn Taylor
Assistant Secretary

Appendix 1

Chart of Delinquent Filings *California Service Stations, Inc., et al.*

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
California Service Stations, Inc.					
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-KSB	06/30/05	09/28/05	Not filed	36
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-QSB	12/31/05	02/14/06	Not filed	31
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-KSB	06/30/06	09/28/06	Not filed	24
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-QSB	12/31/06	02/14/07	Not filed	19
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-KSB	06/30/07	09/28/07	Not filed	12
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-QSB	12/31/07	02/14/08	Not filed	7
	10-Q*	03/31/08	05/15/08	Not filed	4
Total Filings Delinquent	13				
Cozumel Corp.					
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-QSB	12/31/05	02/14/06	Not filed	31
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-KSB	06/30/06	09/28/06	Not filed	24
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-QSB	12/31/06	02/14/07	Not filed	19
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q*	03/31/08	05/15/08	Not filed	4
	10-Q*	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent	12				

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Jenson International, Inc.					
	10-QSB	06/30/99	08/16/99	Not filed	109
	10-QSB	09/30/99	11/15/99	Not filed	106
	10-KSB	12/31/99	03/30/00	Not filed	102
	10-QSB	03/31/00	05/15/00	Not filed	100
	10-QSB	06/30/00	08/14/00	Not filed	97
	10-QSB	09/30/00	11/14/00	Not filed	94
	10-KSB	12/31/00	04/02/01	Not filed	89
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-QSB	06/30/01	08/14/01	Not filed	85
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q*	03/31/08	05/15/08	Not filed	4
	10-Q*	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent 37

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Meditecnic, Inc. (f/k/a Viking Broadcasting Corp.)					
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	1
	10-Q*	03/31/08	05/15/08	Not filed	4
	10-Q*	06/30/08	08/14/08	Not filed	2

Total Filings Delinquent

15

**Space Launches
Financing, Inc.**

10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-KSB	12/31/07	03/31/08	Not filed	6

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Space Launches Financing, Inc.					
	10-Q*	03/31/08	05/15/08	Not filed	4
	10-Q*	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent 24

*Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

September 12, 2008

In the Matter of

**American Environmental Corp.
(n/k/a TrackBets International, Inc.),
BAM! Entertainment, Inc.,
Entertainment Technologies & Programs, Inc.,
Inter Con PC, Inc.,
Rudy Nutrition,
Trans Global Services, Inc.,
XCL Ltd., and
ZymeTx, Inc.,**

File No. 500-1

**ORDER OF SUSPENSION OF
TRADING**

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Environmental Corp. (n/k/a TrackBets International, Inc.) because it has not filed any periodic reports since it filed a Form 10-SB-12G with the Commission on June 24, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of BAM! Entertainment, Inc. because it has not filed any periodic reports since the period ended March 31, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Entertainment Technologies & Programs, Inc. because it has not filed any periodic reports since the period ended June 30, 2003.

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It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Inter Con PC, Inc. because it has not filed any periodic reports since the period ended March 31, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Rudy Nutrition because it has not filed any periodic reports since the period ended September 30, 2005, except for the periodic report filed for the period ended March 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Trans Global Services, Inc. because it has not filed any periodic reports since the period ended December 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of XCL Ltd. because it has not filed any periodic reports since the period ended September 30, 1999.

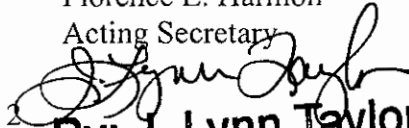
It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ZymeTx, Inc. because it has not filed any periodic reports since the period ended December 31, 2001.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on September 12, 2008, through 11:59 p.m. EDT on September 25, 2008.

By the Commission.

Florence E. Harmon
Acting Secretary


By: J. Lynn Taylor
Assistant Secretary

*Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58515 / September 11, 2008

INVESTMENT ADVISERS ACT OF 1940
Release No. 2775 / September 11, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13181

In the Matter of

**LPL FINANCIAL
CORPORATION, formerly
known as LINSKO/PRIVATE
LEDGER CORP.,**

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTIONS 203(e) AND 203(k) OF
THE INVESTMENT ADVISERS ACT OF
1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS
AND A CEASE-AND-DESIST ORDER AS
TO LPL FINANCIAL CORPORATION**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") against LPL Financial Corporation, formerly known as Linsco/Private Ledger Corp. ("Respondent" or "LPL").¹

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings

¹ On January 9, 2008, Linsco/Private Ledger Corp. changed its name to LPL Financial Corporation.

herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 and Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order as to LPL Financial Corporation ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds² that

Summary

These proceedings arise out of the violations by LPL, a registered broker-dealer, investment adviser, and transfer agent, of the safeguards rule of Regulation S-P (17 CFR § 248.30(a)) (the "Safeguards Rule"), which requires broker-dealers and SEC-registered investment advisers to adopt written policies and procedures reasonably designed to protect customer information. Despite its being aware as early as 2006 that it had insufficient security controls to safeguard customer information at its branch offices, LPL failed to implement adequate controls, including some security measures, which left customer information at LPL's branch offices vulnerable to unauthorized access. Between mid-July 2007 and February 2008, LPL experienced a series of computer system security breaches in which an unauthorized person(s) accessed and traded, or attempted to trade, in the customer accounts of several of LPL's registered representatives. As of the date of the "hacking" incidents, LPL had failed to implement increased security measures and adopt policies and procedures reasonably designed to safeguard customer information as required by Regulation S-P. LPL detected the breaches and absorbed the losses in the customer accounts. Nonetheless, LPL's failures left customer information vulnerable to identity thieves or other unauthorized users at the firm's branch offices.

Respondent

1. Respondent is registered with the Commission as a broker-dealer, investment adviser, and transfer agent (respectively, file nos. 8-17668; 801-10970; and 84-5637). LPL is a privately-held company and a subsidiary of LPL Holdings, Inc. It is headquartered in San Diego and Boston. LPL has about 8,100 independent contractor registered representatives operating from approximately 3,600 registered branch offices. LPL conducts business in all 50 states, and provides brokerage, custody and clearing services for more than 1,000,000 customer accounts, effecting an average of approximately 775,000 trades per month in those customer accounts.

² The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

Background

2. LPL does not provide an online trading platform directly to its customers. Instead, LPL provides its independent contractor registered representatives ("RRs") with online access via its proprietary trading platform called "BranchNet." LPL RRs use BranchNet to place customer trades, open new accounts, review detailed account and commission information, and research materials. With password and user name authorization, BranchNet is accessible through the World Wide Web from any computer with a Web browser application and an Internet connection. During the time of the security breaches, BranchNet allowed for simultaneous log-ins from different computers.

3. Between July 17, 2007 and February 15, 2008, an unauthorized person(s) logged into BranchNet and gained access to the on-line accounts of thirteen of LPL's RRs located in multiple states. The perpetrator(s) placed, or attempted to place, 209 unauthorized trades in 68 customer accounts some of which were held in the names of individuals. Altogether, the perpetrator(s) attempted to place over \$700,000 in trades in securities of nineteen different companies. The perpetrator(s) targeted the login information of the RRs. Once logged in to the BranchNet platform, the perpetrator(s) accessed the customer accounts and may have had access to non-public information of at least 10,000 customers.

4. LPL detected the unauthorized and inappropriate trade requests by the perpetrator(s). Most of the unauthorized trade requests were blocked by LPL's trading apparatus and produced no trade executions. In some cases, however, unauthorized trades were executed in or through LPL customer accounts. LPL promptly reversed or eliminated the resulting customer positions and compensated the customers for the resulting trading losses, which totaled approximately \$98,900.

LPL Fails to Safeguard Customer Information

5. Regulation S-P became effective on November 13, 2000. On July 1, 2001, compliance with Regulation S-P became mandatory. The Safeguards Rule of Regulation S-P required the adoption of policies and procedures that address administrative, technical, and physical safeguards for the protection of customer records and information, and required that these policies and procedures must be reasonably designed to: (1) insure the security and confidentiality of customer records and information; (2) protect against any anticipated threats or hazards to the security or integrity of customer records and information; and (3) protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer. LPL failed to have a customer information policy for its employees and branch RRs describing its overall program that was reasonably designed to protect customer records and information as required by the Safeguards Rule. When Regulation S-P was amended in 2005 to require that such policies and procedures be written, LPL failed to comply.

6. Although LPL had some documents that formed its policies of safeguarding customer records and information, none of these policies were reasonably designed to protect customer records and information. These documents did not include, either individually or in combination, a complete set of LPL's policies and procedures addressing administrative, technical, and physical safeguards reasonably designed to protect customer records and information at the branch offices. Instead, LPL distributed to its branch offices limited and insufficient written materials (and, in some instances, only suggestions or recommendations, as opposed to mandates) regarding safeguarding customer information.

7. LPL's security policies and procedures for safeguarding customer information at its branch offices were deficient in several key areas. In particular, LPL did not have written policies and procedures addressing issues related to the security of customer information accessible from its BranchNet system. Until mid-2006, LPL failed to reasonably evaluate security controls at BranchNet, even though it had retained outside information technology consultants to perform various vulnerability tests on other corporate systems. LPL failed to conduct such an evaluation despite its knowledge of a data breach incident involving conduct by a RR in a branch office in March 2006.

LPL's Inadequate Response to Known Deficiencies And Anticipated Security Threats

8. From July through September 2006, LPL conducted an internal audit of BranchNet to evaluate important security and controls such as access controls, input controls, processing controls, disaster recovery, backup, server security, and pertinent policies and procedures. The audit revealed deficiencies concerning users' password complexity and session inactivity parameters.

9. Regarding password complexity, LPL's internal auditors identified the following weaknesses concerning the BranchNet application: (1) RR passwords did not meet industry standards for so-called "strong" passwords, because, among other things, the passwords had no requirements on length or alphanumeric/special character combinations; (2) passwords were not set to expire after a certain period of time; (3) users could not change their own passwords; and (4) there was no automatic lockout feature related to unsuccessful login attempts. Additionally, over 300 LPL information technology employees had access to a list of BranchNet passwords, and a number of former employees likely had access to such a list before leaving the firm.

10. With respect to BranchNet session inactivity, LPL's internal auditors observed that the automatic session timeout was set at eight hours, which LPL's internal auditors believed was significantly longer than the timeout periods used by other financial services firms for similar applications. LPL internal auditors also noted that the timeout periods should be shortened.

11. The audit concluded that weaknesses in the BranchNet system would increase the likelihood that an unauthorized person(s) would obtain confidential information and

unauthorized trades could occur. The audit further specifically identified the risk of account intrusions.

12. LPL's internal audit department performed its work between early July to mid-September 2006. A written report was finalized and provided to LPL's Chief Information Officer in December 2006. In early 2007, the report was shared with members of LPL's senior management, and later in May 2007, the report was presented to the executive risk committee. Among the specific risks identified for both senior management members and the executive risk committee were risks that (a) an intruder could hack into the BranchNet application and cause financial loss to advisers and customers; and (b) an unauthorized individual could steal client information or execute unauthorized trades. LPL executives were further warned that more than 90% of all security breaches involved loss of information in digital form. In addition, LPL's enterprise risk management organization cautioned that further review of the BranchNet access control issues identified in the audit report could lead to a finding or opinion by its independent auditors that LPL had ineffective controls.

13. LPL's internal audit department reported that the firm could elect to (a) implement password complexity controls and session inactivity controls to the BranchNet System at an estimated cost exceeding \$500,000; or (b) not adopt these enhancements if it determined that such measures would not be cost-effective. In June 2007, LPL created a separate committee to evaluate and implement security for BranchNet.

14. Nonetheless, LPL failed to take immediate corrective action. As a result, as of the time of the security breach in July 2007, LPL, in reckless disregard of the regulatory requirements, had not implemented increased security measures and policies and procedures in response to the internal audit.

15. As a result of the conduct described above, Respondent willfully violated Rule 30(a) of Regulation S-P (17 C.F.R. § 248.30(a)), which requires broker-dealers and registered investment advisers to have written policies and procedures that are reasonably designed to safeguard customer records and information.

Remedial Efforts

16. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

Undertakings

17. Respondent has undertaken to:

a. Devise and implement, within 30 days after the issuance of this Order, a policy and a set of procedures for training its employees and all registered representatives regarding safeguarding customer records and information.

b. Retain, within ten (10) days of the date of entry of this Order, the services of an Independent Consultant not unacceptable to the staff of the Commission. LPL shall exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant. LPL shall retain the Independent Consultant to: (i) review LPL's written policies and procedures relating to the Safeguards Rule of Regulation S-P; and (ii) make recommendations concerning these policies and procedures with a view to assuring compliance with the Safeguards Rule of Regulation S-P.

c. No later than ten (10) days following the date of the Independent Consultant's engagement, provide to the Commission staff a copy of an engagement letter detailing the Independent Consultant's responsibilities pursuant to paragraph 17b above;

d. Arrange for the Independent Consultant to issue its report within 90 days after the date of the engagement. Within ten (10) days after the issuance of the report, LPL shall require the Independent Consultant to submit to Diana Tani of the Commission's Los Angeles Regional Office a copy of the Independent Consultant's report. The Independent Consultant's report shall describe the review performed and the conclusions reached and shall include any recommendations deemed necessary for changes in or improvements to LPL's written policies and procedures and a procedure for implementing the recommended changes or improvements.

e. Within 30 days of receipt of the Independent Consultant's Report, adopt all recommendations contained in the Report and remedy any deficiencies in its written policies and procedures; provided, however, that as to any recommendation that LPL believes is unnecessary or inappropriate, LPL may, within fifteen (15) days of receipt of the Report, advise the Independent Consultant and the Commission's staff in writing of any recommendations that it considers to be unnecessary or inappropriate. With respect to any recommendation that LPL considers unnecessary or inappropriate, LPL shall propose in writing an alternative policy or procedure designed to achieve the same objective or purpose.

f. With respect to any recommendation with which LPL and the Independent Consultant do not agree, attempt in good faith to reach an agreement with the Independent Consultant within 30 days of receipt of the Report. In the event that LPL and the Independent Consultant are unable to agree on an alternative proposal acceptable to the Commission's staff, LPL will abide by the original recommendation of the Independent Consultant.

g. Within 180 days of the entry of this Order, submit an affidavit to the Commission's staff stating that it has implemented any and all recommendations of the Independent Consultant, or explaining the circumstances under which it has not implemented such recommendations.

h. Cooperate fully with the Independent Consultant and provide the Independent Consultant with access to its files, books, records and personnel as reasonably requested for the Independent Consultant's review.

i. LPL shall require the Independent Consultant to enter into an agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with LPL, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which he is affiliated or of which he is a member, and any person engaged to assist the Independent Consultant in performance of his duties under this Order shall not, without prior written consent of the Commission's staff in the Los Angeles Regional Office, enter into any employment, consultant, attorney-client, auditing or other professional relationship with LPL, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.

j. For good cause shown, and upon timely application from LPL or the Independent Consultant, the Commission's staff may extend any of the procedural dates set forth above.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent LPL's Offer.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act and Sections 203(e) and 203(k) of the Advisers Act, it is hereby ORDERED that:

A. Respondent LPL shall cease and desist from committing or causing any violations and any future violations of Rule 30(a) of Regulation S-P (17 C.F.R. § 248.30(a)).

B. Respondent LPL is censured.

C. IT IS FURTHER ORDERED that Respondent shall, within ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$275,000.00 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies LPL as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Michele Wein Layne, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 5670 Wilshire Boulevard, 11th Floor, Los Angeles, California 90036.

D. Respondent shall comply with the undertakings enumerated in Section III.17 a-i above.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 12, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13191

In the Matter of

**Nicole Industries, Inc.,
Outer Banks Investments, Inc.,
Point Arena Group, Inc.,
Russian Athena, Inc.,
Skyframes, Inc. (n/k/a Helsinki
Scientific, Inc.) (CIK No. 919602),
Skyframes, Inc. (CIK No.
1097900), and
Sonoma Marine Technologies, Inc.,

Respondents.**

**ORDER INSTITUTING
PROCEEDINGS AND NOTICE
OF HEARING PURSUANT TO
SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT
OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Nicole Industries, Inc., Outer Banks Investments, Inc., Point Arena Group, Inc., Russian Athena, Inc., Skyframes, Inc. (n/k/a Helsinki Scientific, Inc.) (CIK No. 919602), Skyframes, Inc. (CIK No. 1097900), and Sonoma Marine Technologies, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Nicole Industries, Inc. (CIK No. 1086143) is a revoked Nevada corporation located in Coachella, California with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2001.

2. Outer Banks Investments, Inc. (CIK No. 1092801) is a Delaware corporation located in Dana Point, California with a class of equity securities registered with the

Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended December 31, 2002, which reported no revenues.

3. Point Arena Group, Inc. (CIK No. 1092805) is a void Delaware corporation located in Dana Point, California with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2004, which reported a net loss of \$5,301 for the prior five months.

4. Russian Athena, Inc. (CIK No. 1092797) is a void Delaware corporation, located in Dana Point, California with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2004, which reported a net loss since inception of \$56,792.

5. Skyframes, Inc. (n/k/a Helsinki Scientific, Inc.) (CIK No. 919602) is a Utah corporation located in Dana Point, California with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2002, which reported a net loss of \$5,714 since inception in 1992.

6. Skyframes, Inc. (CIK No. 1097900) is a Utah corporation located in Costa Mesa, California with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2004, which reported a net loss of \$9.2 million since inception in 2002.

7. Sonoma Marine Technologies, Inc. (CIK No. 1092808) is a void Delaware corporation located in Dana Point, California with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2004, which reported a net loss of \$5,301 since inception on April 20, 2004.

B. DELINQUENT PERIODIC FILINGS

8. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

9. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

10. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

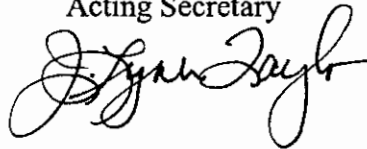
IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Attachment

Florence E. Harmon
Acting Secretary

A handwritten signature in cursive script, appearing to read "J. Lynn Taylor".

By: J. Lynn Taylor
Assistant Secretary

Appendix 1

Chart of Delinquent Filings *In the Matter of Nicole Industries, Inc., et al.*

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Nicole Industries, Inc.					
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent	23				
Outer Banks Investments, Inc.					
	10-QSB	03/31/02	05/15/02	Not filed	76

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-KSB	06/30/02	09/30/02	Not filed	72

**Outer Banks
Investments, Inc.**

10-QSB	09/30/02	11/14/02	Not filed	70
10-QSB	12/31/02	02/14/03	Not filed	67
10-QSB	03/31/03	05/15/03	Not filed	64
10-KSB	06/30/03	09/29/03	Not filed	60
10-QSB	09/30/03	11/14/03	Not filed	58
10-QSB	12/31/03	02/17/04	Not filed	55
10-QSB	03/31/04	05/17/04	Not filed	52
10-KSB	06/30/04	09/28/04	Not filed	48
10-QSB	09/30/04	11/15/04	Not filed	46
10-QSB	12/31/04	02/14/05	Not filed	43
10-QSB	03/31/05	05/16/05	Not filed	40
10-KSB	06/30/05	09/28/05	Not filed	36
10-QSB	09/30/05	11/15/05	Not filed	34
10-QSB	12/31/05	02/14/06	Not filed	31
10-QSB	03/31/06	05/15/06	Not filed	28
10-KSB	06/30/06	09/28/06	Not filed	24
10-QSB	09/30/06	11/14/06	Not filed	22
10-QSB	12/31/06	02/14/07	Not filed	19
10-QSB	03/31/07	05/15/07	Not filed	16
10-KSB	06/30/07	09/28/07	Not filed	12
10-QSB	09/30/07	11/14/07	Not filed	10
10-QSB	12/31/07	02/14/08	Not filed	7
10-QSB	03/31/08	05/15/08	Not filed	4

Total Filings Delinquent 25

Point Arena Group, Inc.

10-QSB	12/31/04	02/14/05	Not filed	43
10-QSB	03/31/05	05/16/05	Not filed	40
10-KSB	06/30/05	09/28/05	Not filed	36
10-QSB	09/30/05	11/15/05	Not filed	34
10-QSB	12/31/05	02/14/06	Not filed	31
10-QSB	03/31/06	05/15/06	Not filed	28
10-KSB	06/30/06	09/28/06	Not filed	24
10-QSB	09/30/06	11/14/06	Not filed	22
10-QSB	12/31/06	02/14/07	Not filed	19

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
	10-QSB	03/31/07	05/15/07	Not filed	16
Point Arena Group, Inc.					
	10-KSB	06/30/07	09/28/07	Not filed	12
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-QSB	12/31/07	02/14/08	Not filed	7
	10-QSB	03/31/08	05/15/08	Not filed	4
Total Filings Delinquent	14				

Russian Athena, Inc.

10-QSB	12/31/04	02/14/05	Not filed	43
10-QSB	03/31/05	05/16/05	Not filed	40
10-KSB	06/30/05	09/28/05	Not filed	36
10-QSB	09/30/05	11/15/05	Not filed	34
10-QSB	12/31/05	02/14/06	Not filed	31
10-QSB	03/31/06	05/15/06	Not filed	28
10-KSB	06/30/06	09/28/06	Not filed	24
10-QSB	09/30/06	11/14/06	Not filed	22
10-QSB	12/31/06	02/14/07	Not filed	19
10-QSB	03/31/07	05/15/07	Not filed	16
10-KSB	06/30/07	09/28/07	Not filed	12
10-QSB	09/30/07	11/14/07	Not filed	10
10-QSB	12/31/07	02/14/08	Not filed	7
10-QSB	03/31/08	05/15/08	Not filed	4

Total Filings Delinquent 14

Skyframes, Inc.
(n/k/a Helsinki Scientific,
Inc.) (CIK No. 919602)

10-QSB	12/31/02	02/14/03	Not filed	67
10-KSB	03/31/03	06/30/03	Not filed	63
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-QSB	12/31/03	02/16/04	Not filed	55
10-KSB	03/31/04	06/29/04	Not filed	51
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-QSB	12/31/04	02/14/05	Not filed	43
10-KSB	03/31/05	06/29/05	Not filed	39

Company Name

Form Type

Period

Ended
06/30/05

Due Date
08/15/05

Date
Received
Not filed

Months
Delinquent
(rounded
up)
37

Skyframes, Inc.
(n/k/a Helsinki Scientific,
Inc.) (CIK No. 919602)

10-QSB	09/30/05	11/14/05	Not filed	34
10-QSB	12/31/05	02/14/06	Not filed	31
10-KSB	03/31/06	06/29/06	Not filed	27
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-QSB	12/31/06	02/14/07	Not filed	19
10-KSB	03/31/07	06/29/07	Not filed	15
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-QSB	12/31/07	02/14/08	Not filed	7
10-K ¹	03/31/08	06/30/08	Not filed	3
10-Q ¹	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent

23

Skyframes, Inc.
(CIK No. 1097900)

10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-KSB	12/31/07	03/31/08	Not filed	6
10-Q ¹	03/31/08	05/15/08	Not filed	4
10-Q ¹	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent

16

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 12, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13188

In the Matter of

AD Art Electronic Sign Corp.,
Homenet Corp.,
Little River Ventures, Inc., and
Webquest International, Inc.,

Respondents.

ORDER INSTITUTING
PROCEEDINGS AND NOTICE
OF HEARING PURSUANT TO
SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT
OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents AD Art Electronic Sign Corp., Homenet Corp., Little River Ventures, Inc., and Webquest International, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. AD Art Electronic Sign Corp. (CIK No. 932008) is a dissolved Nevada corporation located in Stockton, California with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 1996.

2. Homenet Corp. (CIK No. 910639) is a void Delaware corporation located in Provo, Utah with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2004, which reported a net loss of \$993,046 for the prior six months.

3. Little River Ventures, Inc. (CIK No. 1092795) is a void Delaware corporation located in Dana Point, California with a class of equity securities registered with the

31 of 62

Commission pursuant to Exchange Act Section 12(g). Little River is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2005, which reported a net loss of \$5,400 for the prior nine months.

4. Webquest International, Inc. (CIK No. 1061104) is a permanently revoked Nevada corporation located in Las Vegas, Nevada with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). The company is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2001, which reported a net loss of \$8.1 million since inception in 1994.

B. DELINQUENT PERIODIC FILINGS

5. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

6. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

7. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary

Attachment

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

Appendix 1

Chart of Delinquent Filings AD Art Electronic Sign Corp., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
AD Art Electronic Sign Corp.	10-KSB	12/31/96	03/31/97	Not filed	138
	10-QSB	03/31/97	05/15/97	Not filed	136
	10-QSB	06/30/97	08/14/97	Not filed	133
	10-QSB	09/30/97	11/14/97	Not filed	130
	10-KSB	12/31/97	03/31/98	Not filed	126
	10-QSB	03/31/98	05/15/98	Not filed	124
	10-QSB	06/30/98	08/14/98	Not filed	121
	10-QSB	09/30/98	11/16/98	Not filed	118
	10-KSB	12/31/98	03/31/99	Not filed	114
	10-QSB	03/31/99	05/17/99	Not filed	112
	10-QSB	06/30/99	08/16/99	Not filed	109
	10-QSB	09/30/99	11/15/99	Not filed	106
	10-KSB	12/31/99	03/30/00	Not filed	102
	10-QSB	03/31/00	05/15/00	Not filed	100
	10-QSB	06/30/00	08/14/00	Not filed	97
	10-QSB	09/30/00	11/14/00	Not filed	94
	10-KSB	12/31/00	04/02/01	Not filed	89
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-QSB	06/30/01	08/14/01	Not filed	85
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
AD Art Electronic Sign Corp.					
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q*	03/31/08	05/15/08	Not filed	4
	10-Q*	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent

47

Homenet Corp.

10-QSB	12/31/04	02/14/05	Not filed	43
10-KSB	03/31/05	06/29/05	Not filed	39
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-QSB	12/31/05	02/14/06	Not filed	31
10-KSB	03/31/06	06/29/06	Not filed	27
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-QSB	12/31/06	02/14/07	Not filed	19
10-KSB	03/31/07	06/29/07	Not filed	15
10-QSB	06/30/07	08/14/07	Not filed	0
10-QSB	09/30/07	11/14/07	Not filed	10
10-QSB	12/31/07	02/14/08	Not filed	7
10-K*	03/31/08	06/30/08	Not filed	3
10-Q*	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent

15

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Little River Ventures, Inc.					
	10-KSB	06/30/05	09/28/05	Not filed	36
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-QSB	12/31/05	02/14/06	Not filed	31
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-KSB	06/30/06	09/28/06	Not filed	24
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-QSB	12/31/06	02/14/07	Not filed	19
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-KSB	06/30/07	09/28/07	Not filed	12
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-QSB	12/31/07	02/14/08	Not filed	7
	10-Q*	03/31/08	05/15/08	Not filed	4

Total Filings Delinquent 12

Webquest International, Inc.

10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Webquest International, Inc.					
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q*	03/31/08	05/15/08	Not filed	4
	10-Q*	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent		28			

*Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 12, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13185

In the Matter of

American Environmental Corp.
(n/k/a TrackBets International, Inc.),
BAM! Entertainment, Inc., and
Rudy Nutrition,

Respondents.

ORDER INSTITUTING
PROCEEDINGS AND NOTICE OF
HEARING PURSUANT TO SECTION
12(j) OF THE SECURITIES
EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents American Environmental Corp. (n/k/a TrackBets International, Inc.), BAM! Entertainment, Inc., and Rudy Nutrition.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. American Environmental Corp. (n/k/a TrackBets International, Inc.) ("TRKB")¹ (CIK No. 1016614) is a Nevada corporation located in Boulder City, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). TRKB is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB12G with the Commission on June 24, 1999, which reported a net loss of \$6,432 for the nine months ended March 31, 1999. In September 2000, TRKB changed its name with the State of Nevada and the Pink Sheets to Carnegie, Cooke & Co., Inc., but failed to report that change to the Commission as required by Commission rules. In January 2008, TRKB changed its name to TrackBets International, Inc. in the Pink Sheets, but failed to report that change to the Commission as required by Commission rules. As of September 9, 2008, the common stock of TRKB was quoted on the Pink Sheets, had nine market makers, was

¹The short form of each issuer's name is also its stock symbol.

eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3), and had an average daily trading volume of 7,259,963 shares for the six months ended September 9, 2008.

2. BAM! Entertainment, Inc. ("BFUN") (CIK No. 1132809) is a forfeited Delaware corporation located in San Jose, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). BFUN is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2004, which reported a net loss of \$11,216,000 for the prior nine months. The audit report accompanying BFUN's Form 10-K for the period ended September 30, 2003 contained a going concern opinion based on the company's recurring net losses, accumulated deficit, and cash position. As of September 9, 2008, the common stock of BFUN was quoted on the Pink Sheets, had thirteen market makers, was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3), and had an average daily trading volume of 9,901 shares for the six months ended September 9, 2008.

3. Rudy Nutrition ("RUNU") (CIK No. 764794) is a Nevada corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). RUNU is delinquent in its periodic filings with the Commission, having not filed any periodic reports between its filing of a Form 10-Q for the period ended September 30, 2005 and the filing of a Form 10-Q for the period ended March 31, 2008, which reported a net loss of \$296,053 for the prior nine months. On February 23, 2006, RUNU (then known as Accupoll Holding Corp.) filed a Form 8-K disclosing that its independent auditors had withdrawn their audit reports for the financial statements filed with RUNU's Forms 10-K filed for the fiscal years ended June 30, 2003, 2004, and 2005, their review reports for RUNU's interim financial statements contained in all six of RUNU's Forms 10-Q filed during fiscal years 2004 and 2005, and also their review relating to the financial statements filed with RUNU's Form 10-Q filed for the period ended September 30, 2005. RUNU has failed to bring those Forms 10-K and 10-Q back into compliance with the Exchange Act and regulations thereunder by filing new audited or reviewed financial statements, as appropriate. As of September 9, 2008, the common stock of RUNU was quoted on the Pink Sheets, had twenty-seven market makers, was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3), and had an average daily trading volume of 21,017,406 shares for the six months ended September 9, 2008.

B. DELINQUENT PERIODIC FILINGS

4. All of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

5. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

6. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke, the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

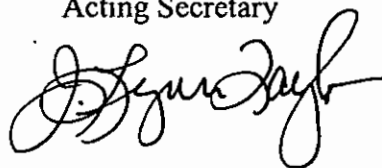
IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Attachment

Florence E. Harmon
Acting Secretary

A handwritten signature in dark ink, appearing to read "J. Lynn Taylor", is written over the typed name of the Assistant Secretary.

By: J. Lynn Taylor
Assistant Secretary

Appendix 1

Chart of Delinquent Filings

In the Matter of American Environmental Corp. (n/k/a TrackBets International, Inc.), et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
American Environmental Corp. (n/k/a TrackBets International, Inc.)	10-KSB	06/30/99	09/28/99	Not filed	108
	10-QSB	09/30/99	11/15/99	Not filed	106
	10-QSB	12/31/99	02/14/00	Not filed	103
	10-QSB	03/31/00	05/15/00	Not filed	100
	10-KSB	06/30/00	09/28/00	Not filed	96
	10-QSB	09/30/00	11/14/00	Not filed	94
	10-QSB	12/31/00	02/14/01	Not filed	91
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-KSB	06/30/01	09/28/01	Not filed	84
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-QSB	12/31/01	02/14/02	Not filed	79
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-KSB	06/30/02	09/30/02	Not filed	72
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-QSB	12/31/02	02/14/03	Not filed	67
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-KSB	06/30/03	09/29/03	Not filed	60
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-QSB	12/31/03	02/17/04	Not filed	55
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-KSB	06/30/04	09/28/04	Not filed	48
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-QSB	12/31/04	02/14/05	Not filed	43
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-KSB	06/30/05	09/28/05	Not filed	36
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-QSB	12/31/05	02/14/06	Not filed	31
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-KSB	06/30/06	09/28/06	Not filed	24
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-QSB	12/31/06	02/14/07	Not filed	19
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-KSB	06/30/07	09/28/07	Not filed	12
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-QSB	12/31/07	2/14/08	Not filed	7
	10-QSB	03/31/08	05/15/08	Not filed	4
Total Filings Delinquent		36			

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
BAM! Entertainment, Inc.					
	10-K	06/30/04	09/28/04	Not filed	48
	10-Q	09/30/04	11/15/04	Not filed	46
	10-Q	12/31/04	02/14/05	Not filed	43
	10-Q	03/31/05	05/16/05	Not filed	40
	10-K	06/30/05	09/28/05	Not filed	36
	10-Q	09/30/05	11/14/05	Not filed	34
	10-Q	12/31/05	02/14/06	Not filed	31
	10-Q	03/31/06	05/15/06	Not filed	28
	10-K	06/30/06	09/28/06	Not filed	24
	10-Q	09/30/06	11/14/06	Not filed	22
	10-Q	12/31/06	02/14/07	Not filed	19
	10-Q	03/31/07	05/15/07	Not filed	16
	10-K	06/30/07	09/28/07	Not filed	12
	10-Q	09/30/07	11/14/07	Not filed	10
	10-Q	12/31/07	2/14/08	Not filed	7
	10-Q	03/31/08	05/15/08	Not filed	4
Total Filings Delinquent	16				

Rudy Nutrition

10-KSB	06/30/03	9/29/03	Auditor's report withdrawn and not replaced	60
10-QSB	09/30/03	11/14/03	Auditor's review withdrawn and not replaced	58
10-QSB	12/31/03	2/17/04	Auditor's review withdrawn and not replaced	55
10-QSB	03/31/04	5/17/04	Auditor's review withdrawn and not replaced	52
10-KSB	06/30/04	9/28/04	Auditors' report withdrawn and not replaced	48
10-QSB	09/30/04	11/15/04	Auditor's review withdrawn and not replaced	46
10-QSB	12/31/04	2/14/05	Auditor's review withdrawn and not replaced	43
10-QSB	03/31/05	5/16/05	Auditor's review withdrawn and not replaced	40
10-KSB	06/30/05	9/28/05	Auditors' report withdrawn and not replaced	36
10-QSB	09/30/05	11/14/05	Not filed	34
10-QSB	12/31/05	02/14/06	Not filed	31
10-QSB	03/31/06	05/15/06	Not filed	28

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Rudy Nutrition (continued)	10-KSB	06/30/06	09/28/06	Not filed	24
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-QSB	12/31/06	02/14/07	Not filed	19
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-KSB	06/30/07	09/28/07	Not filed	12
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-QSB	12/31/07	2/14/08	Not filed	7
Total Filings Delinquent and/or Deficient		19			

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 12, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13186

In the Matter of

**Entertainment Technologies & Programs, Inc.,
Inter Con PC, Inc.,
Trans Global Services, Inc.,
XCL Ltd., and
ZymeTx, Inc.,**

Respondents.

**ORDER INSTITUTING
PROCEEDINGS AND NOTICE
OF HEARING PURSUANT TO
SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT
OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Entertainment Technologies & Programs, Inc., Inter Con PC, Inc., Trans Global Services, Inc., XCL Ltd., and ZymeTx, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Entertainment Technologies & Programs, Inc. ("ETPI")¹ (CIK No. 922257) is a void Delaware corporation located in Houston, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ETPI is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2003. On November 6, 2003, ETPI filed a Chapter 7 petition in the United States Bankruptcy Court for the Southern District of Texas, which was still pending as of September 9, 2008. As of September 9, 2008, the common stock of ETPI was quoted on the Pink Sheets, had eight market makers, was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3), and had an average daily trading volume of 16,804 shares for the six months ended September 9, 2008.

¹The short form of each issuer's name is also its stock symbol.

2. Inter Con PC, Inc. ("ICPC") (CIK No. 1028536) is an inactive Minnesota corporation located in Anderson, South Carolina, with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ICPC is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2001, which reported a net loss of \$317,404 for the prior three months. The audit report accompanying ICPC's Form 10-KSB for the period ended December 31, 2000 contained a going concern paragraph based on the company's lack of revenues and accumulated deficit. As of September 9, 2008, the common stock of ICPC was quoted on the Pink Sheets, had seven market makers, was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3), and had an average daily trading volume of 7 shares for the six months ended September 9, 2008.

3. Trans Global Services, Inc. ("TGSI") (CIK No. 916485) is a void Delaware corporation located in Houston, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). TGSI is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 2002, which reported a net loss of \$3,344,183 for the prior year. The audit report accompanying TGSI's Form 10-K for the period ended December 31, 2002 contained a "going concern" paragraph based on the company's recurring losses, working capital deficiency, and accumulated deficit. As of September 9, 2008, the common stock of TGSI was quoted on the Pink Sheets, had seven market makers, was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3), and had an average daily trading volume of 17,088 shares for the six months ended September 9, 2008.

4. XCL Ltd. ("XCLT") (CIK No. 720676) is a void Delaware corporation located in Lafayette, Louisiana with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). XCLT is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 1999, which reported a net loss of \$6,062,000 for the prior nine months. The auditor's report accompanying XCLT's Form 10-K for the period ended December 31, 1998 included a going concern paragraph based on the company's minimal revenues and working capital deficit. As of September 9, 2008, the common stock of XCLT was quoted on the Pink Sheets, had eight market makers, was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3), and had an average daily trading volume of 8,840 shares for the six months ended September 9, 2008.

5. ZymeTx, Inc. ("ZMTX") (CIK No. 921439) is a Delaware corporation located in Oklahoma City, Oklahoma with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ZMTX is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended December 31, 2001, which reported a net loss of \$7,931,215 for the prior six months. On November 5, 2002, ZMTX filed a Chapter 11 petition in the United States Bankruptcy Court for the Western District of Oklahoma. The case was terminated on April 9, 2004. As of September 9, 2008, the common stock of ZMTX was quoted on the Pink Sheets, had eight market makers, was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3), and had an average daily trading volume of 4,518 shares for the six months ended September 9, 2008.

B. DELINQUENT PERIODIC FILINGS

6. All of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

7. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

8. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke, the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

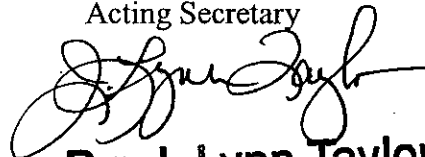
IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Attachment

Florence E. Harmon
Acting Secretary



By: J. Lynn Taylor
Assistant Secretary

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Inter Con PC, Inc. (continued)	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q*	03/31/08	05/15/08	Not filed	4
	10-Q*	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent	28				
Trans Global Services, Inc.	10-Q	03/31/03	05/15/03	Not filed	64
	10-Q	06/30/03	08/14/03	Not filed	61
	10-Q	09/30/03	11/14/03	Not filed	58
	10-K	12/31/03	03/30/04	Not filed	54
	10-Q	03/31/04	05/17/04	Not filed	52
	10-Q	06/30/04	08/16/04	Not filed	49
	10-Q	09/30/04	11/15/04	Not filed	46
	10-K	12/31/04	03/31/05	Not filed	42
	10-Q	03/31/05	05/16/05	Not filed	40
	10-Q	06/30/05	08/15/05	Not filed	37
	10-Q	09/30/05	11/14/05	Not filed	34
	10-K	12/31/05	03/31/06	Not filed	30
	10-Q	03/31/06	05/15/06	Not filed	28
	10-Q	06/30/06	08/14/06	Not filed	25
	10-Q	09/30/06	11/14/06	Not filed	22
	10-K	12/31/06	04/02/07	Not filed	17
	10-Q	03/31/07	05/15/07	Not filed	16
	10-Q	06/30/07	08/14/07	Not filed	13
	10-Q	09/30/07	11/14/07	Not filed	10
	10-K	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent	22				
XCL Ltd.	10-K	12/31/99	03/30/00	Not filed	102
	10-Q	03/31/00	05/15/00	Not filed	100
	10-Q	06/30/00	08/14/00	Not filed	97
	10-Q	09/30/00	11/14/00	Not filed	94
	10-K	12/31/00	04/02/01	Not filed	89
	10-Q	03/31/01	05/15/01	Not filed	88
	10-Q	06/30/01	08/14/01	Not filed	85
	10-Q	09/30/01	11/14/01	Not filed	82
	10-K	12/31/01	04/01/02	Not filed	77
	10-Q	03/31/02	05/15/02	Not filed	76
	10-Q	06/30/02	08/14/02	Not filed	73
	10-Q	09/30/02	11/14/02	Not filed	70

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
XCL Ltd. (continued)	10-K	12/31/02	03/31/03	Not filed	66
	10-Q	03/31/03	05/15/03	Not filed	64
	10-Q	06/30/03	08/14/03	Not filed	61
	10-Q	09/30/03	11/14/03	Not filed	58
	10-K	12/31/03	03/30/04	Not filed	54
	10-Q	03/31/04	05/17/04	Not filed	52
	10-Q	06/30/04	08/16/04	Not filed	49
	10-Q	09/30/04	11/15/04	Not filed	46
	10-K	12/31/04	03/31/05	Not filed	42
	10-Q	03/31/05	05/16/05	Not filed	40
	10-Q	06/30/05	08/15/05	Not filed	37
	10-Q	09/30/05	11/14/05	Not filed	34
	10-K	12/31/05	03/31/06	Not filed	30
	10-Q	03/31/06	05/15/06	Not filed	28
	10-Q	06/30/06	08/14/06	Not filed	25
	10-Q	09/30/06	11/14/06	Not filed	22
	10-K	12/31/06	04/02/07	Not filed	17
	10-Q	03/31/07	05/15/07	Not filed	16
	10-Q	06/30/07	08/14/07	Not filed	13
	10-Q	09/30/07	11/14/07	Not filed	10
	10-K	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent	35				
ZymeTx, Inc.	10-QSB	03/31/02	05/15/02	Not filed	76
	10-KSB	06/30/02	09/30/02	Not filed	72
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-QSB	12/31/02	02/14/03	Not filed	67
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-KSB	06/30/03	09/29/03	Not filed	60
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-QSB	12/31/03	02/17/04	Not filed	55
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-KSB	06/30/04	09/28/04	Not filed	48
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-QSB	12/31/04	02/14/05	Not filed	43
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-KSB	06/30/05	09/28/05	Not filed	36
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-QSB	12/31/05	02/14/06	Not filed	31
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-KSB	06/30/06	09/28/06	Not filed	24
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-QSB	12/31/06	02/14/07	Not filed	19

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
ZymeTx, Inc. (continued)	10-QSB	03/31/07	05/15/07	Not filed	16
	10-KSB	06/30/07	09/28/07	Not filed	12
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-QSB	12/31/07	03/31/08	Not filed	6
	10-QSB	03/31/08	05/15/08	Not filed	4
Total Filings Delinquent		25			

*Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 12, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13192

In the Matter of

Curecom.com, Inc.,
Edlam Acquisition Corp.,
Five Star Broadband Wireless, Inc.,
LeBlanc & Associates, Inc.,
New River Investments, Inc.,
Olympus International, Inc.,
Provence Capital Corp.,
Vertical Solutions, Inc., and
Waistech International, Inc.,

Respondents.

ORDER INSTITUTING
PROCEEDINGS AND NOTICE
OF HEARING PURSUANT TO
SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT
OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Curecom.com, Inc., Edlam Acquisition Corp., Five Star Broadband Wireless, Inc., LeBlanc & Associates, Inc., New River Investments, Inc., Olympus International, Inc., Provence Capital Corp., Vertical Solutions, Inc., and Waistech International, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Curecom.com, Inc. (CIK No. 1156044) is a New Jersey corporation located in West Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Curecom is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2002, which reported an accumulated deficit of \$129,189.

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2. Edlam Acquisition Corp. (CIK No. 1103644) is a defaulted Nevada corporation located in Tyler, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Edlam is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2002, which reported an accumulated deficit of \$521,650.

3. Five Star Broadband Wireless, Inc. (CIK No. 1102053) is a forfeited Kansas corporation located in Tulsa, Oklahoma with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Five Star is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2000, which reported a loss of \$62,329.

4. LeBlanc & Associates, Inc. (CIK No. 1133316) is an inactive Florida corporation located in Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). LeBlanc is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2001, which reported a net loss of \$21,618.

5. New River Investments, Inc. (CIK No. 1128880) is a revoked Nevada corporation located in Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). New River is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2001.

6. Olympus International, Inc. (CIK No. 1126332) is a revoked Nevada corporation located in Fort Worth, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Olympus is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB on March 8, 2001.

7. Provence Capital Corp., Inc. (CIK No. 1107960) is an inactive Florida corporation located in Boca Raton, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Provence is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB on January 5, 2001.

8. Vertical Solutions, Inc. (CIK No. 1130179) is an inactive Delaware corporation located in Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Vertical Solutions is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2001.

9. Waistech International, Inc. (CIK No. 1136934) is a revoked Nevada corporation located in Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Waistech is delinquent in its periodic filings with the Commission, having not filed any periodic

reports since it filed a Form 10-QSB for the period ended November 30, 2001, which reported an accumulated deficit of \$20,689.

B. DELINQUENT PERIODIC FILINGS

10. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

11. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

12. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary

Attachment

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Appendix 1
Chart of Delinquent Filings
In the Matter of Curecom.com, Inc., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
Curecom.com, Inc.	<i>10-QSB</i>	09/30/02	11/14/02	Not filed	70
	<i>10-KSB</i>	12/31/02	03/31/03	Not filed	66
	<i>10-QSB</i>	03/31/03	05/15/03	Not filed	64
	<i>10-QSB</i>	06/30/03	08/14/03	Not filed	61
	<i>10-QSB</i>	09/30/03	11/14/03	Not filed	58
	<i>10-KSB</i>	12/31/03	03/30/04	Not filed	54
	<i>10-QSB</i>	03/31/04	05/17/04	Not filed	52
	<i>10-QSB</i>	06/30/04	08/16/04	Not filed	49
	<i>10-QSB</i>	09/30/04	11/15/04	Not filed	46
	<i>10-KSB</i>	12/31/04	03/31/05	Not filed	42
	<i>10-QSB</i>	03/31/05	05/16/05	Not filed	40
	<i>10-QSB</i>	06/30/05	08/15/05	Not filed	37
	<i>10-QSB</i>	09/30/05	11/14/05	Not filed	34
	<i>10-KSB</i>	12/31/05	03/31/06	Not filed	30
	<i>10-QSB</i>	03/31/06	05/15/06	Not filed	28
	<i>10-QSB</i>	06/30/06	08/14/06	Not filed	25
	<i>10-QSB</i>	09/30/06	11/14/06	Not filed	22
	<i>10-KSB</i>	12/31/06	04/02/07	Not filed	17
	<i>10-QSB</i>	03/31/07	05/15/07	Not filed	16
	<i>10-QSB</i>	06/30/07	08/14/07	Not filed	13
	<i>10-QSB</i>	09/30/07	11/14/07	Not filed	10
	<i>10-KSB</i>	12/31/07	03/31/08	Not filed	6
	<i>10-Q</i>	03/31/08	05/15/08	Not filed	4
	<i>10-Q</i>	06/30/08	08/15/08	Not filed	1
Total Filings Delinquent	24				
Edlam Acquisition Corp.	<i>10-QSB</i>	09/30/02	11/14/02	Not filed	70
	<i>10-KSB</i>	12/31/02	03/31/03	Not filed	66
	<i>10-QSB</i>	03/31/03	05/15/03	Not filed	64
	<i>10-QSB</i>	06/30/03	08/14/03	Not filed	61
	<i>10-QSB</i>	09/30/03	11/14/03	Not filed	58

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
Edlam Acquisition Corp.	<i>10-KSB</i>	12/31/03	03/30/04	Not filed	54
	<i>10-QSB</i>	03/31/04	05/17/04	Not filed	52
	<i>10-QSB</i>	06/30/04	08/16/04	Not filed	49
	<i>10-QSB</i>	09/30/04	11/15/04	Not filed	46
	<i>10-KSB</i>	12/31/04	03/31/05	Not filed	42
	<i>10-QSB</i>	03/31/05	05/16/05	Not filed	40
	<i>10-QSB</i>	06/30/05	08/15/05	Not filed	37
	<i>10-QSB</i>	09/30/05	11/14/05	Not filed	34
	<i>10-KSB</i>	12/31/05	03/31/06	Not filed	30
	<i>10-QSB</i>	03/31/06	05/15/06	Not filed	28
	<i>10-QSB</i>	06/30/06	08/14/06	Not filed	25
	<i>10-QSB</i>	09/30/06	11/14/06	Not filed	22
	<i>10-KSB</i>	12/31/06	04/02/07	Not filed	17
	<i>10-QSB</i>	03/31/07	05/15/07	Not filed	16
	<i>10-QSB</i>	06/30/07	08/14/07	Not filed	13
	<i>10-QSB</i>	09/30/07	11/14/07	Not filed	10
	<i>10-KSB</i>	12/31/07	03/31/08	Not filed	6
	<i>10-Q</i>	03/31/08	05/15/08	Not filed	4
	<i>10-Q</i>	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent

24

Five Star Broadband Wireless, Inc.

<i>10-KSB</i>	09/30/00	12/29/00	Not filed	93
<i>10-QSB</i>	12/31/00	02/14/01	Not filed	91
<i>10-QSB</i>	03/31/01	05/15/01	Not filed	88
<i>10-QSB</i>	06/30/01	08/14/01	Not filed	85
<i>10-KSB</i>	09/30/01	12/31/01	Not filed	81
<i>10-QSB</i>	12/31/01	02/14/02	Not filed	79
<i>10-QSB</i>	03/31/02	05/15/02	Not filed	76
<i>10-QSB</i>	06/30/02	08/14/02	Not filed	73
<i>10-KSB</i>	09/30/02	12/30/02	Not filed	69
<i>10-QSB</i>	12/31/02	02/14/03	Not filed	67
<i>10-QSB</i>	03/31/03	05/15/03	Not filed	64
<i>10-QSB</i>	06/30/03	08/14/03	Not filed	61
<i>10-KSB</i>	09/30/03	12/29/03	Not filed	57

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
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Five Star Broadband Wireless, Inc.

10-QSB	12/31/03	02/17/04	Not filed	55
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-KSB	09/30/04	12/29/04	Not filed	45
10-QSB	12/31/04	02/14/05	Not filed	43
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-KSB	09/30/05	12/29/05	Not filed	33
10-QSB	12/31/05	02/14/06	Not filed	31
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-KSB	09/30/06	12/29/06	Not filed	21
10-QSB	12/31/06	02/14/07	Not filed	19
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-KSB	12/31/07	03/31/08	Not filed	6
10-Q	03/31/08	05/15/08	Not filed	4
10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent 32

LeBlanc & Associates, Inc.

10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
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LeBlanc & Associates, Inc.

10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-KSB	12/31/07	03/31/08	Not filed	6
10-Q	03/31/08	05/15/08	Not filed	4
10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent 28

New River Investments, Inc.

10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
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New River Investments, Inc.

10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-KSB	12/31/07	03/31/08	Not filed	6
10-Q	03/31/08	05/15/08	Not filed	4
10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent

27

Olympus International, Inc.

10-QSB	09/30/00	06/21/01	Not filed	87
10-QSB	12/31/00	06/21/01	Not filed	87
10-QSB	03/31/01	06/21/01	Not filed	87
10-KSB	06/30/01	09/28/01	Not filed	84
10-QSB	09/30/01	11/14/01	Not filed	82
10-QSB	12/31/01	02/14/02	Not filed	79
10-QSB	03/31/02	05/15/02	Not filed	76
10-KSB	06/30/02	09/30/02	Not filed	72
10-QSB	09/30/02	11/14/02	Not filed	70
10-QSB	12/31/02	02/14/03	Not filed	67
10-QSB	03/31/03	05/15/03	Not filed	64
10-KSB	06/30/03	09/29/03	Not filed	60
10-QSB	09/30/03	11/14/03	Not filed	58
10-QSB	12/31/03	02/16/04	Not filed	55
10-QSB	03/31/04	05/17/04	Not filed	52
10-KSB	06/30/04	09/28/04	Not filed	48
10-QSB	09/30/04	11/15/04	Not filed	46
10-QSB	12/31/04	02/14/05	Not filed	43
10-QSB	03/31/05	05/16/05	Not filed	40
10-KSB	06/30/05	09/28/05	Not filed	36
10-QSB	09/30/05	11/14/05	Not filed	34
10-QSB	12/31/05	02/14/06	Not filed	31

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
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Olympus International, Inc.

10-QSB	03/31/06	05/15/06	Not filed	28
10-KSB	06/30/06	09/28/06	Not filed	24
10-QSB	09/30/06	11/14/06	Not filed	22
10-QSB	12/31/06	02/14/07	Not filed	19
10-QSB	03/31/07	05/15/07	Not filed	16
10-KSB	06/30/07	09/28/07	Not filed	12
10-QSB	09/30/07	11/14/07	Not filed	10
10-QSB	12/31/07	02/14/08	Not filed	7
10-Q	03/31/08	05/15/08	Not filed	4
10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent 32

Provence Capital Corp.

10-QSB	03/31/01	05/15/01	Not filed	88
10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
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Provence Capital Corp.

10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-KSB	12/31/07	03/31/08	Not filed	6
10-Q	03/31/08	05/15/08	Not filed	4
10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent 30

Vertical Solutions, Inc.

10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
Vertical Solutions, Inc.					
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/15/08	Not filed	1
Total Filings Delinquent	27				

Waistech International, Inc.

10-KSB	02/28/02	05/29/02	Not filed	76
10-QSB	05/31/02	07/15/02	Not filed	74
10-QSB	08/31/02	10/15/02	Not filed	71
10-QSB	11/30/02	01/14/03	Not filed	68
10-KSB	02/28/03	05/29/03	Not filed	64
10-QSB	05/31/03	07/15/03	Not filed	62
10-QSB	08/31/03	10/15/03	Not filed	59
10-QSB	11/30/03	01/14/04	Not filed	56
10-KSB	02/29/04	06/01/04	Not filed	51
10-QSB	05/31/04	07/15/04	Not filed	50
10-QSB	08/31/04	10/15/04	Not filed	47
10-QSB	11/30/04	01/14/05	Not filed	44
10-KSB	02/28/05	05/31/05	Not filed	40
10-QSB	05/31/05	07/15/05	Not filed	38
10-QSB	08/31/05	10/17/05	Not filed	35
10-QSB	11/30/05	01/17/06	Not filed	32
10-KSB	02/28/06	05/30/06	Not filed	28
10-QSB	05/31/06	07/17/06	Not filed	26
10-QSB	08/31/06	10/17/06	Not filed	23
10-QSB	11/30/06	01/17/07	Not filed	20
10-KSB	02/28/07	05/30/07	Not filed	16
10-QSB	05/31/07	07/17/07	Not filed	14
10-QSB	08/31/07	10/15/07	Not filed	11
10-QSB	11/30/07	01/14/08	Not filed	8
10-KSB	02/28/08	05/30/08	Not filed	4
10-Q	05/31/08	07/18/08	Not filed	2

Total Filings Delinquent **25**

*Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58528 / September 12, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13187

In the Matter of

HomeBanc Corp.,

Respondent.

ORDER INSTITUTING PROCEEDINGS, MAKING
FINDINGS, AND REVOKING REGISTRATION OF
SECURITIES PURSUANT TO SECTION 12(j) OF
THE SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act"), against HomeBanc Corp. ("HomeBanc" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, Respondent consents to the entry of this Order Instituting Proceedings, Making Findings, and Revoking Registration of Securities Pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that

A. HomeBanc, a Georgia corporation based in Atlanta, Georgia was engaged in the business of originating, servicing and selling mortgage loans, and holding investments in mortgage loans and securities. The common stock of HomeBanc has been registered under Section 12 of the Exchange Act, 15 U.S.C. §781, since 2004. HomeBanc's preferred stock has been registered with the Commission pursuant to Section 12 of the Exchange Act since February 2006. Prior to August 2007, HomeBanc's common and preferred stock were listed and traded on The New York Stock Exchange. Both classes of stock are currently quoted by the Pink OTC Markets, Inc.

B. HomeBanc has failed to comply with Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder, 17 C.F.R. §§ 270.13a-1 and -13, while its common and preferred stock were registered with the Commission in that it has not filed an annual report on Form 10-K since its 2006 Form 10-K or quarterly reports on Form 10-Q for any period subsequent to its quarter ending March 31, 2007.

IV.

Section 12(j) of the Exchange Act provides as follows:

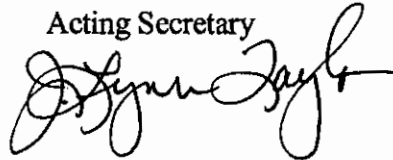
The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means of instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

In view of the foregoing, the Commission finds that it is necessary and appropriate for the protection of investors to impose the sanction specified in Respondent's Offer.

Accordingly, it is hereby ORDERED, pursuant to Section 12(j) of the Exchange Act, that registration of each class of Respondent HomeBanc's securities registered pursuant to Section 12 of the Exchange Act be, and hereby is, revoked.

By the Commission.

Florence E. Harmon
Acting Secretary

A handwritten signature in black ink, appearing to read "J. Lynn Taylor", written over the printed name of the Assistant Secretary.

By: J. Lynn Taylor
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58531 / September 12, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13189

In the Matter of

Donald H. Allen,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Donald H. Allen ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Donald H. Allen is the president, chief executive officer, and sole stockholder of American Energy Resources Corp. ("AER"), and the president and sole stockholder of H&M Petroleum Corp. ("H&M"). Allen has never registered as a broker-dealer or been associated with a registered broker-dealer. Allen, age 48, is a resident of Colorado Springs, Colorado.

2. On September 2, 2008, a final judgment was entered by consent against Allen, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act"), Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. American Energy Resources Corp., H&M Petroleum Corp., and Donald H. Allen, Civil Action Number 08-cv-01847-REB-BNB, in the United States District Court for the District of Colorado. The order required Allen, AER, and H&M to jointly and severally pay \$510,000 of disgorgement to the registry of the court and distribute the funds to investors.

3. The Commission's complaint alleged that, between March 2002 and December 2006, AER and H&M, through Allen, raised approximately \$9.9 million from at least 355 investors nationwide through a series of unregistered offerings of fractional interests in oil and gas wells. The complaint further alleged that Allen, AER, and H&M, made material misrepresentations or omissions to investors regarding the use of investor funds, the companies' records of successful oil and gas projects, the companies' investments of their own capital in the projects, and the projected returns of the investments. The complaint also alleged that Allen engaged in unregistered sales of securities and acted as an unregistered broker-dealer in connection with those sales.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Allen's Offer.

Accordingly, it is hereby ORDERED:

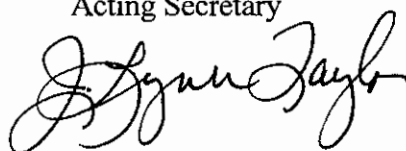
Pursuant to Section 15(b)(6) of the Exchange Act, that Respondent Allen be, and hereby is, barred from association with any broker or dealer, with the right to reapply for association after five years to the appropriate self-regulatory organization, or if there is none, to the Commission.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served

as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Florence E. Harmon
Acting Secretary

A handwritten signature in cursive script, appearing to read "J. Lynn Taylor".

By: J. Lynn Taylor
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

September 15, 2008

In the Matter of

**B.B. Walker Co.,
Bellatrix International, Inc.,
Belmont Resources, Inc.,
Beres Industries, Inc.,
Best Products Co., Inc.,
Bethlehem Corp., and
Bogue Electric Manufacturing Co.
(n/k/a Bogue International, Inc.),**

File No. 500-1

**ORDER OF SUSPENSION OF
TRADING**

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of B.B. Walker Co. because it has not filed any periodic reports since the period ended August 4, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Bellatrix International, Inc. because it has not filed any periodic reports since the period ended December 31, 1995.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Belmont Resources, Inc. because it has not filed any periodic reports since the period ended January 31, 2001.

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It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Beres Industries, Inc. because it has not filed any periodic reports since the period ended December 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Best Products Co., Inc. because it has not filed any periodic reports since the period ended November 2, 1996.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Bethlehem Corp. because it has not filed any periodic reports since the period ended February 28, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Bogue Electric Manufacturing Co. (n/k/a Bogue International, Inc.) because it has not filed any periodic reports since the period ended September 30, 1998.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on September 15, 2008, through 11:59 p.m. EDT on September 26, 2008.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

Service List

The attached Order of Suspension of Trading issued pursuant to Section 12(k) of the Securities Exchange Act of 1934 has been sent via U.S. Mail to the following persons and entities this 15th day of September, 2008.

Neil J. Welch, Jr., Esq.
Division of Enforcement
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-7553

B.B. Walker Co.
414 E. Dixie Drive
Asheboro, NC 27203

B.B. Walker Co.
c/o Corporation Service Company d/b/a
CSC - Lawyers Incorporating Service
Registered Agent
2730 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

B.B. Walker Co.
P.O. Box 1167
Asheboro, NC 27204

Bellatrix International, Inc.
4055 Wilshire Boulevard, Suite 415
Los Angeles, CA 90010

Bellatrix International, Inc.
c/o United Corporate Services, Inc.
Registered Agent
874 Walker Road, Suite C
Dover, DE 19904

Belmont Resources, Inc.
Suite 600 - 625 Howe Street
Vancouver, BC V6C 2T6

Beres Industries, Inc.
1785 Swarthmore Avenue
Lakewood, NJ 08701

Beres Industries, Inc.
c/o Mr. Charles Beres, Jr.
Registered Agent
1785 Swarthmore Avenue
Lakewood, NJ 08701

Best Products Co., Inc.
1620 E. Parham Road
Richmond, VA 23228-2328

Best Products Co., Inc.
c/o Ms. Teresa S. Hanger
Registered Agent
11038 Lakeridge Parkway, Suite 4
Ashland, VA 23005

Bethlehem Corp.
25th and Lennox Streets
Easton, PA 18045

Bethlehem Corp.
c/o CT Corporation System
Registered Agent
815 Superior Avenue, N.E.
Cleveland, OH 44114

Bogue Electric Manufacturing Co. (n/k/a Bogue International, Inc.)
100 Pennsylvania Avenue
P.O. Box 3027
Paterson, NJ 07509

Bogue Electric Manufacturing Co. (n/k/a Bogue International, Inc.)
c/o Corporate Creations Network, Inc.
Registered Agent
8121 Church Road, Suite 105
Cherry Hill, NJ 08002

Ms. Lisa Siebolt
National Securities Clearing Corporation
55 Water Street
22nd Floor
New York, NY 10041

Ms. Lynne Walsh
PinkSheets, L.L.C.
304 Hudson Street, 2d Floor
New York, NY 10013-1015

Mr. John Zecca
MarketWatch Department
The NASDAQ Stock Market, Inc.
9513 Key West Avenue
Rockville, MD 2085C

7012

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 15, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13193

In the Matter of

**B.B. Walker Co.,
Bellatrix International, Inc.,
Belmont Resources, Inc.,
Beres Industries, Inc.,
Best Products Co., Inc.,
Bethlehem Corp., and
Bogue Electric Manufacturing Co.
(n/k/a Bogue International, Inc.),**

Respondents.

**ORDER INSTITUTING
PROCEEDINGS AND NOTICE OF
HEARING PURSUANT TO SECTION
12(j) OF THE SECURITIES
EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents B.B. Walker Co., Bellatrix International, Inc., Belmont Resources, Inc., Beres Industries, Inc., Best Products Co., Inc., Bethlehem Corp., and Bogue Electric Manufacturing Co. (n/k/a Bogue International, Inc.).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. B.B. Walker Co. (CIK No. 104218) is a dissolved North Carolina corporation located in Asheboro, North Carolina with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). B.B. Walker is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended August 4, 2001, which reported a net loss of over \$1.5 million for the prior nine months. On January 14, 2002, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Middle District of North Carolina, and the case was closed on November 28, 2006. As of

September 11, 2008, the company's common stock (symbol "WLKBQ") was quoted on the Pink Sheets, had four market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

2. Bellatrix International, Inc. (CIK No. 826152) is a Delaware corporation located in Los Angeles, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Bellatrix is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 1995. As of September 11, 2008, the company's common stock (symbol "BLLX") was quoted on the Pink Sheets, had five market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

3. Belmont Resources, Inc. (CIK No. 1056301) is a British Columbia corporation located in Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Belmont is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F/A for the period ended January 31, 2001, which reported a net loss of over \$1.3 million (Canadian) for prior twelve months. As of September 11, 2008, the company's common stock (symbol "BEAAF") was quoted on the Pink Sheets, had seven market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

4. Beres Industries, Inc. (CIK No. 790710) is a revoked New Jersey corporation located in Lakewood, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Beres is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended December 31, 2002, which reported a net loss of \$95,000 for the prior three months. As of September 11, 2008, the company's common stock (symbol "BERS") was quoted on the Pink Sheets, had eight market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

5. Best Products Co., Inc. (CIK No. 11821) is a terminated Virginia corporation located in Richmond, Virginia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Best is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended November 2, 1996, which reported a net loss of over \$266 million for the prior thirteen weeks. On September 24, 1996, the company filed a Chapter 7 petition in the U.S. Bankruptcy Court for the Eastern District of Virginia, and the case was closed on July 19, 1999. As of September 11, 2008, the company's common stock (symbol "BESOQ") was quoted on the Pink Sheets, had four market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

6. Bethlehem Corp. (CIK No. 11856) is a Pennsylvania corporation located in Easton, Pennsylvania with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Bethlehem is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended February 28, 2001, which reported a net loss of over \$1.7 million for the prior three months. As of September 11, 2008, the company's common stock (symbol "BEHP") was quoted on the Pink Sheets, had six market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

7. Bogue Electric Manufacturing Co. (n/k/a Bogue International, Inc.) (CIK No. 12953) is a New Jersey corporation located in Paterson, New Jersey with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Bogue is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 1998, which reported a net loss of \$150,082 for the prior nine months in an unaudited financial statement. As of September 11, 2008, the company's common stock (symbol "BGUE") was quoted on the Pink Sheets, had fifteen market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

8. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

9. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires domestic issuers to file quarterly reports. Rule 13a-16 requires foreign private issuers to furnish quarterly and other reports to the Commission under cover of Form 6-K if they make or are required to make the information public under the laws of the jurisdiction of their domicile or in which they are incorporated or organized; if they file or are required to file information with a stock exchange on which their securities are traded and the information was made public by the exchange; or if they distribute or are required to distribute information to their security holders.

10. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 or 13a-16 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

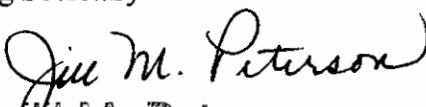
IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Attachment

Florence E. Harmon
Acting Secretary


By: Jill M. Peterson
Assistant Secretary

Appendix 1

Chart of Delinquent Filings In the Matter of B.B. Walker Co., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
B.B. Walker Co.					
	10-KSB	11/03/01	02/01/02	Not filed	79
	10-QSB	02/02/02	03/19/02	Not filed	78
	10-QSB	05/04/02	06/18/02	Not filed	75
	10-QSB	08/03/02	09/17/02	Not filed	72
	10-KSB	11/02/02	01/31/03	Not filed	68
	10-QSB	02/01/03	03/18/03	Not filed	66
	10-QSB	05/03/03	06/17/03	Not filed	63
	10-QSB	08/02/03	09/16/03	Not filed	60
	10-KSB	11/01/03	01/30/04	Not filed	56
	10-QSB	01/31/04	03/16/04	Not filed	54
	10-QSB	05/01/04	06/15/04	Not filed	51
	10-QSB	07/31/04	09/14/04	Not filed	48
	10-KSB	10/30/04	01/28/05	Not filed	44
	10-QSB	01/29/05	03/15/05	Not filed	42
	10-QSB	04/30/05	06/14/05	Not filed	39
	10-QSB	07/30/05	09/13/05	Not filed	36
	10-KSB	10/29/05	01/27/06	Not filed	32
	10-QSB	01/28/06	03/14/06	Not filed	30
	10-QSB	04/29/06	06/13/06	Not filed	27
	10-QSB	07/29/06	09/12/06	Not filed	24
	10-KSB	10/28/06	01/26/07	Not filed	20
	10-QSB	01/27/07	03/13/07	Not filed	18
	10-QSB	04/28/07	06/12/07	Not filed	15
	10-QSB	07/28/07	09/11/07	Not filed	12
	10-KSB	11/03/07	02/01/08	Not filed	7
	10-QSB	02/02/08	03/18/08	Not filed	6
	10-QSB	05/03/08	06/17/08	Not filed	3
Total Filings Delinquent		27			

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
<i>Bellatrix International, Inc.</i>					
	<i>10-QSB</i>	03/31/96	05/15/96	Not filed	148
	<i>10-QSB</i>	06/30/96	08/14/96	Not filed	145
	<i>10-QSB</i>	09/30/96	11/14/96	Not filed	142
	<i>10-KSB</i>	12/31/96	03/31/97	Not filed	138
	<i>10-QSB</i>	03/31/97	05/15/97	Not filed	136
	<i>10-QSB</i>	06/30/97	08/14/97	Not filed	133
	<i>10-QSB</i>	09/30/97	11/14/97	Not filed	130
	<i>10-KSB</i>	12/31/97	03/31/98	Not filed	126
	<i>10-QSB</i>	03/31/98	05/15/98	Not filed	124
	<i>10-QSB</i>	06/30/98	08/14/98	Not filed	121
	<i>10-QSB</i>	09/30/98	11/16/98	Not filed	118
	<i>10-KSB</i>	12/31/98	03/31/99	Not filed	114
	<i>10-QSB</i>	03/31/99	05/17/99	Not filed	112
	<i>10-QSB</i>	06/30/99	08/16/99	Not filed	109
	<i>10-QSB</i>	09/30/99	11/15/99	Not filed	106
	<i>10-KSB</i>	12/31/99	03/30/00	Not filed	102
	<i>10-QSB</i>	03/31/00	05/15/00	Not filed	100
	<i>10-QSB</i>	06/30/00	08/14/00	Not filed	97
	<i>10-QSB</i>	09/30/00	11/14/00	Not filed	94
	<i>10-KSB</i>	12/31/00	04/02/01	Not filed	89
	<i>10-QSB</i>	03/31/01	05/15/01	Not filed	88
	<i>10-QSB</i>	06/30/01	08/14/01	Not filed	85
	<i>10-QSB</i>	09/30/01	11/14/01	Not filed	82
	<i>10-KSB</i>	12/31/01	04/01/02	Not filed	77
	<i>10-QSB</i>	03/31/02	05/15/02	Not filed	76
	<i>10-QSB</i>	06/30/02	08/14/02	Not filed	73
	<i>10-QSB</i>	09/30/02	11/14/02	Not filed	70
	<i>10-KSB</i>	12/31/02	03/31/03	Not filed	66
	<i>10-QSB</i>	03/31/03	05/15/03	Not filed	64
	<i>10-QSB</i>	06/30/03	08/14/03	Not filed	61
	<i>10-QSB</i>	09/30/03	11/14/03	Not filed	58
	<i>10-KSB</i>	12/31/03	03/30/04	Not filed	54
	<i>10-QSB</i>	03/31/04	05/17/04	Not filed	52
	<i>10-QSB</i>	06/30/04	08/16/04	Not filed	49
	<i>10-QSB</i>	09/30/04	11/15/04	Not filed	46
	<i>10-KSB</i>	12/31/04	03/31/05	Not filed	42
	<i>10-QSB</i>	03/31/05	05/16/05	Not filed	40
	<i>10-QSB</i>	06/30/05	08/15/05	Not filed	37

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Bellatrix International, Inc.	10-QSB	09/30/05	11/14/05	Not filed	34
(continued)	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent		50			

Belmont Resource, Inc.

20-F	01/31/02	07/31/02	Not filed	74
20-F	01/31/03	07/31/03	Not filed	62
20-F	01/31/04	08/02/04	Not filed	49
20-F	01/31/05	08/01/05	Not filed	37
20-F	01/31/06	07/31/06	Not filed	26
20-F	01/31/07	07/31/07	Not filed	14
20-F	01/31/08	07/31/08	Not filed	2

Total Filings Delinquent 7

Beres Industries, Inc.

10-KSB	03/31/03	06/30/03	Not filed	63
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-QSB	12/31/03	02/17/04	Not filed	55
10-KSB	03/31/04	06/29/04	Not filed	51
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-QSB	12/31/04	02/14/05	Not filed	43
10-KSB	03/31/05	06/29/05	Not filed	39
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-QSB	12/31/05	02/14/06	Not filed	31

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Beres Industries, Inc.	<i>10-KSB</i>	03/31/06	06/29/06	Not filed	27
<i>(continued)</i>	<i>10-QSB</i>	06/30/06	08/14/06	Not filed	25
	<i>10-QSB</i>	09/30/06	11/14/06	Not filed	22
	<i>10-QSB</i>	12/31/06	02/14/07	Not filed	19
	<i>10-KSB</i>	03/31/07	06/29/07	Not filed	15
	<i>10-QSB</i>	06/30/07	08/14/07	Not filed	13
	<i>10-QSB</i>	09/30/07	11/14/07	Not filed	10
	<i>10-QSB</i>	12/31/07	02/14/08	Not filed	7
	<i>10-KSB</i>	03/31/08	06/30/08	Not filed	3
	<i>10-Q¹</i>	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent 22

Best Products Co., Inc.

<i>10-K</i>	02/01/97	5/2/97	Not filed	136
<i>10-Q</i>	05/03/97	6/17/97	Not filed	135
<i>10-Q</i>	08/02/97	9/16/97	Not filed	132
<i>10-Q</i>	11/01/97	12/16/97	Not filed	129
<i>10-K</i>	01/31/98	5/1/98	Not filed	124
<i>10-Q</i>	05/02/98	6/16/98	Not filed	123
<i>10-Q</i>	08/01/98	9/15/98	Not filed	120
<i>10-Q</i>	10/31/98	12/15/98	Not filed	117
<i>10-K</i>	01/30/99	4/30/99	Not filed	113
<i>10-Q</i>	05/01/99	6/15/99	Not filed	111
<i>10-Q</i>	07/31/99	9/14/99	Not filed	108
<i>10-Q</i>	10/30/99	12/14/99	Not filed	105
<i>10-K</i>	01/29/00	4/28/00	Not filed	101
<i>10-Q</i>	04/29/00	6/13/00	Not filed	99
<i>10-Q</i>	07/29/00	9/12/00	Not filed	96
<i>10-Q</i>	10/28/00	12/12/00	Not filed	93
<i>10-K</i>	02/03/01	5/4/01	Not filed	88
<i>10-Q</i>	05/05/01	6/19/01	Not filed	87
<i>10-Q</i>	08/04/01	9/18/01	Not filed	84
<i>10-Q</i>	11/03/01	12/18/01	Not filed	81
<i>10-K</i>	02/02/02	5/3/02	Not filed	76
<i>10-Q</i>	05/04/02	6/18/02	Not filed	75
<i>10-Q</i>	08/03/02	9/17/02	Not filed	72
<i>10-Q</i>	11/02/02	12/17/02	Not filed	69
<i>10-K</i>	02/01/03	5/2/03	Not filed	64

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Best Products Co., Inc. (continued)	10-Q	05/03/03	6/17/03	Not filed	63
	10-Q	08/02/03	9/16/03	Not filed	60
	10-Q	11/01/03	12/16/03	Not filed	57
	10-K	01/31/04	4/30/04	Not filed	53
	10-Q	05/01/04	6/15/04	Not filed	51
	10-Q	07/31/04	9/14/04	Not filed	48
	10-Q	10/30/04	12/14/04	Not filed	45
	10-K	01/29/05	4/29/05	Not filed	41
	10-Q	04/30/05	6/14/05	Not filed	39
	10-Q	07/30/05	9/13/05	Not filed	36
	10-Q	10/29/05	12/13/05	Not filed	33
	10-K	01/28/06	4/28/06	Not filed	29
	10-Q	04/29/06	6/13/06	Not filed	27
	10-Q	07/29/06	9/12/06	Not filed	24
	10-Q	10/28/06	12/12/06	Not filed	21
	10-K	02/03/07	5/4/07	Not filed	16
	10-Q	05/05/07	6/19/07	Not filed	15
	10-Q	08/04/07	9/18/07	Not filed	12
	10-Q	11/03/07	12/18/07	Not filed	9
	10-K	02/02/08	5/2/08	Not filed	4
	10-Q	05/03/08	6/17/08	Not filed	3

Total Filings Delinquent

46

Bethlehem Corp.

10-KSB	05/31/01	08/29/01	Not filed	85
10-QSB	08/31/01	10/15/01	Not filed	83
10-QSB	11/30/01	01/14/02	Not filed	80
10-QSB	02/28/02	04/15/02	Not filed	77
10-KSB	05/31/02	08/29/02	Not filed	73
10-QSB	08/31/02	10/15/02	Not filed	71
10-QSB	11/30/02	01/14/03	Not filed	68
10-QSB	02/28/03	04/14/03	Not filed	65
10-KSB	05/31/03	08/29/03	Not filed	61
10-QSB	08/31/03	10/15/03	Not filed	59
10-QSB	11/30/03	01/14/04	Not filed	56
10-QSB	02/28/04	04/13/04	Not filed	53
10-KSB	05/31/04	08/30/04	Not filed	49
10-QSB	08/31/04	10/15/04	Not filed	47

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Bethlehem Corp. (continued)	10-QSB	11/30/04	01/14/05	Not filed	44
	10-QSB	2/28/05	04/14/05	Not filed	41
	10-KSB	5/31/05	08/29/05	Not filed	37
	10-QSB	08/31/05	10/17/05	Not filed	35
	10-QSB	11/30/05	01/17/06	Not filed	32
	10-QSB	2/28/06	04/14/06	Not filed	29
	10-KSB	5/31/06	08/29/06	Not filed	25
	10-QSB	08/31/06	10/16/06	Not filed	23
	10-QSB	11/30/06	01/16/07	Not filed	20
	10-QSB	2/28/07	04/16/07	Not filed	17
	10-KSB	5/31/07	08/29/07	Not filed	13
	10-QSB	08/31/07	10/15/07	Not filed	11
	10-QSB	11/30/07	01/14/08	Not filed	8
	10-QSB	2/28/08	04/14/08	Not filed	5
	10-KSB	5/31/08	08/29/08	Not filed	1

Total Filings Delinquent 29

**Bogue Electric
Manufacturing Co. (n/k/a
Bogue International, Inc.)**

10-K	12/31/98	03/31/99	Not filed	114
10-Q	03/31/99	05/17/99	Not filed	112
10-Q	06/30/99	08/16/99	Not filed	109
10-Q	09/30/99	11/15/99	Not filed	106
10-K	12/31/99	03/30/00	Not filed	102
10-Q	03/31/00	05/15/00	Not filed	100
10-Q	06/30/00	08/14/00	Not filed	97
10-Q	09/30/00	11/14/00	Not filed	94
10-K	12/31/00	04/02/01	Not filed	89
10-Q	03/31/01	05/15/01	Not filed	88
10-Q	06/30/01	08/14/01	Not filed	85
10-Q	09/30/01	11/14/01	Not filed	82
10-K	12/31/02	03/31/03	Not filed	66
10-Q	03/31/03	05/15/03	Not filed	64
10-Q	06/30/03	08/14/03	Not filed	61
10-Q	09/30/03	11/14/03	Not filed	58
10-K	12/31/03	03/30/04	Not filed	54
10-Q	03/31/04	05/17/04	Not filed	52

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Bogue Electric Manufacturing Co. (n/k/a Bogue International, Inc.) (continued)	10-Q	06/30/04	08/16/04	Not filed	49
	10-Q	09/30/04	11/15/04	Not filed	46
	10-K	12/31/04	03/31/05	Not filed	42
	10-Q	03/31/05	05/16/05	Not filed	40
	10-Q	06/30/05	08/15/05	Not filed	37
	10-Q	09/30/05	11/14/05	Not filed	34
	10-K	12/31/05	03/31/06	Not filed	30
	10-Q	03/31/06	05/15/06	Not filed	28
	10-Q	06/30/06	08/14/06	Not filed	25
	10-Q	09/30/06	11/14/06	Not filed	22
	10-K	12/31/06	04/02/07	Not filed	17
	10-Q	03/31/07	05/15/07	Not filed	16
	10-Q	06/30/07	08/14/07	Not filed	13
	10-Q	09/30/07	11/14/07	Not filed	10
	10-K	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent		35			

¹Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

*Chairman Cox and
Commissioner Waffler
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58548 / September 15, 2008

INVESTMENT ADVISERS ACT OF 1940
Release No. 2777 / September 15, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13197

In the Matter of

Moon Capital Management, LP,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE AND
CEASE-AND-DESIST
PROCEEDINGS, MAKING
FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER
PURSUANT TO SECTION 21C
OF THE SECURITIES
EXCHANGE ACT OF 1934 AND
SECTION 203(e) OF THE
INVESTMENT ADVISERS ACT
OF 1940**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(e) of the Investment Advisers Act of 1940 ("Advisers Act") against Moon Capital Management, LP ("Moon Capital" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 and Section 203(e) of the Investment Advisers Act of 1940 ("Advisers Act") ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

1. In connection with a follow-on offering conducted after the market close on May 10, 2005, Moon Capital, on behalf of one of the hedge funds it advises (the "Hedge Fund"), sold securities short during the five business days before the pricing of the offering and then covered the short positions with securities purchased in the offering ("offering shares"). These transactions violated Rule 105 of Regulation M, and resulted in the Hedge Fund earning a profit of \$88,100.

Respondent

2. Moon Capital Management, LP, a Delaware limited partnership which has its headquarters and principal place of business in New York, New York, is an unregistered investment adviser to two private investment funds.

Background

3. At the time of the conduct, Rule 105 of Regulation M, "Short Selling in Connection with a Public Offering," prohibited covering a short sale with securities obtained in a public offering if the short sale occurred within the Rule 105 restricted period, which is the shorter of (1) the period five business days before pricing and ending with pricing or (2) the period beginning with the initial filing of the registration statement or notification on Form 1-A and ending with pricing (the "Rule 105 restricted period"). In pertinent part, Rule 105 provided:

In connection with an offering of securities for cash pursuant to a registration statement... filed under the Securities Act, it shall be unlawful for any persons to cover a short sale with offered securities purchased from an underwriter or broker or dealer participating in the offering, if such short sale occurred during the... period beginning five business days before the pricing of the offered securities and ending with such pricing....

17 C.F.R. § 242.105. "The goal of Rule 105 is to promote offering prices that are based upon open market prices determined by supply and demand rather than artificial forces." Final Rule: Short Sales, Exchange Act Release No. 50103, 2004 WL 1697019, at *19 (July 28, 2004). Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent in effecting the short sale. Interpretative guidance by the Commission provides that a transaction violates Rule 105 despite contemporaneous market purchases and sales of the offered security "where the transaction is structured such that there is no legitimate economic purpose or substance to the contemporaneous purchase and sale, no genuine change in beneficial ownership, and/or little or no market risk..." Short Sales, Exchange Act Release No. 50103 (September 7, 2004). In an

example of such a "sham" transaction, "a trader effects pre-pricing short sales during the Rule 105 restricted period, receives offering shares, sells the offering shares into the open market, and then contemporaneously or nearly contemporaneously purchases an equivalent number of the same class of shares as the offering shares, which are then used to cover the short sales." *Id.*

4. Following the market close on May 10, 2005, shares of Satyam Computer Services Ltd. (NYSE: SAY) American Depositary Shares ("ADSs") were offered on a follow-on basis at \$21.50 per ADS. Prior to the market close on that day, Moon Capital, on behalf of the Hedge Fund, sold short 95,000 Satyam ADSs at \$22.20 and another 25,000 ADS at \$22.38 within the Rule 105 restricted period. Then, on May 11, 2005, Moon Capital, again on behalf of the Hedge Fund, purchased 150,000 ADSs at \$21.50 per ADS in the offering. After purchasing these offering ADSs, Moon Capital, on behalf of the Hedge Fund, entered orders to sell 150,000 Satyam ADSs into the market, while almost contemporaneously entering orders through two separate broker-dealers to purchase 120,000 ADSs. These purchases and sales of Satyam ADSs resulted in Moon Capital no longer holding any offering ADSs and covering the short position of 120,000 created during the Rule 105 restricted period. Moon Capital made a profit of \$88,100 for the Hedge Fund from these trades.

5. As a result of the conduct described above, Moon Capital willfully¹ violated Rule 105 of Regulation M, which makes it "unlawful for any person to cover a short sale with offered securities purchased from an underwriter or broker or dealer participating in an offering, if such short sale occurred during the . . . period beginning five business days before the pricing of the offered securities and ending with such pricing."

Moon Capital's Remedial Efforts

6. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Moon Capital's Offer.

Accordingly, pursuant to Section 21C of the Exchange Act and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

¹ A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

A. Respondent Moon Capital cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M.

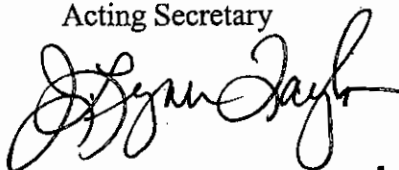
B. Respondent Moon Capital is censured.

C. Respondent shall, within 15 days of the entry of this Order, pay disgorgement of \$88,100, prejudgment interest in the amount of \$20,971.67, and a civil money penalty of \$30,000 to the United States Treasury. Such payment shall be: (1) made by United States postal money order, certified check, bank cashier's check or bank money order; (2) made payable to the Securities and Exchange Commission; (3) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (4) submitted under cover letter that identifies Moon Capital as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Stephen E. Donahue, Assistant Regional Director, Division of Enforcement, Securities and Exchange Commission, 3475 Lenox Road, Suite 500, Atlanta, GA 30326.

D. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as Penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that it shall not, after offset or reduction in any Related Investor Action based upon Respondent's payment of disgorgement in this action, argue that it is entitled to, nor shall it further benefit by offset or reduction of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For the purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Florence E. Harmon
Acting Secretary



By: J. Lynn Taylor
Assistant Secretary

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2776 / September 15, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13195

In the Matter of

MARK J.P. BOUCHER,

Respondent.

CORRECTED ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Mark J.P. Boucher ("Respondent" or "Boucher").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that

1. Boucher is the sole proprietor of Investment Research Associates ("IRA") and the beneficial owner of two Bahamian companies, Midas Resource Group ("MRG") and Midas Capital Management ("MCM"). Neither Boucher nor his entities have ever registered with the Commission as investment advisers, but, through these entities, Boucher has provided investment advice to clients for compensation from at least the mid-1990's to the present. Boucher, 46 years old, is a resident of Portola Valley, California.

2. On September 4, 2008, a final judgment was entered by consent against Boucher, permanently enjoining him from future violations of Sections 17(a) and 17(b) 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, in the civil action entitled Securities and Exchange Commission v. Mark J.P. Boucher et al., Civil Action Number C 08-4088 MEJ, in the United States District Court for the Northern District of California.

3. The Commission's complaint alleges that, in connection with the sale of unsecured promissory notes, Boucher made false and misleading statements to, or omitted material information from, his advisory clients and other investors. Among other things, the complaint alleges that Boucher told clients and other investors that their funds were invested in notes secured by collateral when, in fact, the notes were unsecured; omitted to tell his advisory clients and other investors material information about the safety and security of their investments; and otherwise engaged in a variety of conduct which operated as a fraud and deceit on his advisory clients and other investors.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Boucher's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 203(f) of the Advisers Act, that Respondent Boucher be, and hereby is barred from association with any investment adviser, with the right to reapply for association after five years to the appropriate self-regulatory organization, or if there is none, to the Commission.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served

as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

A handwritten signature in cursive script, appearing to read "Florence E. Harmon".

Florence E. Harmon
Acting Secretary

*Chairman Cox
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58544 / September 15, 2008

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2878 / September 15, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13194

In the Matter of

Mark A. Peterson (CPA),

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST
PROCEEDINGS PURSUANT TO SECTION
21C OF THE SECURITIES EXCHANGE ACT
OF 1934, MAKING FINDINGS, AND
IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Mark A. Peterson ("Peterson" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

1. Peterson, age 44, of Kansas City, Missouri, was vice president of accounting and finance at American Italian Pasta Company ("AIPC") from October 2000 until June 2004, when he resigned from the company. Peterson reported directly to AIPC's chief financial officer. Many of Peterson's duties related to budgeting and forecasting, but he also oversaw AIPC's corporate accounting department which, along with other departments of the company, had responsibilities with respect to AIPC's internal controls. Peterson was licensed as a CPA in Missouri, but his license lapsed in 2000.

2. AIPC is a Delaware corporation with its principal place of business in Kansas City, Missouri. The company produces and markets dry pasta. At all relevant times, AIPC's common stock was registered pursuant to Section 12(b) of the Exchange Act. The company filed annual, quarterly, and current reports with the Commission on Forms 10-K, 10-Q, and 8-K, respectively. AIPC stock was traded on the New York Stock Exchange ("NYSE") until December 20, 2006, when the NYSE suspended trading based on AIPC's failure to keep current its Commission filings. On April 23, 2007, the NYSE filed a Form 25 with the Commission and, as a result, AIPC's common stock was deregistered from Section 12(b) effective April 23, 2007.

3. During its fiscal years ended September 27, 2002 and October 3, 2003, and the first and second quarters of its fiscal year ended October 1, 2004, AIPC inflated its reported income and earnings per share ("EPS") through a scheme orchestrated by senior executives above Peterson's level in AIPC's corporate hierarchy. Peterson failed to take actions to ensure that AIPC's accounting complied with generally accepted accounting principles ("GAAP").

4. From AIPC's fiscal year 2002 through the second quarter of fiscal 2004, senior AIPC executives above Peterson emphasized that the company had consistently met EPS targets and predicted AIPC would continue to generate exceptional income and EPS growth. During this time period, however, AIPC failed to achieve its income and EPS growth targets. In response, the senior executives engaged in a variety of fraudulent accounting manipulations to increase AIPC's reported income and EPS.

5. As a result, in its quarterly and annual financial statements for its 2002 and 2003 fiscal years, and for the first and second quarters of its 2004 fiscal year, AIPC reported materially misstated income and EPS. AIPC included these misleading financial results in Forms 10-K and 10-Q filed with the Commission, and in earnings releases attached to Forms 8-K filed with the Commission. In October 2005, AIPC announced that it would restate financial results for these periods, and in June 2008 AIPC filed the restated results with the Commission.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

6. Peterson knew or should have known that certain of AIPC's accounting was contrary to GAAP including in the following areas: (a) the capitalization of internal pasta manufacturing costs to long-lived manufacturing assets; (b) the capitalization of internal management information systems ("MIS") labor costs to long-lived information technology assets; (c) the use of an acquisition reserve to reduce AIPC's cost of goods sold; (d) the failure to write off a receivable related to a claim against a supplier; (e) the failure to write down overstated wheat inventory; (f) the improper recognition of revenue related to AIPC supply agreements; (g) the improper elimination of a compensated absences liability; and (h) the failure to recognize expenses related to the company's production of pasta for an AIPC customer.

7. During its 2002 and 2003 fiscal years, and the first and second quarters of its 2004 fiscal year, AIPC capitalized more than \$10 million of internal pasta manufacturing costs to long-lived manufacturing assets contrary to GAAP. AIPC recorded capitalization of internal costs to manufacturing assets based on monthly instructions from AIPC's operations department which did not report directly or indirectly to Peterson. Peterson, however, attended meetings at which senior AIPC executives above him frequently agreed to increase the capitalization of internal costs to manufacturing assets based on rationales that Peterson knew or should have known were questionable or insufficient. Peterson also knew or should have known (a) that the additional capitalization was part of an effort by the senior AIPC executives to ensure that the company would meet EPS targets, and (b) that the operations department generally instructed that the additional capitalization should be booked even if it could not be adequately justified. Peterson failed to implement accounting controls designed to prevent and generally failed to otherwise prevent AIPC from booking capitalization based on such instructions. Peterson expressed concerns about the level of internal cost capitalization to manufacturing assets to the senior AIPC executives that directed or otherwise were aware of the additional capitalization, but he failed to express similar concerns to AIPC's audit committee or to AIPC's independent auditors.

8. During its 2002 and 2003 fiscal years, and the first and second quarters of its 2004 fiscal year, AIPC improperly capitalized approximately \$1.4 million of internal MIS labor costs. AIPC did not calculate capitalized internal MIS labor based on specific tasks, time, and compensation rates. Rather, AIPC's budgeted capitalized internal MIS labor was, in general, simply a percentage of total budgeted MIS labor, and the company generally booked capitalization based on its budget. AIPC's MIS department did not report, directly or indirectly, to Peterson. Peterson, however, was informed in fiscal 2004 that capitalized MIS labor was excessive. While Peterson expressed concerns to senior management regarding the level of capitalization, he failed to take action to prevent or implement accounting controls designed to prevent AIPC from capitalizing excessive amounts of MIS labor.

9. During its 2003 fiscal year, AIPC acquired another pasta company and used a \$500,000 acquisition reserve to improperly reduce its cost of goods sold. AIPC closed the acquisition and booked the reserve at the beginning of fiscal year 2003. AIPC then budgeted for the reserve to be amortized ratably during the fiscal year such that AIPC's cost of goods sold would be reduced by \$125,000 per quarter. Peterson calculated the \$500,000 reserve based on an estimate of the excess price AIPC expected to pay for additional wheat it would use during the

fiscal year as a result of the acquisition. Although the actual wheat prices AIPC paid were substantially lower than estimated, Peterson and others permitted the reserve to be amortized as budgeted instead of adjusting the reserve to reflect AIPC's actual wheat costs as required by GAAP.

10. During the first quarter of its 2004 fiscal year, AIPC failed improperly to write-off a receivable in the amount of \$332,000. AIPC had booked a \$632,000 receivable based on a lawsuit filed by the company alleging that a supplier sold defective packaging materials to AIPC. The parties reached a settlement under which the supplier paid \$300,000 in cash to AIPC and provided AIPC the right to make future purchases of packaging materials from the supplier at a discount. AIPC maintained improperly \$332,000 of the receivable on its books based on the right to make discounted purchases. During the closing process for the first quarter of its 2004 fiscal year, Peterson knew or should have known that AIPC had determined not to purchase additional packaging materials from the supplier. AIPC amortized the receivable, but Peterson and others knew or should have known that the company was required by GAAP to write-off the receivable immediately.

11. In fiscal year 2003, AIPC paid less for durum wheat than was budgeted in its standard manufacturing costs, such that the company's fiscal year 2003 year-end inventory balance (which was valued at standard costs) was overstated by approximately \$1 million. Senior AIPC executives directed accounting personnel not to reduce the value of its fiscal year-end inventory to the lower actual cost, and thereby overstated pretax income, contrary to GAAP. Peterson prepared a summary schedule for senior AIPC executives that included this issue and Peterson knew or should have known it was contrary to GAAP.

12. During the third and fourth quarters of its 2002 fiscal year, AIPC managers determined that one of the company's customers might fail to purchase the minimum amount of pasta required under its supply agreement with AIPC. Under the supply agreement, if such a shortfall materialized, the customer would have had to pay AIPC, as a penalty for the shortfall, a higher price for its pasta purchases during fiscal year 2003. Based on the estimated price increase, AIPC improperly booked a total of approximately \$383,000 of revenue for the third and fourth quarters of fiscal year 2002 rather than defer the revenue to fiscal 2003. Peterson was informed of this accounting and knew or should have known that it was contrary to GAAP. During fiscal year 2003, another AIPC customer failed to purchase the minimum amount of pasta set forth in its supply agreement with AIPC and, as a result, agreed to a price increase to make up the shortfall, of up to \$320,000 on future purchases of pasta beginning in fiscal year 2004. AIPC improperly booked the \$320,000 as fiscal year 2003 revenue rather than fiscal year 2004 revenue. Peterson was informed of the price increase and knew or should have known that AIPC's accounting was contrary to GAAP.

13. For fiscal year 2004, AIPC budgeted the elimination of its \$670,000 compensated absences liability based on a plan to adopt a "use-or-lose" compensated absence policy that did not permit employees to carry over unused time-off from one year to the next. In the first quarter of 2004, AIPC eliminated the full amount of the liability and thereby reduced expenses by \$670,000. Instead of fully implementing the use-or-lose policy as budgeted, AIPC only modified the policy and permitted employees to carry over up to 40 hours of unused compensated absences into fiscal

2005, with no hours to be carried over beyond fiscal 2005. Peterson learned of the modification indicating that the "use-or-lose" policy was not implemented fully in fiscal 2004. Thus, Peterson knew or should have known that AIPC's accounting in fiscal 2004 was contrary to GAAP.

14. At the end of fiscal year 2003, AIPC negotiated an agreement to produce new low-carbohydrate pasta products for a customer. During the first quarter of fiscal year 2004, AIPC executives learned that the expenses in the plant where the new products were being manufactured were higher than the amounts that AIPC had budgeted. AIPC determined that the excess costs with respect to the new products related to research and development. Instead of recognizing the excess costs as a period expense, senior AIPC executives directed accounting personnel improperly to book a \$1 million receivable on the grounds that the customer would reimburse AIPC for the costs. Recording the \$1 million receivable was contrary to GAAP because the customer had not agreed to reimburse AIPC for research and development costs and never did so. Peterson reviewed an agreement between AIPC and the customer that stated the customer was not obligated to reimburse AIPC for research and development costs, and thus he knew or should have known that AIPC's accounting was contrary to GAAP.

15. Section 13(a) of the Exchange Act requires all issuers with securities registered under Section 12 of the Exchange Act to file periodic and other reports with the Commission containing such information as the Commission's rules prescribe. Pursuant to Section 13(a), the Commission promulgated Rules 13a-1, 13a-11 and 13a-13 that require issuers to file annual, current, and quarterly reports, respectively. The reporting requirements necessarily include the requirement that the issuer supply accurate information. In addition, Rule 12b-20 requires that reports contain such further material information as may be necessary to make the required statements, in light of the circumstances under which they were made, not misleading. As a result of the conduct described herein, Peterson was a cause of AIPC's violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder.

16. Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act require reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets, and to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles. As a result of the conduct described herein, Peterson was a cause of AIPC's violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

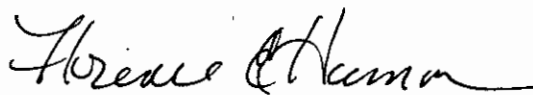
IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Peterson's Offer.

Accordingly, it is hereby ORDERED that:

Pursuant to Section 21C of the Exchange Act, Respondent Peterson cease and desist from causing any violations and any future 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 thereunder.

By the Commission.



Florence E. Harmon
Acting Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 16, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13198

In the Matter of

**Cabot Medical Corp.,
CacheStream Corp.,
Cadema Corp.,
Cannon Express, Inc.,
Capfilm, Inc.,
Capita Research Group, Inc.,
Capital Appreciation Plus LP I,
Capital Dome, Inc.,
and
Caredata.com, Inc.,**

Respondents.

**ORDER INSTITUTING
PROCEEDINGS AND NOTICE OF
HEARING PURSUANT TO
SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT OF
1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Cabot Medical Corp., CacheStream Corp., Cadema Corp., Cannon Express, Inc., Capfilm, Inc., Capita Research Group, Inc., Capital Appreciation Plus LP I, Capital Dome, Inc., and Caredata.com, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Cabot Medical Corp. (CIK No. 719073) is a New Jersey corporation located in Langhorne, Pennsylvania with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Cabot Medical is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q/A for the period ended April 29, 1995, which reported a net loss of \$64,000 for the prior three months.

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2. CacheStream Corp. (CIK No. 1110038) is a dissolved Colorado corporation located in Duluth, Georgia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). CacheStream is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2001, which reported a net loss of \$600 for the prior three months.

3. Cadema Corp. (CIK No. 318951) is a Delaware corporation located in Norwalk, Connecticut with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Cadema is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2002, which reported a net loss of \$22,469 for the prior nine months. As of September 15, 2008, the company's common stock (symbol "CIBM") was quoted on Pink OTC Markets, Inc. ("Pink Sheets"), had nine market makers and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3). The company's Convertible Preferred Series A 8% Cumulative Preferred stock (symbol "CIBMP") was quoted on the Pink Sheets, had three market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

4. Cannon Express, Inc. (CIK No. 801558) is a void Delaware corporation located in Springdale, Arkansas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Cannon Express is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 2003, which reported a net loss of over \$3 million for the prior three months. On December 9, 2003, Cannon Express filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Western District of Arkansas, and the case was closed on June 30, 2004. As of September 15, 2008, the company's common stock (symbol "CEXP") was traded on the over-the-counter markets.

5. Capfilm, Inc. (CIK No. 788845) is a Delaware corporation located in Lee, Massachusetts with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Capfilm is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB for the period ended December 31, 1993, which reported a net loss of \$512,986 for the year ended 1993. As of September 15, 2008, the company's common stock (symbol "CAPF") was traded on the over-the-counter markets.

6. Capita Research Group, Inc. (CIK No. 1059267) is a permanently revoked Nevada corporation located in Blue Bell, Pennsylvania with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Capita Research is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB for the period ended December 31, 2000, which reported a net loss of over \$2 million for the year ended 2000. As of September 15, 2008, the company's common stock (symbol "CEEG") was traded on the over-the-counter markets.

7. Capital Appreciation Plus LP I (CIK No. 832990) is a forfeited Delaware limited partnership located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Capital Appreciation is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 1996.

8. Capital Dome, Inc. (CIK No. 1160422) is a delinquent Colorado corporation located in Tulsa, Oklahoma with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Capital Dome is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended October 31, 2002, which reported a net loss of \$907 for the prior three months.

9. Caredata.com, Inc. (CIK No. 927456) is a forfeited Delaware corporation located in Atlanta, Georgia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Caredata.com is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2000, which reported a net loss of over \$6 million for the prior three months. On November 15, 2000, Caredata.com filed a Chapter 7 petition in the U.S. Bankruptcy Court for the Northern District of Georgia, and the case was closed on July 12, 2006. As of September 15, 2008, the company's common stock (symbol "CDCM") was quoted on the Pink Sheets, had three market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

10. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

11. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires issuers to file quarterly reports.

12. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified or Express Mail, or by other means permitted by the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

A handwritten signature in cursive script, appearing to read "Florence E. Harmon".

Florence E. Harmon
Acting Secretary

Attachment

Appendix 1

**Chart of Delinquent Filings
Cabot Medical Corp., et al.**

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
<i>Cabot Medical Corp.</i>					
	10-Q	07/29/95	09/12/95	Not filed	156
	10-K	10/28/95	01/26/96	Not filed	152
	10-Q	01/27/96	03/12/96	Not filed	150
	10-Q	04/27/96	06/11/96	Not filed	147
	10-Q	07/27/96	09/10/96	Not filed	144
	10-K	10/26/96	01/24/97	Not filed	140
	10-Q	01/25/97	03/11/97	Not filed	138
	10-Q	04/26/97	06/10/97	Not filed	135
	10-Q	07/26/97	09/09/97	Not filed	132
	10-K	10/25/97	01/23/98	Not filed	128
	10-Q	01/31/98	03/17/98	Not filed	126
	10-Q	04/25/98	06/09/98	Not filed	123
	10-Q	07/25/98	09/08/98	Not filed	120
	10-K	10/31/98	01/29/99	Not filed	116
	10-Q	01/30/99	03/16/99	Not filed	114
	10-Q	04/24/99	06/08/99	Not filed	111
	10-Q	07/31/99	09/14/99	Not filed	108
	10-K	10/30/99	01/28/00	Not filed	104
	10-Q	01/29/00	03/14/00	Not filed	102
	10-Q	04/29/00	06/13/00	Not filed	99
	10-Q	07/29/00	09/12/00	Not filed	96
	10-K	10/28/00	01/26/01	Not filed	92
	10-Q	01/27/01	03/13/01	Not filed	90
	10-Q	04/28/01	06/12/01	Not filed	87
	10-Q	07/28/01	09/11/01	Not filed	84
	10-K	10/27/01	01/25/02	Not filed	80
	10-Q	01/26/02	03/12/02	Not filed	78
	10-Q	04/27/02	06/11/02	Not filed	75
	10-Q	07/27/02	09/10/02	Not filed	72
	10-K	10/26/02	01/24/03	Not filed	68
	10-Q	01/25/03	03/11/03	Not filed	66
	10-Q	04/26/03	06/10/03	Not filed	63
	10-Q	07/26/03	09/09/03	Not filed	60
	10-K	10/25/03	01/23/04	Not filed	56
	10-Q	01/31/04	03/16/04	Not filed	54

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Cabot Medical Corp.					
	10-Q	04/24/04	06/08/04	Not filed	51
	10-Q	07/31/04	09/14/04	Not filed	48
	10-K	10/30/04	01/28/05	Not filed	44
	10-Q	01/29/05	03/15/05	Not filed	42
	10-Q	04/30/05	06/14/05	Not filed	39
	10-Q	07/30/05	09/13/05	Not filed	36
	10-K	10/29/05	01/27/06	Not filed	32
	10-Q	01/28/06	03/14/06	Not filed	30
	10-Q	04/29/06	06/13/06	Not filed	27
	10-Q	07/29/06	09/12/06	Not filed	24
	10-K	10/28/06	01/26/07	Not filed	20
	10-Q	01/27/07	03/13/07	Not filed	18
	10-Q	04/28/07	06/12/07	Not filed	15
	10-Q	07/28/07	09/11/07	Not filed	12
	10-K	10/27/07	01/25/08	Not filed	8
	10-Q	01/26/08	03/11/08	Not filed	6
	10-Q	04/26/08	06/10/08	Not filed	3
	10-Q	07/26/08	09/09/08	Not filed	0
Total Filings Delinquent	53				

CacheStream Corp.

10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
CacheStream Corp.					
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q*	03/31/08	05/15/08	Not filed	4
	10-Q*	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent **28**

Cadema Corp.

10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-KSB	12/31/07	03/31/08	Not filed	6

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Cadema Corp.					
	10-Q*	03/31/08	05/15/08	Not filed	4
	10-Q*	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent

23

Cannon Express, Inc.

10-K	06/30/03	9/29/03	Not filed	60
10-Q	09/30/03	11/14/03	Not filed	58
10-Q	12/31/03	2/17/04	Not filed	55
10-Q	03/31/04	5/17/04	Not filed	52
10-K	06/30/04	9/28/04	Not filed	48
10-Q	09/30/04	11/15/04	Not filed	46
10-Q	12/31/04	2/14/05	Not filed	43
10-Q	03/31/05	5/16/05	Not filed	40
10-K	06/30/05	9/28/05	Not filed	36
10-Q	09/30/05	11/14/05	Not filed	34
10-Q	12/31/05	2/14/06	Not filed	31
10-Q	03/31/06	5/15/06	Not filed	28
10-K	06/30/06	9/28/06	Not filed	24
10-Q	09/30/06	11/14/06	Not filed	22
10-Q	12/31/06	2/14/07	Not filed	19
10-Q	03/31/07	5/15/07	Not filed	16
10-K	06/30/07	9/28/07	Not filed	12
10-Q	09/30/07	11/14/07	Not filed	10
10-Q	12/31/07	2/14/08	Not filed	7
10-Q	03/31/08	5/15/08	Not filed	4

Total Filings Delinquent

20

Capfilm, Inc.

10-QSB	03/31/94	05/16/94	Not filed	172
10-QSB	06/30/94	08/15/94	Not filed	169
10-QSB	09/30/94	11/14/94	Not filed	166
10-KSB	12/31/94	03/31/95	Not filed	162
10-QSB	03/31/95	05/15/95	Not filed	160
10-QSB	06/30/95	08/14/95	Not filed	157
10-QSB	09/30/95	11/14/95	Not filed	154

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Capfilm, Inc.	10-KSB	12/31/95	04/01/96	Not filed	149
	10-QSB	03/31/96	05/15/96	Not filed	148
	10-QSB	06/30/96	08/14/96	Not filed	145
	10-QSB	09/30/96	11/14/96	Not filed	142
	10-KSB	12/31/96	03/31/97	Not filed	138
	10-QSB	03/31/97	05/15/97	Not filed	136
	10-QSB	06/30/97	08/14/97	Not filed	133
	10-QSB	09/30/97	11/14/97	Not filed	130
	10-KSB	12/31/97	03/31/98	Not filed	126
	10-QSB	03/31/98	05/15/98	Not filed	124
	10-QSB	06/30/98	08/14/98	Not filed	121
	10-QSB	09/30/98	11/16/98	Not filed	118
	10-KSB	12/31/98	03/31/99	Not filed	114
	10-QSB	03/31/99	05/17/99	Not filed	112
	10-QSB	06/30/99	08/16/99	Not filed	109
	10-QSB	09/30/99	11/15/99	Not filed	106
	10-KSB	12/31/99	03/30/00	Not filed	102
	10-QSB	03/31/00	05/15/00	Not filed	100
	10-QSB	06/30/00	08/14/00	Not filed	97
	10-QSB	09/30/00	11/14/00	Not filed	94
	10-KSB	12/31/00	04/02/01	Not filed	89
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-QSB	06/30/01	08/14/01	Not filed	85
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Capfilm, Inc.					
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q*	03/31/08	05/15/08	Not filed	4
	10-Q*	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent

58

**Capita Research
Group, Inc**

10-QSB	03/31/01	05/15/01	Not filed	88
10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Capita Research Group, Inc	<i>10-QSB</i>	09/30/05	11/14/05	Not filed	34
	<i>10-KSB</i>	12/31/05	03/31/06	Not filed	30
	<i>10-QSB</i>	03/31/06	05/15/06	Not filed	28
	<i>10-QSB</i>	06/30/06	08/14/06	Not filed	25
	<i>10-QSB</i>	09/30/06	11/14/06	Not filed	22
	<i>10-KSB</i>	12/31/06	04/02/07	Not filed	17
	<i>10-QSB</i>	03/31/07	05/15/07	Not filed	16
	<i>10-QSB</i>	06/30/07	08/14/07	Not filed	13
	<i>10-QSB</i>	09/30/07	11/14/07	Not filed	10
	<i>10-KSB</i>	12/31/07	03/31/08	Not filed	6
	<i>10-Q*</i>	03/31/08	05/15/08	Not filed	4
	<i>10-Q*</i>	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent **30**

Capital Appreciation Plus LP I

<i>10-K</i>	12/31/96	03/31/97	Not filed	138
<i>10-Q</i>	03/31/97	05/15/97	Not filed	136
<i>10-Q</i>	06/30/97	08/14/97	Not filed	133
<i>10-Q</i>	09/30/97	11/14/97	Not filed	130
<i>10-K</i>	12/31/97	03/31/98	Not filed	126
<i>10-Q</i>	03/31/98	05/15/98	Not filed	124
<i>10-Q</i>	06/30/98	08/14/98	Not filed	121
<i>10-Q</i>	09/30/98	11/16/98	Not filed	118
<i>10-K</i>	12/31/98	03/31/99	Not filed	114
<i>10-Q</i>	03/31/99	05/17/99	Not filed	112
<i>10-Q</i>	06/30/99	08/16/99	Not filed	109
<i>10-Q</i>	09/30/99	11/15/99	Not filed	106
<i>10-K</i>	12/31/99	03/30/00	Not filed	102
<i>10-Q</i>	03/31/00	05/15/00	Not filed	100
<i>10-Q</i>	06/30/00	08/14/00	Not filed	97
<i>10-Q</i>	09/30/00	11/14/00	Not filed	94
<i>10-K</i>	12/31/00	04/02/01	Not filed	89
<i>10-Q</i>	03/31/01	05/15/01	Not filed	88
<i>10-Q</i>	06/30/01	08/14/01	Not filed	85

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Capital Appreciation Plus LP I					

10-Q	09/30/01	11/14/01	Not filed	82
10-K	12/31/01	04/01/02	Not filed	77
10-Q	03/31/02	05/15/02	Not filed	76
10-Q	06/30/02	08/14/02	Not filed	73
10-Q	09/30/02	11/14/02	Not filed	70
10-K	12/31/02	03/31/03	Not filed	66
10-Q	03/31/03	05/15/03	Not filed	64
10-Q	06/30/03	08/14/03	Not filed	61
10-Q	09/30/03	11/14/03	Not filed	58
10-K	12/31/03	03/30/04	Not filed	54
10-Q	03/31/04	05/17/04	Not filed	52
10-Q	06/30/04	08/16/04	Not filed	49
10-Q	09/30/04	11/15/04	Not filed	46
10-K	12/31/04	03/31/05	Not filed	42
10-Q	03/31/05	05/16/05	Not filed	40
10-Q	06/30/05	08/15/05	Not filed	37
10-Q	09/30/05	11/14/05	Not filed	34
10-K	12/31/05	03/31/06	Not filed	30
10-Q	03/31/06	05/15/06	Not filed	28
10-Q	06/30/06	08/14/06	Not filed	25
10-Q	09/30/06	11/14/06	Not filed	22
10-K	12/31/06	04/02/07	Not filed	17
10-Q	03/31/07	05/15/07	Not filed	16
10-Q	06/30/07	08/14/07	Not filed	13
10-Q	09/30/07	11/14/07	Not filed	10
10-K	12/31/07	03/31/08	Not filed	6
10-Q	03/31/08	05/15/08	Not filed	4
10-Q	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent **47**

Capital Dome, Inc.

10-QSB	01/31/03	03/17/03	Not filed	66
10-KSB	04/30/03	07/29/03	Not filed	62
10-QSB	07/31/03	09/15/03	Not filed	60
10-QSB	10/31/03	12/15/03	Not filed	57

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Capital Dome, Inc.					
	10-QSB	01/31/04	03/16/04	Not filed	54
	10-KSB	04/30/04	07/29/04	Not filed	50
	10-QSB	07/31/04	09/14/04	Not filed	48
	10-QSB	10/31/04	12/15/04	Not filed	45
	10-QSB	01/31/05	03/17/05	Not filed	42
	10-KSB	04/30/05	07/29/05	Not filed	38
	10-QSB	07/31/05	09/14/05	Not filed	36
	10-QSB	10/31/05	12/15/05	Not filed	33
	10-QSB	01/31/06	03/17/06	Not filed	30
	10-KSB	04/30/06	07/31/06	Not filed	26
	10-QSB	07/31/06	09/14/06	Not filed	24
	10-QSB	10/31/06	12/15/06	Not filed	21
	10-QSB	01/31/07	03/19/07	Not filed	18
	10-KSB	04/30/07	07/30/07	Not filed	14
	10-QSB	07/31/07	09/14/07	Not filed	12
	10-QSB	10/31/07	12/17/07	Not filed	9
	10-QSB	01/31/08	03/17/08	Not filed	6
	10-K*	04/30/08	07/29/08	Not filed	2

Total Filings Delinquent 22

Caredata.com, Inc.

10-K	12/31/00	04/02/01	Not filed	89
10-Q	03/31/01	05/15/01	Not filed	88
10-Q	06/30/01	08/14/01	Not filed	85
10-Q	09/30/01	11/14/01	Not filed	82
10-K	12/31/01	04/01/02	Not filed	77
10-Q	03/31/02	05/15/02	Not filed	76
10-Q	06/30/02	08/14/02	Not filed	73
10-Q	09/30/02	11/14/02	Not filed	70
10-K	12/31/02	03/31/03	Not filed	66
10-Q	03/31/03	05/15/03	Not filed	64
10-Q	06/30/03	08/14/03	Not filed	61
10-Q	09/30/03	11/14/03	Not filed	58
10-K	12/31/03	03/30/04	Not filed	54
10-Q	03/31/04	05/17/04	Not filed	52
10-Q	06/30/04	08/16/04	Not filed	49
10-Q	09/30/04	11/15/04	Not filed	46

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Caredata.com, Inc.					
	10-K	12/31/04	03/31/05	Not filed	42
	10-Q	03/31/05	05/16/05	Not filed	40
	10-Q	06/30/05	08/15/05	Not filed	37
	10-Q	09/30/05	11/14/05	Not filed	34
	10-K	12/31/05	03/31/06	Not filed	30
	10-Q	03/31/06	05/15/06	Not filed	28
	10-Q	06/30/06	08/14/06	Not filed	25
	10-Q	09/30/06	11/14/06	Not filed	22
	10-K	12/31/06	04/02/07	Not filed	17
	10-Q	03/31/07	05/15/07	Not filed	16
	10-Q	06/30/07	08/14/07	Not filed	13
	10-Q	09/30/07	11/14/07	Not filed	10
	10-K	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent 31

*Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

*Chairman Cox and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 16, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13199

In the Matter of

CORNERSTONE CAPITAL
MANAGEMENT, INC. and
LAURA JEAN KENT,

Respondents.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTIONS 203(e), 203(f), AND 203(k) OF
THE INVESTMENT ADVISERS ACT OF
1940 AND SECTION 9(b) OF THE
INVESTMENT COMPANY ACT OF 1940
AND NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e), 203(f), and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") and Section 9(b) of the Investment Company Act of 1940 ("Company Act") against Cornerstone Capital Management, Inc. ("Cornerstone Capital") and Laura Jean Kent ("Kent") (together, "Respondents").

II.

After an investigation, the Division of Enforcement alleges that:

A. NATURE OF PROCEEDINGS

1. From 1997 to 2004, respondent Laura Kent and her investment advisory firm, respondent Cornerstone Capital, invested approximately \$15 million of client funds in five investments, each of which produced disastrous results for their clients. Four of the five investments bore the hallmarks of classic Ponzi or prime bank schemes, and the promoters of those schemes were subsequently convicted of fraud charges. Regardless of whether Respondents knew of the fraudulent nature of these investments at the outset, over time Respondents became aware of substantial evidence demonstrating that the value of the investments was severely impaired.

2. Despite this knowledge, Respondents have continued to issue periodic client account statements in which they list the "market price" and "total market value" of these

investments as remaining unchanged from their original cost. Respondents also have made numerous material misrepresentations and omissions about the status of the investments, including the fact that some of the promoters were convicted of fraud. Respondents knew, or were reckless or negligent in not knowing, that the values of the investments had been impaired, yet they have continued to charge a 1%-assets-under-management fee based on the initial cost of the failed investments, collecting at least \$547,035 in illegitimate fees between 2003 and 2007.

3. By failing to properly value impaired investments, and by misrepresenting and failing to disclose material facts about the investments, Respondents have violated the antifraud provisions of Sections 206(1) and 206(2) of the Advisers Act.

B. RESPONDENTS AND OTHER RELEVANT ENTITIES

Respondents

4. Cornerstone Capital is a California corporation providing investment advisory services to individual clients and three pooled investment vehicles. Cornerstone Capital registered with the Commission on July 3, 1996 and with California on July 10, 1996. Cornerstone Capital withdrew its Commission registration on July 18, 1997, and re-registered on May 31, 2006, after its purported assets under management surpassed \$25 million. Today, Cornerstone Capital claims to have nearly \$34 million in assets under management. It provides direct, personal advice to clients, who are invested in a combination of domestic and foreign stocks, bonds, and mutual funds, REITs, futures, commodities, and cash, as well as the pooled investment vehicles managed by Kent and Cornerstone Capital described below.

5. Kent, 59, owns and is president of Cornerstone Capital. She resides in Redwood City, California. Kent graduated from Wayne State University with a Masters in Economics and obtained an MBA from Stanford University. She holds Series 3, 7, 24, 63, and 65 securities licenses. From 1983 to 1994, she was a registered representative with the broker-dealer Kidder Peabody. Between 1994 and 1996, she was a registered representative of Cornerstone Investments, a branch of a Bay Area-based broker-dealer, Investment Architects. She founded Cornerstone Capital in 1996. In 2000, Washington state securities regulators sued Kent and Cornerstone Capital, alleging they misrepresented themselves as a Commission-registered investment adviser and defrauded clients by offering and selling fictitious securities. The state alleged that Kent offered clients investments in a fraudulent prime bank scheme. In 2004, without admitting or denying the allegations, Kent and the firm settled the Washington state proceeding, agreeing to cease and desist from violating state antifraud provisions and acting as an unregistered securities broker.

Other Relevant Entities

6. Cornerstone Investment Circle, LLC ("CIC") is a Wyoming limited liability company formed by Kent in August 1996. Respondents use CIC as a vehicle for Cornerstone Capital clients to invest in certain alternative private investments. Since 2004, CIC has been

invested in two "programs" (as Kent calls them) described in detail below – the Precious Metals and Mining Program and the Promissory Note Program.

7. Cornerstone Investment Circle I & II, L.P. ("the Partnerships") are Delaware limited partnerships formed in April 2004. They began operations in July 2004 as vehicles for Cornerstone Capital clients to invest in certain alternative private investments. The Partnerships are invested in a number of programs described below, including the Costa Rican Currency Exchange Program, the Indemnity Bond Bridge Program, and the Cogeneration Project Financing Program.

8. Cornerstone Management Company, LLC ("Cornerstone Management") is a Delaware limited liability company controlled by Kent and is the general partner of the Partnerships. Cornerstone Management formed in July 2004 with Cornerstone Capital as the managing member.

C. FACTS

Background

9. In 1996, Kent formed Cornerstone Capital and registered it as an investment adviser in California. Soon afterwards, she established a limited liability company, CIC, for the purpose of investing clients in alternative private investments. Only Cornerstone Capital clients were eligible to become members of CIC. Thus, Cornerstone Capital has a direct client relationship with all investors in CIC.

10. The Investment Advisory Agreement between Cornerstone Capital and each client states that "[f]ees for Investment Management are computed as a percentage of assets under management at the rate of 1% annualized, subject to the minimum fee." Each Cornerstone Capital client receives a quarterly account statement that summarizes the performance of that client's portfolio for that quarter, lists the client's total assets under management, identifies the "market price" and "total market value" of each investment, and calculates a rate of return from the initial investment. In the quarterly account statements, Cornerstone Capital provides "market price" and "total market value" for all investments, regardless of whether the investment is a publicly traded stock or bond or an illiquid security, such as interests in CIC and the Partnerships.

11. Around June 30, 2004, Respondents reorganized CIC. Respondents formed the Partnerships and transferred to the Partnerships all investments but the Promissory Note Program and the Precious Metals and Mining Program, both of which remained as portfolio investments in CIC. Only Cornerstone Capital clients were eligible to become limited partners of the Partnerships. Thus, as with CIC members, Cornerstone Capital has a direct client relationship with all Partnership investors.

Respondents Failed, and Continue to Fail, to Properly Value Investments That Have Been Impaired.

12. As described above, from 1997 to 2004 Respondents placed more than \$15 million in client funds into five investments, the values of which have become impaired. Respondents knew, or were reckless or negligent in not knowing, that the value of the investments had been impaired. Despite this, Respondents have continued to issue client account statements that list the market value of these investments at the original cost, and have misrepresented and omitted other material information about the status of the investments. Through this misconduct, Respondents have obtained hundreds of thousands of dollars from clients in improper fees. The five impaired investment programs are described below.

The Costa Rican Currency Exchange Program.

13. In 1999, CIC, on Respondents' advice, started the Costa Rican Currency Exchange Program. The program consisted of debt and equity investments in the foreign currency exchange business of two Costa Rican brothers. Debt investors were to receive monthly interest payments, while equity investors were to have their monthly returns reinvested in the program. The investments allegedly provided working capital for the currency exchange and for other businesses of the brothers. By mid-2002, Respondents had invested nearly \$7.7 million in funds from a total of 70 clients in the program.

14. In July 2002, Costa Rican authorities raided the currency exchange business, seized all of its assets, and froze its bank accounts totaling \$7 million dollars (out of an estimated total of \$88 million invested by numerous investors, including CIC) while investigating the currency exchange's relationship with a Canadian drug cartel. Within six months of the raid, one of the two principals was arrested and charged by Costa Rican authorities with financial fraud. The other promoter fled. In May 2007, one promoter was found guilty of fraud, while the other promoter remains missing.

15. By at least December 2002, Respondents had clear indications that the value of their clients' investment in the currency exchange program was impaired. In October 2002, the currency exchange ceased operation and one month later stopped making or accruing interest payments, and has made no payments to investors since that time. The Respondents learned in December 2002 that one of the promoters had been arrested and charged with fraud and the other forced into hiding and facing a warrant for his arrest. At about the same time, Respondents learned of reports from reputable news agencies that described the currency exchange investment as a classic Ponzi scheme, including a December 13, 2002 *Wall Street Journal* article that Kent read at or near the time of publication.

16. Despite their knowledge of these problems, from December 2002 to the present, Respondents have continued to send their clients account statements showing the value of the currency exchange investment at its original cost plus accrued interest. For example, in four quarterly account statements to clients in 2007, Kent and Cornerstone Capital stated that the "market price" of the Costa Rican Currency Exchange Program had remained the same (and was

the same "market price" as it was in 2002). Since January 2003, Cornerstone Capital has collected at least \$345,300 in investment management fees based on this impaired investment.

The Promissory Note Program and Precious Metals and Mining Program.

17. Between 1997 and 1999, Cornerstone Capital clients, through CIC, invested a total of \$6.6 million in two programs referred to as the Promissory Note Program and the Precious Metals and Mining Program. Funds invested in these programs were loaned to a private company that allegedly had three separate divisions: a European bank financing group, a California-based technology group, and a group that purportedly owned mineral rights in New Mexico. The loans were evidenced by promissory notes issued by the company, which were supposedly secured by the company's technology and mineral rights, and were guaranteed by the company's promoters. Under both programs, the company was required to make monthly interest payments to Cornerstone Capital clients.

18. In 2000, the company defaulted on the loans and declared bankruptcy soon thereafter. In April 2001, the company's two promoters pled guilty to charges they had defrauded investors through prime bank and Ponzi schemes. On August 14, 2002, the promoters were sentenced to 18 months in federal prison for the fraud.

19. Respondents learned of the promoters' guilty pleas in May 2001. In early 2002, Respondents started foreclosure proceedings to secure the company's mineral rights. On February 4, 2003, Respondents filed a lawsuit against the company and the promoters alleging that the promoters defrauded Respondents in their investment dealings. Respondents obtained summary and default judgments against the promoters in October and November 2004 and foreclosed on the company's New Mexico mineral rights in September 2004. However, to date, Respondents have been unable to collect on the judgments or to develop, sell or otherwise realize any value from the foreclosed property.

20. In May 2002, Respondents disclosed to their clients that they had started foreclosure proceedings on the mineral rights. Respondents, however, waited until August 2004 to disclose to clients the promoters' guilty plea, when Respondents wrote to clients that the principals "entered into a plea bargain with Federal authorities regarding a suit filed by a different investor group." Additionally, Respondents did not disclose the lawsuit against the company and the promoters until February 2006, and then stated that Respondents "obtained a Summary Judgment against the two managers." Respondents have never disclosed that they alleged fraud in the legal action against the company and the promoters.

21. By at least February 2003, when they filed a fraud action against the company's promoters, Respondents had substantial information indicating that the value of client investments in the Promissory Note Program and the Precious Metals and Mining Program was impaired. Despite this information, Respondents have continued to value the investments in the Promissory Note Program and the Precious Metals and Mining Program at their original cost in client account statements. Since February 2003, Cornerstone Capital has collected at least \$190,095 in investment management fees based on these impaired investments.

The Indemnity Bond Bridge Program.

22. In June 2004, Cornerstone Capital clients, at the direction of the Respondents, invested \$500,000 in CIC's Indemnity Bond Bridge Program. A majority of these clients invested in the program by redeeming certificates of deposit issued by a large, FDIC-insured bank. Under the program, CIC loaned money to two start-up companies through a promoter. The two start-up companies had applied for lines of credit with the promoter of the program, who in turn had purportedly secured bank loans to fund the lines of credit. The \$500,000 was to be used to purchase insurance policies from unnamed insurance companies guaranteeing that the bank loans would be repaid and allowing the banks to release funds for the lines of credit.

23. Unbeknownst to Cornerstone Capital clients, CIC used \$250,000 of the \$500,000 investment in an effort to obtain a \$2,500,000 line of credit for CIC's own benefit. Respondents intended to use the proceeds from the line of credit in connection with another ailing investment program. Respondents did not disclose to clients before they invested that Respondents intended to use client funds to help CIC obtain a line of credit for its own benefit.

24. Respondents wired the \$500,000 in client funds to a lawyer for the promoter on June 10 and 15, 2004. On or about June 30, 2004, Respondents created a disclosure document regarding the Indemnity Bond Bridge Program that materially misrepresented a key aspect of the investment. Respondents claimed that a respected 150-person California law firm served as escrow agent for the funds CIC was investing and was "authorized to release those funds upon issuance of [an] insurance binder representing the commitment of the insurance company to issue the bond." In truth, the law firm was not involved in the transaction and had no role in determining whether any insurance policy was properly issued.

25. Although CIC was to be repaid the full amount of client funds invested (i.e. \$500,000) plus interest by August 2004, by December 2005 it still had received no payments, and Respondents' inquiries to the promoters throughout 2004 and 2005 met with vague excuses.

26. In December 2005, Federal Bureau of Investigation ("FBI") agents informed Respondents that the promoters had been indicted for fraud and questioned Kent about CIC's investment in the Indemnity Bond Bridge Program. Prosecutors subsequently amended the indictment in August 2006 to name CIC as a defrauded investor. On June 22, 2007 Kent testified at the criminal trial of the promoters, who were convicted one month later. They were both sentenced to lengthy prison terms of 7 and 13 years.

27. To this day, Respondents have not informed clients about the information regarding the CIC investment revealed to Respondents in the FBI interview or the indictments. Instead, Respondents continually represent to clients that the investment will pay off soon.

28. From at least December 2005, Respondents have had substantial evidence that the value of their clients' investment in the Indemnity Bond Bridge Program is impaired. Respondents, however, continue to value the investment at its original cost (the initial investment

amount) on account statements to clients. Respondents have collected at least \$8,400 in fees on this investment since January 2006.

The Cogeneration Project Financing (Grain Mill) Program.

29. Between May and August 2003, Cornerstone Capital, on Respondents' advice and through CIC, provided \$235,000 in client funds to two small California energy companies for the installation and operation of a power cogeneration unit at a grain mill in Central California. The investment consisted of a promissory note to be paid back in seven years with 12% interest. Under the terms of the note, payment was to begin upon the installation and operation of the power generator.

30. From its inception, this program ran into delays and difficulties. After a year with no payments from the principals of the energy companies, Respondents renegotiated the contract, affording the principals more time to repay the loan. Under the terms of the new contract, the principals were to begin payment in October 2004 and continue with monthly payments through September 2011. In this contract, the promoter stated that the power generator had been installed and was fully operational. However, Respondents learned in early 2005 from a third party that the promoters' statements in the contract were false and that the generator had not been installed and was not operational. Since entering the renegotiated contract, Respondents have received just one payment for \$32,000 in early 2005.

31. From at least June 2005, Respondents have faced clear indications that the value of their clients' investment in this program is impaired. Despite this, until June 2007, Respondents valued the investment at its original cost in client account statements. From June 2005 to June 2007 (when Respondents reduced the value of the investment to 50% of cost), Respondents collected at least \$3,240 in fees based on this failed investment.

D. VIOLATIONS

32. As a result of the conduct described above, Respondents willfully violated Sections 206(1) and 206(2) of the Advisers Act, which make it "unlawful to employ any device, scheme, or artifice to defraud any client or prospective client; and to engage in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or prospective client."

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Respondents an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Cornerstone Capital pursuant to Section 203(e) of the Advisers Act, including, but not limited to, civil penalties pursuant to Section 203(i) of the Advisers Act and disgorgement pursuant to Section 203(j) of the Advisers Act;

C. What, if any, remedial action is appropriate in the public interest against Kent pursuant to Section 203(f) of the Advisers Act including, but not limited to, civil penalties pursuant to Section 203(i) of the Advisers Act and disgorgement pursuant to Section 203(j) of the Advisers Act;

D. What, if any, remedial action is appropriate in the public interest against Kent pursuant to Section 9(b) of the Company Act; and

E. Whether, pursuant to Section 203(k) of the Advisers Act, Respondents should be ordered to cease and desist from committing or causing violations of and any future violations of Sections 206(1) and 206(2) of the Advisers Act.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondents fail to file the directed answer, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

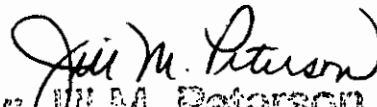
This Order shall be served forthwith upon Respondents personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary


By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 16, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13202

In the Matter of

East West Distributors, Inc.,
Ecomed Corp.,
Edgar Garside Co., Inc.,
EduLink, Inc. (n/k/a Learning
Priority, Inc.),
E.J. Nak Mattress Co.,
eKnowledge Group, Inc.,
Electropharmacology, Inc.,
E.L. Hunter, Inc., and
Elligent Consulting Group, Inc., (n/k/a
e-Vantage Solutions, Inc.),

Respondents.

ORDER INSTITUTING
PROCEEDINGS AND NOTICE
OF HEARING PURSUANT TO
SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT
OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against East West Distributors, Inc., Ecomed Corp., Edgar Garside Co., Inc., EduLink, Inc. (n/k/a Learning Priority, Inc.), E.J. Nak Mattress, Co., eKnowledge Group, Inc., Electropharmacology, Inc., E.L. Hunter, Inc., and Elligent Consulting Group, Inc. (n/k/a e-Vantage Solutions, Inc.).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. East West Distributors, Inc. (CIK No. 1330718) is a revoked Nevada corporation located in Scottsdale, Arizona with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). East West Distributors is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2006, which reported a net loss of \$55,999 for the prior nine months.

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2. Ecomed Corp. (CIK No. 1137998) is a Nevada corporation located in Bellingham, Washington with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Ecomed is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on May 7, 2001, which reported a net loss of \$309,914 for the year ended December 31, 2000.

3. Edgar Garside Co., Inc. (CIK No. 1100137) is a dissolved Nevada corporation located in Henderson, Nevada, with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Edgar Garside is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB/A on March 30, 2000, which reported a net loss of over \$1,399 for the prior nine months.

4. Edulink, Inc. (n/k/a Learning Priority, Inc.) (CIK No. 1023008) is a Nevada corporation located in Thousand Oaks, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Edulink is delinquent in its periodic filings with the Commission, having not filed any periodic reports with properly audited financial statements since it filed a Form 10-Q for the period ended October 31, 2006, which reported a net loss of \$2,673,898 for the prior nine months. Edulink recently changed its name to Learning Priority, Inc. and filed Forms 10-K for the fiscal years ended 2006 and 2007, as well as four interim reports. The financial statements contained in the quarterly and annual reports since the period ended October 31, 2006 were not audited by an independent accounting firm registered with the Public Company Accounting Oversight Board. Thus, the reports are materially deficient, and Edulink remains obligated to file such reports in accordance with Commission rules and regulations. As of September 16, 2008, the company's stock (symbol "LRNP") was traded on the over-the-counter markets.

5. E.J. Nak Mattress Co. (CIK No. 1130635) is a Utah corporation located in Ardrossan, Alberta, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). E.J. Nak Mattress is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a 10-QSB for the period ended December 31, 2001, which reported a net loss of \$20,525 for the prior three months.

6. eKnowledge Group, Inc. (CIK No. 1045284) is a Nevada corporation located in Dana Point, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). eKnowledge Group is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed an amended Form 10-QSB for the period ended June 30, 2003, which reported a net loss of \$199,309 for the prior three months. The Form 15 filed by eKnowledge Group on May 1, 2006 was invalid pursuant to Rule 12g4-(a)(1) (ii) because eKnowledge Group reported "approximately 500" shareholders of record. Rule 12g4-(a)(1)(ii) requires that the issuer certify that it has less than 500 record shareholders for purposes of terminating registration using the Form 15.

7. Electropharmacology, Inc. (CIK No. 934849) is a void Delaware corporation located in Berkeley, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Electropharmacology is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2001, which reported a net loss of \$87,559 for the prior six months.

8. E.L. Hunter, Inc. (CIK No. 1133269) is a permanently revoked Nevada corporation located in Carefree, Arizona with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). E.L. Hunter is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2001, which reported a net loss of over \$10,255 since inception on December 31, 1998.

9. Elligent Consulting Group, Inc. (n/k/a e-Vantage Solutions, Inc.) (CIK No. 814741) is a revoked Nevada corporation located in New York, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Elligent Consulting is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2001.

B. DELINQUENT PERIODIC FILINGS

10. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

11. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires issuers to file quarterly reports.

12. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to

notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary

Attachment

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Appendix 1

**Chart of Delinquent Filings
In the Matter of East West Distributors, Inc., et al.**

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
East West Distributors, Inc.					
	10-KSB	06/30/06	9/28/06	Not filed	24
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-QSB	12/31/06	2/14/07	Not filed	19
	10-QSB	03/31/07	5/15/07	Not filed	16
	10-KSB	06/30/07	9/28/07	Not filed	12
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-QSB	12/31/07	2/14/08	Not filed	7
	10-QSB	03/31/08	5/15/08	Not filed	4
Total Filings Delinquent	7				
Ecomed Corp.					
	10-QSB	03/31/01	08/20/01	Not filed	85
	10-QSB	06/30/01	08/20/01	Not filed	85
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Ecomed Corp.					
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/16/08	Not filed	4
	10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent 30

**Edgar Garside Co.,
Inc.**

10-KSB	12/31/99	03/30/00	Not filed	102
10-QSB	03/31/00	05/15/00	Not filed	100
10-QSB	06/30/00	08/14/00	Not filed	97
10-QSB	09/30/00	11/14/00	Not filed	94
10-KSB	12/31/00	04/02/01	Not filed	89
10-QSB	03/31/01	05/15/01	Not filed	88
10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66

¹Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Edgar Garside Co., Inc.	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/16/08	Not filed	4
	10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent 35

EduLink, Inc. (n/k/a Learning Priority, Inc.)

10-K	12/31/06	04/02/07	Not filed	17
10-Q	03/31/07	05/15/07	Not filed	16
10-Q	06/30/07	08/14/07	Not filed	13
10-Q	09/30/07	11/14/07	Not filed	10
10-K	12/31/07	03/31/08	Not filed	6
10-Q	03/31/08	05/16/08	Not filed	4
10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent 7

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
E.J. Nak Mattress Co.					
	10-KSB	03/31/02	07/01/02	Not filed	74
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-QSB	12/31/02	02/14/03	Not filed	67
	10-KSB	03/31/03	06/30/03	Not filed	63
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-QSB	12/31/03	02/17/04	Not filed	55
	10-KSB	03/31/04	06/29/04	Not filed	51
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-QSB	12/31/04	02/14/05	Not filed	43
	10-KSB	03/31/05	06/29/05	Not filed	39
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-QSB	12/31/05	02/14/06	Not filed	31
	10-KSB	03/31/06	06/29/06	Not filed	27
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-QSB	12/31/06	02/14/07	Not filed	19
	10-KSB	03/31/07	06/29/07	Not filed	15
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-QSB	12/31/07	02/14/08	Not filed	7
	10-KSB	03/31/08	06/30/08	Not filed	3
	10-Q	06/30/08	08/15/08	Not filed	1
Total Filings Delinquent	26				

**eKnowledge Group,
Inc.**

10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
eKnowledge Group, Inc.					
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/16/08	Not filed	4
	10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent 20

Electropharmacology, Inc.

10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
<i>Electropharmacology, Inc.</i>					
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/16/08	Not filed	4
	10-Q	06/30/08	08/15/08	Not filed	1
Total Filings Delinquent		28			

E.L. Hunter, Inc.

10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
E.L. Hunter, Inc.					
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/16/08	Not filed	4
	10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent 28

Elligent Consulting Group, Inc. (n/k/a e-Vantage Solutions, Inc.)

10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Elligent Consulting Group, Inc. (n/k/a e- Vantage Solutions, Inc.)	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/16/08	Not filed	4
	10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent	28
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findings herein, except as to the Commission's jurisdiction over her and the subject matter of these proceedings, and the findings contained in Section III. Paragraph 4 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Heinen, age 51, is an attorney licensed to practice in California. From September 1997 through May 2006, Heinen was Senior Vice President, General Counsel and Corporate Secretary of Apple, Inc. ("Apple").

2. Apple was, at all relevant times, a Delaware corporation headquartered in Cupertino, California that designed, developed and manufactured personal computers, portable digital music players, and related products. At all relevant times, Apple's common stock was registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act") and was listed on the NASDAQ National Market.

3. On April 24, 2007, the Commission filed a Complaint against Heinen in the United States District Court for the Northern District of California, entitled *SEC v. Nancy R. Heinen* (Civil Action No. 5:07-cv-02214-JF). On May 16, 2007, the Commission filed an Amended Complaint in that action.

4. On August 26, 2008, the court entered an order permanently enjoining Heinen, by consent, from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act") and Sections 10(b), 13(b)(5), and 16(a) of the Exchange Act and Rules 10b-5, 13b2-1, 13b2-2 and 16a-3 thereunder, and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), 13(b)(2)(B), and 14(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-13, and 14a-9 thereunder. Heinen was also ordered to pay \$1,575,000 in disgorgement, plus \$400,219.78 in prejudgment interest; and a \$200,000 civil money penalty.

5. The Commission's Amended Complaint alleged, among other things, that on two occasions in 2001 Apple issued large stock options grants to top executives at the company, but in each case improperly backdated the grants to make it appear that they had been made at an earlier date, when Apple's stock price was lower. As a result, the Amended Complaint alleged, Apple failed to recognize and thereby concealed from investors millions of dollars of expenses related to the issuance of the options. The Amended Complaint alleged that Heinen, as Apple's General Counsel and Corporate Secretary, participated in causing the options to be backdated and in preparing corporate records that concealed the backdating. In

addition, the Amended Complaint alleged, Heinen received options on 400,000 shares of Apple stock in one of the backdated grants, and thus personally benefited from the backdating.

IV.

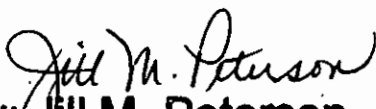
In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent Heinen's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

Heinen is suspended from appearing or practicing before the Commission as an attorney for three (3) years. Furthermore, before appearing and resuming practice before the Commission, Heinen must submit an affidavit to the Commission's Office of General Counsel truthfully stating, under penalty of perjury, that she has complied with the Order; that she is not the subject of any suspension or disbarment as an attorney by a court of the United States or of any state, territory, district, commonwealth, or possession; and that she has not been convicted of a felony or misdemeanor involving moral turpitude as set forth in Rule 102(e)(2) of the Commission's Rules of Practice.

By the Commission.

Florence E. Harmon
Acting Secretary


By: **Jill M. Peterson**
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58555; File No. PCAOB-2008-01)

September 16, 2008

Public Company Accounting Oversight Board; Order Approving Proposed Rule on Auditing Standard No. 6, Evaluating Consistency of Financial Statements, and Conforming Amendments.

I. Introduction

On February 1, 2008, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission") Proposed Auditing Standard No. 6, Evaluating Consistency of Financial Statements, ("Auditing Standard No. 6"), and Conforming Amendments, pursuant to Section 107 of the Sarbanes-Oxley Act of 2002 (the "Act") and Section 19(b) of the Securities Exchange Act of 1934 (the "Exchange Act").

Auditing Standard No. 6 will supersede the PCAOB's interim auditing standard on evaluating consistency, AU section 420, Consistency of Application of Generally Accepted Accounting Principles. Auditing Standard No. 6 will establish requirements and provide direction for an auditor's evaluation of the consistency of financial statements, including changes to previously issued financial statements, and the effect of that evaluation on the auditor's report on financial statements.

The Board's proposed conforming amendments affect several of the Board's interim auditing standards. Those standards are: AU section 328, Auditing Fair Value Measurements and Disclosures, AU section 410, Adherence to Generally Accepted Accounting Principles, AU section 411, The Meaning of Present Fairly in Conformity With Generally Accepted Accounting Principles, AU section 431, Adequacy of

Disclosure in Financial Statements, AU section 508, Reports on Audited Financial Statements, and AU section 561, Subsequent Discovery of Facts Existing at the Date of the Auditor's Report. With the exception of the proposed amendment to AU section 411, the Commission believes the aforementioned amendments are generally technical or conforming in nature, such as updating references in the interim standards to the proposed new standard's paragraph numbers and definitions.

The proposed amendment to AU section 411 will have the effect of removing the hierarchy for accounting principles generally accepted in the United States (the "U.S. GAAP hierarchy") from the PCAOB's auditing standards. The Financial Accounting Standards Board (the "FASB") recently issued Statement of Financial Accounting Standards ("SFAS") No. 162, The Hierarchy of Generally Accepted Accounting Principles, which will include the current U.S. GAAP hierarchy going forward.¹

Notice of the proposed standard and the conforming amendments was published in the Federal Register on August 5, 2008.² The Commission received three comment letters on the proposed rules and amendments. For the reasons discussed below, the Commission is granting approval of the proposed standard and conforming amendments.

II. Description

The Act established the PCAOB to oversee the audits of public companies and related matters, in order to protect the interests of investors and further the public interest in preparation of informative, accurate and independent audit reports. Section 103(a) of the Act directs the PCAOB to establish auditing and related attestation standards, quality

¹ The FASB issued SFAS No. 162 on May 9, 2008. SFAS No. 162 becomes effective 60 days after the date of this approval order.

² Release No. 34-58259 (July 30, 2008).

control standards, and ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports as required by the Act or the rules of the Commission.

On January 29, 2008, the Board adopted Auditing Standard No. 6, Evaluating Consistency of Financial Statements, and amendments to the Board's interim auditing standards. The Board proposed these changes to its auditing standards in response to two actions of the FASB.

First, in May 2005, the FASB issued SFAS No. 154, Accounting Changes and Error Corrections, which superseded Accounting Principles Board ("APB") Opinion No. 20, Accounting Changes. SFAS No. 154 establishes, unless impracticable, retrospective application as the required method for reporting a change in accounting principle in the absence of explicit transition requirements specific to a newly adopted accounting principle. SFAS No. 154 also redefines the term "restatement" to refer only to "the process of revising previously issued financial statements to reflect the correction of an error in those financial statements."³ Under SFAS No. 154, therefore, the term "restatement" does not refer to changes made to previously issued financial statements to reflect a change in accounting principle.

AU section 420, Consistency of Application of Generally Accepted Accounting Principles, the Board's interim standard on the auditor's responsibilities for evaluating the consistency of the application of generally accepted accounting principles ("GAAP"), generally reflected the provisions of APB Opinion No. 20, which was superseded by SFAS No. 154. To better align the Board's standards with the new accounting standard, the Board adopted a new auditing standard on evaluating consistency, which will

supersede AU section 420, and conforming amendments to AU section 508, Reports on Audited Financial Statements, of its interim auditing standards.

Second, in 2005, the FASB issued an exposure draft of a proposed Statement of Financial Accounting Standards, The Hierarchy of Generally Accepted Accounting Principles. The FASB proposed that this standard incorporate the hierarchy found in the current auditing standards into the accounting standards. Historically, a description of the U.S. GAAP hierarchy has resided only in the auditing standards. However, because the current U.S. GAAP hierarchy identifies the sources of accounting principles and the framework for selecting principles to be used in preparing financial statements, the PCAOB and the FASB believed that these requirements are more appropriately located in the FASB's accounting standards. Accordingly, the PCAOB adopted amendments to its auditing standards to remove the U.S. GAAP hierarchy.

In May 2008, the FASB issued in final form, SFAS No. 162, The Hierarchy of Generally Accepted Accounting Principles. SFAS No. 162 will become effective 60 days from the date of this order approving Auditing Standard No. 6 and conforming amendments.

In addition to proposing Auditing Standard No. 6 and the amendment to AU section 411, the PCAOB proposed amendments to other interim auditing standards and related interpretations. The Commission believes the amendments to AU section 328, Auditing Fair Value Measurements and Disclosures, AU section 410, Adherence to Generally Accepted Accounting Principles, AU section 431, Adequacy of Disclosure in Financial Statements, AU section 508, Reports on Audited Financial Statements, and AU

³ See SFAS No. 154, paragraph 2j.

section 561, Subsequent Discovery of Facts Existing at the Date of the Auditor's Report, are technical or conforming in nature.

As discussed further below, one of the proposed amendments to AU section 431, Adequacy of Disclosure in Financial Statements, proposes to delete footnote 1 to paragraph 4 of AU section 431, which is an application of the AICPA's Code of Professional Conduct regarding the disclosure of confidential client information. In 2003, when the Board adopted certain AICPA rules and ASB standards as interim Board standards, the Board did not adopt Rule 301. Consistent with that action, the proposed amendments would eliminate the reference to Rule 301 that is included in paragraph 4 of AU section Sec. 431.

The proposed Auditing Standard No. 6 and amendments to the Board's interim standards are intended to update and clarify the auditing standards in light of SFAS No. 154 and SFAS No. 162. In particular, these updates and clarifications are intended to enhance the clarity of auditor reporting on accounting changes and corrections of misstatements by distinguishing between these events.

III. Discussion

The Commission received three comment letters in response to its request for comments on Auditing Standard No. 6 and conforming amendments. The comment letters came from three registered public accounting firms.⁴ All three commenters expressed support for the Commission's approval of the proposed standard.

As noted above, the PCAOB's proposed amendment to AU section 431 deletes a reference to Rule 301 of the AICPA's Code of Professional Conduct – a rule the PCAOB

⁴ Deloitte and Touche LLP, Grant Thornton LLP, and PricewaterhouseCoopers LLP.

did not adopt as part of its original interim standards. Similar to comments made to the PCAOB during its comment period, one commenter believed concerns exist that the Board's action in removing a reference to a rule the PCAOB did not adopt might be construed as minimizing the auditor's responsibilities for maintaining the confidentiality of client information. The commenter requested that the Commission encourage the PCAOB to adopt a rule establishing the auditor's responsibility with respect to maintaining the confidentiality of client information.

In its adopting release, the PCAOB discussed the concerns the comments raised about client confidentiality and noted its awareness of many auditors' legal or professional obligations to maintain the confidentiality of client information, and made reference to the confidentiality requirements included in the provisions of the Uniform Accountancy Act and the provisions of the International Federation of Accountants' Code of Ethics for Professional Accountants. The PCAOB also noted that its decision to omit Rule 301 from its interim standards was based on a determination that incorporation of that rule was not necessary to fulfill the Board's mandate under Section 103(a)(1) and (3) of the Act at that time, and that it did not reflect a decision that auditor confidentiality requirements imposed by other authorities were inappropriate. Similarly, in amending AU section 431, the PCAOB noted that it seeks neither to modify nor detract from existing confidentiality requirements.

The Commission agrees with the Board's proposed action to remove from its interim standards a reference to a rule it did not adopt. However, the Commission

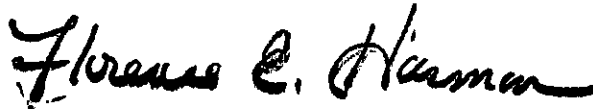
encourages the PCAOB to develop and adopt a rule addressing the auditor's responsibility with respect to maintaining the confidentiality of client information.⁵

IV. Conclusion

On the basis of the foregoing, the Commission finds that proposed Auditing Standard No. 6 and the Conforming Amendments are consistent with the requirements of the Act and the securities laws and are necessary and appropriate in the public interest and for the protection of investors.

IT IS THEREFORE ORDERED, pursuant to Section 107 of the Act and Section 19(b)(2) of the Exchange Act, that proposed Auditing Standard No. 6, Evaluating Consistency of Financial Statements, and Conforming Amendments (File No. PCAOB-2008-01) be and hereby are approved.

By the Commission.



Florence E. Harmon
Acting Secretary

⁵ One commenter also noted that the adoption of Auditing Standard No. 6 would cause existing published PCAOB Staff Questions and Answers to require updating. The Commission encourages the PCAOB to ensure that its guidance is up to date with its current standards and presumes the PCAOB will update these Questions and Answers once these amendments are approved.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 16, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13201

In the Matter of

E-Star Holdings, Inc.,
Earful of Books, Inc.,
East Coast Group Investments, Inc.,
Ecom Digital Properties, Inc.,
eHomeOne.com, Inc., and
Electro Catheter Corp.,

Respondents.

ORDER INSTITUTING
PROCEEDINGS AND NOTICE
OF HEARING PURSUANT TO
SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT
OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against E-Star Holdings, Inc., Earful of Books, Inc., East Coast Group Investments, Inc., Ecom Digital Properties, Inc., eHomeOne.com, Inc., and Electro Catheter Corp.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. E-Star Holdings, Inc. (CIK No. 1111572) is a revoked Nevada corporation located in Uniondale, New York with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). E-Star Holdings is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB for the period ended February 28, 2002.

2. Earful of Books, Inc. (CIK No. 914553) is a forfeited Delaware corporation located in Austin, Texas with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Earful of Books is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB for the period ended December 31, 2001, which reported a net loss of \$4,596,061 for the prior year.

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3. East Coast Group Investments, Inc. (CIK No. 1262018) is an inactive Florida corporation located in Tequesta, Florida with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). East Coast Group Investments is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB/A registration statement on November 4, 2003, which reported a net loss of \$3,079 since inception on August 23, 2003.

4. Ecom Digital Properties, Inc. (CIK No. 1117153) is a permanently revoked Nevada corporation located in Port Washington, New York with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Ecom Digital Properties is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2001, which reported a net loss of \$132,574 for the prior six months.

5. eHomeOne.com, Inc. (CIK No. 1080772) is a permanently revoked Nevada corporation located in Orlando, Florida with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). eHomeOne.com is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2001, which reported a net loss of \$377,210 for the prior nine months.

6. Electro Catheter Corp. (CIK No. 32120) is a New Jersey corporation located in Rahway, New Jersey with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). Electro Catheter is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended May 31, 1999, which reported a net loss of \$1,570,821 for the prior nine months.

B. DELINQUENT PERIODIC FILINGS

7. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

8. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires issuers to file quarterly reports.

9. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to

notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary

Attachment

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Appendix 1

**Chart of Delinquent Filings
In the Matter of E-Star Holdings, Inc., et al.**

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
<i>E-Star Holdings, Inc.</i>					
	10-QSB	05/31/02	07/15/02	Not filed	74
	10-QSB	08/31/02	10/15/02	Not filed	71
	10-QSB	11/30/02	01/14/03	Not filed	68
	10-KSB	02/28/03	05/29/03	Not filed	64
	10-QSB	05/31/03	07/15/03	Not filed	62
	10-QSB	08/31/03	10/15/03	Not filed	59
	10-QSB	11/30/03	01/14/04	Not filed	56
	10-KSB	02/29/04	06/01/04	Not filed	51
	10-QSB	05/31/04	07/15/04	Not filed	50
	10-QSB	08/31/04	10/15/04	Not filed	47
	10-QSB	11/30/04	01/14/05	Not filed	44
	10-KSB	02/28/05	05/31/05	Not filed	40
	10-QSB	05/31/05	07/15/05	Not filed	38
	10-QSB	08/31/05	10/17/05	Not filed	35
	10-QSB	11/30/05	01/17/06	Not filed	32
	10-KSB	02/28/06	05/30/06	Not filed	28
	10-QSB	05/31/06	07/17/06	Not filed	26
	10-QSB	08/31/06	10/16/06	Not filed	23
	10-QSB	11/30/06	01/16/07	Not filed	20
	10-KSB	02/28/07	05/29/07	Not filed	16
	10-QSB	05/31/07	07/16/07	Not filed	14
	10-QSB	08/31/07	10/15/07	Not filed	11
	10-QSB	11/30/07	01/14/08	Not filed	8
	10-KSB	02/28/08	05/28/08	Not filed	4
	10-QSB	05/31/08	07/16/08	Not filed	2
Total Filings Delinquent	25				

Earful of Books, Inc.

10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
<i>Earful of Books, Inc.</i>					
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10

Earful of Books, Inc.

10-KSB	12/31/07	03/31/08	Not filed	6
10-Q ¹	03/31/08	05/16/08	Not filed	4
10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent 24

East Coast Group Investments, Inc.

10-QSB	09/30/03	01/31/04	Not filed	56
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52

¹Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
East Coast Group Investments, Inc.	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/16/08	Not filed	4
	10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent 20

Ecom Digital Properties, Inc.

10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Ecom Digital Properties, Inc.					
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/16/08	Not filed	4
	10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent 28

eHomeOne.com, Inc.

10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
eHomeOne.com, Inc.					
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/16/08	Not filed	4
	10-Q	06/30/08	08/15/08	Not filed	1
Total Filings Delinquent	27				

Electro Catheter Corp.					
	10-Q	11/30/07	01/14/08	Not filed	8
	10-Q	02/28/08	04/14/08	Not filed	5
	10-Q	05/31/08	07/16/08	Not filed	2
Total Filings Delinquent	3				

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
RELEASE NO. 34-58572/ September 17, 2008

EMERGENCY ORDER PURSUANT TO SECTION 12(k)(2) OF THE SECURITIES
EXCHANGE ACT OF 1934 TAKING TEMPORARY ACTION TO RESPOND TO
MARKET DEVELOPMENTS

The Commission continues to be concerned that there is a substantial threat of sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could threaten fair and orderly markets. As evidenced by our recent publication of an emergency order under Section 12(k) of the Securities Exchange Act of 1934 (the "July Emergency Order"),¹ we are concerned about the possible unnecessary or artificial price movements based on unfounded rumors regarding the stability of financial institutions and other issuers exacerbated by "naked" short selling. Our concerns, however, are no longer limited to just the financial institutions that were the subject of the July Emergency Order. In addition, we have become concerned that some persons may take advantage of issuers that have become temporarily weakened by current market conditions to engage in inappropriate short selling in the securities of such issuers.

Given the importance of confidence in our financial markets as a whole, we have become concerned about sudden and unexplained declines in the prices of securities. Such price declines can give rise to questions about the underlying financial condition of an issuer, which in turn can create a crisis of confidence without a fundamental

¹ See Exchange Act Release No. 58166 (July 15, 2008).

underlying basis. This crisis of confidence can impair the liquidity and ultimate viability of an issuer, with potentially broad market consequences.

As a result of these recent developments, the Commission concluded that there continues to exist a substantial threat of sudden and excessive fluctuations of securities prices generally and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Based on this conclusion, the Commission is exercising its powers under Section 12(k)(2) of the Securities Exchange Act of 1934.² Pursuant to Section 12(k)(2), in appropriate circumstances the Commission may issue summarily an order to alter, supplement, suspend, or impose requirements or restrictions with respect to matters or actions subject to regulation by the Commission.

We have concluded that it is necessary to impose enhanced delivery requirements on sales of all equity securities, by adding and making immediately effective a temporary rule to Regulation SHO, Rule 204T. The temporary rule imposes a penalty on any participant³ of a registered clearing agency,⁴ and any broker-dealer from which it receives trades for clearance and settlement, for having a fail to deliver position at a registered clearing agency in any equity security. In addition, we have concluded it is necessary to make immediately effective amendments to Rule 203(b)(3) of Regulation SHO that eliminate the options market maker exception from Regulation SHO's close-out

² This finding of an "emergency" is solely for purposes of Section 12(k)(2) of the Exchange Act and is not intended to have any other effect or meaning or to confer any right or impose any obligation other than set forth in this Order.

³ The term "participant" has the same meaning as in section 3(a)(24) of the Exchange Act. See 15 U.S.C. 78c(a)(24).

⁴ The term "registered clearing agency" means a clearing agency, as defined in section 3(a)(23)(A) of the Exchange Act, that is registered as such pursuant to section 17A of the Exchange Act. See 15 U.S.C. 78c(a)(23)(A) and 78q-1, respectively.

requirement. We are also making immediately effective Rule 10b-21, a "naked" short selling antifraud rule.⁵ We intend these enhanced delivery requirements and the antifraud rule to impose powerful disincentives to those who might otherwise exacerbate artificial price movements through "naked" short selling.

In addition, in these unusual and extraordinary circumstances, we believe such requirements are in the public interest and for the protection of investors to maintain fair and orderly securities markets, and to prevent substantial disruption in the securities markets.

This emergency requirement should significantly reduce any possibility that "naked" short selling may contribute to the disruption of markets in these securities. We described in the releases in which we proposed and adopted Regulation SHO the bases for the current delivery requirements Regulation SHO imposes. We believe, however, that the unusual circumstances we now confront require the enhanced requirements we are imposing today.

IT IS ORDERED that, pursuant to our Section 12(k)(2) powers, we are adding § 242.204T to read as follows:

§ 242.204T Short Sales.

- (a) A participant of a registered clearing agency must deliver securities to a registered clearing agency for clearance and settlement on a long or short sale in any equity security by settlement date, or if a participant of a registered clearing agency has a

⁵ Rule 204T, as set forth in this Order, applies only to fails to deliver resulting from trades that occur after this Order becomes effective. Rule 203(b)(3) of Regulation SHO, as amended by this Order, continues to apply to fails to deliver that occurred prior to the Order becoming effective. For example, if a participant has a fail to deliver position in a threshold security that has persisted for six consecutive settlement days prior to the effective date of this Order and the fail continues to persist until the thirteenth settlement day, the participant must still close out its position pursuant to Rule 203(b)(3).

fail to deliver position at a registered clearing agency in any equity security for a long or short sale transaction in that equity security, the participant shall, by no later than the beginning of regular trading hours on the settlement day following the settlement date, immediately close out the fail to deliver position by borrowing or purchasing securities of like kind and quantity; Provided, however:

- (1) If a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security and the participant can demonstrate on its books and records that such fail to deliver position resulted from a long sale, the participant shall by no later than the beginning of regular trading hours on the third consecutive settlement day following the settlement date, immediately close out the fail to deliver position by purchasing securities of like kind and quantity; or
- (2) If a participant of a registered clearing agency has a fail to deliver position at a registered clearing agency in any equity security sold pursuant to § 230.144 of this chapter for thirty-five consecutive settlement days after the settlement date for a sale in that equity security, the participant shall, by no later than the beginning of regular trading hours on the thirty-sixth consecutive settlement day following the settlement date for the transaction, immediately close out the fail to deliver position by purchasing securities of like kind and quantity;
- (b) If a participant of a registered clearing agency has a fail to deliver position in any equity security at a registered clearing agency and does not close out such fail to deliver position in accordance with the requirements of paragraph (a) of this section, the participant and any broker or dealer from which it receives trades for

clearance and settlement, including any market maker that would otherwise be entitled to rely on the exception provided in § 242.203(b)(2)(iii), may not accept a short sale order in the equity security from another person, or effect a short sale in the equity security for its own account, to the extent that the broker or dealer submits its short sales to that participant for clearance and settlement, without first borrowing the security, or entering into a bona-fide arrangement to borrow the security, until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity and that purchase has cleared and settled at a registered clearing agency;

(c) The participant must notify any broker or dealer from which it receives trades for clearance and settlement, including any market maker that would otherwise be entitled to rely on the exception provided in § 242.203(b)(2)(iii):

(1) That the participant has a fail to deliver position in an equity security at a registered clearing agency that has not been closed out in accordance with the requirements of paragraph (a) of this section; and

(2) When the purchase that the participant has made to close out the fail to deliver position has cleared and settled at a registered clearing agency; and

(d) Definitions: (1) For purposes of this section, the term settlement date shall mean the business day on which delivery of a security and payment of money is to be made through the facilities of a registered clearing agency in connection with the sale of a security.

(2) For purposes of this section, the term regular trading hours has the same meaning as in Rule 600(b)(64) of Regulation NMS (17 CFR 242.600(b)(64)).

IT IS FURTHER ORDERED that, pursuant to our Section 12(k)(2) powers, § 242.203(t)(3)(iii) of Regulation SHO is amended by revising paragraphs (b)(3)(iii) and (b)(3)(v) to read as follows:

(iii) Provided, however, that a participant of a registered clearing agency that has a fail to deliver position at a registered clearing agency in a threshold security on the effective date of this amendment and which, prior to the effective date of this amendment, had been previously excepted from the close-out requirement in paragraph (b)(3) of this section (i.e., because the participant of a registered clearing agency had a fail to deliver position in the threshold security that is attributed to short sales effected by a registered options market maker to establish or maintain a hedge on options positions that were created before the security became a threshold security), shall immediately close out that fail to deliver position, including any adjustments to the fail to deliver position, within 35 consecutive settlement days of the effective date of this amendment by purchasing securities of like kind and quantity;

(v) If a participant of a registered clearing agency entitled to rely on the 35 consecutive settlement day close-out requirement contained in paragraph (b)(3)(i), (b)(3)(ii), or (b)(3)(iii) of this section has a fail to deliver position at a registered clearing agency in the threshold security for 35 consecutive settlement days from the effective date of the amendment, the participant and any broker or dealer for which it clears transactions, including any market maker, that would otherwise be entitled to rely on the exception provided in paragraph (b)(2)(iii) of this section, may not accept a short sale

order in the threshold security from another person, or effect a short sale in the threshold security for its own account, without borrowing the security or entering into a bona-fide arrangement to borrow the security, until the participant closes out the fail to deliver position by purchasing securities of like kind and quantity;

IT IS FURTHER ORDERED that, pursuant to our Section 12(k)(2) powers, we are adding § 240.10b-21 to read as follows:

§ 240.10b-21 Deception in connection with a seller's ability or intent to deliver securities on the date delivery is due.

PRELIMINARY NOTE to rule 10b-21: This rule is not intended to limit, or restrict, the applicability of the general antifraud provisions of the federal securities laws, such as section 10(b) of the Act and rule 10b-5 thereunder.

It shall also constitute a "manipulative or deceptive device or contrivance" as used in section 10(b) of this Act for any person to submit an order to sell an equity security if such person deceives a broker or dealer, a participant of a registered clearing agency, or a purchaser about its intention or ability to deliver the security on or before the settlement date, and such person fails to deliver the security on or before the settlement date. For purposes of this section, settlement date is as defined in § 242.204T of this chapter.

This Order shall be effective at 12:01 a.m. EDT on September 18, 2008, and shall terminate at 11:59 p.m. on October 1, 2008 unless further extended by the Commission.

By the Commission.

A handwritten signature in cursive script, reading "Florence E. Harmon". The signature is written in dark ink and is positioned to the right of the "By the Commission." text.

Florence E. Harmon
Acting Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 17, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13208

In the Matter of

**Caddo Enterprises, Inc.,
California Properties Fund,
Cambridge Creek Companies, Ltd.,
Canadian Hemp Corp.,
Cannon Pictures, Inc.,
Capital Preferred Yield Fund-II, L.P.,
Caprock Corp.,
Carbite Golf, Inc.,
and
Cardinal Technologies, Inc.,**

Respondents.

**ORDER INSTITUTING
PROCEEDINGS AND NOTICE OF
HEARING PURSUANT TO
SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT OF
1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Caddo Enterprises, Inc., California Properties Fund, Cambridge Creek Companies, Ltd., Canadian Hemp Corp., Cannon Pictures, Inc., Capital Preferred Yield Fund-II, L.P., Caprock Corp., Carbite Golf, Inc., and Cardinal Technologies, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Caddo Enterprises, Inc. (CIK No. 1094373) is a revoked Nevada corporation located in Richmond, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Caddo is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2003, which reported a net loss of \$11,556 for the prior nine months.

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2. California Properties Fund (CIK No. 874500) is a suspended California corporation located in Carlsbad, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). California Properties is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 1994.

3. Cambridge Creek Companies, Ltd. (CIK No.1090951) is a dissolved Nevada corporation located in Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Cambridge is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended August 31, 2001.

4. Canadian Hemp Corp. (CIK No. 1174229) is a British Columbia corporation located in Sidney, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Canadian Hemp is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB/A on August 2, 2002, which reported a net loss of over \$9 million for the period ended March 31, 2002.

5. Cannon Pictures, Inc. (CIK No. 703807) is a void Delaware corporation located in Beverly Hills, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Cannon Pictures is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended October 2, 1993, which reported a net loss of over \$1 million for the prior three months. On April 19, 1994, Cannon filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Central District of California, and the case was dismissed on August 27, 1999.

6. Capital Preferred Yield Fund-II, L.P. (CIK No. 881295) is a void Delaware limited partnership located in Denver, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Capital Preferred is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 2001.

7. Caprock Corp. (CIK No. 801310) is a dissolved Colorado corporation located in Denver, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Caprock is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended March 31, 1993, which reported a net loss of \$396,930 for the year ended 1993.

8. Carbite Golf, Inc. (CIK No. 1095102) is a Canadian corporation located in San Diego, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Carbite Golf is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2002, which reported a net loss of \$541,979 for the prior three months. Carbite, Inc., a wholly-owned subsidiary of Carbite Golf filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Southern District of California on

November 18, 2002, and the case is still pending. As of September 15, 2008, the company's common stock (symbol "CGTFQ") was traded on the over-the-counter markets.

9. Cardinal Technologies, Inc. (CIK No. 787426) is an expired Utah corporation located in St. Louis, Missouri with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Cardinal is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 1993, which reported a net loss of over \$1 million for the year ended December 1993. On October 9, 1998, Cardinal Technologies filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of Delaware, which was subsequently converted to Chapter 7 and closed, and was reopened on December 13, 2007.

B. DELINQUENT PERIODIC FILINGS

10. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

11. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires issuers to file quarterly reports.

12. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified or Express Mail, or by other means permitted by the Commission's Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary

Attachment

Jill M. Peterson
By: *Jill M. Peterson*
Assistant Secretary

Appendix 1

**Chart of Delinquent Filings
Caddo Enterprises, Inc., et al.**

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Caddo Enterprises, Inc.					
	10-KSB	09/30/03	12/29/03	Not filed	57
	10-QSB	12/31/03	02/17/04	Not filed	55
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-KSB	09/30/04	12/29/04	Not filed	45
	10-QSB	12/31/04	02/14/05	Not filed	43
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-KSB	09/30/05	12/29/05	Not filed	33
	10-QSB	12/31/05	02/14/06	Not filed	31
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-KSB	09/30/06	12/29/06	Not filed	21
	10-QSB	12/31/06	02/14/07	Not filed	19
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-KSB	09/30/07	12/31/07	Not filed	9
	10-QSB	12/31/07	02/14/08	Not filed	7
	10-QSB	03/31/08	05/15/08	Not filed	4
	10-Q*	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent	20				
California Properties Fund					
	10-Q	03/31/95	05/15/95	Not filed	160
	10-Q	06/30/95	08/14/95	Not filed	157
	10-Q	09/30/95	11/14/95	Not filed	154
	10-K	12/31/95	04/01/96	Not filed	149
	10-Q	03/31/96	05/15/96	Not filed	148
	10-Q	06/30/96	08/14/96	Not filed	145
	10-Q	09/30/96	11/14/96	Not filed	142
	10-K	12/31/96	03/31/97	Not filed	138

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
California Properties Fund	10-Q	03/31/97	05/15/97	Not filed	136
	10-Q	06/30/97	08/14/97	Not filed	133
	10-Q	09/30/97	11/14/97	Not filed	130
	10-K	12/31/97	03/31/98	Not filed	126
	10-Q	03/31/98	05/15/98	Not filed	124
	10-Q	06/30/98	08/14/98	Not filed	121
	10-Q	09/30/98	11/16/98	Not filed	118
	10-K	12/31/98	03/31/99	Not filed	114
	10-Q	03/31/99	05/17/99	Not filed	112
	10-Q	06/30/99	08/16/99	Not filed	109
	10-Q	09/30/99	11/15/99	Not filed	106
	10-K	12/31/99	03/30/00	Not filed	102
	10-Q	03/31/00	05/15/00	Not filed	100
	10-Q	06/30/00	08/14/00	Not filed	97
	10-Q	09/30/00	11/14/00	Not filed	94
	10-K	12/31/00	04/02/01	Not filed	89
	10-Q	03/31/01	05/15/01	Not filed	88
	10-Q	06/30/01	08/14/01	Not filed	85
	10-Q	09/30/01	11/14/01	Not filed	82
	10-K	12/31/01	04/01/02	Not filed	77
	10-Q	03/31/02	05/15/02	Not filed	76
	10-Q	06/30/02	08/14/02	Not filed	73
	10-Q	09/30/02	11/14/02	Not filed	70
	10-K	12/31/02	03/31/03	Not filed	66
	10-Q	03/31/03	05/15/03	Not filed	64
	10-Q	06/30/03	08/14/03	Not filed	61
	10-Q	09/30/03	11/14/03	Not filed	58
	10-K	12/31/03	03/30/04	Not filed	54
	10-Q	03/31/04	05/17/04	Not filed	52
	10-Q	06/30/04	08/16/04	Not filed	49
	10-Q	09/30/04	11/15/04	Not filed	46
	10-K	12/31/04	03/31/05	Not filed	42
	10-Q	03/31/05	05/16/05	Not filed	40
	10-Q	06/30/05	08/15/05	Not filed	37
	10-Q	09/30/05	11/14/05	Not filed	34
	10-K	12/31/05	03/31/06	Not filed	30
	10-Q	03/31/06	05/15/06	Not filed	28
	10-Q	06/30/06	08/14/06	Not filed	25

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
California Properties Fund					
	10-Q	09/30/06	11/14/06	Not filed	22
	10-K	12/31/06	04/02/07	Not filed	17
	10-Q	03/31/07	05/15/07	Not filed	16
	10-Q	06/30/07	08/14/07	Not filed	13
	10-Q	09/30/07	11/14/07	Not filed	10
	10-K	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent

54

Cambridge Creek Companies, Ltd.

10-QSB	11/30/01	01/14/02	Not filed	80
10-KSB	02/28/02	05/29/02	Not filed	76
10-QSB	05/31/02	07/15/02	Not filed	74
10-QSB	08/31/02	10/15/02	Not filed	71
10-QSB	11/30/02	01/14/03	Not filed	68
10-KSB	02/28/03	05/29/03	Not filed	64
10-QSB	05/31/03	07/15/03	Not filed	62
10-QSB	08/31/03	10/15/03	Not filed	59
10-QSB	11/30/03	01/14/04	Not filed	56
10-KSB	02/29/04	06/01/04	Not filed	51
10-QSB	05/31/04	07/15/04	Not filed	50
10-QSB	08/31/04	10/15/04	Not filed	47
10-QSB	11/30/04	01/14/05	Not filed	44
10-KSB	02/28/05	05/31/05	Not filed	40
10-QSB	05/31/05	07/15/05	Not filed	38
10-QSB	08/31/05	10/17/05	Not filed	35
10-QSB	11/30/05	01/17/06	Not filed	32
10-KSB	02/28/06	05/30/06	Not filed	28
10-QSB	05/31/06	07/17/06	Not filed	26
10-QSB	08/31/06	10/16/06	Not filed	23
10-QSB	11/30/06	01/16/07	Not filed	20
10-KSB	02/28/07	05/29/07	Not filed	16
10-QSB	05/31/07	07/16/07	Not filed	14

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Cambridge Creek Companies, Ltd.					
	10-QSB	08/31/07	10/15/07	Not filed	11
	10-QSB	11/30/07	01/14/08	Not filed	8
	10-KSB	02/28/08	05/28/08	Not filed	4
	10-Q*	05/31/08	07/15/08	Not filed	2

Total Filings Delinquent

27

Canadian Hemp Corp.

10-QSB	06/30/02	09/10/02	Not filed	72
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-KSB	12/31/07	03/31/08	Not filed	6
10-Q*	03/31/08	05/15/08	Not filed	4
10-Q*	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent

24

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Cannon Pictures, Inc.					
	10-KSB	01/01/94	04/01/94	Not filed	173
	10-QSB	04/02/94	05/17/94	Not filed	172
	10-QSB	07/02/94	08/16/94	Not filed	169
	10-QSB	10/01/94	11/15/94	Not filed	166
	10-KSB	12/31/94	03/31/95	Not filed	162
	10-QSB	04/01/95	05/16/95	Not filed	160
	10-QSB	07/01/95	08/15/95	Not filed	157
	10-QSB	09/30/95	11/14/95	Not filed	154
	10-KSB	01/06/96	04/05/96	Not filed	149
	10-QSB	04/06/96	05/21/96	Not filed	148
	10-QSB	07/06/96	08/20/96	Not filed	145
	10-QSB	10/05/96	11/19/96	Not filed	142
	10-KSB	01/04/97	04/04/97	Not filed	137
	10-QSB	04/05/97	05/20/97	Not filed	136
	10-QSB	07/05/97	08/19/97	Not filed	133
	10-QSB	10/04/97	11/18/97	Not filed	130
	10-KSB	01/03/98	04/03/98	Not filed	125
	10-QSB	04/04/98	05/19/98	Not filed	124
	10-QSB	07/04/98	08/18/98	Not filed	121
	10-QSB	10/03/98	11/17/98	Not filed	118
	10-KSB	01/02/99	04/02/99	Not filed	113
	10-QSB	04/03/99	05/18/99	Not filed	112
	10-QSB	07/03/99	08/17/99	Not filed	109
	10-QSB	10/02/99	11/16/99	Not filed	106
	10-KSB	01/01/00	03/31/00	Not filed	102
	10-QSB	04/01/00	05/16/00	Not filed	100
	10-QSB	07/01/00	08/15/00	Not filed	97
	10-QSB	09/30/00	11/14/00	Not filed	94
	10-KSB	01/06/01	04/06/01	Not filed	89
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-QSB	06/30/01	08/14/01	Not filed	85
	10-QSB	10/06/01	11/20/01	Not filed	82
	10-KSB	01/05/02	04/05/02	Not filed	77
	10-QSB	04/06/02	05/21/02	Not filed	76
	10-QSB	07/06/02	08/20/02	Not filed	73
	10-QSB	10/05/02	11/19/02	Not filed	70
	10-KSB	01/04/03	04/04/03	Not filed	65

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Cannon Pictures, Inc.					
	10-QSB	04/05/03	05/20/03	Not filed	64
	10-QSB	04/05/03	05/20/03	Not filed	64
	10-QSB	10/04/03	11/18/03	Not filed	58
	10-KSB	01/03/04	04/02/04	Not filed	53
	10-QSB	04/03/04	05/18/04	Not filed	52
	10-QSB	07/03/04	08/17/04	Not filed	49
	10-QSB	10/02/04	11/16/04	Not filed	46
	10-KSB	01/01/05	04/01/05	Not filed	41
	10-QSB	04/02/05	05/17/05	Not filed	40
	10-QSB	07/02/05	08/16/05	Not filed	37
	10-QSB	10/01/05	11/15/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	04/01/06	05/16/06	Not filed	28
	10-QSB	07/01/06	08/15/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	01/06/07	04/06/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/29/07	11/13/07	Not filed	10
	10-KSB	12/29/07	03/28/08	Not filed	6
	10-Q*	03/29/08	05/13/08	Not filed	4
	10-Q*	06/28/08	08/12/08	Not filed	1

Total Filings Delinquent 59

**Capital Preferred Yield
Fund-II, L.P.**

10-Q	03/31/02	05/15/02	Not filed	76
10-Q	06/30/02	08/14/02	Not filed	73
10-Q	09/30/02	11/14/02	Not filed	70
10-K	12/31/02	03/31/03	Not filed	66
10-Q	03/31/03	05/15/03	Not filed	64
10-Q	06/30/03	08/14/03	Not filed	61
10-Q	09/30/03	11/14/03	Not filed	58
10-K	12/31/03	03/30/04	Not filed	54
10-Q	03/31/04	05/17/04	Not filed	52
10-Q	06/30/04	08/16/04	Not filed	49

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Capital Preferred Yield Fund-II, L.P.					

10-Q	09/30/04	11/15/04	Not filed	46
10-K	12/31/04	03/31/05	Not filed	42
10-Q	03/31/05	05/16/05	Not filed	40
10-Q	06/30/05	08/15/05	Not filed	37
10-Q	09/30/05	11/14/05	Not filed	34
10-K	12/31/05	03/31/06	Not filed	30
10-Q	03/31/06	05/15/06	Not filed	28
10-Q	06/30/06	08/14/06	Not filed	25
10-Q	09/30/06	11/14/06	Not filed	22
10-K	12/31/06	04/02/07	Not filed	17
10-Q	03/31/07	05/15/07	Not filed	16
10-Q	06/30/07	08/14/07	Not filed	13
10-Q	09/30/07	11/14/07	Not filed	10
10-K	12/31/07	03/31/08	Not filed	6
10-Q	03/31/08	05/15/08	Not filed	4
10-Q	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent **26**

Caprock Corp.

10-Q	06/30/93	08/16/93	Not filed	181
10-Q	09/30/93	11/14/93	Not filed	178
10-Q	12/31/93	02/14/94	Not filed	175
10-K	03/31/94	06/30/94	Not filed	171
10-Q	06/30/94	08/14/94	Not filed	169
10-Q	09/30/94	11/14/94	Not filed	166
10-Q	12/31/94	02/17/95	Not filed	163
10-K	03/31/95	06/29/95	Not filed	159
10-Q	06/30/95	08/14/95	Not filed	157
10-Q	09/30/95	11/16/95	Not filed	154
10-Q	12/31/95	02/16/96	Not filed	151
10-K	03/31/96	06/29/96	Not filed	147
10-Q	06/30/96	08/14/96	Not filed	145
10-Q	09/30/96	11/14/96	Not filed	142
10-Q	12/31/96	02/14/97	Not filed	139
10-K	03/31/97	06/30/97	Not filed	135
10-Q	06/30/97	08/14/97	Not filed	133

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Caprock Corp.					
	10-Q	09/30/97	11/14/97	Not filed	130
	10-Q	12/31/97	02/17/98	Not filed	127
	10-K	03/31/98	06/29/98	Not filed	123
	10-Q	06/30/98	08/14/98	Not filed	121
	10-Q	09/30/98	11/16/98	Not filed	118
	10-Q	12/31/98	02/16/99	Not filed	115
	10-K	03/31/99	06/29/99	Not filed	111
	10-Q	12/31/98	02/16/99	Not filed	115
	10-K	03/31/99	06/29/99	Not filed	111
	10-Q	06/30/99	08/16/99	Not filed	109
	10-Q	09/30/99	11/15/99	Not filed	106
	10-Q	12/31/99	02/14/00	Not filed	103
	10-K	03/31/00	06/29/00	Not filed	99
	10-Q	06/30/00	08/14/00	Not filed	97
	10-Q	09/30/00	11/14/00	Not filed	94
	10-Q	12/31/00	02/14/01	Not filed	91
	10-K	03/31/01	06/29/01	Not filed	87
	10-Q	06/30/01	08/14/01	Not filed	85
	10-Q	09/30/01	11/14/01	Not filed	82
	10-Q	12/31/01	02/14/02	Not filed	79
	10-K	03/31/02	07/01/02	Not filed	74
	10-Q	06/30/02	08/14/02	Not filed	73
	10-Q	09/30/02	11/14/02	Not filed	70
	10-Q	12/31/02	02/14/03	Not filed	67
	10-K	03/31/03	06/30/03	Not filed	63
	10-Q	06/30/03	08/14/03	Not filed	61
	10-Q	09/30/03	11/14/03	Not filed	58
	10-Q	12/31/03	02/17/04	Not filed	55
	10-K	03/31/04	06/29/04	Not filed	51
	10-Q	06/30/04	08/16/04	Not filed	49
	10-Q	09/30/04	11/15/04	Not filed	46
	10-Q	12/31/04	02/14/05	Not filed	43
	10-K	03/31/05	06/29/05	Not filed	39
	10-Q	06/30/05	08/15/05	Not filed	37
	10-Q	09/30/05	11/14/05	Not filed	34
	10-Q	12/31/05	02/14/06	Not filed	31
	10-K	03/31/06	06/29/06	Not filed	27

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Caprock Corp.					
	10-Q	06/30/06	08/14/06	Not filed	25
	10-Q	09/30/06	11/14/06	Not filed	22
	10-Q	12/31/06	02/14/07	Not filed	19
	10-K	03/31/07	06/29/07	Not filed	15
	10-Q	06/30/07	08/14/07	Not filed	13
	10-Q	09/30/07	11/14/07	Not filed	10
	10-Q	12/31/07	02/14/08	Not filed	7
	10-K	03/31/08	06/30/08	Not filed	3
	10-Q	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent **63**

Carbite Golf, Inc.

10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-KSB	12/31/07	03/31/08	Not filed	6
10-Q*	03/31/08	05/15/08	Not filed	4
10-Q*	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent **24**

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Cardinal Technologies, Inc.	10-Q	03/31/94	05/16/94	Not filed	172
	10-Q	06/30/94	08/15/94	Not filed	169
	10-Q	09/30/94	11/14/94	Not filed	166
	10-K	12/31/94	03/31/95	Not filed	162
	10-Q	03/31/95	05/15/95	Not filed	160
	10-Q	06/30/95	08/14/95	Not filed	157
	10-Q	09/30/95	11/14/95	Not filed	154
	10-K	12/31/95	04/01/96	Not filed	149
	10-Q	03/31/96	05/15/96	Not filed	148
	10-Q	06/30/96	08/14/96	Not filed	145
	10-Q	09/30/96	11/14/96	Not filed	142
	10-K	12/31/96	03/31/97	Not filed	138
	10-Q	03/31/97	05/15/97	Not filed	136
	10-Q	06/30/97	08/14/97	Not filed	133
	10-Q	09/30/97	11/14/97	Not filed	130
	10-K	12/31/97	03/31/98	Not filed	126
	10-Q	03/31/98	05/15/98	Not filed	124
	10-Q	06/30/98	08/14/98	Not filed	121
	10-Q	09/30/98	11/16/98	Not filed	118
	10-K	12/31/98	03/31/99	Not filed	114
	10-Q	03/31/99	05/17/99	Not filed	112
	10-Q	06/30/99	08/16/99	Not filed	109
	10-Q	09/30/99	11/15/99	Not filed	106
	10-K	12/31/99	03/30/00	Not filed	102
	10-Q	03/31/00	05/15/00	Not filed	100
	10-Q	06/30/00	08/14/00	Not filed	97
	10-Q	09/30/00	11/14/00	Not filed	94
	10-K	12/31/00	04/02/01	Not filed	89
	10-Q	03/31/01	05/15/01	Not filed	88
	10-Q	06/30/01	08/14/01	Not filed	85
	10-Q	09/30/01	11/14/01	Not filed	82
	10-K	12/31/01	04/01/02	Not filed	77
	10-Q	03/31/02	05/15/02	Not filed	76
	10-Q	06/30/02	08/14/02	Not filed	73
	10-Q	09/30/02	11/14/02	Not filed	70
	10-K	12/31/02	03/31/03	Not filed	66
	10-Q	03/31/03	05/15/03	Not filed	64
	10-Q	06/30/03	08/14/03	Not filed	61

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Cardinal Technologies, Inc.	10-Q	09/30/03	11/14/03	Not filed	58
	10-K	12/31/03	03/30/04	Not filed	54
	10-Q	03/31/04	05/17/04	Not filed	52
	10-Q	06/30/04	08/16/04	Not filed	49
	10-Q	09/30/04	11/15/04	Not filed	46
	10-K	12/31/04	03/31/05	Not filed	42
	10-Q	03/31/05	05/16/05	Not filed	40
	10-Q	06/30/05	08/15/05	Not filed	37
	10-Q	09/30/05	11/14/05	Not filed	34
	10-K	12/31/05	03/31/06	Not filed	30
	10-Q	03/31/06	05/15/06	Not filed	28
	10-Q	06/30/06	08/14/06	Not filed	25
	10-Q	09/30/06	11/14/06	Not filed	22
	10-K	12/31/06	04/02/07	Not filed	17
	10-Q	03/31/07	05/15/07	Not filed	16
	10-Q	06/30/07	08/14/07	Not filed	13
	10-Q	09/30/07	11/14/07	Not filed	10
	10-K	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent		58			

*Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 17, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13207

In the Matter of

Blue Angel Holdings Corp.,
Byron Enterprises, Inc.,
Captains Management Corp.,
Coronado Resources, Inc.,
Hometeach.com, Inc.,
Joshua Tree Construction, Inc.,
Magellan Filmed Entertainment,
Inc., and
Solar Enterprises, Inc.,

Respondents.

ORDER INSTITUTING
PROCEEDINGS AND NOTICE
OF HEARING PURSUANT TO
SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT
OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Blue Angel Holdings Corp., Byron Enterprises, Inc., Captains Management Corp., Coronado Resources, Inc., Hometeach.com, Inc., Joshua Tree Construction, Inc., Magellan Filmed Entertainment, Inc., and Solar Enterprises, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Blue Angel Holdings Corp. (CIK No. 1161327) is a New York corporation located in Williamsville, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Blue Angel is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on October 19, 2001, which reported an accumulated deficit of \$42,035.

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2. Byron Enterprises, Inc. (CIK No. 1140462) is a revoked Nevada corporation located in Irvine, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Byron is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2001, which reported a net loss of \$8,313.

3. Captains Management Corp. (CIK No. 1104164) is a revoked Nevada corporation located in Beverly Hills, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Captains is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2000, which reported liabilities of \$113,315.

4. Coronado Resources, Inc. (CIK No. 1082825) is a revoked Nevada corporation located in Escondido, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Coronado is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2001, which reported an accumulated deficit of \$12,840.

5. Hometeach.com, Inc. (CIK No. 1099729) is a revoked Nevada corporation located in Dana Point, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Hometeach is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2001, which reported accumulated losses of \$107,084.

6. Joshua Tree Construction, Inc. (CIK No. 1130481) is a revoked Nevada corporation located in Canfield, Ohio with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Joshua Tree is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2002, which reported an accumulated deficit of \$3,978,374.

7. Magellan Filmed Entertainment, Inc. (CIK No. 1092804) is a terminated Delaware corporation located in Kirkland, Washington with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Magellan is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2001, which reported total liabilities of \$2,244,428.

8. Solar Enterprises, Inc. (CIK No. 1103589) is a suspended California corporation located in Los Angeles, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Solar is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended November 30, 2001.

B. DELINQUENT PERIODIC FILINGS

9. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

10. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

11. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary

Attachment

By: *Jill M. Peterson*
Jill M. Peterson
Assistant Secretary

Appendix 1
Chart of Delinquent Filings
In the Matter of Blue Angel Holdings Corp., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
Blue Angel Holdings Corp.	10-QSB	03/31/01	02/04/02	Not filed	79
	10-QSB	06/30/01	02/04/02	Not filed	79
	10-QSB	09/30/01	02/04/02	Not filed	79
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
Blue Angel Holdings Corp.					
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/15/08	Not filed	1
Total Filings Delinquent	30				
Byron Enterprises, Inc.					
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10

¹Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
Byron Enterprises, Inc.					
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/15/08	Not filed	1
Total Filings Delinquent	27				

Captains Management Corp.

10-QSB	09/30/00	11/14/00	Not filed	94
10-KSB	12/31/00	04/02/01	Not filed	89
10-QSB	03/31/01	05/15/01	Not filed	88
10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
Captains Management Corp.					
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/15/08	Not filed	1
Total Filings Delinquent	32				

Coronado Resources, Inc.

10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-KSB	12/31/07	03/31/08	Not filed	6
10-Q	03/31/08	05/15/08	Not filed	4
10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent **26**

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
Hometeach.com, Inc.					
	10-KSB	06/30/01	09/28/01	Not filed	84
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-QSB	12/31/01	02/14/02	Not filed	79
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-KSB	06/30/02	09/30/02	Not filed	72
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-QSB	12/31/02	02/14/03	Not filed	67
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-KSB	06/30/03	09/29/03	Not filed	60
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-QSB	12/31/03	02/17/04	Not filed	55
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-KSB	06/30/04	09/28/04	Not filed	48
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-QSB	12/31/04	02/14/05	Not filed	43
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-KSB	06/30/05	09/28/05	Not filed	36
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-QSB	12/31/05	02/14/06	Not filed	31
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-KSB	06/30/06	09/28/06	Not filed	24
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-QSB	12/31/06	02/14/07	Not filed	19
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-KSB	06/30/07	09/28/07	Not filed	12
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-QSB	12/31/07	02/14/08	Not filed	7
	10-Q	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent 29

**Joshua Tree
Construction, Inc.**

10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52

Company Name**Form Type****Period
Ended****Due Date****Date
Received****Months
delinquent
(rounded up)****Joshua Tree
Construction, Inc.**

10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/01/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-KSB	12/31/07	03/31/08	Not filed	6
10-Q	03/31/08	05/15/08	Not filed	4
10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent

23

**Magellan Filmed
Entertainment, Inc.**

10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
Magellan Filmed Entertainment, Inc.					
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/15/08	Not filed	1
Total Filings Delinquent	27				

Solar Enterprises, Inc.

10-KSB	02/28/02	05/29/02	Not filed	76
10-QSB	05/31/02	07/15/02	Not filed	74
10-QSB	08/31/02	10/15/02	Not filed	71
10-QSB	11/30/02	01/14/03	Not filed	68
10-KSB	02/28/03	05/29/03	Not filed	64
10-QSB	05/31/03	07/15/03	Not filed	62
10-QSB	08/31/03	10/15/03	Not filed	59
10-QSB	11/30/03	01/14/04	Not filed	56
10-KSB	02/29/04	06/01/04	Not filed	51
10-QSB	05/31/04	07/15/04	Not filed	50
10-QSB	08/31/04	10/15/04	Not filed	47
10-QSB	11/30/04	01/14/05	Not filed	44
10-KSB	02/28/05	05/31/05	Not filed	40
10-QSB	05/31/05	07/15/05	Not filed	38
10-QSB	08/31/05	10/17/05	Not filed	35
10-QSB	11/30/05	01/17/06	Not filed	32
10-KSB	02/28/06	05/30/06	Not filed	28
10-QSB	05/31/06	07/17/06	Not filed	26
10-QSB	08/31/06	10/17/06	Not filed	23
10-QSB	11/30/06	01/17/07	Not filed	20
10-KSB	02/28/07	05/30/07	Not filed	16
10-QSB	05/31/07	07/17/07	Not filed	14
10-QSB	08/31/07	10/17/07	Not filed	11
10-QSB	11/30/07	01/17/08	Not filed	8
10-KSB	02/28/08	05/30/08	Not filed	4

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
Solar Enterprises, Inc.	10-Q	05/31/08	07/18/08	Not filed	2
Total Filings Delinquent	26				

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 17, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13206

In the Matter of

Q-Entertainment, Inc. (f/k/a Q-Zar,
Inc.),
Q-Seven Systems, Inc.,
Qualton, Inc., and
QuikBIZ Internet Group, Inc.,

Respondents.

ORDER INSTITUTING
PROCEEDINGS AND NOTICE
OF HEARING PURSUANT TO
SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT
OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Q-Entertainment, Inc. (f/k/a Q-Zar, Inc.), Q-Seven Systems, Inc., Qualton, Inc., and QuikBIZ Internet Group, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Q-Entertainment, Inc. (f/k/a Q-Zar, Inc.) (CIK No. 1004545) is a New Brunswick, Canada corporation located in Dallas, Texas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Q-Entertainment is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended December 31, 1996. On December 5, 1997, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Northern District of Texas, the petition was converted to Chapter 7 on December 3, 1997, and the case is pending.

2. Q-Seven Systems, Inc. (CIK No. 1033504) is an expired Utah corporation located in Monheim, Germany with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Q-Seven Systems is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form

10-QSB for the period ended September 30, 2001, which reported a net loss of \$161,168 for the prior nine months.

3. Qualton, Inc. (CIK No. 887310) is a void Delaware corporation located in Mexico City, Mexico with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Qualton is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2001, which reported a net loss of \$7,144 for the prior three months.

4. QuikBIZ Internet Group, Inc. (CIK No. 925376) is a revoked Nevada corporation located in Ft. Lauderdale, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). QuikBIZ Internet Group is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2000, which reported a net loss of \$1,951,740 for the prior nine months.

B. DELINQUENT PERIODIC FILINGS

5. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

6. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires domestic issuers to file annual reports and Rule 13a-13 requires domestic issuers that file domestic forms to file quarterly reports. Rule 13a-16 requires certain foreign private issuers to furnish quarterly and other material reports to the Commission under cover of Form 6-K if they make or are required to make the information public under the laws of the jurisdiction of their domicile or in which they are incorporated or organized; if they file or are required to file information with a stock exchange on which their securities are traded and the information was made public by the exchange; or if they distribute or are required to distribute information to their security holders.

7. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 or 13a-16 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to

notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary

Attachment

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Appendix 1

**Chart of Delinquent Filings
In the Matter of Q-Entertainment, Inc., et al.**

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Q-Entertainment, Inc. (f/k/a Q-Zar, Inc.)					
	20-F	12/31/97	06/30/98	Not filed	123
	20-F	12/31/98	06/30/99	Not filed	111
	20-F	12/31/99	06/30/00	Not filed	99
	20-F	12/31/00	07/02/01	Not filed	86
	20-F	12/31/01	07/01/02	Not filed	74
	20-F	12/31/02	06/30/03	Not filed	63
	20-F	12/31/03	06/30/04	Not filed	51
	20-F	12/31/04	06/30/05	Not filed	39
	20-F	12/31/05	06/30/06	Not filed	27
	20-F	12/31/06	07/02/07	Not filed	14
	20-F	12/31/07	06/30/08	Not filed	3
Total Filings Delinquent	11				
Q-Seven Systems, Inc.					
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Q-Seven Systems, Inc.					
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	2
	10-Q	06/30/08	08/15/08	Not filed	1
Total Filings Delinquent	27				
Qualton, Inc.					
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34

¹Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
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Qualton, Inc.

10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-KSB	12/31/07	03/31/08	Not filed	6
10-Q	03/31/08	05/15/08	Not filed	4
10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent

26

QuikBIZ Internet Group, Inc.

10-KSB	12/31/00	04/02/01	Not filed	89
10-QSB	03/31/01	05/15/01	Not filed	88
10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
QuikBIZ Internet Group, Inc.	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent 31

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58559 / September 17, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13204

In the Matter of

Douglas B. Peterson,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER PURSUANT TO
SECTIONS 15(b) AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934.

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Douglas B. Peterson ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that

A. RESPONDENT

1. Douglas B. Peterson, age 43, resides in Casper, Wyoming. From August 2005 through January 2007, Peterson was a sales manager for American Energy Resources Corporation ("American Energy Resources"), a Colorado Springs, Colorado, based company that sells undivided fractional interests in oil and gas wells to investors. American Energy Resources has not registered any securities with the Commission. During the relevant period, Peterson was not associated with a registered broker or dealer.

B. FACTS

1. Beginning in approximately May 2005, American Energy Resources issued securities in the form of undivided fractional interests in oil and gas wells.

2. From August 2005 through January 2007, Peterson was a sales manager for American Energy Resources. In this role, Peterson offered and sold American Energy Resources securities through cold call telephone solicitations of prospective investors and seminars advertised in local newspapers. Peterson also supervised and trained other salespeople who offered and sold American Energy Resources securities through cold call telephone solicitations and seminars advertised in local newspapers.

3. Peterson received transaction-based compensation in connection with his sales of American Energy Resources securities. Peterson also received transaction-based compensation for sales of American Energy Resources securities by the salespeople under his management.

4. Peterson offered and sold the American Energy Resources securities through means and instruments of interstate commerce. Peterson caused American Energy Resources offering materials to be mailed to prospective investors and also used telephonic communications to offer and sell securities issued by American Energy Resources.

5. No registration statement was filed with the Commission or was in effect as to the transactions in securities issued by American Energy Resources. Moreover, the securities issued by American Energy Resources were not exempt from registration.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

6. As a result of the conduct described above, Peterson willfully violated Sections 5(a) and 5(c) of the Securities Act of 1933 ("Securities Act") and Section 15(a) of the Exchange Act.

7. Peterson has submitted a sworn Statement of Financial Condition dated November 5, 2007 and other evidence and has asserted his inability to pay a civil penalty or disgorgement plus prejudgment interest.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in the Offer of Respondent Peterson.

Accordingly, pursuant to Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Peterson cease and desist from committing or causing any violations and any future violations of Sections 5(a) and 5(c) of the Securities Act and Section 15(a) of the Exchange Act.

B. Peterson be, and hereby is barred from association with any broker or dealer, with the right to reapply for association after one (1) year to the appropriate self-regulatory organization, or if there is none, to the Commission.

C. Any reapplication for association by Peterson will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against Peterson, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Peterson shall pay disgorgement of \$396,853.86 plus prejudgment interest of \$47,841.75, but that payment of such amounts is waived based upon Respondent's sworn representations in his Statement of Financial Condition dated November 5, 2007 and other documents submitted to the Commission. Based upon Peterson's sworn representations in his Statement of Financial Condition dated November 5, 2007 and other documents submitted to the Commission, the Commission is not imposing a penalty against Peterson.

E. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; and (2) seek an order directing payment of disgorgement and prejudgment interest and/or the maximum civil penalty allowable under the law. No other issue shall be considered in connection

with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement and interest and/or the maximum civil penalty allowable under the law should not be ordered; (3) contest the amount of disgorgement and interest or the imposition of the maximum penalty allowable under the law; or (4) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: *Jill M. Peterson*
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 17, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13203

In the Matter of

**EA Industries, Inc.,
Ebiz Enterprises, Inc., and
Einstein Noah Bagel Corp.
(n/k/a ENBC Corp.),**

Respondents.

**ORDER INSTITUTING
PROCEEDINGS AND NOTICE OF
HEARING PURSUANT TO SECTION
12(j) OF THE SECURITIES
EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against EA Industries, Inc., Ebiz Enterprises, Inc., and Einstein Noah Bagel Corp. (n/k/a ENBC Corp.).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. EA Industries, Inc. ("EAIN")¹ (CIK No. 313096) is a revoked New Jersey corporation located in West Long Branch, New Jersey with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). EAIN is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended June 27, 1998, which reported a net loss of \$6,692,000 for the prior six months. As of September 12, 2008, the common stock of EAIN was quoted on the Pink Sheets, had five market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

2. Ebiz Enterprises, Inc. ("EBPR") (CIK No. 1094944) is a Nevada corporation located in Scottsdale, Arizona with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). EBPR is delinquent in its periodic

¹The short form of each issuer's name is also its stock symbol.

filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended December 31, 2002, which reported a net loss of over \$1.2 million for the prior six months. As of September 12, 2008, the common stock of EBPR was quoted on the Pink Sheets, had four market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

3. Einstein Noah Bagel Corp. (n/k/a ENBC Corp.) ("ENBBQ") (CIK No. 1007184) is a dissolved Delaware corporation located in Golden, Colorado with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). ENBBQ is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended April 24, 2001, which reported a net loss of \$6,766,000 for the prior sixteen weeks. As of September 12, 2008, the common stock of ENBBQ was quoted on the Pink Sheets, had five market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

4. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

5. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires issuers to file quarterly reports).

6. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary

Attachment

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

Appendix 1

Chart of Delinquent Filings In the Matter of EA Industries, Inc., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
EA Industries, Inc.					
	10-Q	09/26/98	11/10/98	Not filed	118
	10-K	12/31/98	03/31/99	Not filed	114
	10-Q	03/27/99	05/11/99	Not filed	112
	10-Q	06/26/99	08/10/99	Not filed	109
	10-Q	09/25/99	11/09/99	Not filed	106
	10-K	12/31/99	03/30/00	Not filed	102
	10-Q	03/25/00	05/09/00	Not filed	100
	10-Q	06/24/00	08/08/00	Not filed	97
	10-Q	09/30/00	11/14/00	Not filed	94
	10-K	12/31/00	04/02/01	Not filed	89
	10-Q	03/31/01	05/15/01	Not filed	88
	10-Q	06/30/01	08/14/01	Not filed	85
	10-Q	09/29/01	11/13/01	Not filed	82
	10-K	12/31/01	04/01/02	Not filed	77
	10-Q	03/30/02	05/14/02	Not filed	76
	10-Q	06/29/02	08/13/02	Not filed	73
	10-Q	09/28/02	11/12/02	Not filed	70
	10-K	12/31/02	03/31/03	Not filed	66
	10-Q	03/29/03	05/13/03	Not filed	64
	10-Q	06/28/03	08/12/03	Not filed	61
	10-Q	09/27/03	11/11/03	Not filed	58
	10-K	12/31/03	03/30/04	Not filed	54
	10-Q	03/27/04	05/11/04	Not filed	52
	10-Q	06/26/04	08/10/04	Not filed	49
	10-Q	09/25/04	11/09/04	Not filed	46
	10-K	12/31/04	03/31/05	Not filed	42
	10-Q	03/26/05	05/10/05	Not filed	40
	10-Q	06/25/05	08/09/05	Not filed	37
	10-Q	09/24/05	11/08/05	Not filed	34
	10-K	12/31/05	03/31/06	Not filed	30
	10-Q	03/25/06	05/09/06	Not filed	28
	10-Q	06/24/06	08/08/06	Not filed	25
	10-Q	09/30/06	11/14/06	Not filed	22
	10-K	12/31/06	04/02/07	Not filed	17
	10-Q	03/31/07	05/15/07	Not filed	16
	10-Q	06/30/07	08/14/07	Not filed	13

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
EA Industries, Inc. (continued)	10-Q	09/29/07	11/13/07	Not filed	10
	10-K	12/31/07	03/31/08	Not filed	6
	10-Q	03/29/08	05/13/08	Not filed	4
	10-Q	06/28/08	08/12/08	Not filed	1

Total Filings Delinquent **40**

Ebiz Enterprises, Inc.

10-QSB	03/31/03	05/15/03	Not filed	64
10-KSB	06/30/03	09/29/03	Not filed	60
10-QSB	09/30/03	11/14/03	Not filed	58
10-QSB	12/31/03	02/17/04	Not filed	55
10-QSB	03/31/04	05/17/04	Not filed	52
10-KSB	06/30/04	09/28/04	Not filed	48
10-QSB	09/30/04	11/15/04	Not filed	46
10-QSB	12/31/04	02/14/05	Not filed	43
10-QSB	03/31/05	05/16/05	Not filed	40
10-KSB	06/30/05	09/28/05	Not filed	36
10-QSB	09/30/05	11/14/05	Not filed	34
10-QSB	12/31/05	02/14/06	Not filed	31
10-QSB	03/31/06	05/15/06	Not filed	28
10-KSB	06/30/06	09/28/06	Not filed	24
10-QSB	09/30/06	11/14/06	Not filed	22
10-QSB	12/31/06	02/14/07	Not filed	19
10-QSB	03/31/07	05/15/07	Not filed	16
10-KSB	06/30/07	09/28/07	Not filed	12
10-QSB	09/30/07	11/14/07	Not filed	10
10-QSB	12/31/07	02/14/08	Not filed	7
10-QSB	03/31/08	05/16/08	Not filed	4

Total Filings Delinquent **21**

Einstein Noah Bagel Corp.
(n/k/a ENBC Corp.)

10-Q	07/17/01	08/31/01	Not filed	85
10-Q	10/09/01	11/23/01	Not filed	82
10-K	01/01/02	04/01/02	Not filed	77
10-Q	04/23/02	06/07/02	Not filed	75
10-Q	07/16/02	08/30/02	Not filed	73
10-Q	10/08/02	11/22/02	Not filed	70
10-K	12/31/02	03/31/03	Not filed	66

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Einstein Noah Bagel Corp.					
(n/k/a ENBC Corp.)					
<i>(continued)</i>					
	10-Q	04/22/03	06/06/03	Not filed	63
	10-Q	07/15/03	08/29/03	Not filed	61
	10-Q	10/07/03	11/21/03	Not filed	58
	10-K	12/30/03	03/29/04	Not filed	54
	10-Q	04/20/04	06/04/04	Not filed	51
	10-Q	07/13/04	08/27/04	Not filed	49
	10-Q	10/05/04	11/19/04	Not filed	46
	10-K	01/04/05	04/04/05	Not filed	41
	10-Q	04/26/05	06/10/05	Not filed	39
	10-Q	07/19/05	09/02/05	Not filed	36
	10-Q	10/11/05	11/25/05	Not filed	34
	10-K	01/03/06	04/03/06	Not filed	29
	10-Q	04/25/06	06/09/06	Not filed	27
	10-Q	07/18/06	09/01/06	Not filed	24
	10-Q	10/10/06	11/24/06	Not filed	22
	10-K	01/02/07	04/02/07	Not filed	17
	10-Q	04/24/07	06/08/07	Not filed	15
	10-Q	07/17/07	08/31/07	Not filed	13
	10-Q	10/09/07	11/23/07	Not filed	10
	10-K	01/01/08	03/31/08	Not filed	6
	10-Q	04/22/08	06/06/08	Not filed	3
	10-Q	07/15/08	08/29/08	Not filed	1
Total Filings Delinquent	29				

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

September 17, 2008

IN THE MATTER OF

**EA Industries, Inc.,
Ebiz Enterprises, Inc., and
Einstein Noah Bagel Corp. (n/k/a
ENBC Corp.)**

File No. 500-1

**ORDER OF SUSPENSION
OF TRADING**

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of EA Industries, Inc. because it has not filed any periodic reports since the period ended June 27, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Ebiz Enterprises, Inc. because it has not filed any periodic reports since the period ended December 31, 2002.

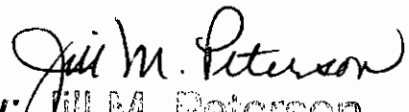
It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Einstein Noah Bagel Corp. (n/k/a ENBC Corp.) because it has not filed any periodic reports since the period ended April 24, 2001.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on September 17, 2008, through 11:59 p.m. EDT on September 30, 2008.

By the Commission.

Florence E. Harmon
Acting Secretary


By: Jill M. Peterson
Assistant Secretary

*Chairman Cox and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58575 / September 18, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13212

In the Matter of

Laurence McKeever,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Laurence McKeever ("McKeever" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. McKeever, 47 years old, is a resident of Pearl River, New York.
2. From March 2003 through March 2007, McKeever was a registered representative associated with Assent LLC ("Assent"), a broker-dealer registered with the Commission. McKeever was a general securities principal at Assent.
3. On January 28, 2008, McKeever pled guilty to a count of conspiracy to commit securities fraud, in violation of Title 15, United States Code, Sections 78j(b) & 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2; wire fraud, in violation of Title 18, United States Code, Sections 1343 and 1346; and commercial bribery and commercial bribe receiving, in violation of the laws of the State of New York and in violation of Title 18, United States Code, Section 1952(a)(3) before the United States District Court for the Southern District of New York, in United States v. Samuel W. Childs, Jr. and Laurence McKeever, Indictment No. 1:07-CR-142.
4. The count of the criminal indictment to which McKeever pled guilty alleged, inter alia, that McKeever discovered an illegal insider trading scheme in which individuals executing trades through Assent ("Assent traders") used material, nonpublic information concerning upcoming analyst recommendations by UBS Securities LLC to purchase and sell securities. In violation of his duties to Assent, McKeever concealed the insider trading scheme from Assent management in exchange for bribery payments from the Assent traders.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent McKeever's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act, that Respondent McKeever be, and hereby is barred from association with any broker or dealer.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a

customer, whether or not related to the conduct that served as the basis for the Commission order;
and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct
that served as the basis for the Commission order.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: *Jill M. Peterson*
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58580 / September 18, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13217

In the Matter of

LLOYD S. BEIRNE,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Lloyd S. Beirne ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in §§ III.2 and III.4 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

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1. Lloyd S. Beirne, age 42, is a resident of Boca Raton, Florida. He is the former president of a now defunct broker-dealer named D.L. Cromwell Investments, Inc. ("Cromwell"), which was registered with the Commission from July 1999 until October 9, 2003. He is not currently associated with any broker-dealer.

2. On July 24, 2008, a final judgment was entered by consent against Beirne, permanently enjoining him from future violations of 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled *Securities and Exchange Commission v. David S. Davidson, et al.*, Civil Action Number 05-742, in the United States District Court for the Eastern District of Pennsylvania.

3. On February 17, 2005, the Commission filed its complaint alleging that, from late October 2002 through March 2003, Cromwell conducted a fraudulent short selling scheme in the stock of Expedia, Inc. ("Expedia"). The named defendants were Cromwell officers, David S. Davidson ("Davidson") and Respondent Beirne, and the Cromwell trader responsible for placing the trades for Cromwell. The Commission's complaint alleges that Beirne and his co-defendants used the access that Cromwell, as an introducing broker, had to its clearing broker's trading system to falsely place Expedia buy orders, which they knew they would cancel the next day, claiming the orders were placed in error. The complaint alleges that defendants entered and cancelled these fictitious buys almost daily for five months, concealing the size of the short position, and avoiding serious financial consequences until the scheme unraveled when Expedia's price rose, and Cromwell could not cover its short position, leaving the clearing broker to pay \$18 million to cover the position.

4. On June 26, 2003, Beirne pled guilty to one count of conspiracy to commit securities fraud in violation of 18 U.S.C. § 371, two counts of securities fraud in violation of 15 U.S.C. §§ 78(b) and 78ff, and one count of making false statements to the Securities and Exchange Commission in violation of 15 U.S.C. §§ 78q(a) and 78ff(a) before the United States District Court for the Eastern District of New York, *U.S. v. David S. Davidson and Lloyd S. Beirne*, Criminal Action No. 02-681 (S-1) & 04-583 (Judge Gleeson). On October 31, 2007, an amended judgment in the criminal case was entered against Beirne. He was sentenced to probation for five years to run concurrently on all counts, ordered to make restitution in the amount of \$6.9 million and to pay a \$400 fine.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Beirne's Offer.

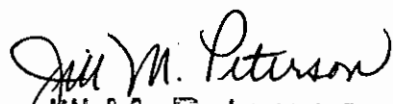
Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act Respondent Beirne be, and hereby is barred from association with any broker or dealer;

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Florence E. Harmon
Acting Secretary


By: Jill M. Peterson
Assistant Secretary

*Chairman Cox and
Commissioner Watter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58578 / September 18, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13215

In the Matter of

Randi E. Collotta,

Respondent.

ORDER OF SUSPENSION PURSUANT TO
RULE 102(e)(2) OF THE COMMISSION'S
RULES OF PRACTICE

I.

The Securities and Exchange Commission deems it appropriate to issue an order of forthwith suspension of Randi E. Collotta ("Collotta") pursuant to Rule 102(e)(2) of the Commission's Rules of Practice [17 C.F.R. § 200.102(e)(2)].¹

II.

The Commission finds that:

1. Collotta is an attorney in New York.
2. On May 10, 2007, Collotta pled guilty to one count of conspiracy to commit securities fraud, in violation of Title 15, United States Code, Sections 78j(b) & 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2, and one count of securities fraud,

¹ Rule 102(e)(2) provides in pertinent part: "Any ... person who has been convicted of a felony or a misdemeanor involving moral turpitude shall be forthwith suspended from appearing or practicing before the Commission."

in violation of Title 17, Code of Federal Regulations, Sections 240.10b-5, before the United States District Court for the Southern District of New York, in United States v. Randi Collotta and Christopher Collotta, Crim. Indictment No. 1:07-CR-143.

3. On October 16, 2007, Collotta was sentenced to 60 days imprisonment, four years probation, forfeiture of \$4,500, and a \$3,000 fine.

III.

In view of the foregoing, the Commission finds that Collotta has been convicted of a felony within the meaning of Rule 102(e)(2) of the Commission's Rules of Practice.

Accordingly, it is ORDERED, that Randi Collotta is forthwith suspended from appearing or practicing before the Commission pursuant to Rule 102(e)(2) of the Commission's Rules of Practice.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

*Chairman Cox and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58577 / September 18, 2008

INVESTMENT ADVISERS ACT OF 1940
Release No. 2781 / September 18, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13214

In the Matter of

Randi E. Collotta,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Randi E. Collotta ("Collotta" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over her and the subject matter of these

proceedings, and the findings contained in Section III.3 and 5 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Collotta, 31 years old, is a resident of Bayport, New York.
2. From July 2003 through June 2005, Collotta was a registered representative associated with Morgan Stanley & Co., Inc. ("Morgan Stanley"), a broker-dealer and investment adviser registered with the Commission.
3. On September 12, 2008, a final judgment was entered by consent against Collotta, permanently enjoining her from future violations of Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Guttenberg, et al., Civil Action No. 07 CV 1774, in the United States District Court for the Southern District of New York.
4. The Commission's complaint alleged that from at least 2004 through 2005, Collotta misappropriated from Morgan Stanley material, nonpublic information concerning upcoming corporate acquisitions, and, together with her husband Christopher Collotta, tipped this confidential information to Marc Jurman, in exchange for sharing in Jurman's illicit profits from trading on that information.
5. On May 10, 2007, Collotta pled guilty to one count of conspiracy to commit securities fraud, in violation of Title 15, United States Code, Sections 78j(b) & 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2, and one count of securities fraud, in violation of Title 17, Code of Federal Regulations, Sections 240.10b-5, before the United States District Court for the Southern District of New York, in United States v. Randi Collotta and Christopher Collotta, Crim. Indictment No. 1:07-CR-143.
6. The counts of the criminal information to which Collotta pled guilty alleged, inter alia, that Collotta misappropriated material, nonpublic information from Morgan Stanley and its clients and unlawfully passed that information to Christopher Collotta and Marc Jurman, and that Marc Jurman illegally traded using that information and then shared a portion of the illegal profits with Randi Collotta and Christopher Collotta.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Collotta's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act, that Respondent Collotta be, and hereby is barred from association with any broker, dealer, or investment adviser.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: *Jill M. Peterson*
Assistant Secretary

*Chairman Cok and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58576 / September 18, 2008

INVESTMENT ADVISERS ACT OF 1940
Release No. 2780 / September 18, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13213

In the Matter of

Robert D. Babcock,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Robert D. Babcock ("Babcock" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these

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proceedings, and the findings contained in Section III.3 and 5 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934 and Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Babcock, 34 years old, is a resident of New York, New York.
2. From January 2000 through August 2006, Babcock was a registered representative associated with Bear, Stearns & Co., Inc. ("Bear Stearns"), a broker-dealer and investment adviser registered with the Commission.
3. On September 12, 2008, a final judgment was entered by consent against Babcock, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Guttenberg, et al., Civil Action No. 07 CV 1774, in the United States District Court for the Southern District of New York.
4. The Commission's complaint alleged that from at least December 2001 through 2003, Babcock engaged in illegal insider trading by using material, nonpublic information concerning upcoming analyst recommendations by UBS Securities LLC ("UBS") to purchase and sell securities in his personal brokerage account and on behalf of Lyford Cay Capital, LP, a hedge fund at Bear Stearns. The complaint further alleged that in 2005, Babcock engaged in illegal insider trading by using material, nonpublic information concerning upcoming corporate acquisition announcements involving investment banking clients of Morgan Stanley & Co., Inc. ("Morgan Stanley") to purchase securities in his personal brokerage account.
5. On March 1, 2007, Babcock pled guilty to one count of conspiracy to commit securities fraud, in violation of Title 15, United States Code, Sections 78j(b) & 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2, and one count of securities fraud, in violation of Title 17, Code of Federal Regulations, Sections 240.10b-5, before the United States District Court for the Southern District of New York, in United States v. Robert Babcock, Crim. Information No. 1:07-CR-154.
6. The counts of the criminal information to which Babcock pled guilty alleged, *inter alia*, that Babcock illegally conspired with others to trade on material, nonpublic information obtained from Morgan Stanley concerning upcoming corporate acquisitions, and that Babcock illegally traded on material, nonpublic information obtained from UBS concerning upcoming analyst recommendation in his personal accounts.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Babcock's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act, that Respondent Babcock be, and hereby is barred from association with any broker, dealer, or investment adviser.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

*Chairman Cok and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2779 / September 18, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13211

In the Matter of

Mark E. Lenowitz,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Mark E. Lenowitz ("Lenowitz" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.3 and 5 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Lenowitz, 45 years old, is a resident of Old Tappan, New Jersey.
2. In 2002, Lenowitz was associated with DSJ International Resources Ltd. (d/b/a Chelsey Capital) and, from 2003 through 2005, was associated with Q Capital Investment Partners, LP ("Q Capital"). Both Chelsey Capital and Q Capital were investment advisers.
3. On September 12, 2008, a final judgment was entered by consent against Lenowitz, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Exchange Act, and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Guttenberg, et al., Civil Action No. 07 CV 1774, in the United States District Court for the Southern District of New York.
4. The Commission's complaint alleged that from 2002 through 2003, Lenowitz engaged in illegal insider trading by using material, nonpublic information concerning upcoming analyst recommendations by UBS Securities LLC ("UBS") to purchase and sell securities in his personal brokerage account and on behalf of Chelsey Capital.
5. On July 24, 2007, Lenowitz pled guilty to one count of conspiracy to commit securities fraud, in violation of Title 15, United States Code, Sections 78j(b) & 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2, and one count of securities fraud, in violation of Title 17, Code of Federal Regulations, Sections 240.10b-5, before the United States District Court for the Southern District of New York, in United States v. Mark Lenowitz, Crim. Indictment No. 1:07-CR-146 (SHS).
6. The counts of the criminal indictment to which Lenowitz pled guilty alleged, inter alia, that Lenowitz illegally conspired with others to trade on material, nonpublic information obtained from UBS concerning upcoming analyst recommendations, and that Lenowitz illegally traded on material, nonpublic information obtained from UBS concerning upcoming analyst recommendations in his personal account.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Lenowitz's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 203(f) of the Advisers Act, that Respondent Lenowitz be, and hereby is barred from association with any investment adviser.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

*Chairman Cox and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58574 / September 18, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13210

In the Matter of

David A. Glass,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against David A. Glass ("Glass" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.3 and 5 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

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*Chairman Cox and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58573 / September 18, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13209

In the Matter of

Marc R. Jurman,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Marc R. Jurman ("Jurman" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.3 and 5 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Jurman, 33 years old, is a resident of Bay Shore, New York.
2. From May 2003 to February 2005, Jurman was a registered representative associated with Marlins Capital, LLC, a broker-dealer registered with the Commission. From February 2005 through January 2007, Jurman was a registered representative associated with Finance 500, Inc., a broker-dealer registered with the Commission.
3. On September 12, 2008, a final judgment was entered by consent against Jurman, permanently enjoining him from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. Guttenberg, et al., Civil Action No. 07 CV 1774, in the United States District Court for the Southern District of New York.
4. The Commission's complaint alleged that from at least September 2004 through April 2005, Jurman engaged in illegal insider trading by using material, nonpublic information concerning upcoming corporate acquisition announcements involving investment banking clients of Morgan Stanley & Co., Inc. ("Morgan Stanley") to purchase securities in his personal brokerage account. The complaint further alleged that in 2005, Jurman tipped Robert Babcock material, nonpublic information concerning upcoming acquisition announcements involving Morgan Stanley investment banking clients, which Babcock traded on.
5. On March 2, 2007, Jurman pled guilty to one count of conspiracy to commit securities fraud, in violation of Title 15, United States Code, Sections 78j(b) & 78ff, and Title 17, Code of Federal Regulations, Sections 240.10b-5 and 240.10b5-2, and one count of securities fraud, in violation of Title 17, Code of Federal Regulations, Sections 240.10b-5, before the United States District Court for the Southern District of New York, in United States v. Marc Jurman, Crim. Information No. 1:07-CR-140 (TPG).
6. The counts of the criminal information to which Jurman pled guilty alleged, inter alia, that Jurman illegally conspired with others to trade on material, nonpublic information obtained from Morgan Stanley concerning upcoming corporate acquisitions, and that Jurman illegally traded on material, nonpublic information obtained from Morgan Stanley concerning upcoming corporate acquisitions in his personal accounts.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Jurman's Offer.

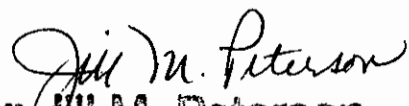
Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act, that Respondent Jurman be, and hereby is barred from association with any broker or dealer.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Florence E. Harmon
Acting Secretary


By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION

This file is maintained pursuant to the Freedom of Information Act (5 U.S.C. 552). It contains a copy of each decision, order, rule or similar action of the Commission, for September 2008, with respect to which the final votes of individual Members of the Commission are required to be made available for public inspection pursuant to the provisions of that Act.

Unless otherwise noted, each of the following individual Members of the Commission voted affirmatively upon each action of the Commission shown in the file:

CHRISTOPHER COX, CHAIRMAN

KATHLEEN L. CASEY, COMMISSIONER

ELISSE B. WALTER, COMMISSIONER

LUIS A. AGUILAR, COMMISSIONER

TROY A. PAREDES, COMMISSIONER

66 Documents

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58579 / September 18, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13216

In the Matter of

DAVID S. DAVIDSON,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against David S. Davidson ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer"), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in §§ III.2 and III.4 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

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1. David S. Davidson, age 48, is a resident of Boca Raton, Florida. He is the former chairman and chief executive officer of a now defunct broker-dealer named D.L. Cromwell Investments, Inc. ("Cromwell"), which was registered with the Commission from July 1999 until October 9, 2003. He is not currently associated with any broker-dealer.

2. On July 24, 2008, a final judgment was entered by consent against Davidson, permanently enjoining him from future violations of 17(a) of the Securities Act of 1933 ("Securities Act"), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled *Securities and Exchange Commission v. David S. Davidson, et al.*, Civil Action Number 05-742, in the United States District Court for the Eastern District of Pennsylvania.

3. On February 17, 2005, the Commission filed its complaint alleging that, from late October 2002 through March 2003, Cromwell conducted a fraudulent short selling scheme in the stock of Expedia, Inc. ("Expedia"). The named defendants were Cromwell officers, Lloyd S. Beirne ("Beirne") and Respondent Davidson, and the Cromwell trader responsible for placing the trades for Cromwell. The Commission's complaint alleges that Davidson and his co-defendants used the access that Cromwell, as an introducing broker, had to its clearing broker's trading system to falsely place Expedia buy orders, which they knew they would cancel the next day, claiming the orders were placed in error. The complaint alleges that defendants entered and cancelled these fictitious buys almost daily for five months, concealing the size of the short position, and avoiding serious financial consequences until the scheme unraveled when Expedia's price rose, and Cromwell could not cover its short position, leaving the clearing broker to pay \$18 million to cover the position.

4. On June 26, 2003, Davidson pled guilty to one count of conspiracy to commit securities fraud in violation of 18 U.S.C. § 371, two counts of securities fraud in violation of 15 U.S.C. §§ 78(b) and 78ff, and one count of making false statements to the Securities and Exchange Commission in violation of 15 U.S.C. §§ 78q(a) and 78ff(a) before the United States District Court for the Eastern District of New York, *U.S. v. David S. Davidson and Lloyd S. Beirne*, Criminal Action No. 02-681 (S-1) & 04-583 (Judge Gleeson). On October 31, 2007, an amended judgment in the criminal case was entered against Davidson. He was sentenced to probation for five years to run concurrently on all counts, ordered to make restitution in the amount of \$6.9 million and to pay a \$400 fine.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Davidson's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act Respondent Davidson be, and hereby is barred from association with any broker or dealer;

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: *Jill M. Peterson*
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 18, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13218

In the Matter of

Far East Ventures Trading Co. (f/k/a
Nico Telecom, Inc.),
Ultimate Ventures I, Inc.,
Ultimate Ventures II, Inc.,
Ultimate Ventures III, Inc.,
Ultimate Ventures IV, Inc., and
Ultimate Ventures V, Inc.,

Respondents.

ORDER INSTITUTING
PROCEEDINGS AND NOTICE
OF HEARING PURSUANT TO
SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT
OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Far East Ventures Trading Co. (f/k/a Nico Telecom, Inc.), Ultimate Ventures I, Inc., Ultimate Ventures II, Inc., Ultimate Ventures III, Inc., Ultimate Ventures IV, Inc., and Ultimate Ventures V, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Far East Ventures Trading Co. (f/k/a Nico Telecom, Inc.) (CIK No. 1067981) is a Nevada corporation located in Miami, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Far East Ventures Trading is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2000, which reported a net loss of \$2.3 million for the prior three months.

2. Ultimate Ventures I, Inc. (CIK No. 1107657) is a revoked Nevada corporation located in Las Vegas, Nevada with classes of securities registered with the Commission pursuant to Exchange Act Section 12(g). Ultimate Ventures I is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2000, which reported no assets. The company's fiscal year ends March 31, its filing of a quarterly report on March 31, 2000 was incorrect because it should have filed an annual report on a Form 10-KSB.

3. Ultimate Ventures II, Inc. (CIK No. 1107658) is a revoked Nevada corporation located in Las Vegas, Nevada with classes of securities registered with the Commission pursuant to Exchange Act Section 12(g). Ultimate Ventures II is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2000, which reported no assets. The company's fiscal year ends March 31, its filing of a quarterly report on March 31, 2000 was incorrect because it should have filed an annual report on a Form 10-KSB.

4. Ultimate Ventures III, Inc. (CIK No. 1107659) is a revoked Nevada corporation located in Las Vegas, Nevada with classes of securities registered with the Commission pursuant to Exchange Act Section 12(g). Ultimate Ventures III is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2000, which reported no assets. The company's fiscal year ends March 31, its filing of a quarterly report on March 31, 2000 was incorrect because it should have filed an annual report on a Form 10-KSB.

5. Ultimate Ventures IV, Inc. (CIK No. 1107660) is a revoked Nevada corporation located in Las Vegas, Nevada with classes of securities registered with the Commission pursuant to Exchange Act Section 12(g). Ultimate Ventures IV is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2000, which reported no assets. The company's fiscal year ends March 31, its filing of a quarterly report on March 31, 2000 was incorrect because it should have filed an annual report on a Form 10-KSB.

6. Ultimate Ventures V, Inc. (CIK No. 1107661) is a revoked Nevada corporation located in Las Vegas, Nevada with classes of securities registered with the Commission pursuant to Exchange Act Section 12(g). Ultimate Ventures V is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2000, which reported no assets. The company's fiscal year ends March 31, its filing of a quarterly report on March 31, 2000 was incorrect because it should have filed an annual report on a Form 10-KSB.

B. DELINQUENT PERIODIC FILINGS

8. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as

Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

9. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers to file quarterly reports.

10. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be

deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

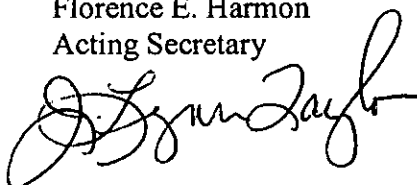
IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Attachment

Florence E. Harmon
Acting Secretary



By: J. Lynn Taylor
Assistant Secretary

Appendix 1

Chart of Delinquent Filings

In the Matter of Far East Ventures Co. (f/k/a Nico Telecom, Inc.), et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
Far East Ventures Trading Co. (f/k/a Nico Telecom, Inc.)	<i>10-KSB</i>	12/31/00	04/02/01	Not filed	89
	<i>10-QSB</i>	03/31/01	05/15/01	Not filed	88
	<i>10-QSB</i>	06/30/01	08/14/01	Not filed	85
	<i>10-QSB</i>	09/30/01	11/14/01	Not filed	82
	<i>10-KSB</i>	12/31/01	04/01/02	Not filed	77
	<i>10-QSB</i>	03/31/02	05/15/02	Not filed	76
	<i>10-QSB</i>	06/30/02	08/14/02	Not filed	73
	<i>10-QSB</i>	09/30/02	11/14/02	Not filed	70
	<i>10-KSB</i>	12/31/02	03/31/03	Not filed	66
	<i>10-QSB</i>	03/31/03	05/15/03	Not filed	64
	<i>10-QSB</i>	06/30/03	08/14/03	Not filed	61
	<i>10-QSB</i>	09/30/03	11/14/03	Not filed	58
	<i>10-KSB</i>	12/31/03	03/30/04	Not filed	54
	<i>10-QSB</i>	03/31/04	05/17/04	Not filed	52
	<i>10-QSB</i>	06/30/04	08/16/04	Not filed	49
	<i>10-QSB</i>	09/30/04	11/15/04	Not filed	46
	<i>10-KSB</i>	12/31/04	03/31/05	Not filed	42
	<i>10-QSB</i>	03/31/05	05/16/05	Not filed	40
	<i>10-QSB</i>	06/30/05	08/15/05	Not filed	37
	<i>10-QSB</i>	09/30/05	11/14/05	Not filed	34
	<i>10-KSB</i>	12/31/05	03/31/06	Not filed	30
	<i>10-QSB</i>	03/31/06	05/15/06	Not filed	28
	<i>10-QSB</i>	06/30/06	08/14/06	Not filed	25
	<i>10-QSB</i>	09/30/06	11/14/06	Not filed	22
	<i>10-KSB</i>	12/31/06	04/02/07	Not filed	17
	<i>10-QSB</i>	03/31/07	05/15/07	Not filed	16
	<i>10-QSB</i>	06/30/07	08/14/07	Not filed	13
	<i>10-QSB</i>	09/30/07	11/14/07	Not filed	10
	<i>10-KSB</i>	12/31/07	03/31/08	Not filed	6

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
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**Far East Ventures
Trading Co. (f/k/a Nico
Telecom, Inc.)**

<i>10-Q</i> ¹	03/31/08	05/15/08	Not filed	4
<i>10-Q</i>	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent 31

**Ultimate Ventures I,
Inc.**

<i>10-KSB</i>	03/31/00	06/29/00	Not filed	99
<i>10-QSB</i>	06/30/00	08/14/00	Not filed	97
<i>10-QSB</i>	09/30/00	11/14/00	Not filed	94
<i>10-QSB</i>	12/31/00	02/14/01	Not filed	91
<i>10-KSB</i>	03/31/01	06/29/01	Not filed	87
<i>10-QSB</i>	06/30/01	08/14/01	Not filed	85
<i>10-QSB</i>	09/30/01	11/14/01	Not filed	82
<i>10-QSB</i>	12/31/01	02/14/02	Not filed	79
<i>10-KSB</i>	03/31/02	07/01/02	Not filed	74
<i>10-QSB</i>	06/30/02	08/14/02	Not filed	73
<i>10-QSB</i>	09/30/02	11/14/02	Not filed	70
<i>10-QSB</i>	12/31/02	02/14/03	Not filed	67
<i>10-KSB</i>	03/31/03	06/30/03	Not filed	63
<i>10-QSB</i>	06/30/03	08/14/03	Not filed	61
<i>10-QSB</i>	09/30/03	11/14/03	Not filed	58
<i>10-QSB</i>	12/31/03	02/17/04	Not filed	55
<i>10-KSB</i>	03/31/04	06/29/04	Not filed	51

¹Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
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Ultimate Ventures I, Inc.

10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-QSB	12/31/04	02/14/05	Not filed	43
10-KSB	03/31/05	06/29/05	Not filed	39
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-QSB	12/31/05	02/14/06	Not filed	31
10-KSB	03/31/06	06/29/06	Not filed	27
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-QSB	12/31/06	02/14/07	Not filed	19
10-KSB	03/31/07	06/29/07	Not filed	15
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-QSB	12/31/07	02/14/08	Not filed	7
10-KSB	03/31/08	06/30/08	Not filed	3
10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent 34

Ultimate Ventures II, Inc.

10-KSB	03/31/00	06/29/00	Not filed	99
10-QSB	06/30/00	08/14/00	Not filed	97
10-QSB	09/30/00	11/14/00	Not filed	94
10-QSB	12/31/00	02/14/01	Not filed	91
10-KSB	03/31/01	06/29/01	Not filed	87
10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-QSB	12/31/01	02/14/02	Not filed	79
10-KSB	03/31/02	07/01/02	Not filed	74
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-QSB	12/31/02	02/14/03	Not filed	67
10-KSB	03/31/03	06/30/03	Not filed	63
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
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Ultimate Ventures II, Inc.

10-QSB	12/31/03	02/17/04	Not filed	55
10-KSB	03/31/04	06/29/04	Not filed	51
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-QSB	12/31/04	02/14/05	Not filed	43
10-KSB	03/31/05	06/29/05	Not filed	39
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-QSB	12/31/05	02/14/06	Not filed	31
10-KSB	03/31/06	06/29/06	Not filed	27
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-QSB	12/31/06	02/14/07	Not filed	19
10-KSB	03/31/07	06/29/07	Not filed	15
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-QSB	12/31/07	02/14/08	Not filed	7
10-QSB	12/31/07	02/14/08	Not filed	7
10-KSB	03/31/08	06/30/08	Not filed	3
10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent 35

Ultimate Ventures III, Inc.

10-KSB	03/31/00	06/29/00	Not filed	99
10-QSB	06/30/00	08/14/00	Not filed	97
10-QSB	09/30/00	11/14/00	Not filed	94
10-QSB	12/31/00	02/14/01	Not filed	91
10-KSB	03/31/01	06/29/01	Not filed	87
10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-QSB	12/31/01	02/14/02	Not filed	79
10-KSB	03/31/02	07/01/02	Not filed	74
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-QSB	12/31/02	02/14/03	Not filed	67

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
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Ultimate Ventures III, Inc.

10-KSB	03/31/03	06/30/03	Not filed	63
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-QSB	12/31/03	02/17/04	Not filed	55
10-KSB	03/31/04	06/29/04	Not filed	51
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-QSB	12/31/04	02/14/05	Not filed	43
10-KSB	03/31/05	06/29/05	Not filed	39
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-QSB	12/31/05	02/14/06	Not filed	31
10-KSB	03/31/06	06/29/06	Not filed	27
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-QSB	12/31/06	02/14/07	Not filed	19
10-KSB	03/31/07	06/29/07	Not filed	15
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-QSB	12/31/07	02/14/08	Not filed	7
10-QSB	12/31/07	02/14/08	Not filed	7
10-KSB	03/31/08	06/30/08	Not filed	3
10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent 35

Ultimate Ventures IV, Inc.

10-KSB	03/31/00	06/29/00	Not filed	99
10-QSB	06/30/00	08/14/00	Not filed	97
10-QSB	09/30/00	11/14/00	Not filed	94
10-QSB	12/31/00	02/14/01	Not filed	91
10-KSB	03/31/01	06/29/01	Not filed	87
10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-QSB	12/31/01	02/14/02	Not filed	79
10-KSB	03/31/02	07/01/02	Not filed	74

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
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Ultimate Ventures IV, Inc.

10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-QSB	12/31/02	02/14/03	Not filed	67
10-KSB	03/31/03	06/30/03	Not filed	63
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-QSB	12/31/03	02/17/04	Not filed	55
10-KSB	03/31/04	06/29/04	Not filed	51
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-QSB	12/31/04	02/14/05	Not filed	43
10-KSB	03/31/05	06/29/05	Not filed	39
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-QSB	12/31/05	02/14/06	Not filed	31
10-KSB	03/31/06	06/29/06	Not filed	27
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-QSB	12/31/06	02/14/07	Not filed	19
10-KSB	03/31/07	06/29/07	Not filed	15
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-QSB	12/31/07	02/14/08	Not filed	7
10-QSB	12/31/07	02/14/08	Not filed	7
10-KSB	03/31/08	06/30/08	Not filed	3
10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent 35

Ultimate Ventures V, Inc.

10-KSB	03/31/00	06/29/00	Not filed	99
10-QSB	06/30/00	08/14/00	Not filed	97
10-QSB	09/30/00	11/14/00	Not filed	94
10-QSB	12/31/00	02/14/01	Not filed	91
10-KSB	03/31/01	06/29/01	Not filed	87
10-QSB	06/30/01	08/14/01	Not filed	85

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
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Ultimate Ventures V, Inc.

10-QSB	09/30/01	11/14/01	Not filed	82
10-QSB	12/31/01	02/14/02	Not filed	79
10-KSB	03/31/02	07/01/02	Not filed	74
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-QSB	12/31/02	02/14/03	Not filed	67
10-KSB	03/31/03	06/30/03	Not filed	63
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-QSB	12/31/03	02/17/04	Not filed	55
10-KSB	03/31/04	06/29/04	Not filed	51
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-QSB	12/31/04	02/14/05	Not filed	43
10-KSB	03/31/05	06/29/05	Not filed	39
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-QSB	12/31/05	02/14/06	Not filed	31
10-KSB	03/31/06	06/29/06	Not filed	27
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-QSB	12/31/06	02/14/07	Not filed	19
10-KSB	03/31/07	06/29/07	Not filed	15
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-QSB	12/31/07	02/14/08	Not filed	7
10-KSB	03/31/08	06/30/08	Not filed	3
10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent	34
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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 18, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13219

In the Matter of

Quality Dino Entertainment, Ltd.,
Quantech, Ltd.,
Quantum Health Resources, Inc.,
Quest BioTechnology, Inc., and
Questec.com, Inc. (n/k/a Questec, Inc.),

Respondents.

ORDER INSTITUTING
PROCEEDINGS AND NOTICE
OF HEARING PURSUANT TO
SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT
OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Quality Dino Entertainment, Ltd., Quantech, Ltd., Quantum Health Resources, Inc., Quest BioTechnology, Inc., and Questec.com, Inc. (n/k/a Questec, Inc.).

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Quality Dino Entertainment, Ltd. (CIK No. 874666) is a Manitoba corporation located in Winnipeg, Manitoba, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Quality Dino Entertainment is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended June 30, 1997, which reported a net loss of \$17,270,000 for the prior year.

2. Quantech, Ltd. (CIK No. 880354) is an inactive Minnesota corporation located in St. Paul, Minnesota with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Quantech is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2002, which reported a net loss of \$8,377,687 for the prior nine months. On February 18, 2003, the company filed a Chapter 7 petition in the U.S. Bankruptcy Court for the District of Minnesota, and the case is pending.

3 of 66

3. Quantum Health Resources, Inc. (CIK No. 873393) is a Delaware corporation located in Indianapolis, Indiana with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Quantum Health Resources is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended March 31, 1996, which reported a net loss of \$1,354,000 for the prior three months.

4. Quest BioTechnology, Inc. (CIK No. 793395) is a Michigan corporation located in Detroit, Michigan with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Quest BioTechnology is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended July 31, 2000, which reported a net loss of \$85,361 for the prior nine months.

5. Questec.com, Inc. (n/k/a Questec, Inc.) (CIK No. 1108150) is a dissolved Wyoming corporation located in Deer Park, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Questec.com is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2002, which reported a net loss of \$39,541 for the prior three months.

B. DELINQUENT PERIODIC FILINGS

6. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

7. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires domestic issuers to file annual reports and Rule 13a-13 requires domestic issuers that file domestic forms to file quarterly reports. Rule 13a-16 requires certain foreign private issuers to furnish quarterly and other material reports to the Commission under cover of Form 6-K if they make or are required to make the information public under the laws of the jurisdiction of their domicile or in which they are incorporated or organized; if they file or are required to file information with a stock exchange on which their securities are traded and the information was made public by the exchange; or if they distribute or are required to distribute information to their security holders.

8. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 or 13a-16 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to

notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Attachment

Florence E. Harmon
Acting Secretary

A handwritten signature in cursive script, appearing to read "J. Lynn Taylor".

By: J. Lynn Taylor
Assistant Secretary

Appendix 1

**Chart of Delinquent Filings
In the Matter of Quality Dino Entertainment, Ltd., et al.**

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Quality Dino Entertainment, Ltd.	20-F	06/30/98	12/28/98	Not filed	117
	20-F	06/30/99	12/27/99	Not filed	105
	20-F	06/30/00	12/27/00	Not filed	93
	20-F	06/30/01	12/27/01	Not filed	81
	20-F	06/30/02	12/27/02	Not filed	69
	20-F	06/30/03	12/29/03	Not filed	57
	20-F	06/30/04	12/27/04	Not filed	45
	20-F	06/30/05	12/27/05	Not filed	33
	20-F	06/30/06	12/27/06	Not filed	21
	20-F	06/30/07	12/27/07	Not filed	9

Total Filings Delinquent 10

Quantech, Ltd.

10-KSB	06/30/02	9/30/02	Not filed	72
10-QSB	09/30/02	11/14/02	Not filed	70
10-QSB	12/31/02	2/14/03	Not filed	67
10-QSB	03/31/03	5/15/03	Not filed	64
10-KSB	06/30/03	9/29/03	Not filed	60
10-QSB	09/30/03	11/14/03	Not filed	58
10-QSB	12/31/03	2/17/04	Not filed	55
10-QSB	03/31/04	5/17/04	Not filed	52
10-KSB	06/30/04	9/28/04	Not filed	48
10-QSB	09/30/04	11/15/04	Not filed	46
10-QSB	12/31/04	2/14/05	Not filed	43
10-QSB	03/31/05	5/16/05	Not filed	40
10-KSB	06/30/05	9/28/05	Not filed	36
10-QSB	09/30/05	11/14/05	Not filed	34
10-QSB	12/31/05	2/14/06	Not filed	31
10-QSB	03/31/06	5/15/06	Not filed	28
10-KSB	06/30/06	9/28/06	Not filed	24
10-QSB	09/30/06	11/14/06	Not filed	22

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Quantech, Ltd.					
	10-QSB	12/31/06	2/14/07	Not filed	19
	10-QSB	03/31/07	5/15/07	Not filed	16
	10-KSB	06/30/07	9/28/07	Not filed	12
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-QSB	12/31/07	2/14/08	Not filed	7
	10-QSB	03/31/08	5/15/08	Not filed	4

Total Filings Delinquent **24**

Quantum Health Resources, Inc.

10-Q	06/30/96	08/14/96	Not filed	145
10-Q	09/30/96	11/14/96	Not filed	142
10-K	12/31/96	03/31/97	Not filed	138
10-Q	03/31/97	05/15/97	Not filed	136
10-Q	06/30/97	08/14/97	Not filed	133
10-Q	09/30/97	11/14/97	Not filed	130
10-K	12/31/97	03/31/98	Not filed	126
10-Q	03/31/98	05/15/98	Not filed	124
10-Q	06/30/98	08/14/98	Not filed	121
10-Q	09/30/98	11/16/98	Not filed	118
10-K	12/31/98	03/31/99	Not filed	114
10-Q	03/31/99	05/17/99	Not filed	112
10-Q	06/30/99	08/16/99	Not filed	109
10-Q	09/30/99	11/15/99	Not filed	106
10-K	12/31/99	03/30/00	Not filed	102
10-Q	03/31/00	05/15/00	Not filed	100
10-Q	06/30/00	08/14/00	Not filed	97
10-Q	09/30/00	11/14/00	Not filed	94
10-K	12/31/00	04/02/01	Not filed	89
10-Q	03/31/01	05/15/01	Not filed	88
10-Q	06/30/01	08/14/01	Not filed	85
10-Q	09/30/01	11/14/01	Not filed	82
10-K	12/31/01	04/01/02	Not filed	77
10-Q	03/31/02	05/15/02	Not filed	76
10-Q	06/30/02	08/14/02	Not filed	73
10-Q	09/30/02	11/14/02	Not filed	70
10-K	12/31/02	03/31/03	Not filed	66

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Quantum Health Resources, Inc.	<i>10-Q</i>	03/31/03	05/15/03	Not filed	64
	<i>10-Q</i>	06/30/03	08/14/03	Not filed	61
	<i>10-Q</i>	09/30/03	11/14/03	Not filed	58
	<i>10-K</i>	12/31/03	03/30/04	Not filed	54
	<i>10-Q</i>	03/31/04	05/17/04	Not filed	52
	<i>10-Q</i>	06/30/04	08/16/04	Not filed	49
	<i>10-Q</i>	09/30/04	11/15/04	Not filed	46
	<i>10-K</i>	12/31/04	03/31/05	Not filed	42
	<i>10-Q</i>	03/31/05	05/16/05	Not filed	40
	<i>10-Q</i>	06/30/05	08/15/05	Not filed	37
	<i>10-Q</i>	09/30/05	11/14/05	Not filed	34
	<i>10-K</i>	12/31/05	03/31/06	Not filed	30
	<i>10-Q</i>	03/31/06	05/15/06	Not filed	28
	<i>10-Q</i>	06/30/06	08/14/06	Not filed	25
	<i>10-Q</i>	09/30/06	11/14/06	Not filed	22
	<i>10-K</i>	12/31/06	04/02/07	Not filed	17
	<i>10-Q</i>	03/31/07	05/15/07	Not filed	16
	<i>10-Q</i>	06/30/07	08/14/07	Not filed	13
	<i>10-Q</i>	09/30/07	11/14/07	Not filed	10
	<i>10-K</i>	12/31/07	03/31/08	Not filed	6
	<i>10-Q</i>	03/31/08	05/15/08	Not filed	4
	<i>10-Q</i>	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent **49**

Quest BioTechnology, Inc.

<i>10-KSB</i>	10/31/00	01/29/01	Not filed	92
<i>10-QSB</i>	01/31/01	03/19/01	Not filed	90
<i>10-QSB</i>	04/30/01	06/14/01	Not filed	87
<i>10-QSB</i>	07/31/01	09/14/01	Not filed	84
<i>10-KSB</i>	10/31/01	01/29/02	Not filed	80
<i>10-QSB</i>	01/31/02	03/18/02	Not filed	78
<i>10-QSB</i>	04/30/02	06/14/02	Not filed	75
<i>10-QSB</i>	07/31/02	09/16/02	Not filed	72

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Quest BioTechnology, Inc.	<i>10-KSB</i>	10/31/02	01/29/03	Not filed	68
	<i>10-QSB</i>	01/31/03	03/17/03	Not filed	66
	<i>10-QSB</i>	04/30/03	06/16/03	Not filed	63
	<i>10-QSB</i>	07/31/03	09/15/03	Not filed	60
	<i>10-KSB</i>	10/31/03	01/29/04	Not filed	56
	<i>10-QSB</i>	01/31/04	03/16/04	Not filed	54
	<i>10-QSB</i>	04/30/04	06/14/04	Not filed	51
	<i>10-QSB</i>	07/31/04	09/14/04	Not filed	48
	<i>10-KSB</i>	10/31/04	01/31/05	Not filed	44
	<i>10-QSB</i>	01/31/05	03/17/05	Not filed	42
	<i>10-QSB</i>	04/30/05	06/14/05	Not filed	39
	<i>10-QSB</i>	07/31/05	09/14/05	Not filed	36
	<i>10-KSB</i>	10/31/05	01/30/06	Not filed	32
	<i>10-QSB</i>	01/31/06	03/17/06	Not filed	30
	<i>10-QSB</i>	04/30/06	06/14/06	Not filed	27
	<i>10-QSB</i>	07/31/06	09/14/06	Not filed	24
	<i>10-KSB</i>	10/31/06	01/29/07	Not filed	20
	<i>10-QSB</i>	01/31/07	03/19/07	Not filed	18
	<i>10-QSB</i>	04/30/07	06/14/07	Not filed	15
	<i>10-QSB</i>	07/31/07	09/14/07	Not filed	12
	<i>10-KSB</i>	10/31/07	01/29/08	Not filed	8
	<i>10-QSB</i>	01/31/08	03/17/08	Not filed	6
	<i>10-QSB</i>	04/30/08	06/16/08	Not filed	3

Total Filings Delinquent. 31

**Questec.com, Inc.
(n/k/a Questec, Inc.)**

<i>10-KSB</i>	06/30/02	9/30/02	Not filed	72
<i>10-QSB</i>	09/30/02	11/14/02	Not filed	70
<i>10-QSB</i>	12/31/02	2/14/03	Not filed	67
<i>10-QSB</i>	03/31/03	5/15/03	Not filed	64
<i>10-KSB</i>	06/30/03	9/29/03	Not filed	60
<i>10-QSB</i>	09/30/03	11/14/03	Not filed	58
<i>10-QSB</i>	12/31/03	2/17/04	Not filed	55
<i>10-QSB</i>	03/31/04	5/17/04	Not filed	52
<i>10-KSB</i>	06/30/04	9/28/04	Not filed	48

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Questec.com, Inc. (n/k/a Questec, Inc.)	10-QSB	09/30/04	11/15/04	Not filed	46
	10-QSB	12/31/04	2/14/05	Not filed	43
	10-QSB	03/31/05	5/16/05	Not filed	40
	10-KSB	06/30/05	9/28/05	Not filed	36
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-QSB	12/31/05	2/14/06	Not filed	31
	10-QSB	03/31/06	5/15/06	Not filed	28
	10-KSB	06/30/06	9/28/06	Not filed	24
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-QSB	12/31/06	2/14/07	Not filed	19
	10-QSB	03/31/07	5/15/07	Not filed	16
	10-KSB	06/30/07	9/28/07	Not filed	12
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-QSB	12/31/07	2/14/08	Not filed	7
	10-QSB	03/31/08	5/15/08	Not filed	4
Total Filings Delinquent	24				

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
RELEASE NO. 58591 / September 18, 2008

EMERGENCY ORDER PURSUANT TO SECTION 12(k)(2) OF THE SECURITIES
EXCHANGE ACT OF 1934 TAKING TEMPORARY ACTION TO RESPOND TO
MARKET DEVELOPMENTS

The Commission is aware of the continued potential of sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could threaten fair and orderly markets. As evidenced by our recent publication of emergency orders under Section 12(k) of the Securities Exchange Act of 1934 ("Exchange Act"),¹ we are concerned about the possible unnecessary or artificial price movements based on unfounded rumors regarding the stability of financial institutions and other issuers exacerbated by short selling. We also believe that some persons may take advantage of issuers that have become temporarily weakened by current market conditions to engage in inappropriate short selling in the securities of such issuers.

Given the importance of confidence in our financial markets as a whole, we have become concerned about sudden and unexplained declines in the prices of securities. Such price declines can give rise to questions about the underlying financial condition of an issuer, which in turn can create a crisis of confidence without a fundamental underlying basis. This crisis of confidence can impair the liquidity and ultimate viability of an issuer, with potentially broad market consequences.

¹ See Exchange Act Release No. 58166 (July 15, 2008), Exchange Act Release No. 58572 (September 17, 2008).

As a result of these recent developments, the Commission concluded that there continues to exist the potential of sudden and excessive fluctuations of securities prices generally and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Based on this conclusion, the Commission is exercising its powers under Section 12(k)(2) of the Exchange Act.² Pursuant to Section 12(k)(2), in appropriate circumstances the Commission may by order summarily take action to alter, supplement, suspend, or impose requirements or restrictions with respect to matters or actions subject to regulation by the Commission.

We have concluded that it is necessary to require certain institutional investment managers to report information concerning daily short sales of securities. For purposes of this Order, we believe that section 13(f) of the Exchange Act and Rule 13f-1 provide useful and tested terms and definitions that provide a basis for requiring new disclosure. The Order therefore requires that an institutional investment manager that exercises investment discretion³ with respect to accounts holding section 13(f) securities⁴ having an aggregate fair market value on the last trading day of any month of any calendar year of at least \$100,000,000 must file a new form with the Commission. Specifically, an institutional investment manager who has filed or was required to file a Form 13F for the calendar quarter ended June 30, 2008 under section 13(f) of the Exchange Act and Rule 13f-1(a) thereunder will be required to file a report on new Form SH with the

² This finding of an "emergency" is solely for purposes of Section 12(k)(2) of the Exchange Act and is not intended to have any other effect or meaning or to confer any right or impose any obligation other than set forth in this Order.

³ The term "investment discretion" has the same meaning as in Exchange Act Rule 13f-1(b). See 17 CFR § 240.13f-1(b).

⁴ The term "section 13(f) securities" has the same meaning as in Exchange Act Rule 13f-1(c). See 17 CFR § 240.13f-1(c).

Commission on the first business day⁵ of every calendar week immediately following a week in which it effected short sales.

The Form SH, which must be filed electronically and will be publicly available on our EDGAR system,⁶ must include disclosure of the number and value of securities sold short for each section 13(f) security, except for short sales in options, and the opening short position, closing short position, largest intraday short position, and the time of the largest intraday short position, for that security during each calendar day of the prior week. No filing, however, will be required when no short sales of a section 13(f) security have been effected since the previous filing of a Form SH. In addition, this disclosure requirement will only apply to short sales effected after the effective date of the Order. Finally, an institutional investment manager need not report short positions otherwise reportable if: (i) the short position in the section 13(f) securities constitutes less than one-quarter of one per cent of the class of the issuer's section 13(f) securities issued and outstanding as reported on the issuer's most recent annual or quarterly report, and any current report subsequent thereto, filed with the Commission pursuant to the Exchange Act, unless the manager knows or has reason to believe the information contained therein is inaccurate; and (ii) the fair market value of the short position in the section 13(f) securities is less than \$1,000,000.

We believe that the extraordinary circumstances we now confront require the new disclosure requirements we are imposing today. We also believe such disclosure

⁵ See Exchange Act Rule 0-2 for a description of the business hours of the Commission. 17 CFR § 240.0-2.

⁶ No Commission procedure for seeking confidential treatment of information filed with or transmitted to the Commission, such as those in 17 C.F.R. §§ 200.80, 200.83, or 240.24b-2, shall apply to the information that this Order requires to be filed.

requirements are in the public interest for the protection of investors and will ensure transparency in short selling.

IT IS ORDERED that, pursuant to our Section 12(k)(2) powers:

Every institutional investment manager that exercises investment discretion with respect to accounts holding section 13(f) securities and that has filed or was required to file a Form 13F for the calendar quarter ended June 30, 2008, as required under section 13(f) of the Exchange Act and Rule 13f-1(a) thereunder, must file a report on Form SH with the Commission. The Form SH filing must be made on the first business day of each week immediately following a week in which the institutional investment manager has effected any short sale with respect to any section 13(f) security that is not an option. With respect to each section 13(f) security that is not an option, the Form SH filing must reflect the number and value of securities sold short during the day as well as the opening short position, closing short position, largest intraday short position, and the time of the largest intraday short position, for that security on each calendar day of the prior week in which the institutional investment manager engaged in trading activity with respect to short sales.

Finally, an institutional investment manager need not report short positions otherwise reportable if: (i) the short position in the section 13(f) securities constitutes less than one-quarter of one per cent of the class of the issuer's section 13(f) securities issued and outstanding as reported on the issuer's most recent annual or quarterly report, and any current report subsequent thereto, filed with the Commission pursuant to the Exchange Act, unless the manager knows or has reason to believe the information contained therein is inaccurate; and (ii) the fair market value of the short position in the section 13(f) securities is less than \$1,000,000.

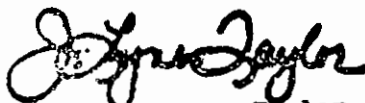
Short sale has the meaning set forth in Rule 200 of Regulation SHO (17 CFR § 242.200), and terms referenced in that provision shall have the same meaning as set forth in Regulation SHO; and short positions to be reported are those resulting from "short sales" as that term is defined in SEC Rule 200(a) of Regulation SHO.

IT IS FURTHER ORDERED that, pursuant to our Section 12(k)(2) powers, the text of Form SH be as set forth in the attachment to this Order.

This Order shall be effective at 12:01 a.m. EDT on September 22, 2008, the first Form SH shall be required to be filed on September 29, 2008, and this Order shall terminate at 11:59 p.m. on October 2, 2008 unless further extended by the Commission.

By the Commission.

J. Lynn Taylor
Assistant Secretary


By: J. Lynn Taylor
Assistant Secretary

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM SH

**INFORMATION REQUIRED OF INSTITUTIONAL INVESTMENT
MANAGERS PURSUANT TO EMERGENCY ORDER, SECURITIES
EXCHANGE ACT OF 1934 RELEASE NO. 58591, SEPTEMBER 18, 2008**

GENERAL INSTRUCTIONS

1. Rule as to Use of Form SH. Institutional investment managers ("Managers") must use Form SH for reports to the Commission required by the Commission's Emergency Order, Securities Exchange Act of 1934 Release No. 58591, September 18, 2008 ("September 18, 2008 Order"). The September 18, 2008 Order provides that every Manager that exercises investment discretion with respect to accounts holding section 13(f) securities, as defined in paragraph (c) of section 13(f) of the Securities Exchange Act of 1934 [15 U.S.C. 78m(f)] ("Exchange Act"), who has filed or was required to file a Form 13F for the calendar quarter ended June 30, 2008, must file a report on Form SH with the Commission to report certain information about short sales and short positions. The Form SH filing must be made on the Monday (or, if Monday is a federal holiday, the first business day thereafter) of each calendar week immediately following a Form SH reporting period (*i.e.*, the preceding Monday-Sunday, or seven calendar days) in which the Manager has entered into any new short positions or closed part or all of any short positions with respect to any section 13(f) securities except for any short position(s) for options ("SH Short Positions"). The Form SH will report SH Short Positions for the Monday-Sunday immediately preceding the Monday on which the Form SH is due to be filed.
2. Rules to Prevent Duplicative Reporting. If two or more Managers, each of which is required by the September 18, 2008 Order to file a report on Form SH for the reporting period, exercise investment discretion with respect to the same securities, only one such Manager must include information in its reports on Form SH.

A Manager having information that is required by the September 18, 2008 Order to be reported on Form SH, and such information is reported by another Manager (or Managers), such Manager must identify the Manager(s) reporting on its behalf in the manner described in Special Instruction 6.

3. Filing of Form SH. A Manager must file a Form SH report with the Commission on or before 5:30 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever currently is in effect in Washington, DC ("Eastern Time") on the Monday (or, if Monday is a federal holiday, the first business day thereafter) of each week immediately following the preceding seven calendar day period in which the Manager

has entered into any new SH Short Position(s) or closed part or all of any SH Short Position(s).

4. Official List of Section 13(f) Securities. The official list of section 13(f) securities published by the Commission (the "13F List") lists the securities the holdings of which a Manager is to report on Form 13F. See rule 13f-1(c) [17 CFR 240.13f-1(c)]. Form SH filers may rely on the current 13F List in determining whether they need to report on Form SH information about any particular equity security, excluding short positions on options. The 13F List is available on the SEC's website, at <http://www.sec.gov/divisions/investment/13flists.htm>. Paper copies are available at a reasonable fee from the Securities and Exchange Commission, Public Reference Room, 100 F Street, NE, Washington, DC 20549.

SPECIAL INSTRUCTIONS

1. This form consists of three parts: the Form SH Cover Page (the "Cover Page"), the Form SH Summary Page (the "Summary Page"), and the Form SH Information Table (the "Information Table").
2. When preparing the report, omit all bracketed text. Include brackets used to form check boxes.

The Cover Page:

3. The period end date used in the report (and in the EDGAR submission header) is the Sunday before the Form SH is filed. The date should name the month, and express the day and year in Arabic numerals, with the year being a four-digit numeral (*i.e.*, 2008).
4. Amendments to a Form SH must either restate the Form SH in its entirety or include only entries that are being reported in addition to those already reported in a current public Form SH for the same period. If the Manager is filing the Form SH report as an amendment, then the Manager must check the amendment box on the Cover Page; enter the amendment number; and check the appropriate box to indicate whether the amendment (a) is a restatement or (b) adds new entries. Each amendment must include a complete Cover Page and, if applicable, a Summary Page and Information Table. Amendments must be filed sequentially.
5. Present the Cover Page and the Summary Page information in the format and order provided in the form. The Cover Page may include information in addition to the required information, so long as the additional information does not, either by its nature, quantity, or manner of presentation, impede the understanding or presentation of the required information. Place all additional information after the signature of the person signing the report (immediately preceding the Report Type section). Do not include any additional information on the Summary Page or in the Information Table.

6. Designate the Report Type for the Form SH by checking the appropriate box in the Report Type section of the Cover Page, and include, where applicable, the List of Other Managers Reporting for this Manager (on the Cover Page), the Summary Page and the Information Table, as follows:
 - a. If all of the information that a Manager is required by the September 18, 2008 Order to report on Form SH is reported by another Manager (or Managers), check the box for Report Type "FORM SH NOTICE," include (on the Cover Page) the List of Other Managers Reporting for this Manager, and omit both the Summary Page and the Information Table.
 - b. If all of the information that a Manager is required by the September 18, 2008 Order to report on Form SH is reported in this report, check the box for Report Type "FORM SH ENTRIES REPORT," omit from the Cover Page the List of Other Managers Reporting for this Manager, and include both the Summary Page and the Information Table.
 - c. If only a part of the information that a Manager is required by the September 18, 2008 Order to report on Form SH is reported in this report, check the box for Report Type "FORM SH COMBINATION REPORT," include (on the Cover Page) the List of Other Managers Reporting for this Manager, and include both the Summary Page and the Information Table.

Summary Page:

7. Include on the Summary Page the Report Summary, containing the Number of Other Included Managers, the Information Table Entry Total and the Information Table Value Total.
 - a. Enter as the Number of Other Included Managers the total number of other Managers listed in the List of Other Included Managers on the Summary Page, not counting the Manager filing this report. *See Special Instruction 8.* If none, enter the number zero ("0").
 - b. Enter as the Information Table Entry Total the total number of line entries providing issuer information included in the Information Table.
 - c. Enter as the Information Table Value Total the aggregate fair market value in U.S. dollars of all securities sold short during the reporting period that are reported in this report, *i.e.*, the total for Column 5 (Value of Securities Sold Short (Day)) of all line entries in the Information Table. The Manager must express this total as a rounded figure, corresponding to the individual Column 4 entries in the Information Table. *See Special Instruction 9.*
8. Include on the Summary Page the List of Other Included Managers. Use the title, column headings and format provided.

- a. If this Form SH does not report the information that a Manager is required by the September 18, 2008 Order to report on Form SH of any Manager other than the Manager filing this report, enter the word "NONE" under the title and omit the column headings and list entries.
- b. If this Form SH reports the information that a Manager is required by the September 18, 2008 Order to report on Form SH of one or more Managers other than the Manager filing this report, enter in the List of Other Included Managers all such Managers together with their respective Form 13F file numbers, if known. (The Form 13F file numbers are assigned to Managers when they file their first Form 13F.) Assign a number to each Manager in the List of Other Included Managers, and present the list in sequential order. The numbers need not be consecutive. The List of Other Managers cannot include the Manager filing this report.

Information Table:

9. In determining the fair market value of securities sold short, a Manager must use the market price of the section 13(f) securities as of the close of floor trading on the New York Stock Exchange ("NYSE") for the day in question. If the securities are sold short on a non-business day, a Manager must use the market price of the section 13(f) securities as of the close of the NYSE for the most recent business day. Such market closing time shall be used to determine the price for all SH Short Positions, irrespective of which U.S. equity market the issuer trades on. Enter values rounded to the nearest one thousand dollars (with "000" omitted).
10. Furnish the Information Table using the table title, column headings and format provided. Provide column headings once at the beginning of the Information Table; repetition of column headings on subsequent pages is not required. Present the table in accordance with the column instructions provided in Special Instructions 10.a.i through 10.a.viii. Do not include any additional information in the Information Table. Begin the Information Table on a new page; do not include any portion of the Information Table on either the Cover Page or the Summary Page.

a. Instructions for each column in the Information Table:

- i. Column 1. Name of Issuer. Enter in Column 1 the name of the issuer as it appears in the current official list of Section 13(f) Securities published by the Commission in accordance with rule 13f-1(c) (the "13F List"). Reasonable abbreviations are permitted.
- ii. Column 2. CUSIP Number. Enter in Column 2 the nine (9) digit CUSIP number of the security for which information is being reported.

- iii. Column 3. Short Position (Start of Day). Enter in Column 3 the number of securities that represent the Manager's short position in the issuer as of the start of each calendar day (or days, in the case of Saturday and Sunday) during the reporting period. The Short Position (Start of Day) for Monday, September 22, 2008 shall be zero.
- iv. Column 4. Number of Securities Sold Short (Day). Enter in Column 4 the aggregate number of securities in the issuer that the Manager sold short for each calendar day (or days, in the case of Saturday and Sunday) during the reporting period.
- v. Column 5. Value of Securities Sold Short (Day). Enter in Column 5 the market value in U.S. dollars of the number of securities reported in Column 4. In valuing such securities, use the fair market value for each security, as set forth in Special Instruction 9, *supra*.
- vi. Column 6. Short Position (End of Day). Enter in Column 6 the number of securities that represent the Manager's short position in the issuer as of the end each calendar day (or days, in the case of Saturday and Sunday) during the reporting period.
- vii. Column 7. Largest Intra-Day Short Position. Enter in Column 7 the number of securities that represent the Manager's largest single short position in the issuer for each calendar day (or days, in the case of Saturday and Sunday) during the reporting period.
- viii. Column 8. Time of Day of Largest Intra-Day Short Position. Enter in Column 7 the time of day (Eastern Time) that the Manager had the largest single short position in the issuer, as reported in Column 7.

11. Preparation of the electronic filing:

- a. No line on the Cover Page or the Summary Page may exceed 80 characters in length. See rule 305 of Regulation S-T [17 CFR 232.305].
- b. No line in the Form SH Information Table may exceed 132 characters in length. See rule 305 of Regulation S-T [17 CFR 232.305].
- c. If the Form SH Report Type is "SH ENTRIES REPORT" or "SH COMBINATION REPORT," then place one EDGAR <PAGE> tag at the end of the Cover Page and one <PAGE> tag at the end of the Summary Page. Additional EDGAR <PAGE> tags are not required. Those electing to include additional <PAGE> tags should, for each page containing a <PAGE> tag, include no more

than sixty (60) lines per page, including the line on which the <PAGE> tag is placed.

- d. In preparing the Form SH report for electronic filing, a Manager may omit underscoring used in the form to indicate the placement of information that the Manager is to furnish.
- e. Use the following EDGAR submission types for the following Form SH Report Types:

<u>Form SH Report Type</u>	<u>EDGAR Submission Type</u>
FORM SH ENTRIES REPORT	
Initial Filing	SH-ER
Amendments	SH-ER/A
FORM SH NOTICE	
Initial Filing	SH-NT
Amendments	SH-NT/A
FORM SH COMBINATION REPORT	
Initial Filing	SH-ER
Amendments	SH-ER/A

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM SH

FORM SH COVER PAGE

Report for the Period Ended: _____ [Month, Day, Year]

Check here if Amendment ☐; Amendment Number: _____

This Amendment (Check only one): ☐ is a restatement.
☐ adds new entries.

Institutional Investment Manager Filing this Report:

Name: _____

Address: _____

Form 13F File Number: 28-_____

The institutional investment manager filing this report and the person by whom it is signed hereby represent that the person signing the report is authorized to submit it, that all information contained herein is true, correct and complete, and that it is understood that all required items, statements, schedules, lists, and tables, are considered integral parts of this form.

Person Signing this Report on Behalf of Reporting Manager:

Name: _____

Title: _____

Phone: _____

Signature, Place, and Date of Signing

[Signature]

[City, State]

[Date]

Report Type (Check only one):

- ☐ FORM SH ENTRIES REPORT. (Check here if all entries of this reporting manager are reported in this report.)
☐ FORM SH NOTICE. (Check here if no entries reported are in this report, and all entries are reported by other reporting manager(s).)
☐ FORM SH COMBINATION REPORT. (Check here if a portion of the entries for this reporting manager is reported in this report and a portion is reported by other reporting manager(s).)

List of Other Managers Reporting for this Manager:
[If there are no entries in this list, omit this section.]

Form 13F File Number

Name

[Repeat as necessary.]

FORM SH SUMMARY PAGE

Report Summary:

Number of Other Included Managers: _____

Form SH Information Table Entry Total: _____

Form SH Information Table Value Total: _____
(thousands)

List of Other Included Managers:

Provide a numbered list of the name(s) and Form 13F file number(s) of all institutional investment managers with respect to which this Form SH report is filed, other than the manager filing this report.

[If there are no entries in this list, state "NONE" and omit the column headings and list entries.]

No.	Form 13F File Number	Name
28- _____	_____	_____

[Repeat as necessary.]

FORM SH INFORMATION TABLE -PAGE 2
TUESDAY, [Month, Day, Year]

[illegible]

WEDNESDAY, [Month, Day, Year]

[illegible]

FORM SH INFORMATION TABLE -PAGE 4
THURSDAY, _____ [Month, Day, Year]

[illegible]

FRIDAY, [Month, Day, Year]

FRIDAY, [Month, Day, Year]

[illegible]

SATURDAY-SUNDAY, _____ [Month, Day, Year]

[illegible]

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
RELEASE NO. 58592 / September 18, 2008

EMERGENCY ORDER PURSUANT TO SECTION 12(k)(2) OF THE SECURITIES
EXCHANGE ACT OF 1934 TAKING TEMPORARY ACTION TO RESPOND TO
MARKET DEVELOPMENTS

The Commission is aware of the continued potential of sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could threaten fair and orderly markets. In our recent publication of an emergency order under Section 12(k) of the Exchange Act (the "Act"),¹ for example, we were concerned about the possible unnecessary or artificial price movements based on unfounded rumors regarding the stability of financial institutions and other issuers exacerbated by "naked" short selling. Our concerns, however, are no longer limited to just the financial institutions that were the subject of the July Emergency Order. Recent market conditions have made us concerned that short selling in the securities of a wider range of financial institutions may be causing sudden and excessive fluctuations of the prices of such securities in such a manner so as to threaten fair and orderly markets.

Given the importance of confidence in our financial markets as a whole, we have become concerned about recent sudden declines in the prices of a wide range of securities. Such price declines can give rise to questions about the underlying financial condition of an issuer, which in turn can create a crisis of confidence, without a fundamental underlying basis. This crisis of confidence can impair the liquidity and

¹ See Exchange Act Release No. 58166 (July 15, 2008). See also Exchange Act Release No. 58190 (July 18, 2008) ("Amended July Emergency Order"). See also Exchange Act Release No. 58572 (September 17, 2008).

ultimate viability of an issuer, with potentially broad market consequences. Our concerns are no longer limited to the financial institutions that were the subject of the July Emergency Order.

As a result of these recent developments, the Commission has concluded that there continues to exist the potential of sudden and excessive fluctuations of securities prices generally and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Based on this conclusion, the Commission is exercising its powers under Section 12(k)(2) of the Act.² Pursuant to Section 12(k)(2), in appropriate circumstances the Commission may issue summarily an order to alter, supplement, suspend, or impose requirements or restrictions with respect to matters or actions subject to regulation by the Commission if the Commission determines such an order is necessary in the public interest and for the protection of investors to maintain or restore fair and orderly securities markets.

In these unusual and extraordinary circumstances, we have concluded that, to prevent substantial disruption in the securities markets, temporarily prohibiting any person from effecting a short sale in the publicly traded securities of certain financial firms, which entities are identified in Appendix A ("Included Financial Firms"), is in the public interest and for the protection of investors to maintain or restore fair and orderly securities markets.

² This finding of an "emergency" is solely for purposes of Section 12(k)(2) of the Exchange Act and is not intended to have any other effect or meaning or to confer any right or impose any obligation other than set forth in this Order.

This emergency action should prevent short selling from being used to drive down the share prices of issuers even where there is no fundamental basis for a price decline other than general market conditions.

IT IS ORDERED that, pursuant to our Section 12(k)(2) powers, all persons are prohibited from short selling³ any publicly traded securities of any Included Financial Firm.

Similar to the Amended July Emergency Order, we are providing a limited exception for certain bona fide market makers. We believe this narrow exception is necessary because such market makers may need to facilitate customer orders in a fast moving market without possible delays associated with complying with the requirements of this Order.

IT IS THEREFORE ORDERED that, pursuant to our Section 12(k)(2) powers, the following entities are excepted from the requirements of the Order: registered market makers, block positioners, or other market makers obligated to quote in the over-the-counter market, in each case that are selling short a publicly traded security of an Included Financial Firm as part of bona fide market making in such security.

In addition, we are providing an exception to allow short sales that occur as a result of automatic exercise or assignment of an equity option held prior to effectiveness of this Order due to expiration of the option.

IT IS THEREFORE ORDERED that, pursuant to our Section 12(k)(2) powers, the requirements of this Order shall not apply to any person that effects a short sale in any

³ The definition of "short sale" shall be the same definition used in Rule 200(a) of Regulation SHO and the requirements for marking orders "long" or "short" shall be the same as provided in Regulation SHO.

publicly traded security of any Included Financial Firm as a result of automatic exercise or assignment of an equity option held prior to effectiveness of this Order due to expiration of the option.

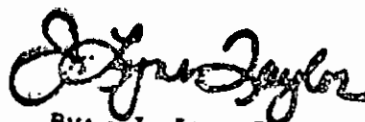
Finally, to facilitate the expiration of options on September 20th, options market makers are excepted from the requirements of this Order until 11:59 p.m. on September 19th when selling short as part of bona fide market making and hedging activities related directly to bona fide market making in derivatives on the publicly traded securities of any Included Financial Firm.

IT IS THEREFORE ORDERED that, pursuant to our Section 12(k)(2) powers, the requirements of this Order shall not apply, until 11:59 p.m. on September 19, 2008, to any person that is a market maker that effects a short sale as part of a bona fide market making and hedging activity related directly to bona fide market making in derivatives on the publicly traded securities of any Included Financial Firm.

This Order shall be effective immediately and shall terminate at 11:59 p.m. EDT on October 2, 2008, unless further extended by the Commission.

By the Commission.

J. Lynn Taylor
Assistant Secretary



By: J. Lynn Taylor
Assistant Secretary

Appendix A

This list, prepared on a best efforts basis, includes banks, insurance companies, and securities firms identified by SICs 6000, 6011, 6020-22, 6025, 6030, 6035-36, 6111, 6140, 6144, 6200, 6210-11, 6231, 6282, 6305, 6310-11, 6320-21, 6324, 6330-31, 6350-51, 6360-61, 6712, and 6719.

AAME	ATLANTIC AMERICAN CORP ABIGAIL ADAMS NATL BANCORP
AANB	INC
ABBC	ABINGTON BANCORP INC PA
ABCB	AMERIS BANCORP
ABCW	ANCHOR BANCORP WISCONSIN INC
ABK	AMBAC FINANCIAL GROUP INC
ABNJ	AMERICAN BANCORP OF NJ INC
ABVA	ALLIANCE BANKSHARES CORP AMERICAN PHYSICIANS CAPITAL
ACAP	INC AMERICAN COMMUNITY BNC SHRS
ACBA	INC
ACE	ACE LTD
ACFC	ATLANTIC COAST FED CORP
ACGL	ARCH CAPITAL GROUP LTD NEW
ADVNA	ADVANTA CORP
ADVNB	ADVANTA CORP
AEG	AEGON N V AMERICAN EQUITY INVT LIFE HLDG
AEL	C
AET	AETNA INC NEW
AF	ASTORIA FINANCIAL CORP AFFIRMATIVE INSURANCE HLDGS
AFFM	INC AMERICAN FINANCIAL GROUP INC
AFG	NEW
AFL	A F L A C INC
AGII	ARGO GROUP INTL HLDGS LTD
AGO	ASSURED GUARANTY LTD
AGP	AMERIGROUP CORP
AGX	ARGAN INC
AHD	ATLAS PIPELINE HOLDINGS L P
AHL	ASPEN INSURANCE HOLDINGS LTD
AIB	ALLIED IRISH BANKS PLC
AIG	AMERICAN INTERNATIONAL GROUP

	INC
AINV	APOLLO INVESTMENT CORP
AIZ	ASSURANT INC
ALL	ALLSTATE CORP
ALLB	ALLIANCE BANCORP INC PA
ALNC	ALLIANCE FINANCIAL CORP NY
AMCP	AMCOMP INC NEW
AMFI	AMCORE FINANCIAL INC
AMG	AFFILIATED MANAGERS GROUP INC
AMIC	AMERICAN INDEPENDENCE CORP
	AMERICAN NATIONAL
AMNB	BANKSHARES INC
AMP	AMERIPRISE FINANCIAL INC
AMPH	AMERICAN PHYSICIANS SVC GROUP
AMRB	AMERICAN RIVER BANKSHARES
AMSF	AMERISAFE INC
AMTD	T D AMERITRADE HOLDING CORP
ANAT	AMERICAN NATIONAL INS CO
ANNB	ANNAPOLIS BANCORP INC
AOC	AON CORP
APAB	APPALACHIAN BANCSHARES INC
AROW	ARROW FINANCIAL CORP
ASBI	AMERIANA BANCORP
ASFI	ASTA FUNDING INC
	ATLANTIC SOUTHERN FINL GROUP
ASFN	INC
ASRV	AMERISERV FINANCIAL INC
ATBC	ATLANTIC BANCGROUP INC
ATLO	AMES NATL CORP
AUBN	AUBURN NATIONAL BANCORP
	AMERICAN WEST
AWBC	BANCORPORATION
	ALLIED WORLD ASSUR CO HLDGS
AWH	LTD
AXA	A X A UAP
	ATLAS ACQUISITION HOLDINGS
AXG	CORP
AXS	AXIS CAPITAL HOLDINGS LTD
BAC	BANK OF AMERICA CORP
BANF	BANCFIRST CORP
BANR	BANNER CORP
BARI	BANCORP RHODE ISLAND INC
BAYN	BAY NATIONAL CORP
BBNK	BRIDGE CAPITAL HOLDINGS
BBT	B B & T CORP
BBX	BANKATLANTIC BANCORP INC

BCA	CORPBANCA
BCAR	BANK OF THE CAROLINAS CORP
BCBP	B C B BANCORP INC
BCP	BROOKE CAPITAL CORP
BCS	BARCLAYS PLC
BCSB	B C S B BANCORP INC
BDGE	BRIDGE BANCORP INC
BEN	FRANKLIN RESOURCES INC
BERK	BERKSHIRE BANCORP INC DEL
BFF	B F C FINANCIAL CORP
BFIN	BANKFINACIAL CORP
	BEACH FIRST NATL BANCSHARES
BFNB	INC
BHB	BAR HARBOR BANKSHARES
BHBC	BEVERLY HILLS BANCORP INC
BHLB	BERKSHIRE HILLS BANCORP INC
BK	BANK OF NEW YORK MELLON CORP
BKBK	BRITTON & KOONTZ CAPITAL CORP
BKMU	BANK MUTUAL CORP NEW
	OAK RIDGE FINANCIAL SERVICES
BKOR	INC
BKSC	BANK SOUTH CAROLINA CORP
BKUNA	BANKUNITED FINANCIAL CORP
	BANCO LATINOAMERICANO DE EXP
BLX	SA
BMRC	BANK OF MARIN BANCORP
BMTC	BRYN MAWR BANK CORP
BNCL	BENEFICIAL MUTUAL BANCORP INC
BNCN	B N C BANCORP
BNS	BANK OF NOVA SCOTIA
BNV	BEVERLY NATIONAL CORP
BOCH	BANK OF COMMERCE HOLDINGS
BOFI	B OF I HOLDING INC
BOFL	BANK OF FLORIDA CORP NAPLES
BOH	BANK OF HAWAII CORP
BOKF	B O K FINANCIAL CORP
BOMK	BANK MCKENNEY VA
BOVA	BANK OF VIRGINIA
BPFH	BOSTON PRIVATE FINL HLDS INC
	BROADPOINT SECURITIES GROUP
BPSG	INC
BRK	BERKSHIRE HATHAWAY INC DEL
BRK	BERKSHIRE HATHAWAY INC DEL
BRKL	BROOKLINE BANCORP INC
BSRR	SIERRA BANCORP
BTFG	BANCTRUST FINANCIAL GROUP INC

BUSE	FIRST BUSEY CORP
BWINA	BALDWIN & LYONS INC
BWINB	BALDWIN & LYONS INC
BX	BLACKSTONE GROUP L P
BXS	BANCORPSOUTH INC
BYFC	BROADWAY FINANCIAL CORP DEL
C	CITIGROUP INC
CAC	CAMDEN NATIONAL CORP
CACB	CASCADE BANCORP
CADE	CADENCE FINANCIAL CORP
CAFI	CAMCO FINANCIAL CORP
CAPB	CAPITALSOUTH BANCORP
CAPE	CAPE FEAR BANK CORP
CART	CAROLINA TRUST BANK
CARV	CARVER BANCORP INC
CASB	CASCADE FINANCIAL CORP
CASH	META FINANCIAL GROUP INC
CATY	CATHAY GENERAL BANCORP
CB	CHUBB CORP
CBAN	COLONY BANCORP INC
CBBO	COLUMBIA BANCORP ORE
CBC	CAPITOL BANCORP LTD
	COMMUNITY BANK SHRS INDIANA
CBIN	INC
CBKN	CAPITAL BANK CORP NEW
CBNK	CHICOPEE BANCORP INC
CBON	COMMUNITY BANCORP
CBU	COMMUNITY BANK SYSTEM INC
CCBD	COMMUNITY CENTRAL BANK CORP
CCBG	CAPITAL CITY BANK GROUP
CCBP	COMM BANCORP INC
CCFH	C C F HOLDING COMPANY
CCNE	C N B FINANCIAL CORP PA
CCOW	CAPITAL CORP OF THE WEST
CEBK	CENTRAL BANCORP INC
CFBK	CENTRAL FEDERAL CORP
CFFC	COMMUNITY FINANCIAL CORP
CFFI	C & F FINANCIAL CORP
CFFN	CAPITOL FEDERAL FINANCIAL
CFNL	CARDINAL FINANCIAL CORP
CFR	CULLEN FROST BANKERS INC
CHCO	CITY HOLDING CO
CHEV	CHEVIOT FINANCIAL CORP
CHFC	CHEMICAL FINANCIAL CORP
CI	C I G N A CORP
CIA	CITIZENS INC

CINF	CINCINNATI FINANCIAL CORP
CITZ	C F S BANCORP INC
CIZN	CITIZENS HOLDING CO
CJBK	CENTRAL JERSEY BANCORP
CLBH	CAROLINA BANK HOLDINGS INC
CLFC	CENTER FINANCIAL CORP
	CALAMOS ASSET MANAGEMENT
CLMS	INC
CMA	COMERICA INC
CME	C M E GROUP INC
CMFB	COMMERCEFIRST BANCORP INC
CMGI	C M G I INC
CMSB	C M S BANCORP INC
CNA	C N A FINANCIAL CORP
CNAF	COMMERCIAL NATIONAL FINL CORP
CNB	COLONIAL BANGROUP INC
CNBC	CENTER BANCORP INC
CNBKA	CENTURY BANCORP INC
CNC	CENTENE CORP DEL
	COMMUNITY NATL BANK LAKEWAY
CNLA	AREA
CNO	CONSECO INC
CNS	COHEN & STEERS INC
	PENNSYLVANIA COMMERCE
COBH	BANCORP IN
COBZ	COBIZ FINANCIAL INC
COLB	COLUMBIA BANKING SYSTEM INC
COOP	COOPERATIVE BANCSHARES INC
CORS	CORUS BANKSHARES INC
COWN	COWEN GROUP INC
CPBC	COMMUNITY PARTNERS BANCORP
CPBK	COMMUNITY CAPITAL CORP
CPF	CENTRAL PACIFIC FINANCIAL CORP
CPHL	CASTLEPOINT HOLDINGS LTD
CRBC	CITIZENS REPUBLIC BANCORP INC
CRFN	CRESCENT FINANCIAL CORP
CRMH	C R M HOLDINGS LTD
CRRB	CARROLLTON BANCORP
CRVL	CORVEL CORP
	CITIZENS SOUTH BANKING CORP
CSBC	DEL
CSBK	CLIFTON SAVINGS BANCORP INC
	CENTERSTATE BANKS OF FLORIDA
CSFL	INC
CSHB	COMMUNITY SHORES BANK CORP
CSNT	CRESCENT BANKING CO

CTBC	CONNECTICUT BANK & TRUST CO
CTBI	COMMUNITY TRUST BANCORP INC
	CITYBANK LYNNWOOD
CTBK	WASHINGTON
CTZN	CITIZENS FIRST BANCORP INC
CVBF	C V B FINANCIAL CORP
	CENTRAL VIRGINIA BANKSHARES
CVBK	INC
CVCY	CENTRAL VALLEY COMM BANCORP
CVH	COVENTRY HEALTH CARE INC
CVLL	COMMUNITY VALLEY BANCORP
CVLY	CODORUS VALLEY BANCORP INC
CWBC	COMMUNITY WEST BANCSHARES
	COMMONWEALTH BANKSHARES
CWBS	INC
CWLZ	COWLITZ BANCORPORATION
CZFC	CITIZENS FIRST CORP
CZWI	CITIZENS CMNTY BANCORP INC MD
DB	DEUTSCHE BANK AG
DCOM	DIME COMMUNITY BANCSHARES
DEAR	DEARBORN BANCORP INC
DFG	DELPHI FINANCIAL GROUP INC
DGICA	DONEGAL GROUP INC
DGICB	DONEGAL GROUP INC
	DIAMOND HILL INVESTMENT GRP
DHIL	INC
DLLR	DOLLAR FINANCIAL CORP
	DARWIN PROFESSIONAL
DR	UNDERWRITERS
DSL	DOWNEY FINANCIAL CORP
DUF	DUFF & PHELPS CORP NEW
	MERIDIAN INTERSTATE BANCORP
EBSB	INC
EBTX	ENCORE BANCASHRES INC
ECBE	E C B BANCORP INC
EGBN	EAGLE BANCORP INC
	EASTERN INSURANCE HOLDINGS
EIHI	INC
	ENERGY INFRASTRUCTURE ACQUI
EII	CORP
EMCI	E M C INSURANCE GROUP INC
EMITF	ELBIT IMAGING LTD
	ENDURANCE SPECIALTY HOLDINGS
ENH	LTD
ESBF	E S B FINANCIAL CORP
ESBK	ELMIRA SAVINGS BANK FSB NY

ESGR	ENSTAR GROUP LTD
ETFC	E TRADE FINANCIAL CORP
EV	EATON VANCE CORP
EVBN	EVANS BANCORP INC
	EASTERN VIRGINIA BANKSHARES
EVBS	INC
EVR	EVERCORE PARTNERS INC
EWBC	EAST WEST BANCORP INC
FABK	FIRST ADVANTAGE BANCORP
FAC	FIRST ACCEPTANCE CORP
FAF	FIRST AMERICAN CORP CALIF
FBC	FLAGSTAR BANCORP INC
FBCM	F B R CAPITAL MARKETS CORP
FBIZ	FIRST BUSINESS FINL SVCS INC
FBMI	FIRSTBANK CORP
FBMS	FIRST BANCSHARES INC MS
FBNC	FIRST BANCORP NC
FBP	FIRST BANCORP P R
FBSI	FIRST BANCSHARES INC MO
FBSS	FAUQUIER BANKSHARES INC
FBTC	FIRST BANCTRUST
FCAL	FIRST CALIFORNIA FINL GROUP INC
FCAP	FIRST CAPITAL INC
	FIRST COMMUNITY BANCSHARES
FCBC	INC
FCCO	FIRST COMMUNITY CORP SC
FCCY	1ST CONSTITUTION BANCORP
	FIRST COMMUNITY BANK CORP
FCFL	AMER
	FIRST CITIZENS BANCSHARES INC
FCNCA	NC
FCVA	FIRST CAPITAL BANCORP INC VA
FCZA	FIRST CITIZENS BANC CORP
FDEF	FIRST DEFIANCE FINANCIAL CORP
FDT	FEDERAL TRUST CORP
FED	FIRSTFED FINANCIAL CORP
FFBC	FIRST FINANCIAL BANCORP OHIO
	FIRST FEDERAL BANCSHARES ARK
FFBH	INC
FFCH	FIRST FINANCIAL HOLDINGS INC
FFCO	FEDFIRST FINANCIAL CORP
FFDF	F F D FINANCIAL CORP
FFFD	NORTH CENTRAL BANCSHARES INC
FFG	F B L FINANCIAL GROUP INC
FFH	FAIRFAX FINL HOLDINGS LTD
FFHS	FIRST FRANKLIN CORP

FFIC	FLUSHING FINANCIAL CORP
FFIN	FIRST FINANCIAL BANKSHARES INC
FFKT	FARMERS CAPITAL BANK CORP
FFKY	FIRST FINANCIAL SERVICE CORP
	FIRST FED NORTHN MI BANCORP
FFNM	INC
FFNW	FIRST FINANCIAL NORTHWEST INC
	FIRST FEDERAL BANKSHARES INC
FFSX	DEL
FHN	FIRST HORIZON NATIONAL CORP
FIFG	1ST INDEPENDENCE FNL GROUP INC
	FORTRESS INVESTMENT GROUP L L
FIG	C
FII	FEDERATED INVESTORS INC PA
FISI	FINANCIAL INSTITUTIONS INC
FKFS	FIRST KEYSTONE FINANCIAL INC
FLIC	FIRST LONG ISLAND CORP
FMAR	FIRST MARINER BANCORP
FMBI	FIRST MIDWEST BANCORP DE
FMER	FIRSTMERIT CORP
FMFC	FIRST M & F CORP
FNB	F N B CORP PA
FBNB	F N B UNITED CORP
	FIRST NIAGARA FINL GROUP INC
FNFG	NEW
FNLC	FIRST BANCORP INC ME
	FEDERAL NATIONAL MORTGAGE
FNM	ASSN
	FIRST NATIONAL BANCSHARES INC
FNSC	SC
FPBI	F P B BANCORP INC
FPBN	1ST PACIFIC BANCORP CA
FPFC	FIRST PLACE FINANCIAL CORP NM
FPIC	F P I C INSURANCE GROUP INC
FPTB	FIRST PACTRUST BANCORP INC
FRBK	REPUBLIC FIRST BANCORP INC
	FEDERAL HOME LOAN MORTGAGE
FRE	CORP
FRGB	FIRST REGIONAL BANCORP
FRME	FIRST MERCHANTS CORP
FSBI	FIDELITY BANCORP INC
FSBK	FIRST SOUTH BANCORP INC
FSGI	FIRST SECURITY GROUP INC
FSNM	FIRST STATE BANCORPORATION
FTBK	FRONTIER FINANCIAL CORP
FULT	FULTON FINANCIAL CORP PA

FUNC	FIRST UNITED CORP
FWV	FIRST WEST VIRGINIA BANCORP INC
FXCB	FOX CHASE BANCORP INC
GABC	GERMAN AMERICAN BANCORP INC
GAN	GAINSCO INC
GBCI	GLACIER BANCORP INC NEW
GBH	GREEN BUILDERS INC
GBL	GAMCO INVESTORS INC
GBNK	GUARANTY BANCORP
GBTS	GATEWAY FINANCIAL HLDGS INC
	GLOBAL CASH ACCESS HOLDINGS
GCA	INC
	GUARANTY FEDERAL BANCSHARES
GFED	INC
GFIG	G F I GROUP INC
GFLB	GREAT FLORIDA BANK
GGAL	GRUPO FINANCIERO GALICIA S A
GHL	GREENHILL & CO INC
GIW	WILBER CORP
GLBZ	GLEN BURNIE BANCORP
GLRE	GREENLIGHT CAPITAL RE LTD
GNW	GENWORTH FINANCIAL INC
GOV	GOUVERNEUR BANCORP INC
GRAN	BANK GRANITE CORP
GRNB	GREEN BANKSHARES INC
GROW	U S GLOBAL INVESTORS INC
GS	GOLDMAN SACHS GROUP INC
GSBC	GREAT SOUTHERN BANCORP INC
GSLA	G S FINANCIAL CORP
GTS	TRIPLE S MANAGEMENT CORP
HABC	HABERSHAM BANCORP INC
HAFC	HANMI FINANCIAL CORP
	HALLMARK FINANCIAL SERVICES
HALL	INC
	HARLEYSVILLE SAVINGS FINAN
HARL	CORP
HAXS	HEALTHAXIS INC
HBAN	HUNTINGTON BANCSHARES INC
HBHC	HANCOCK HOLDING CO
HBNK	HAMPDEN BANCORP INC
HBOS	HERITAGE FINANCIAL GROUP
HCBK	HUDSON CITY BANCORP INC
HCC	H C C INSURANCE HOLDINGS INC
HEOP	HERITAGE OAKS BANCORP
HFBC	HOPFED BANCORP INC
HFFC	H F FINANCIAL CORP

HFWA	HERITAGE FINANCIAL CORP WA
HGIC	HARLEYSVILLE GROUP INC
	HINGHAM INSTITUTION FOR SVGS
HIFS	MA
	HORACE MANN EDUCATORS CORP
HMN	NEW
HMNF	H M N FINANCIAL INC
HMPR	HAMPTON ROADS BANKSHARES INC
HNBC	HARLEYSVILLE NATIONAL CORP PA
HNT	HEALTH NET INC
HOMB	HOME BANCSHARES INC
HOME	HOME FEDERAL BANCORP INC MD
HRZB	HORIZON FINANCIAL CORP WASH
HS	HEALTHSPRING INC
HTBK	HERITAGE COMMERCE CORP
HTH	HILLTOP HOLDINGS INC
HTLF	HEARTLAND FINANCIAL USA INC
HUM	HUMANA INC
HWBK	HAWTHORN BANCSHARES INC
	HARRINGTON WEST FINANCIAL GRP
HWFG	IN
	INTERNATIONAL ASSETS HLDG
IAAC	CORP
IBCA	INTERVEST BANCSHARES CORP
IBCP	INDEPENDENT BANK CORP MICH
IBKC	IBERIABANK CORP
IBKR	INTERACTIVE BROKERS GROUP INC
IBNK	INTEGRA BANK CORP
	INTERNATIONAL BANCSHARES
IBOC	CORP
ICE	INTERCONTINENTALEXCHANGE INC
ICH	INVESTORS CAPITAL HOLDINGS LTD
IFC	IRWIN FINANCIAL CORP
	INDEPENDENCE FEDERAL SAVINGS
IFSB	BK
IHC	INDEPENDENCE HOLDING CO NEW
IMP	IMPERIAL CAPITAL BANCORP INC
INCB	INDIANA COMMUNITY BANCORP
INDB	INDEPENDENT BANK CORP MA
ING	I N G GROEP N V
	INFINITY PROPERTY & CASUALTY
IPCC	COR
IPCR	I P C HOLDINGS LTD
IRE	IRELAND BANK
ITC	I T C HOLDINGS CORP
ITG	INVESTMENT TECHNOLOGY GP INC

	NEW
ITIC	INVESTORS TITLE CO
JAXB	JACKSONVILLE BANCORP INC FL
JEF	JEFFERIES GROUP INC NEW
JFBC	JEFFERSONVILLE BANCORP
JFBI	JEFFERSON BANCSHARES INC TENN
JLI	JESUP & LAMONT INC
JMP	J M P GROUP INC
JNS	JANUS CAP GROUP INC
JPM	JPMORGAN CHASE & CO
JXSB	JACKSONVILLE BANCORP INC
KCLI	KANSAS CITY LIFE INS CO
KENT	KENT FINANCIAL SERVICES INC
KEY	KEYCORP NEW
KFED	K FED BANCORP
	KENTUCKY FIRST FEDERAL
KFFB	BANCORP
	KINGSWAY FINANCIAL SERVICES
KFS	INC
KRNY	KEARNY FINANCIAL CORP
L	LOEWS CORP
LAB	LABRANCHE & CO INC
LABC	LOUISIANA BANCORP INC
LARK	LANDMARK BANCORP INC
LAZ	LAZARD LTD
LBBB	LIBERTY BELL BK CHERRY HILL NJ
LBCP	LIBERTY BANCORP INC MO
LEGC	LEGACY BANCORP INC
LEH	LEHMAN BROTHERS HOLDINGS INC
LFC	CHINA LIFE INSURANCE CO LTD
LION	FIDELITY SOUTHERN CORP NEW
LKFN	LAKELAND FINANCIAL CORP
LNC	LINCOLN NATIONAL CORP IN
LNCB	LINCOLN BANCORP IND
LPSB	LAPORTE BANCORP INC
LSBI	L S B FINANCIAL CORP
LSBK	LAKE SHORE BANCORP INC
LSBX	L S B CORP
	LADENBURG THALMANN FIN SVCS
LTS	INC
LUK	LEUCADIA NATIONAL CORP
LYG	LLOYDS TSB GROUP PLC
MAIN	MAIN STREET CAPITAL CORP
MASB	MASSBANK CORP
MBFI	M B FINANCIAL INC NEW
MBHI	MIDWEST BANC HOLDINGS INC

MBI	M B I A INC
MBP	MID PENN BANCORP INC
MBR	MERCANTILE BANCORP INC
MBRG	MIDDLEBURG FINANCIAL CORP
MBTF	M B T FINANCIAL CORP
MBVA	MILLENNIUM BANKSHARES CORP
MBVT	MERCHANTS BANCSHARES INC
MBWM	MERCANTILE BANK CORP
	MONARCH COMMUNITY BANCORP
MCBF	INC
MCBI	METROCORP BANCSHARES INC
MCGC	M C G CAPITAL CORP
MCY	MERCURY GENERAL CORP NEW
MER	MERRILL LYNCH & CO INC
	MERRIMAN CURHAN FORD GROUP
MERR	INC
MF	M F GLOBAL LTD
MFC	MANULIFE FINANCIAL CORP
MFLR	MAYFLOWER BANCORP INC
MFNC	MACKINAC FINANCIAL CORP
MFSF	MUTUALFIRST FINL INC
MGYR	MAGYAR BANCORP INC
MHLD	MAIDEN HOLDNGS LTD
MI	MARSHALL & ILSLEY CORP NEW
	MEADOWBROOK INSURANCE
MIG	GROUP INC
MIGP	MERCER INSURANCE GROUP INC
MKL	MARKEL CORP
MKTX	MARKETAXESS HLDGS INC
	MONARCH FINANCIAL HOLDINGS
MNRK	INC
	MIDWESTONE FINANCIAL GRP INC
MOFG	NEW
MOH	MOLINA HEALTHCARE INC
MORN	MORNINGSTAR INC
MRH	MONTPELIER RES HOLDINGS LTD
MROE	MONROE BANCORP
	MORGAN STANLEY DEAN WITTER &
MS	CO
MSBF	M S B FINANCIAL CORP
	MAINSOURCE FINANCIAL GROUP
MSFG	INC
MSL	MIDSOUTH BANCORP INC
MTG	M G I C INVESTMENT CORP WIS
MTU	MITSUBISHI UFJ FINANCIAL GP INC
MXGL	MAX CAPITAL GROUP LTD

NAHC	NATIONAL ATLANTIC HOLDINGS CORP
NAL	NEWALLIANCE BANCSHARES INC
NARA	NARA BANCORP INC
NATL	NATIONAL INTERSTATE CORP
NAVIG	NAVIGATORS GROUP INC
NBBC	NEWBRIDGE BANCORP
NBN	NORTHEAST BANCORP
NBTB	N B T BANCORP INC
NBTF	N B & T FINANCIAL GROUP INC
NCBC	NEW CENTURY BANCORP INC NC
NCC	NATIONAL CITY CORP
NDAQ	NASDAQ O M X GROUP INC
NEBS	NEW ENGLAND BANCSHARES INC
	NORTHEAST COMMUNITY BANCORP INC
NECB	INC
NEWT	NEWTEK BUSINESS SVCS INC
NFBK	NORTHFIELD BANCORP INC
	NATIONWIDE FINANCIAL SERVICES IN
NFS	IN
NFSB	NEWPORT BANCORP INC
	NEW HAMPSHIRE THRIFT BNCSHRS INC
NHTB	INC
NICK	NICHOLAS FINANCIAL INC
NITE	KNIGHT CAPITAL GROUP INC
NKSH	NATIONAL BANKSHARES INC
NMR	NOMURA HOLDINGS INC
NMX	NYMEX HOLDINGS INC
NOVB	NORTH VALLEY BANCORP
NPBC	NATIONAL PENN BANCSHARES INC
NRIM	NORTHRIM BANCORP INC
NSEC	NATIONAL SECURITY GROUP INC
	NORTHERN STATES FINANCIAL CORP
NSFC	CORP
NSH	NUSTAR G P HOLDINGS LLC
NTQ	N T R ACQUISITION CO
NTRS	NORTHERN TRUST CORP
NVSL	NAUGATUCK VLY FINANCIAL CORP
NWFL	NORWOOD FINANCIAL CORP
NWLIA	NATIONAL WESTERN LIFE INS CO
NWSB	NORTHWEST BANCORP INC PA
NXTY	NEXITY FINANCIAL CORP
	NEW YORK COMMUNITY BANCORP INC
NYB	INC
NYM	N Y M A G I C INC
NYX	N Y S E EURONEXT

OCFC	OCEANFIRST FINANCIAL CORP
OFG	ORIENTAL FINANCIAL GROUP INC
OKSB	SOUTHWEST BANCORP INC OKLA
OLBK	OLD LINE BANCSHARES
OLCB	OHIO LEGACY CORP
ONB	OLD NATIONAL BANCORP
ONFC	ONEIDA FINANCIAL CORP
OPHC	OPTIMUMBANK HOLDINGS INC
OPOF	OLD POINT FINL CORP
OPY	OPPENHEIMER HOLDINGS INC
ORH	ODYSSEY RE HOLDINGS CORP
	OLD REPUBLIC INTERNATIONAL
ORI	CORP
ORIT	ORITANI FINANCIAL CORP
OSBC	OLD SECOND BANCORP INC
OSBK	OSAGE BANCSHARES INC
OSHC	OCEAN SHORE HOLDING CO
OVBC	OHIO VALLEY BANC CORP
OXPS	OPTIONSXPRESS HOLDINGS INC
	OCH ZIFF CAPITAL MANGMNT GRP
OZM	LLC
OZRK	BANK OF THE OZARKS INC
PABK	P A B BANKSHARES INC
PACW	PACWEST BANCORP DE
PBCI	PAMRAPO BANCORP INC
PBCT	PEOPLES UNITED FINANCIAL INC
PBHC	PATHFINDER BANCORP INC
PBIB	PORTER BANCORP INC
PBIP	PRUDENTIAL BANCORP INC PA
PBKS	PROVIDENT BANKSHARES CORP
PBNY	PROVIDENT NEW YORK BANCORP
PCBC	PACIFIC CAPITAL BANCORP NEW
	PEOPLES COMMUNITY BANCORP
PCBI	INC
PCBK	PACIFIC CONTINENTAL CORP
	PROVIDENT COMMUNITY
PCBS	BANCSHRS INC
PEBK	PEOPLES BANCORP NC INC
PEBO	PEOPLES BANCORP INC
PFBC	PREFERRED BANK LOS ANGELES
PFBI	PREMIER FINANCIAL BANCORP INC
PFBX	PEOPLES FINANCIAL CORP
PFED	PARK BANCORP INC
PFG	PRINCIPAL FINANCIAL GROUP INC
PFS	PROVIDENT FINANCIAL SVCS INC
PGR	PROGRESSIVE CORP OH

	PHILADELPHIA CONSOLIDATED HLG
PHLY	CO
PICO	P I C O HOLDINGS INC
PJC	PIPER JAFFRAY COMPANIES
PKBK	PARKE BANCORP INC
PL	PROTECTIVE LIFE CORP
PLCC	PAULSON CAPITAL CORP
PLFE	PRESIDENTIAL LIFE CORP
PMACA	P M A CAPITAL CORP
PMBC	PACIFIC MERCANTILE BANCORP
PMI	P M I GROUP INC
	PRINCETON NATIONAL BANCORP
PNBC	INC
PNBK	PATRIOT NATIONAL BANCORP INC
PNC	P N C FINANCIAL SERVICES GRP INC
	PINNACLE FINANCIAL PARTNERS
PNFP	INC
PNSN	PENSON WORLDWIDE INC
PNX	PHOENIX COS INC
PPBI	PACIFIC PREMIER BANCORP INC
PRA	PROASSURANCE CORP
PRE	PARTNERRE LTD
PRK	PARK NATIONAL CORP
PROS	PROCENTURY CORP
	PROVIDENT FINANCIAL HOLDINGS
PROV	INC
PRSP	PROSPERITY BANCSHARES INC
PRU	PRUDENTIAL FINANCIAL INC
PRWT	PREMIERWEST BANCORP
PSBC	PACIFIC STATE BANCORP
PSBH	PSB HOLDINGS INC
PSEC	PROSPECT CAPITAL CORP
PTA	PENN TREATY AMERICAN CORP
	PLATINUM UNDERWRITERS HLDGS
PTP	LTD
PUK	PRUDENTIAL PLC
PULB	PULASKI FINANCIAL CORP
PVFC	P V F CAPITAL CORP
PVSA	PARKVALE FINANCIAL CORP
PVTB	PRIVATEBANCORP INC
PWOD	PENNS WOODS BANCORP INC
	PZENA INVESTMENT MANAGEMENT
PZN	INC
QCRH	Q C R HOLDINGS INC
QNTA	QUANTA CAPITAL HOLDINGS LTD
RAMR	R A M HOLDINGS LTD

RBCAA	REPUBLIC BANCORP INC KY
RBNF	RURBAN FINANCIAL CORP
RBPA	ROYAL BANCSHARES PA INC
	ROYAL BANK SCOTLAND GROUP
RBS	PLC
RCBK	RIVER CITY BANK
RCKB	ROCKVILLE FINANCIAL INC
RDN	RADIAN GROUP INC
RE	EVEREST RE GROUP LTD
RF	REGIONS FINANCIAL CORP NEW
	REINSURANCE GROUP OF AMERICA
RGA	INC
RIVR	RIVER VALLEY BANCORP
RJF	RAYMOND JAMES FINANCIAL INC
RKH	REGIONAL BANK HOLDRS TRUST
RLI	R L I CORP
RNR	RENAISSANCERE HOLDINGS LTD
RNST	RENASANT CORP
	RODMAN & RENSHAW CAP GRP INC
RODM	NEW
ROMA	ROMA FINANCIAL CORP
ROME	ROME BANCORP INC
RPFG	RAINIER PACIFIC FINL GROUP INC
RVSB	RIVERVIEW BANCORP INC
	ROYAL BANK CANADA MONTREAL
RY	QUE
SAF	SAFECO CORP
SAFT	SAFETY INSURANCE GROUP INC
SAL	SALISBURY BANCORP INC
SAMB	SUN AMERICAN BANCORP
SASR	SANDY SPRING BANCORP INC
SAVB	SAVANNAH BANCORP INC
SBBX	SUSSEX BANCORP
SBCF	SEACOAST BANKING CORP FLA
SBIB	STERLING BANCSHARES INC
SBKC	SECURITY BANK CORP
SBNY	SIGNATURE BANK NEW YORK N Y
SBP	SANTANDER BANCORP
SBSI	SOUTHSIDE BANCSHARES INC
	SECURITY CAPITAL ASSURANCE
SCA	LTD
SCB	COMMUNITY BANKSHARES INC S C
SCBT	S C B T FINANCIAL CORP
SCHW	SCHWAB CHARLES CORP NEW
	SOUTHERN COMMUNITY FINCL
SCMF	CORP

SEAB	SEABRIGHT INSURANCE HOLDINGS
SF	INC
SFG	STIFEL FINANCIAL CORP
SFNC	STANCORP FINANCIAL GROUP INC
SFST	SIMMONS 1ST NATIONAL CORP
	SOUTHERN FIRST BANCSHARES INC
	SOUTHWEST GEORGIA FINANCIAL
SGB	CORP
	SHINHAN FINANCIAL GROUP CO
SHG	LTD
SIEB	SIEBERT FINANCIAL CORP
SIFI	SI FINANCIAL GROUP INC
SIGI	SELECTIVE INSURANCE GROUP INC
SIVB	S V B FINANCIAL GROUP
SLF	SUN LIFE FINANCIAL INC
SLM	S L M CORP
SMBC	SOUTHERN MISSOURI BANCORP INC
	MILLENNIUM INDIA ACQUISIT CO
SMCG	INC
	SANDERS MORRIS HARRIS GROUP
SMHG	INC
SMMF	SUMMIT FINANCIAL GROUP INC
SMTB	SMITHTOWN BANCORP INC
SNBC	SUN BANCORP INC
SNV	SYNOVUS FINANCIAL CORP
SOCB	SOUTHCOAST FINANCIAL CORP
SOMH	SOMERSET HILLS BANCORP
	SOUTHERN NATIONAL BANCORP VA
SONA	INC
SOV	SOVEREIGN BANCORP INC
SRCE	1ST SOURCE CORP
SSBI	SUMMIT STATE BANK
SSBX	SILVER STATE BANCORP
SSFN	STEWARDSHIP FINANCIAL CORP
STBA	S & T BANCORP INC
STBC	STATE BANCORP INC NY
STBK	STERLING BANKS INC
STEL	STELLARONE CORP
STFC	STATE AUTO FINANCIAL CORP
STI	SUNTRUST BANKS INC
STL	STERLING BANCORP
STSA	STERLING FINANCIAL CORP WASH
STT	STATE STREET CORP
STU	STUDENT LOAN CORP
	SPECIALTY UNDERWRITERS ALL
SUAI	INC

SUBK	SUFFOLK BANCORP
SUFB	SUFFOLK FIRST BANK VA
SUPR	SUPERIOR BANCORP
SUR	C N A SURETY CORP
	SUSQUEHANNA BANCSHARES INC
SUSQ	PA
SVBI	SEVERN BANCORP INC MD
SWS	S W S GROUP INC
SYBT	S Y BANCORP INC
TAMB	TAMALPAIS BANCORP
	TRANSFORMA ACQUISITION GROUP
TAQ	INC
TAYC	TAYLOR CAPITAL GROUP INC
TBBK	BANCORP INC
TBHS	BANK HOLDINGS THE
TCB	T C F FINANCIAL CORP
TCBI	TEXAS CAPITAL BANCSHARES INC
TCBK	TRICO BANCSHARES
TCHC	21ST CENTURY HOLDING CO
TDBK	TIDELANDS BANCSHARES INC
TFIN	TEAM FINANCIAL INC
TFSL	TFS FINANCIAL CORP
TGIC	TRIAD GUARANTY INC
THFF	FIRST FINANCIAL CORP IN
THG	HANOVER INSURANCE GROUP INC
THRD	T F FINANCIAL CORP
TIBB	T I B FINANCIAL CORP
TIL	TRANS INDIA ACQUISITION CORP
TMCV	TEMECULA VALLEY BANCORP INC
TMK	TORCHMARK CORP
TMP	TOMPKINS FINANCIAL CORP
	TENNESSEE COMMERCE BANCORP
TNCC	INC
TOFC	TOWER FINANCIAL CORP
TONE	TIERONE CORP
TOWN	TOWNEBANK
TRH	TRANSATLANTIC HOLDINGS INC
TROW	T ROWE PRICE GROUP INC
TRST	TRUSTCO BANK CORP NY
TRUE	CENTRUE FINANCIAL CORP NEW
TRV	TRAVELERS COMPANIES INC
TSBK	TIMBERLAND BANCORP INC
TSFG	SOUTH FINL GROUP INC
TSH	TECHE HOLDING CO
TWGP	TOWER GROUP INC
TWPG	THOMAS WEISEL PARTNERS GROUP

	INC
UAM	UNIVERSAL AMERICAN CORP
UB	UNIONBANCAL CORP
UBCP	UNITED BANCORP INC
UBFO	UNITED SECURITY BANKSHARES
	UNITED FINANCIAL BANCORP INC
UBNK	MD
UBOH	UNITED BANCSHARES INC
UBS	U B S AG
UBSH	UNION BANKSHARES CORP
UBSI	UNITED BANKSHARES INC
UCBA	UNITED COMMUNITY BANCORP
UCBH	U C B H HOLDINGS INC
UCBI	UNITED COMMUNITY BANKS INC GA
	UNITED COMMUNITY FINL CORP
UCFC	OHIO
UFCS	UNITED FIRE & CAS CO
UMBF	U M B FINANCIAL CORP
UMPQ	UMPQUA HOLDINGS CORP
UNAM	UNICO AMERICAN CORP
UNB	UNION BANKSHARES INC
UNH	UNITEDHEALTH GROUP INC
UNIB	UNIVERSITY BANCORP INC
UNM	UNUM GROUP
UNTY	UNITY BANCORP INC
USB	U S BANCORP DEL
	UNITED SECURITY BANCSHARES
USBI	INC
UTR	UNITRIN INC
UVSP	UNIVEST CORP OF PENNSYLVANIA
UWBK	UNITED WESTERN BANCORP INC
	VILLAGE BANK AND TRUST FINL
	CORP
VBFC	
VCBI	VIRGINIA COMMERCE BANCORP
VIST	V I S T FINACIAL CORP
VLY	VALLEY NATIONAL BANCORP
VNBC	VINEYARD NATIONAL BANCORP
VPFG	VIEWPOINT FINANCIAL GROUP
VR	VALIDUS HOLDINGS LTD
VSBN	V S B BANCORP INC NY
VYFC	VALLEY FINANCIAL CORP VA
WABC	WESTAMERICA BANCORPORATION
	WAINWRIGHT BANK & TRUST CO
WAIN	BOSTN
	WESTERN ALLIANCE
WAL	BANCORPORATION

WASH	WASHINGTON TRUST BANCORP INC
WAUW	WAUWATOSA HOLDINGS INC
	WAYNE SAVINGS BANCSHARES INC
WAYN	NEW
WB	WACHOVIA CORP 2ND NEW
WBCO	WASHINGTON BANKING COMPANY
WBNK	WACCAMAW BANKSHARES INC
	WEBSTER FINL CORP WATERBURY
WBS	CONN
WCBO	WEST COAST BANCORP ORE NEW
WCG	WELLCARE HEALTH PLANS INC
WDR	WADDELL & REED FINANCIAL INC
WFBC	WILLOW FINANCIAL BANCORP INC
WFC	WELLS FARGO & CO NEW
WFD	WESTFIELD FINANCIAL INC
WFSL	WASHINGTON FEDERAL INC
WGNB	W G N B CORP
WHG	WESTWOOD HOLDINGS GROUP INC
WHI	W HOLDING CO INC
WIBC	WILSHIRE BANCORP INC
WL	WILMINGTON TRUST CORP
WLP	WELLPOINT INC
WM	WASHINGTON MUTUAL INC
WPL	STEWART W P & CO LTD
WRB	BERKLEY W R CORP
WSB	W S B HOLDINGS INC
WSBC	WESBANCO INC
WSFG	W S B FINANCIAL GROUP
WSFS	WSFS FINANCIAL CORP
WTBA	WEST BANCORPORATION INC
	WINTRUST FINANCIAL
WTFC	CORPORATION
WTM	WHITE MOUNTAINS INS GROUP INC
WTNY	WHITNEY HOLDING CORP
WVFC	WVS FINANCIAL CORP
XL	X L CAPITAL LTD
Y	ALLEGHANY CORP DE
YAVY	YADKIN VALLEY FINANCIAL CORP
ZION	ZIONS BANCORP
	ZENITH NATIONAL INSURANCE
ZNT	CORP

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33-8956; 34-58584; 39-2458; IC-28381]

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the Commission) is adopting revisions to the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) Filer Manual to reflect updates to the EDGAR system. The revisions are being made primarily to support the rule amendments made to mandate the electronic filing of information required by Securities Act of 1933 Form D with the implementation of a new Form D online application.

In addition, the revisions also include updates to submission types PREM14A, DEFM14A, PREM14C and DEFM14C to correctly process series and class identifiers; updates to the EDGAR company name conformance rules; updates to the EDGARLite Form TA-2 (Annual Report of Transfer Agent activities filed pursuant to the Securities Exchange Act of 1934) to correct the OMB expiration date displayed on the printed blank form, to correct the order that the response fields for Question 1(h) (Full Name of Registrant as stated in Question 3 of Form TA-1) and Question 3(a) (Registrants Appropriate Regulatory Agency) are displayed on the printed blank form, to make a response to Question 11(a)(i) (Date of Database Search) optional and to prevent the submission of invalid ASCII characters; updates to the EDGAR processing of series and classes co-registrant filings; and the incorporation of the final US GAAP Taxonomies 1.0 into EDGAR.

The revisions to the Filer Manual reflect changes within Volume I entitled EDGAR Filer Manual, Volume I: "General Information," Version 5 (September 2008) and Volume II entitled

EDGAR Filer Manual, Volume II: "EDGAR Filing," Version 9 (September 2008). The updated manual will be incorporated by reference into the Code of Federal Regulations.

EFFECTIVE DATE: [Insert date of publication in the Federal Register.] The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: In the Office of Information Technology, Rick Heroux, Assistant Director of the EDGAR Program Office, at (202) 551-8800; in the Division of Corporation Finance for questions regarding the electronic filing and revision of Form D, contact Gerald J. Laporte, Chief, or Corey A. Jennings, Attorney-Advisor, Office of Small Business Policy at (202) 551-3460; in the Division of Trading and Markets for questions concerning updates to Form TA-2, contact Catherine Moore, Special Counsel, Office of Clearance and Settlement, at (202) 551-5710; in the Division of Investment Management for questions regarding co-registrant filing of series and classes (contracts), contact Ruth Armfield Sanders, Senior Special Counsel, Office of Legal and Disclosure, at (202) 551-6989; and in the Office of Interactive Disclosure, for questions concerning XBRL filings contact Jeffrey W. Naumann, Assistant Director of the Office of Interactive Disclosure, at (202) 551-5352.

SUPPLEMENTARY INFORMATION: Today we are adopting an updated EDGAR Filer Manual, Volume I and Volume II. The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the EDGAR system.¹

¹ We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33-6986 (April 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on June 12, 2008. See Release No. 33-8926 (June 4, 2008) [73 FR 33298].

It also describes the requirements for filing using EDGARLink² and the Online Forms/XML Web site.

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.³ Filers should consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.⁴

² This is the filer assistance software we provide filers filing on the EDGAR system.

³ See Rule 301 of Regulation S-T (17 CFR 232.301).

⁴ See Release Nos. 33-6977 (February 23, 1993) [58 FR 14628], IC-19284 (February 23, 1993) [58 FR 14848], 35-25746 (February 23, 1993) [58 FR 14999], and 33-6980 (February 23, 1993) [58 FR 15009] in which we comprehensively discuss the rules we adopted to govern mandated electronic filing. See also Release No. 33-7122 (December 19, 1994) [59 FR 67752], in which we made the EDGAR rules final and applicable to all domestic registrants; Release No. 33-7427 (July 1, 1997) [62 FR 36450], in which we adopted minor amendments to the EDGAR rules; Release No. 33-7472 (October 24, 1997) [62 FR 58647], in which we announced that, as of January 1, 1998, we would not accept in paper filings that we require filers to submit electronically; Release No. 34-40934 (January 12, 1999) [64 FR 2843], in which we made mandatory the electronic filing of Form 13F; Release No. 33-7684 (May 17, 1999) [64 FR 27888], in which we adopted amendments to implement the first stage of EDGAR modernization; Release No. 33-7855 (April 24, 2000) [65 FR 24788], in which we implemented EDGAR Release 7.0; Release No. 33-7999 (August 7, 2001) [66 FR 42941], in which we implemented EDGAR Release 7.5; Release No. 33-8007 (September 24, 2001) [66 FR 49829], in which we implemented EDGAR Release 8.0; Release No. 33-8224 (April 30, 2003) [68 FR 24345], in which we implemented EDGAR Release 8.5; Release Nos. 33-8255 (July 22, 2003) [68 FR 44876] and 33-8255A (September 4, 2003) [68 FR 53289] in which we implemented EDGAR Release 8.6; Release No. 33-8409 (April 19, 2004) [69 FR 21954] in which we implemented EDGAR Release 8.7; Release No. 33-8454 (August 6, 2004) [69 FR 49803] in which we implemented EDGAR Release 8.8; Release No. 33-8528 (February 3, 2005) [70 FR 6573] in which we implemented EDGAR Release 8.10; Release No. 33-8573 (May 19, 2005) [70 FR 30899] in which we implemented EDGAR Release 9.0; Release No. 33-8612 (September 21, 2005) [70 FR 57130] in which the Commission granted the authorization to publish the release adopting the reorganized EDGAR Filer Manual; Release No. 33-8633 (November 1, 2005) [70 FR 67350] in which we implemented EDGAR Release 9.2; Release No. 33-8656 (January 27, 2006) [71 FR 5596] in which we implemented EDGAR Release 9.3; Release No. 33-8834 (August 15, 2007) [72 FR 46559] in which we implemented EDGAR Release 9.7; Release No. 33-8922 (May 30, 2008) [73 FR 33002] in which we implemented EDGAR Release 9.8 and Release 9.9; and Release No. 33-8926 (June 4, 2008) [73 FR 33298] in which we implemented EDGAR Release 9.10.

In support of the adopted rule amendments mandating the electronic filing of information required by Securities Act of 1933 Form D⁵ through the Internet, EDGAR Release 9.13 will be implemented on September 15, 2008. EDGAR Release 9.13 will implement a new Form D online application that will allow filers to create and submit Form D and Form D amendment filings electronically to the Commission. The Form D online application can be accessed from the EDGAR OnlineForms/XML Web site (<https://www.onlineforms.edgarfiling.sec.gov>) by logging in and selecting the "File Form D" link. Filers can also log in by clicking the "Would you like to File a Form D?" link from the EDGAR Portal Web site (<http://www.portal.edgarfiling.sec.gov>).

Use of the new Form D online application requires EDGAR access codes (e.g., CIK (filer ID number), CCC (filer ID number confirmation code) and password). Filers that have a CIK, but have previously filed with the Commission in paper only must use the "Convert Paper Only Filer to Electronic Filer" function on the EDGAR Filer Management Website (<https://www.filermanagement.edgarfiling.sec.gov>) to be converted to an electronic filer prior to using the Form D application (See EDGAR Filer Manual - Volume I, Section 3.3.1 for details). For those filers that have never been assigned a CIK, they must apply for EDGAR access codes via the EDGAR Filer Management Website (See EDGAR Filer Manual - Volume I, Section 3.2 for details) prior to using the new Form D online application.

EDGAR Release 9.13 will include updates to submission types PREM14A, DEFM14A, PREM14C and DEFM14C to correctly process series and class identifiers. Target funds that are series and class investment companies must use these submission types for those proxy mergers for which the acquiring fund does not file a registration statement on Form N-14; PREM14A, DEFM14A, PREM14C and DEFM14C must include the relevant series and class identifiers for

⁵ See Release No. 33-8891 (February 6, 2008) [73 FR 10592].

both the target and the acquiring fund (if in existence). Filers must download the updated EDGARLink Submission Template 2 to ensure PREM14A, DEFM14A, PREM14C and DEFM14C submissions are processed successfully.

The EDGAR conformed name values applied to the following words have been updated (See EDGAR Filer Manual - Volume I, Appendix C, Section C.5 for details).

<u>Original Value</u>	<u>Conformed Value as of EDGAR Release 9.13</u>
Company	Co
Corporation	Corp
Incorporated	Inc
Incorporation	Inc
Limited	Ltd

The EDGARLite Form TA-2 (Annual Report of Transfer Agent activities filed pursuant to the Securities Exchange Act of 1934) is being updated to correct two errors that occur when the "Check to show blank form for printing" option is checked on the form: (1) the OMB expiration date displayed will be corrected to be "September 30, 2009" and (2) the response fields for Question 1(h) (Full Name of Registrant as stated in Question 3 of Form TA-1) and Question 3(a) (Registrants Appropriate Regulatory Agency) will be correctly displayed under the appropriate question. Note that the OMB expiration date and questions 3(a) and 1(h) display correctly on the EDGARLite TA-2 submission template if the "Check to show blank form for printing" option is not selected. Form TA-2 will also be updated to make Question 11(a)(i) (Date of Database Search) optional. Data fields on Form TA-2 that allow the entry of text were updated to accept only valid ASCII characters (See EDGAR Filer Manual - Volume II, Sections 5.2.1.1 and 5.2.1.2

for details). Filers must download the updated EDGARLite TA-2 Submission Template from the EDGAR OnlineForms Website to ensure that TA-2 submissions will be processed successfully. Previous versions of the templates will not work properly.

EDGAR Release 9.12, implemented on June 23, 2008, updated EDGAR processing for all submission types that require, series and class (contract) identifiers to suspend co-registrant filings unless at least one series and one class (contract) identifier associated with the respective co-registrant CIK is included in the submission for each respective co-registrant (i.e., the filing must include at least one series and class (contract) identifier for the primary co-registrant and at least one series and class (contract) identifier for each of the other co-registrants); increased the maximum number of co-registrants acceptable per submission to 999; and incorporated the final US GAAP Taxonomies version 1.0 into EDGAR.

Notice of the updates has previously been provided on the EDGAR Filing and OnlineForms/XML Filing Web site and on the Commission's public Web sites. The discrete updates are reflected on the EDGAR OnlineForms/XML Filing Web site and in the updated Filer Manual, Volume I and Volume II.

Along with adoption of the Filer Manual, we are amending Rule 301 of Regulation S-T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

You may obtain paper copies of the updated Filer Manual at the following address: Public Reference Room, Securities and Exchange Commission, 100 F Street, NE, Room 1580, Washington DC 20549, on official business days between the hours of 10:00am and 3:00pm. We will post electronic format copies on the Commission's Web site; the address for the Filer Manual is

<http://www.sec.gov/info/edgar.shtml>. You may also obtain copies from Thomson Financial, the paper document contractor for the Commission, at (800) 638-8241.

Since the Filer Manual relates solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (APA)⁶. It follows that the requirements of the Regulatory Flexibility Act⁷ do not apply.

The effective date for the updated Filer Manual and the rule amendments is [Insert date of publication in the Federal Register]. In accordance with the APA⁸, we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system upgrade to Release 9.13 is scheduled to become available on September 15, 2008. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manual with the system upgrade.

Statutory Basis

We are adopting the amendments to Regulation S-T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,⁹ Sections 3, 12, 13, 14, 15, 23, and 35A of the Exchange Act,¹⁰

⁶ 5 U.S.C. 553(b).

⁷ 5 U.S.C. 601- 612.

⁸ 5 U.S.C. 553(d)(3).

⁹ 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

¹⁰ 15 U.S.C. 78c, 78l, 78m, 78n, 78o, 78w, and 78ll.

Section 319 of the Trust Indenture Act of 1939,¹¹ and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.¹²

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

TEXT OF THE AMENDMENT

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

**PART 232 - REGULATION S-T—GENERAL RULES AND REGULATIONS FOR
ELECTRONIC FILINGS**

1. The authority citation for Part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z-3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a-6(c), 80a-8, 80a-29, 80a-30, 80a-37, and 7201 et seq.; and 18 U.S.C. 1350.

2. Section 232.301 is revised to read as follows:

§232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the updated EDGAR Filer Manual, Volume I: "General Information," Version 5 (September 2008). The requirements for filing on EDGAR are set forth in the updated EDGAR

¹¹ 15 U.S.C. 77sss.

¹² 15 U.S.C. 80a-8, 80a-29, 80a-30, and 80a-37.

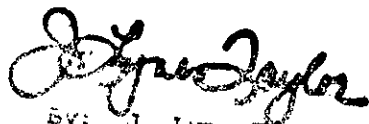
Filer Manual, Volume II: "EDGAR Filing," Version 9 (September 2008). Additional provisions applicable to Form N-SAR filers are set forth in the EDGAR Filer Manual, Volume III: "N-SAR Supplement," Version 1 (September 2005). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You must comply with these requirements in order for documents to be timely received and accepted. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, Securities and Exchange Commission, 100 F Street, NE, Room 1580, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm, or by calling Thomson Financial at (800) 638-8241. Electronic copies are available on the Commission's Web site. The address for the Filer Manual is <http://www.sec.gov/info/edgar.shtml>. You can also inspect the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to:

http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

By the Commission.

J. Lynn Taylor
Assistant Secretary

September 18, 2008


By: J. Lynn Taylor
Assistant Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
RELEASE NO. 34-58588 September 18, 2008

EMERGENCY ORDER PURSUANT TO SECTION 12(k)(2) OF THE SECURITIES
EXCHANGE ACT OF 1934 TAKING TEMPORARY ACTION TO RESPOND TO MARKET
DEVELOPMENTS

The Commission is aware of the continued potential of sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Given the importance of confidence in our financial markets as a whole, we have also become concerned about sudden and unexplained declines in the prices of securities. Such price declines can give rise to questions about the underlying financial condition of an issuer, which in turn can create a crisis of confidence without a fundamental underlying basis. This crisis of confidence can impair the liquidity and ultimate viability of an issuer, with potentially broad market consequences.

As a result of these recent developments, the Commission concluded that there continues to exist the potential of sudden and excessive fluctuations of securities prices generally and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Based on this conclusion, the Commission is exercising its powers under Section 12(k)(2) of the Securities Exchange Act of 1934.¹ Pursuant to Section 12(k)(2), in appropriate circumstances the Commission may issue summarily an order to alter, supplement, suspend, or impose requirements or restrictions with respect to matters or actions subject to regulation by the Commission.

¹ This finding of an "emergency" is solely for purposes of Section 12(k)(2) of the Exchange Act and is not intended to have any other effect or meaning or to confer any right or impose any obligation other than set forth in this Order.

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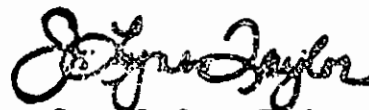
(ii) The volume of purchases condition in paragraph (b)(4) of Exchange Act Rule 10b-18 is modified so that the amount of Rule 10b-18 purchases must not exceed 100 percent of the ADTV for the security.

All other provisions of Exchange Act Rule 10b-18, including the manner and price of purchase conditions of paragraphs (b)(1) and (b)(3), are not altered by this order. Terms used in this order have the same meanings as those terms used in Exchange Act Rule 10b-18 unless stated otherwise.

This Order shall be effective at 12:01 a.m. EDT on September 19, 2008, and shall terminate at 11:59 p.m. on October 2, 2008 unless further extended by the Commission.

By the Commission.

J. Lynn Taylor
Assistant Secretary


By: J. Lynn Taylor
Assistant Secretary

Commissioner ~~Walter~~
not participating

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8958 / September 19, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13225

In the Matter of

ERIC R. WILKINSON,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT
TO SECTION 8A OF THE
SECURITIES ACT OF 1933, MAKING
FINDINGS, AND IMPOSING A CEASE-
AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act"), against Eric R. Wilkinson ("Wilkinson" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Respondent

1. Wilkinson, age 52, is a resident of Iping, West Sussex, in the United Kingdom. At various times, from 1993 through mid-2000, Wilkinson was a partner or principal of a private equity firm and/or certain of its affiliates (collectively, the "Private Equity Firm").

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Overview

2. Wilkinson served as a non-employee director of National Century Financial Enterprises, Inc. ("NCFE"), a Dublin, Ohio healthcare financing company which is now defunct. Wilkinson served as a non-employee director of NCFE from approximately mid-1998 through July 2002. Wilkinson became a non-employee director of NCFE as the result of a \$40 million investment in NCFE in July 1998 by a private equity fund (the "Fund") that the Private Equity Firm managed.

3. From approximately 1991 through 2002, NCFE subsidiaries (collectively, the "programs") purchased medical accounts receivable ("receivables") from health-care providers and issued asset-backed notes ("notes") that securitized those receivables. NCFE and the programs collapsed in November 2002 when investors and others discovered massive reserve-account transfers and collateral shortfalls. The collapse caused significant investor losses. Several NCFE employees orchestrated the fraud; four employees have pled guilty to a criminal conspiracy, and five other employees have been criminally convicted of fraud charges.

4. In late 2000, NCFE asked Wilkinson and others at the Private Equity Firm to cause the Fund to guarantee a portion of a short-term loan to NCFE. In late September 2000, Wilkinson and others at the Private Equity Firm caused the Fund to guarantee a portion of the short-term loan. NCFE used the short-term loan to mask the depletion of certain reserve accounts that the NCFE programs were required to maintain ("Reserve Accounts") by making it appear that the programs were maintaining the Reserve Accounts at required levels, when in fact NCFE was consistently and severely depleting the Reserve Accounts.

NCFE Makes Misrepresentations to Investors and Engages In Fraud

5. In the private placement memoranda through which the NCFE programs offered asset-backed notes to institutional investors, NCFE represented, among other things, that NCFE would use the proceeds from the note offerings for the purchase of healthcare account receivables by the programs, that the programs would purchase receivables only less than 180 days old, and that the programs would maintain specified balances ("Specified Balances") for separate Reserve Accounts. While NCFE used some investor funds to purchase healthcare account receivables that were less than 180 days old, NCFE used a substantial portion of the private placement proceeds and Reserve Account funds to make either unsecured loans or loans secured by collateral other than healthcare account receivables, or to purchase healthcare account receivables that were over 180 days old.

6. Further, NCFE improperly depleted and manipulated the Reserve Accounts in the programs. A principal feature of NCFE's fraudulent scheme was the transfer of huge amounts of Reserve Account funds on or around the first and last business day of every month. The indentures required the programs to report on the balances in the Reserve Accounts as of one day of the month, called the "Determination Date." NCFE concocted a scheme to kite funds back and forth between the programs on or around the Determination Dates to make it appear that the programs were maintaining the Specified Balances in the Reserve Accounts. In fact, NCFE was consistently and severely depleting the balances in these Reserve Accounts without telling investors. NCFE's practices were contrary to NCFE's representations to investors and contrary

to the requirements of the master trust indentures ("indentures") that governed NCFE's note offerings.

Wilkinson Helps Cause the Fund to Guarantee a Short-Term Loan to NCFE

7. At the time of the Fund's investment in NCFE, Wilkinson reviewed certain offering materials for NCFE note offerings. The offering materials that Wilkinson reviewed represented in substance, among other things, that the programs held the Specified Balances in the Reserve Accounts.

8. Wilkinson understood that the indentures required that the Reserve Accounts hold the Specified Balances on the monthly Determination Dates. Wilkinson should have known that the offering materials for NCFE's note offerings represented that the programs were maintaining the Reserve Account balances at the Specified Balances. He also should have known that there should not have been any shortfall in the Reserve Accounts.

9. As noted above, as part of NCFE's fraud, NCFE manipulated the Reserve Accounts on or around the monthly Determination Dates to make it appear that NCFE was maintaining the Specified Balances in the Reserve Accounts and produced false reports based on this manipulation.

10. In late September 2000, NCFE devised a scheme to attempt to obtain short-term loans during the period covering the Determination Dates for the programs to temporarily fund the Reserve Accounts. As part of this scheme, NCFE asked a bank (the "Bank") with whom NCFE had an existing lending relationship to make a short-term seven-day loan (the "Short-Term Loan") to NCFE.

11. The Bank agreed to make the Short-Term Loan on the condition that NCFE fully secure the loan amount. Since NCFE did not have sufficient collateral to fully secure the entire loan amount, NCFE asked Wilkinson and others at the Private Equity Firm to cause the Fund to guarantee a portion of the Short-Term Loan and told Wilkinson and others at the Private Equity Firm that the purpose of the Short-Term Loan was to cover a shortfall in the Reserve Accounts.

12. In late September 2000, Wilkinson and others at the Private Equity Firm caused the Fund to guarantee a portion of the Short-Term Loan to fund the Reserve Accounts, and the Bank made the Short-Term Loan to NCFE.

13. NCFE used the Short-Term Loan and other short-term loans at the end of September 2000 and the beginning of October 2000 Determination Dates to temporarily fund the Reserve Accounts and make it falsely appear that one of the Reserve Accounts was being maintained at the Specified Balance. NCFE then repaid the Short-Term Loan. NCFE did not tell investors and others that NCFE had used the Short-Term Loan to fund the Reserve Accounts.

14. Shortly after using the Short-Term Loan to temporarily fund the Reserve Accounts, NCFE successfully completed a \$275 million October 2000 program note issuance ("October 2000 Note Issuance").

15. In the October 2000 Note Issuance, NCFE made misleading representations that the programs were maintaining the Reserve Account balances at the Specified Balances when in fact, as discussed above, NCFE had satisfied the Specified Balances for the end of September 2000 and beginning of October 2000 Determination Dates by the use of, among other things, the Short-Term Loan. NCFE's misrepresentations operated as a fraud or deceit upon the purchasers of the October 2000 Note Issuance.

16. Wilkinson should have known that, by causing the Fund to guarantee a portion of the loan to NCFE to fund the Reserve Accounts, he would contribute to NCFE's violation.

Violation

17. Section 8A of the Securities Act authorizes the Commission to order a person who "is, was, or would be a cause of [a] violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation. . . ." 15 U.S.C. § 78u-3(a). To issue such an order, the Commission must find that: "(1) a primary violation occurred, (2) there was an act or omission by the respondent that was a cause of the violation, and (3) the respondent knew, or should have known, that his conduct would contribute to the violation." *In the Matter of Robert M. Fuller*, AP. File No. 3-10576, 56 SEC 976, 984 (Aug. 25, 2003), *pet. denied*, 95 Fed. Appx. 361 (D.C. Cir. 2004) (unpublished). Such "causing" liability can be based on negligence when the underlying primary violation requires a showing of negligence. *KPMG Peat Marwick LLP*, 54 S.E.C. 1135, 1175 & n.100 (2001), *pet. denied*, *KPMG Peat Marwick, LLP v. SEC*, 289 F.3d 109, 120 (D.C. Cir. 2002).

18. As a result of the conduct described above, Wilkinson was a cause of NCFE's violation of Section 17(a)(3) of the Securities Act, which makes it unlawful for any person in the offer or sale of securities "to engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit upon the purchaser." A finding of negligent conduct is sufficient to establish liability for causing a violation of Section 17(a)(3) of the Securities Act. *See Aaron v. SEC*, 446 U.S. 680, 697, 701-02 (1980).

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that pursuant to Section 8A of the Securities Act, Respondent cease and desist from committing or causing any violations and any future violations of Section 17(a)(3) of the Securities Act.

By the Commission.

Florence E. Harmon
Acting Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 19, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13223

In the Matter of

Cat-A-Tonic Beverage Corp.,
Chlorophyllix, Inc.,
Clem's Stox, Inc.,
Fashion Barn, Inc., and
Merlin Software Technologies
International, Inc.,

Respondents.

ORDER INSTITUTING
PROCEEDINGS AND NOTICE
OF HEARING PURSUANT
TO SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT
OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Cat-A-Tonic Beverage Corp., Chlorophyllix, Inc., Clem's Stox, Inc., Fashion Barn, Inc., and Merlin Software Technologies, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Cat-A-Tonic Beverage Corp. (CIK No. 1108598) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Cat-A-Tonic Beverage is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on March 8, 2000, which reported no assets.

2. Chlorophyllix, Inc. (CIK No. 1108564) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Chlorophyllix is delinquent in its periodic

filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on March 7, 2000, which reported no assets.

3. Clem's Stox, Inc. (CIK No. 1108557) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Clem's Stox is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on March 8, 2000, which reported no assets.

4. Fashion Barn, Inc. (CIK No. 1108561) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Fashion Barn is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on March 8, 2000, which reported no assets.

5. Merlin Software Technologies International, Inc. (CIK No. 1091394) is a revoked Nevada corporation located in Burnaby, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Merlin Software Technologies International is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 2002, which reported a net loss of over \$12 million since inception in 1999.

B. DELINQUENT PERIODIC FILINGS

6. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed, in whole or in part, to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission, did not receive such letters.

7. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires domestic issuers to file quarterly reports.

8. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

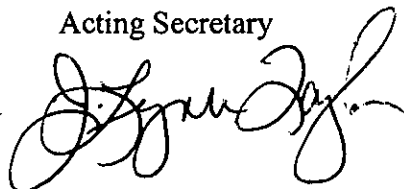
In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to

notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Attachment

Florence E. Harmon
Acting Secretary

A handwritten signature in cursive script, appearing to read "J. Lynn Taylor", written in black ink.

By: J. Lynn Taylor
Assistant Secretary

Appendix 1

**Chart of Delinquent Filings
In the Matter of Cat-A-Tonic Beverage Corp., et al.**

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
Cat-A-Tonic Beverage Corp.					
	10-QSB	03/31/00	06/21/00	Not filed	99
	10-QSB	06/30/00	08/14/00	Not filed	97
	10-QSB	09/30/00	11/14/00	Not filed	94
	10-KSB	12/31/00	04/02/01	Not filed	89
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-QSB	06/30/01	08/14/01	Not filed	85
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
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Cat-A-Tonic Beverage Corp.

10-QSB	09/30/07	11/14/07	Not filed	10
10-KSB	12/31/07	03/31/08	Not filed	6
10-Q ¹	03/31/08	05/15/08	Not filed	4
10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent

34

Chlorophyllix, Inc.

10-QSB	03/31/00	06/20/00	Not filed	99
10-QSB	06/30/00	08/14/00	Not filed	97
10-QSB	09/30/00	11/14/00	Not filed	94
10-KSB	12/31/00	04/02/01	Not filed	89
10-QSB	03/31/01	05/15/01	Not filed	88
10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54

¹Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

Company Name
Form Type
**Period
Ended**
Due Date
**Date
Received**
**Months
delinquent
(rounded up)**
Chlorophyllix, Inc.

10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-KSB	12/31/07	03/31/08	Not filed	6
10-Q	03/31/08	05/15/08	Not filed	4
10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent
33
Clem's Stox, Inc.

10-QSB	03/31/00	06/21/00	Not filed	99
10-QSB	06/30/00	08/14/00	Not filed	97
10-QSB	09/30/00	11/14/00	Not filed	94
10-KSB	12/31/00	04/02/01	Not filed	89
10-QSB	03/31/01	05/15/01	Not filed	88
10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52

Company Name**Form Type****Period
Ended****Due Date****Date
Received****Months
delinquent
(rounded up)****Clem's Stox, Inc.**

10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-KSB	12/31/07	03/31/08	Not filed	6
10-Q	03/31/08	05/15/08	Not filed	4
10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent

34

Fashion Barn, Inc.

10-QSB	03/31/00	06/21/00	Not filed	99
10-QSB	06/30/00	08/14/00	Not filed	97
10-QSB	09/30/00	11/14/00	Not filed	94
10-KSB	12/31/00	04/02/01	Not filed	89
10-QSB	03/31/01	05/15/01	Not filed	88
10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54

Company Name**Form Type****Period
Ended****Due Date****Date
Received****Months
delinquent
(rounded up)****Fashion Barn, Inc.**

10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-KSB	12/31/07	03/31/08	Not filed	6
10-Q	03/31/08	05/15/08	Not filed	4
10-Q	03/31/08	05/15/08	Not filed	4

Total Filings Delinquent 34**Merlin Software
Technologies
International, Inc.**

10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40

Company Name

Form Type

**Period
Ended**

Due Date

**Date
Received**

**Months
delinquent
(rounded up)**

**Merlin Software
Technologies
International, Inc.**

<i>10-QSB</i>	06/30/05	08/15/05	Not filed	37
<i>10-QSB</i>	09/30/05	11/14/05	Not filed	34
<i>10-KSB</i>	12/31/05	03/31/06	Not filed	30
<i>10-QSB</i>	03/31/06	05/15/06	Not filed	28
<i>10-QSB</i>	06/30/06	08/14/06	Not filed	25
<i>10-QSB</i>	09/30/06	11/14/06	Not filed	22
<i>10-KSB</i>	12/31/06	04/02/07	Not filed	17
<i>10-QSB</i>	03/31/07	05/15/07	Not filed	16
<i>10-QSB</i>	06/30/07	08/14/07	Not filed	13
<i>10-QSB</i>	09/30/07	11/14/07	Not filed	10
<i>10-KSB</i>	12/31/07	03/31/08	Not filed	6
<i>10-Q</i>	03/31/08	05/15/08	Not filed	4

Total Filings Delinquent

23

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 19, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13220

In the Matter of

Ragen Corp.
Rainwire Partners, Inc.,
Rako Capital Corp.,
Ramtek Corp.
(n/k/a Ramtek I Corp.),
Ranger Industries, Inc.,
RCS Holdings, Inc., and
Recycling Industries, Inc.,

Respondents.

**ORDER INSTITUTING
PROCEEDINGS AND NOTICE OF
HEARING PURSUANT TO SECTION
12(j) OF THE SECURITIES
EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Ragen Corp., Rainwire Partners, Inc., Rako Capital Corp., Ramtek Corp. (n/k/a Ramtek I Corp.), Ranger Industries, Inc., RCS Holdings, Inc., and Recycling Industries, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Ragen Corp. (CIK No. 81766) is a Nevada corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Ragen is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended June 30, 1993, which reported a net loss of \$420,000 for the prior nine months. On December 23, 1993, Ragen filed a Chapter 11 petition in the U.S. Bankruptcy Court for the District of New Jersey, and the case was terminated on November 21, 1996. As of

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September 16, 2008, the company's common stock (symbol "RAGN") was quoted on the Pink Sheets operated by Pink OTC Markets, Inc. ("Pink Sheets"), had four market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

2. Rainwire Partners, Inc. (CIK No. 917253) is a void Delaware corporation located in Alpharetta, Georgia with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Rainwire is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2003, which reported a net loss of \$349,945 from the company's inception on January 1, 2001. As of September 16, 2008, the company's common stock (symbol "RNWR") was quoted on the Pink Sheets, had six market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

3. Rako Capital Corp. (CIK No. 1063111) is a Nevada corporation located in Fayetteville, Arkansas with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Rako is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2003, which reported a net loss of over \$1.9 million for the prior three months. As of September 16, 2008, the company's stock (symbol "RKOC") was quoted on the Pink Sheets, had three market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

4. Ramtek Corp. (n/k/a Ramtek I Corp.) (CIK No. 277317) is a Delaware corporation located in Sunnyvale, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Ramtek is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended April 2, 1993. As of September 16, 2008, the company's common stock (symbol "RMTKQ") was quoted on the Pink Sheets, had two market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

5. Ranger Industries, Inc. (CIK No. 21610) is a Connecticut corporation located in St. Petersburg, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Ranger is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2003, which reported a net loss of \$199,060 for the prior nine months. As of September 16, 2008, the company's common stock (symbol "RNGR") was quoted on the Pink Sheets, had six market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

6. RCS Holdings, Inc. (CIK No. 313968) is a dissolved Colorado corporation located in Littleton, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). RCS is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended January 31, 2002, which reported a net loss of over \$2.24 million for the prior nine months. As of September 16, 2008, the company's common stock (symbol

"RCSH") was quoted on the Pink Sheets, had seven market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

7. Recycling Industries, Inc. (CIK No. 769879) is a dissolved Colorado corporation located in Englewood, Colorado with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Recycling is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended December 31, 1998, which reported a net loss of over \$10 million for the prior three months. As of September 16, 2008, the company's common stock (symbol "RECQQ") was quoted on the Pink Sheets, had four market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

8. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

9. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires issuers to file quarterly reports.

10. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

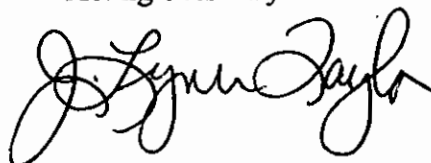
IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Attachment

Florence E. Harmon
Acting Secretary



By: J. Lynn Taylor
Assistant Secretary

Appendix 1

Chart of Delinquent Filings *In the Matter of Ragen Corp., et al.*

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Ragen Corp.	10-KSB	09/30/93	12/29/93	Not filed	177
	10-QSB	12/31/93	02/14/94	Not filed	175
	10-QSB	03/31/94	05/16/94	Not filed	172
	10-QSB	06/30/94	08/15/94	Not filed	169
	10-KSB	09/30/94	12/29/94	Not filed	165
	10-QSB	12/31/94	02/14/95	Not filed	163
	10-QSB	03/31/95	05/15/95	Not filed	160
	10-QSB	06/30/95	08/14/95	Not filed	157
	10-KSB	09/30/95	12/29/95	Not filed	153
	10-QSB	12/31/95	02/14/96	Not filed	151
	10-QSB	03/31/96	05/15/96	Not filed	148
	10-QSB	06/30/96	08/14/96	Not filed	145
	10-KSB	09/30/96	12/30/96	Not filed	141
	10-QSB	12/31/96	02/14/97	Not filed	139
	10-QSB	03/31/97	05/15/97	Not filed	136
	10-QSB	06/30/97	08/14/97	Not filed	133
	10-KSB	09/30/97	12/29/97	Not filed	129
	10-QSB	12/31/97	02/17/98	Not filed	127
	10-QSB	03/31/98	05/15/98	Not filed	124
	10-QSB	06/30/98	08/14/98	Not filed	121
	10-KSB	09/30/98	12/29/98	Not filed	117
	10-QSB	12/31/98	02/16/99	Not filed	115
	10-QSB	03/31/99	05/17/99	Not filed	112
	10-QSB	06/30/99	08/16/99	Not filed	109
	10-KSB	09/30/99	12/29/99	Not filed	105
	10-QSB	12/31/99	02/14/00	Not filed	103
	10-QSB	03/31/00	05/15/00	Not filed	100
	10-QSB	06/30/00	08/14/00	Not filed	97
	10-KSB	09/30/00	12/29/00	Not filed	93
	10-QSB	12/31/00	02/14/01	Not filed	91
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-QSB	06/30/01	08/14/01	Not filed	85
	10-KSB	09/30/01	12/31/01	Not filed	81

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Ragen Corp. (continued)	10-QSB	12/31/01	02/14/02	Not filed	79
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-KSB	09/30/02	12/30/02	Not filed	69
	10-QSB	12/31/02	02/14/03	Not filed	67
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-KSB	09/30/03	12/29/03	Not filed	57
	10-QSB	12/31/03	02/17/04	Not filed	55
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-KSB	09/30/04	12/29/04	Not filed	45
	10-QSB	12/31/04	02/14/05	Not filed	43
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-KSB	09/30/05	12/29/05	Not filed	33
	10-QSB	12/31/05	02/14/06	Not filed	31
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-KSB	09/30/06	12/29/06	Not filed	21
	10-QSB	12/31/06	02/14/07	Not filed	19
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-KSB	09/30/07	12/29/07	Not filed	9
	10-QSB	12/31/07	02/14/08	Not filed	7
	10-QSB	03/31/08	05/15/08	Not filed	4
	10-QSB	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent 60

Rainwire Partners, Inc.

10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Rainwire Partners, Inc. (continued)	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent 21

Rako Capital Corp.

10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Rako Capital Corp.	<i>10-QSB</i>	09/30/07	11/14/07	Not filed	10
<i>(continued)</i>	<i>10-KSB</i>	12/31/07	03/31/08	Not filed	6
	<i>10-Q¹</i>	03/31/08	05/15/08	Not filed	4
	<i>10-Q¹</i>	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent

21

Ramtek Corp.
(n/k/a Ramtek I Corp.)

<i>10-K</i>	07/02/93	09/30/93	Not filed	180
<i>10-Q</i>	10/01/93	11/15/93	Not filed	178
<i>10-Q</i>	12/31/93	02/14/94	Not filed	175
<i>10-Q</i>	04/01/94	05/16/94	Not filed	172
<i>10-K</i>	07/01/94	09/29/94	Not filed	168
<i>10-Q</i>	09/30/94	11/14/94	Not filed	166
<i>10-Q</i>	12/30/94	02/13/95	Not filed	163
<i>10-Q</i>	03/31/95	05/15/95	Not filed	160
<i>10-K</i>	07/07/95	10/05/95	Not filed	155
<i>10-Q</i>	10/06/95	11/20/95	Not filed	154
<i>10-Q</i>	01/05/96	02/19/96	Not filed	151
<i>10-Q</i>	04/05/96	05/20/96	Not filed	148
<i>10-K</i>	07/05/96	10/03/96	Not filed	143
<i>10-Q</i>	10/04/96	11/18/96	Not filed	142
<i>10-Q</i>	01/03/97	02/17/97	Not filed	139
<i>10-Q</i>	04/04/97	05/19/97	Not filed	136
<i>10-K</i>	07/04/97	10/02/97	Not filed	131
<i>10-Q</i>	10/03/97	11/17/97	Not filed	130
<i>10-Q</i>	01/02/98	02/16/98	Not filed	127
<i>10-Q</i>	04/03/98	05/18/98	Not filed	124
<i>10-K</i>	07/03/98	10/01/98	Not filed	119
<i>10-Q</i>	10/02/98	11/16/98	Not filed	118
<i>10-Q</i>	01/01/99	02/15/99	Not filed	115
<i>10-Q</i>	04/02/99	05/17/99	Not filed	112
<i>10-K</i>	07/02/99	09/30/99	Not filed	108
<i>10-Q</i>	10/01/99	11/15/99	Not filed	106
<i>10-Q</i>	12/31/99	02/14/00	Not filed	103
<i>10-Q</i>	03/31/00	05/15/00	Not filed	100
<i>10-K</i>	07/07/00	10/05/00	Not filed	95
<i>10-Q</i>	10/06/00	11/20/00	Not filed	94

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Ramtek Corp.					
(n/k/a Ramtek I Corp.)					
(continued)					
	10-Q	01/05/01	02/19/01	Not filed	91
	10-Q	04/06/01	05/21/01	Not filed	88
	10-K	07/06/01	10/04/01	Not filed	83
	10-Q	10/05/01	11/19/01	Not filed	82
	10-Q	01/04/02	02/18/02	Not filed	79
	10-Q	04/05/02	05/20/02	Not filed	76
	10-K	07/05/02	10/03/02	Not filed	71
	10-Q	10/04/02	11/18/02	Not filed	70
	10-Q	01/03/03	02/17/03	Not filed	67
	10-Q	04/04/03	05/19/03	Not filed	64
	10-K	07/04/03	10/02/03	Not filed	59
	10-Q	10/03/03	11/17/03	Not filed	58
	10-Q	01/02/04	02/16/04	Not filed	55
	10-Q	04/02/04	05/17/04	Not filed	52
	10-K	07/02/04	09/30/04	Not filed	48
	10-Q	10/01/04	11/15/04	Not filed	46
	10-Q	12/31/04	02/14/05	Not filed	43
	10-Q	04/01/05	05/16/05	Not filed	40
	10-K	07/01/05	09/29/05	Not filed	36
	10-Q	09/30/05	11/14/05	Not filed	34
	10-Q	12/30/05	02/13/06	Not filed	31
	10-Q	03/31/06	05/15/06	Not filed	28
	10-K	07/07/06	10/05/06	Not filed	23
	10-Q	10/06/06	11/20/06	Not filed	22
	10-Q	01/05/07	02/19/07	Not filed	19
	10-Q	04/06/07	05/21/07	Not filed	16
	10-K	07/06/07	10/04/07	Not filed	11
	10-Q	10/05/07	11/19/07	Not filed	10
	10-Q	01/04/08	02/18/08	Not filed	7
	10-Q	04/04/08	05/19/08	Not filed	4

Total Filings Delinquent

60

Ranger Industries, Inc.

10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Ranger Industries, Inc. (continued)	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent

19

RCS Holdings, Inc.

10-QSB	01/31/05	03/17/05	Not filed	42
10-KSB	04/30/05	07/29/05	Not filed	38
10-QSB	07/31/05	09/14/05	Not filed	36
10-QSB	10/31/05	12/15/05	Not filed	33
10-QSB	01/31/06	03/17/06	Not filed	30
10-KSB	04/30/06	07/31/06	Not filed	26
10-QSB	07/31/06	09/14/06	Not filed	24
10-QSB	10/31/06	12/15/06	Not filed	21
10-QSB	01/31/07	03/19/07	Not filed	18
10-KSB	04/30/07	07/30/07	Not filed	14
10-QSB	07/31/07	09/14/07	Not filed	12
10-QSB	10/31/07	12/17/07	Not filed	9
10-QSB	01/31/08	03/17/08	Not filed	6
10-KSB	04/30/08	07/29/08	Not filed	2

Total Filings Delinquent

14

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Recycling Industries, Inc.					
	10-Q	03/31/99	05/17/99	Not filed	112
	10-Q	06/30/99	08/16/99	Not filed	109
	10-K	09/30/99	12/29/99	Not filed	105
	10-Q	12/31/99	02/14/00	Not filed	103
	10-Q	03/31/00	05/15/00	Not filed	100
	10-Q	06/30/00	08/14/00	Not filed	97
	10-K	09/30/00	12/29/00	Not filed	93
	10-Q	12/31/00	02/14/01	Not filed	91
	10-Q	03/31/01	05/15/01	Not filed	88
	10-Q	06/30/01	08/14/01	Not filed	85
	10-K	09/30/01	12/31/01	Not filed	81
	10-Q	12/31/01	02/14/02	Not filed	79
	10-Q	03/31/02	05/15/02	Not filed	76
	10-Q	06/30/02	08/14/02	Not filed	73
	10-K	09/30/02	12/30/02	Not filed	69
	10-Q	12/31/02	02/14/03	Not filed	67
	10-Q	03/31/03	05/15/03	Not filed	64
	10-Q	06/30/03	08/14/03	Not filed	61
	10-K	09/30/03	12/29/03	Not filed	57
	10-Q	12/31/03	02/17/04	Not filed	55
	10-Q	03/31/04	05/17/04	Not filed	52
	10-Q	06/30/04	08/16/04	Not filed	49
	10-K	09/30/04	12/29/04	Not filed	45
	10-Q	12/31/04	02/14/05	Not filed	43
	10-Q	03/31/05	05/16/05	Not filed	40
	10-Q	06/30/05	08/15/05	Not filed	37
	10-K	09/30/05	12/29/05	Not filed	33
	10-Q	12/31/05	02/14/06	Not filed	31
	10-Q	03/31/06	05/15/06	Not filed	28
	10-Q	06/30/06	08/14/06	Not filed	25
	10-K	09/30/06	12/29/06	Not filed	21
	10-Q	12/31/06	02/14/07	Not filed	19

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Recycling Industries, Inc. (continued)	10-Q	03/31/07	05/15/07	Not filed	16
	10-Q	06/30/07	08/14/07	Not filed	13
	10-K	09/30/07	12/29/07	Not filed	9
	10-Q	12/31/07	02/14/08	Not filed	7
	10-Q	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent 36

¹Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 19, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13221

In the Matter of

Quadxsports.com, Inc.,
Quality Resorts of America, Inc.,
Quentra Networks, Inc.,
Quicksilver Enterprises, Inc., and
Quokka Sports, Inc.,

Respondents.

ORDER INSTITUTING
PROCEEDINGS AND NOTICE
OF HEARING PURSUANT TO
SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT
OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Quadxsports.com, Inc., Quality Resorts of America, Inc., Quentra Networks, Inc., Quicksilver Enterprises, Inc., and Quokka Sports, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Quadxsports.com, Inc. (CIK No. 1095181) is a revoked Nevada corporation located in Long Beach, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Quadxsports.com is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2000.

2. Quality Resorts of America, Inc. (CIK No. 766431) is a suspended California corporation located in Fair Oaks, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Quality Resorts of America is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-KSB for the period ended June 30, 1997, which reported a net loss of \$326,590 for the prior year. As of September 18, 2008, the company's stock (symbol "QROA") was quoted on the Pink Sheets operated by Pink OTC Markets, Inc.

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("Pink Sheets"), had two market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

3. Quentra Networks, Inc. (CIK No. 57201) is a forfeited Delaware corporation located in Los Angeles, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Quentra Networks is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 2000, which reported a net loss of over \$17,470,000 for the prior six months. On December 14, 2000, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Central District of California, the reorganization plan was confirmed on September 23, 2002, and the case is pending. As of September 18, 2008, the company's stock (symbol "QTRAQ") was quoted on the Pink Sheets, had six market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

4. Quicksilver Enterprises, Inc. (CIK No. 832985) is a suspended Delaware corporation located in Temecula, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Quicksilver Enterprises is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended February 28, 1995, which reported a net loss of \$237,725 for the prior nine months. As of September 18, 2008, the company's stock (symbol "QEIC") was traded on the over-the-counter markets.

5. Quokka Sports, Inc. (CIK No. 1037737) is a forfeited Delaware corporation located in San Francisco, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Quokka Sports is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-K for the period ended December 31, 2000, which reported a net loss of \$279,519,000 for the prior year. On April 27, 2001, the company filed a Chapter 11 petition in the U.S. Bankruptcy Court for the Northern District of California, and the case was terminated on March 23, 2007. As of September 18, 2008, the company's stock (symbol "QKKAQ") was quoted on the Pink Sheets, had six market makers, and was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3).

B. DELINQUENT PERIODIC FILINGS

6. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

7. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration

is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires issuers that file domestic forms to file quarterly reports.

8. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

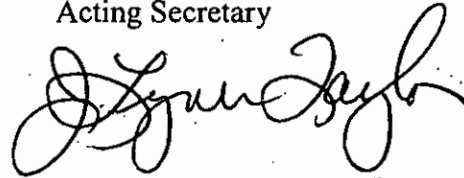
IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Attachment

Florence E. Harmon
Acting Secretary

A handwritten signature in cursive script, appearing to read "J. Lynn Taylor".

By: J. Lynn Taylor
Assistant Secretary

Appendix 1

**Chart of Delinquent Filings
In the Matter of Quadxsports.com, Inc., et al.**

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Quadxsports.com, Inc.	10-QSB	06/30/00	08/14/00	Not filed	97
	10-QSB	09/30/00	11/14/00	Not filed	94
	10-KSB	12/31/00	04/02/01	Not filed	89
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-QSB	06/30/01	08/14/01	Not filed	85
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Quadxsports.com, Inc.					
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/15/08	Not filed	1
Total Filings Delinquent	33				

Quality Resorts of America, Inc.

10-QSB	09/30/97	11/14/97	Not filed	130
10-QSB	12/31/97	2/17/98	Not filed	127
10-QSB	03/31/98	5/15/98	Not filed	124
10-KSB	06/30/98	9/28/98	Not filed	120
10-QSB	09/30/98	11/16/98	Not filed	118
10-QSB	12/31/98	2/16/99	Not filed	115
10-QSB	03/31/99	5/17/99	Not filed	112
10-KSB	06/30/99	9/28/99	Not filed	108
10-QSB	09/30/99	11/15/99	Not filed	106
10-QSB	12/31/99	2/14/00	Not filed	103
10-QSB	03/31/00	5/15/00	Not filed	100
10-KSB	06/30/00	9/28/00	Not filed	96
10-QSB	09/30/00	11/14/00	Not filed	94
10-QSB	12/31/00	2/14/01	Not filed	91
10-QSB	03/31/01	5/15/01	Not filed	88
10-KSB	06/30/01	9/28/01	Not filed	84
10-QSB	09/30/01	11/14/01	Not filed	82
10-QSB	12/31/01	2/14/02	Not filed	79
10-QSB	03/31/02	5/15/02	Not filed	76

¹Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Quality Resorts of America, Inc.	10-KSB	06/30/02	9/30/02	Not filed	72
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-QSB	12/31/02	2/14/03	Not filed	67
	10-QSB	03/31/03	5/15/03	Not filed	64
	10-KSB	06/30/03	9/29/03	Not filed	60
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-QSB	12/31/03	2/17/04	Not filed	55
	10-QSB	03/31/04	5/17/04	Not filed	52
	10-KSB	06/30/04	9/28/04	Not filed	48
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-QSB	12/31/04	2/14/05	Not filed	43
	10-QSB	03/31/05	5/16/05	Not filed	40
	10-KSB	06/30/05	9/28/05	Not filed	36
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-QSB	12/31/05	2/14/06	Not filed	31
	10-QSB	03/31/06	5/15/06	Not filed	28
	10-KSB	06/30/06	9/28/06	Not filed	24
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-QSB	12/31/06	2/14/07	Not filed	19
	10-QSB	03/31/07	5/15/07	Not filed	16
10-KSB	06/30/07	9/28/07	Not filed	12	
10-QSB	09/30/07	11/14/07	Not filed	10	
10-QSB	12/31/07	2/14/08	Not filed	7	
10-Q	03/31/08	5/15/08	Not filed	4	

Total Filings Delinquent 43

Quentra Networks, Inc.

10-Q	12/31/00	02/14/01	Not filed	91
10-K	03/31/01	06/29/01	Not filed	87
10-Q	06/30/01	08/14/01	Not filed	85
10-Q	09/30/01	11/14/01	Not filed	82
10-Q	12/31/01	02/14/02	Not filed	79
10-K	03/31/02	07/01/02	Not filed	74
10-Q	06/30/02	08/14/02	Not filed	73

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Quentra Networks, Inc.					
	10-Q	09/30/02	11/14/02	Not filed	70
	10-Q	12/31/02	02/14/03	Not filed	67
	10-K	03/31/03	06/30/03	Not filed	63
	10-Q	06/30/03	08/14/03	Not filed	61
	10-Q	09/30/03	11/14/03	Not filed	58
	10-Q	12/31/03	02/17/04	Not filed	55
	10-K	03/31/04	06/29/04	Not filed	51
	10-Q	06/30/04	08/16/04	Not filed	49
	10-Q	09/30/04	11/15/04	Not filed	46
	10-Q	12/31/04	02/14/05	Not filed	43
	10-K	03/31/05	06/29/05	Not filed	39
	10-Q	06/30/05	08/15/05	Not filed	37
	10-Q	09/30/05	11/14/05	Not filed	34
	10-Q	12/31/05	02/14/06	Not filed	31
	10-K	03/31/06	06/29/06	Not filed	27
	10-Q	06/30/06	08/14/06	Not filed	25
	10-Q	09/30/06	11/14/06	Not filed	22
	10-Q	12/31/06	02/14/07	Not filed	19
	10-K	03/31/07	06/29/07	Not filed	15
	10-Q	06/30/07	08/14/07	Not filed	13
	10-Q	09/30/07	11/14/07	Not filed	10
	10-Q	12/31/07	02/14/08	Not filed	7
	10-K	03/31/08	06/30/08	Not filed	3
	10-Q	06/30/08	08/15/08	Not filed	1
Total Filings Delinquent	31				

**Quicksilver
Enterprises, Inc.**

10-K	5/31/95	08/29/95	Not filed	157
10-Q	8/31/95	10/16/95	Not filed	155
10-Q	11/30/95	01/16/96	Not filed	152
10-Q	2/28/96	04/15/96	Not filed	149
10-K	5/31/96	08/29/96	Not filed	145
10-Q	8/31/96	10/15/96	Not filed	143

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Quicksilver Enterprises, Inc.	10-Q	11/30/96	01/14/97	Not filed	140
	10-Q	2/28/97	04/14/97	Not filed	137
	10-K	5/31/97	08/29/97	Not filed	133
	10-Q	8/31/97	10/15/97	Not filed	131
	10-Q	11/30/97	01/14/98	Not filed	128
	10-Q	02/28/98	04/14/98	Not filed	125
	10-K	05/31/98	08/31/98	Not filed	121
	10-Q	08/31/98	10/15/98	Not filed	119
	10-Q	11/30/98	01/14/99	Not filed	116
	10-Q	02/28/99	04/14/99	Not filed	113
	10-K	05/31/99	08/30/99	Not filed	109
	10-Q	08/31/99	10/15/99	Not filed	107
	10-Q	11/30/99	01/14/00	Not filed	104
	10-Q	02/29/00	04/14/00	Not filed	101
	10-K	05/31/00	08/29/00	Not filed	97
	10-Q	08/31/00	10/16/00	Not filed	95
	10-Q	11/30/00	01/16/01	Not filed	92
	10-Q	02/28/01	04/16/01	Not filed	89
	10-K	05/31/01	08/29/01	Not filed	85
	10-Q	08/31/01	10/15/01	Not filed	83
	10-Q	11/30/01	01/14/02	Not filed	80
	10-Q	02/28/02	04/15/02	Not filed	77
	10-K	05/31/02	08/29/02	Not filed	73
	10-Q	08/31/02	10/15/02	Not filed	71
	10-Q	11/30/02	01/14/03	Not filed	68
	10-Q	02/28/03	04/14/03	Not filed	65
	10-K	05/31/03	08/29/03	Not filed	61
	10-Q	08/31/03	10/15/03	Not filed	59
	10-Q	11/30/03	01/14/04	Not filed	56
	10-Q	02/28/04	04/13/04	Not filed	53
	10-K	05/31/04	08/30/04	Not filed	49
	10-Q	08/31/04	10/15/04	Not filed	47
	10-Q	11/30/04	01/14/05	Not filed	44
	10-Q	2/28/05	04/14/05	Not filed	41
	10-K	5/31/05	08/29/05	Not filed	37
	10-Q	08/31/05	10/17/05	Not filed	35
	10-Q	11/30/05	01/17/06	Not filed	32

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
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Quicksilver Enterprises, Inc.

10-Q	2/28/06	04/14/06	Not filed	29
10-K	5/31/06	08/29/06	Not filed	25
10-Q	08/31/06	10/16/06	Not filed	23
10-Q	11/30/06	01/16/07	Not filed	20
10-Q	2/28/07	04/16/07	Not filed	17
10-K	5/31/07	08/29/07	Not filed	13
10-Q	08/31/07	10/15/07	Not filed	11
10-Q	11/30/07	01/14/08	Not filed	8
10-Q	2/29/08	04/14/08	Not filed	5
10-K	5/31/08	08/29/08	Not filed	1

Total Filings Delinquent 53

Quokka Sports, Inc.

10-Q	03/31/01	05/15/01	Not filed	88
10-Q	06/30/01	08/14/01	Not filed	85
10-Q	09/30/01	11/14/01	Not filed	82
10-K	12/31/01	04/01/02	Not filed	77
10-Q	03/31/02	05/15/02	Not filed	76
10-Q	06/30/02	08/14/02	Not filed	73
10-Q	09/30/02	11/14/02	Not filed	70
10-K	12/31/02	03/31/03	Not filed	66
10-Q	03/31/03	05/15/03	Not filed	64
10-Q	06/30/03	08/14/03	Not filed	61
10-Q	09/30/03	11/14/03	Not filed	58
10-K	12/31/03	03/30/04	Not filed	54
10-Q	03/31/04	05/17/04	Not filed	52
10-Q	06/30/04	08/16/04	Not filed	49
10-Q	09/30/04	11/15/04	Not filed	46
10-K	12/31/04	03/31/05	Not filed	42
10-Q	03/31/05	05/16/05	Not filed	40
10-Q	06/30/05	08/15/05	Not filed	37
10-Q	09/30/05	11/14/05	Not filed	34

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Quokka Sports, Inc.	10-K	12/31/05	03/31/06	Not filed	30
	10-Q	03/31/06	05/15/06	Not filed	28
	10-Q	06/30/06	08/14/06	Not filed	25
	10-Q	09/30/06	11/14/06	Not filed	22
	10-K	12/31/06	04/02/07	Not filed	17
	10-Q	03/31/07	05/15/07	Not filed	16
	10-Q	06/30/07	08/14/07	Not filed	13
	10-Q	09/30/07	11/14/07	Not filed	10
	10-K	12/31/07	03/31/08	Not filed	6
	10-Q	03/31/08	05/15/08	Not filed	4
	10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent 30

*Commissioner Watter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 58605 / September 19, 2008

ACCOUNTING AND AUDITING ENFORCEMENT

Release No. 2882 / September 19, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13226

In the Matter of

DAVID BLAIN, CPA,

Respondent.

ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934 AND RULE
102(e) OF THE COMMISSION'S RULES
OF PRACTICE, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS AND
A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against David Blain, CPA ("Respondent" or "Blain") pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1)(iii) of the Commission's Rules of Practice.¹

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the

¹ Rule 102(e)(1)(iii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . [t]o have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rule of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds² that:

SUMMARY

1. These proceedings arise out of Blain's role in improper accounting practices within the Insurance Services division of The BISYS Group, Inc., a leading provider of financial products and support services. Based primarily on improper accounting within the company's Insurance Services division from July 2000 through December 2003, in May 2007, BISYS was the subject of a settled Commission enforcement action charging it with violations of the financial reporting, books-and-records, and internal control provisions of the Exchange Act.

2. The improper accounting practices at BISYS were the product of a corporate focus on meeting aggressive, short-term earnings targets and a lax internal control environment. Throughout the relevant period, Insurance Services was a major factor in the company's success in achieving those targets. The division's finance department responded to the corporate focus on making numbers by engaging in improper accounting practices.

3. For much of the period of the improper accounting, Blain was one of three directors of finance in the Insurance Services division and participated in a variety of improper accounting practices at the behest of his supervisor, the vice president of finance for the Insurance and Education Services group. Specifically, from at least July 2000 until at least March 2002, Blain participated in the following accounting practices that had the purpose and effect of materially overstating BISYS's income and revenue in the company's reported financial results and rendering its books and records inaccurate: (1) at least one instance of improper and unsupportable acquisition accounting – the recording as revenue to BISYS of the bonus commission income that had already been earned but not recorded by an acquired company, Ascensus Insurance Services; (2) the creation of inflated and unsupportable receivables for commissions on the sale of a particular insurance product, "419" plans; and (3) the creation of phony revenue entries that were reversed promptly after BISYS reported its results for the quarter.

² The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

4. These accounting practices and others resulted in the misstatement of the company's operating results, enabled the company to meet earnings targets, and resulted in the filing of inaccurate reports with the Commission and the creation and maintenance of inaccurate books and records from at least July 2000 through at least April 2003.

5. By virtue of this conduct, Blain willfully aided and abetted, and was a cause of, BISYS'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.

RESPONDENT

6. David Blain, age 37, a certified public accountant licensed in Pennsylvania, was a director of finance in Insurance Services from 1998 until April 2003, reporting during most of that period to the vice president of finance for the Insurance and Education Services Group. From 1993 to 1998, he was an accountant at Coopers and Lybrand. Blain is currently a principal at a registered public accounting firm in Pennsylvania.

FACTS

Background

7. At all relevant times, BISYS was a publicly-held Delaware corporation headquartered in New York, New York, with securities registered pursuant to Section 12(b) of the Exchange Act. As a result of the improper accounting practices within Insurance Services and other divisions, the company ultimately issued two restatements, filing a \$103.7 million restatement in August 2004 and a second restatement of \$108.7 million in April 2006. The bulk of the restatements concerned improper accounting for Insurance Services' revenues in fiscal years 2001 through 2003, including improper acquisition accounting and the failure to adequately reserve for uncollectible commission receivables. On May 23, 2007, the Commission filed a settled civil action against BISYS charging the company with violating 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. See SEC v. The BISYS Group, Inc., 07-Civ-4010 (RJS) (S.D.N.Y.); see also Accounting and Auditing Enforcement Release No. 2611 (May 23, 2007).

8. During the relevant period, directly and through wholly-owned subsidiaries, BISYS provided products and support services to financial institutions such as insurance companies, banks and mutual funds.³ At the time, BISYS was divided into three business groups: (1) Investment Services; (2) Insurance and Education Services; and (3) Information Services. Insurance and Education Services was, during the relevant period, comprised of the Insurance Services division and the Education Services division. Through the Insurance Services division, BISYS was the nation's largest independent distributor of life insurance. It essentially acted as an insurance

³ After the relevant period, BISYS sold some of its businesses. On August 1, 2007, the company was acquired by Citigroup, Inc.

broker, and its revenues primarily consisted of commissions on the sale and renewal of insurance policies.

9. From 2000 through 2003, BISYS reported tremendous growth, consistently reporting profitable quarters and record earnings. This growth was driven in large part by Insurance Services, which the company described to analysts as its "fastest growing and highest margin business." As a percentage of the company's total revenues, the revenues produced by Insurance Services increased from 15.7% in fiscal year 2000 to 25.5% in fiscal year 2003.⁴ In fact, however, a material portion of Insurance Services' growth was illusory and much of it was the result of intentional efforts to make numbers and blatant deviations from Generally Accepted Accounting Principles ("GAAP").

10. Blain's supervisor, the vice president for finance for the Insurance and Information Services group, responded to the corporate focus on meeting earnings targets by urging and often directing Blain and other personnel within Insurance Services' finance department to apply what the supervisor characterized as "smoke and mirrors accounting." Quarterly closings for the division were a scramble to find revenue, with a make-numbers-at-all-costs approach. These efforts paid off, making Insurance Services the major driver in the company's reported growth and ability to meet Wall Street expectations.

Improper Accounting for the Ascensus Acquisition

11. In July 2000, BISYS acquired Ascensus, a privately-held insurance company. Ascensus used the accrual method of accounting and thus for commissions earned had already recorded revenue on its income statement and the associated receivables on its balance sheet. While performing due diligence for the acquisition, however, Blain and others learned that Ascensus's final balance sheet understated receivables by over \$4 million because Ascensus had earned but failed to record over \$4 million of bonus commission revenue pertaining to fiscal 1999 and 2000 in its income statements. (Bonus commissions are additional commissions on the sale of insurance, based on the achievement of certain sales targets.)

12. Blain failed to record a receivable for this additional income as an asset on Ascensus's opening balance sheet, as required by GAAP.⁵ Instead, following the acquisition, he

⁴ BISYS's fiscal year ended on June 30th. Thus, for example, "fiscal year 2001" refers to the year ended June 30, 2001.

⁵ The applicable GAAP, Accounting Principle Board Opinion No. 16, Business Combinations, required that all:

assets acquired, . . . and liabilities assumed in a business combination whether or not shown in the financial statements of the acquired company should be assigned a portion of the cost of the acquired company, normally equal to their fair values at date of acquisition [and that acquiring companies establish] receivables at present

booked Ascensus's unrecorded bonus commission revenue as revenue for BISYS over a period of several months, recording over \$4 million of revenue for BISYS between August and December 2000. Blain knew that this accounting failed to comply with GAAP and inflated the company's reported results but accounted for the revenue in this manner because his supervisor directed him to do so.

13. As a result, for the quarter ended September 30, 2000, BISYS improperly recorded \$3.2 million in revenue related to the bonus commission income earned by Ascensus, which resulted in BISYS overstating income before taxes by approximately 18%.⁶ In addition, the company was able to report earnings per share ("EPS") of \$0.22, exceeding analysts' expectations (excluding merger charges) by \$0.01. Without the revenue attributable to the Ascensus bonus commission income, EPS would have been \$0.19 and fallen short of analysts' expectations.

14. For the quarter ended December 31, 2000, the improper accounting for the bonus commission income earned by Ascensus inflated BISYS's revenue by \$1.2 million, which resulted in its overstating income before taxes by approximately 4%. On January 22, 2001, BISYS issued an earnings release for the quarter, announcing "Record Revenues Up 22%" from the same quarter the previous year. The company reported \$0.32 EPS for the quarter, matching analysts' mean and median expectations. Insurance Services was the driving force behind this apparent improvement, with an announced segment increase of \$17.9 million or 81.4%. Without the revenue inflation attributable to the accounting for the Ascensus-earned bonus commissions, BISYS's results for the quarter would have fallen short of analysts' expectations by \$0.01. When the company restated, the income attributable to the bonus commissions earned by Ascensus represented approximately 60% of the acquisition income restated for fiscal year 2001.

15. Blain participated in another instance of improper accounting related to the Ascensus acquisition. In June 2001, nearly a year after the company had acquired Ascensus and the last month of fiscal 2001, BISYS became aware that a vendor called Quotesmith claimed that it was owed monies by Ascensus. Over the next six months, BISYS investigated the matter and reached a settlement with Quotesmith requiring BISYS to pay Quotesmith \$551,000. Most of the \$551,000 pertained to policies placed after the Ascensus acquisition and accordingly was properly recorded as BISYS's expense. In January 2002, at his supervisor's direction, Blain arranged to capitalize this expense as goodwill from the acquisition, thereby reducing BISYS's expenses, under the purported rationale that a liability for these payments should have been recorded at the acquisition date. In addition, Blain inflated the amount by \$256,000, an amount that had already been booked and paid by Ascensus prior to the acquisition and for which BISYS had therefore

values of amounts to be received determined at appropriate current interest rates, less allowances for uncollectibility and collection costs, if necessary.

⁶ Because BISYS recorded revenue on a net basis – the company deducted the amount it owed/paid out to the agents when calculating the revenue number – the amount of revenue improperly recorded equals the inflation of income before taxes.

incurred no liability or expense. As a result, BISYS reduced its expenses by \$807,000, with a corresponding increase to goodwill. This accounting was clearly improper and inflated BISYS's pre-tax income for fiscal years 2001 and 2002 by a total of \$718,000.⁷

16. To achieve the desired accounting, at his supervisor's urging, Blain lied to BISYS's controller, who was under the correct impression that the \$256,000 was a pre-acquisition expense paid by Ascensus, and therefore not attributable to BISYS, and raised the issue with Blain. In an e-mail, Blain told his supervisor that the controller "was wise to what we were trying to do," to which his supervisor responded "can't you backdate?" (The reference to backdating was erroneous because what Blain and his supervisor sought to do was to convince the controller that the payments to Quotesmith were made later than they actually were, i.e., that BISYS, rather than Ascensus, had made the payments.) Blain responded, "I can do whatever you need me to do. Let me talk to [the controller] and tell him that I discovered that these commissions were actually paid [by BISYS] as part of the settlement with Quotesmith." In an e-mail he sent the controller later that day, Blain did that, falsely telling him that the Quotesmith payment followed the acquisition and should therefore be included in the goodwill adjustment.

Other Kinds of Improper Accounting in Which Blain Participated

17. Blain also inflated BISYS's results by increasing the rate at which Insurance Services accrued commissions on the sale of so-called "419 plans" – insurance products marketed to companies seeking to qualify for tax benefits related to Internal Revenue Code Sections 419 and 419A.⁸ Initially, BISYS accrued as commission revenue five percent of its total sales of a carrier's 419 and 419A products. In December 2001, Blain's supervisor told Blain that Insurance Services' results for November were below its forecasted results. As a result, in order to improve the

⁷ This accounting inflated pre-tax income in two ways: (1) by eliminating the \$551,000 expense for the settlement payments BISYS agreed to make, and (2) by crediting BISYS with reductions to expenses for the \$256,000 BISYS purportedly made but which in fact Ascensus had made and for which BISYS had not recorded an expense. The elimination of most of the \$551,000 expense to BISYS was improper because most of that expense pertained to policies placed after the acquisition, and therefore under GAAP should have been treated as BISYS's expense and not a liability of Ascensus. See FAS 141 and Accounting Principle Board Opinion No. 16, Business Combinations (stating that the liabilities of an acquired entity must be recorded at fair value as of the date of the acquisition). The reduction of expenses in the amount of the \$256,000 paid by Ascensus prior to the acquisition was improper because BISYS had not incurred the expense, and did not make any payments. Ultimately, BISYS restated all but \$89,000 of the \$807,000, based on its conclusion that only that amount had been paid by BISYS and pertained to the period before the acquisition.

⁸ Internal Revenue Code Sections 419 and 419A deal with tax treatment of contributions to multi-employer employee benefit plans that can be used for life, disability and severance payments.

division's numbers, and without any reasonable basis for doing so, Blain increased the 419 accrual from 5% to 10%, resulting in an additional \$1.15 million in revenue for November 2001. At the end of December 2001, in order to further increase revenue, Blain increased the 419 accrual rate to 15%. This accrual increase enabled BISYS to book an additional \$1.5 million of revenue in December 2001. There was no basis for these increases in the accrual for 419 plan commissions.

18. The unsupported increases in the 419 revenue accruals resulted in an overstatement of BISYS's income before taxes for the quarter ended December 31, 2001 of \$2.65 million, or 7%. They also resulted in an overstatement of EPS of \$0.03 and allowed the company to exceed analysts' expectations for the quarter by one cent. The corresponding inflated receivable of \$2.65 million was never collected and was written off when the company restated.

19. On occasion, at his supervisor's behest, Blain also recorded revenue solely to meet revenue projections, making unsupported revenue entries and offsetting expense adjustments, which were promptly reversed after BISYS announced its inflated revenues.

20. For example, in January 2001, at his supervisor's direction and for the sole purpose of increasing revenue for the quarter ended December 31, 2000, which was falling short of Wall Street expectations, Blain directed a clerk in the finance department to book \$1 million of renewal commission income while creating an offsetting expense accrual. Simultaneously, Blain directed the clerk to reverse the entries effective the next month, reducing revenue and increasing expenses for the next quarter. The company reported revenue of \$168.3 million for the quarter and without the false entry would have reported revenue of \$167.3 million. These reported results narrowly missed at least three analysts' revenue expectations and without the false entry, the revenue miss would have been wider.

21. Similarly, the following year, Blain instructed accounting personnel to make offsetting revenue and expense entries of \$2.05 million for the quarter ended December 31, 2001, which again were reversed in the next quarter. He did so at the direction of his supervisor, who had told him that senior management was looking to Insurance Services for additional revenue because the company's results were falling short of expectations. Although it would have met analysts' consensus revenue estimates without the additional \$2.05 million in reported revenue, that additional revenue enabled BISYS to beat at least one analyst's revenue expectations.

VIOLATIONS

22. At all relevant times, BISYS was a reporting company and subject to the provisions of Section 13(a) of the Exchange Act. Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder require issuers with securities registered pursuant to Section 12 of the Exchange Act to file, respectively, annual and quarterly reports with the Commission. Inherent in these provisions is the requirement that such filings be accurate. *See, e.g., United States v. Bilzerian*, 926 F.2d 1285, 1298 (2d Cir. 1991); *SEC v. Savoy Indus., Inc.*, 587 F.2d 1149, 1165 (D.C. Cir. 1978) (citing *SEC v. IMC Int'l, Inc.*, 384 F.Supp. 889, 893 (N.D. Tex. 1974)). Rule 12b-20 under the Exchange Act requires disclosure of such additional material information as may be necessary to make the required statements made in the reports not misleading.

23. BISYS filed annual and quarterly reports with the Commission that materially misstated its results for the quarters ended September 30, 2000 and December 31, 2000, the fiscal year ended June 30, 2001, and the quarters ended September 30, 2001 and December 31, 2001, and other periods. Accordingly, BISYS violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13.

24. Section 13(b)(2)(A) of the Exchange Act requires Section 12 registrants to make and keep books, records, and accounts that accurately and fairly reflect the transactions and dispositions of their assets. Section 13(b)(2)(B) of the Exchange Act requires Section 12 registrants to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP and to maintain the accountability of assets.

25. BISYS violated Section 13(b)(2)(A) of the Exchange Act by failing to make and keep books, records and accounts that accurately, and in reasonable detail, reflected its true financial condition. BISYS also failed to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions were recorded as necessary to permit preparation of financial statements in accordance with GAAP, thereby violating Section 13(b)(2)(B) of the Exchange Act.

FINDINGS

26. Based on the foregoing, the Commission finds that Blain willfully aided and abetted and caused BISYS'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.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Blain's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Blain shall cease and desist from causing any violations and any future 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.

B. Blain is denied the privilege of appearing or practicing before the Commission as an accountant.

C. After one year from the date of this order, Blain may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Blain's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Blain, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Blain, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the Blain's or the firm's quality control system that would indicate that the Blain will not receive appropriate supervision;

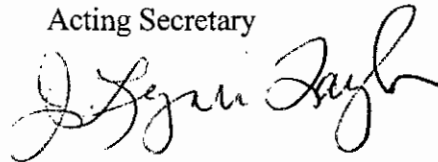
(c) Blain has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Blain acknowledges his responsibility, as long as he appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

D. The Commission will consider an application by Blain to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Blain's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Florence E. Harmon
Acting Secretary



9 By: J. Lynn Taylor
Assistant Secretary

Service List

Rule 141 of the Commission's Rules of Practice provides that the Secretary, or another duly authorized officer of the Commission, shall serve a copy of the Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), on the Respondent and his legal agent.

The attached Order has been sent to the following parties and other persons entitled to notice:

Honorable Brenda P. Murray
Chief Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-2557

Leslie Kazon, Esq.
New York Regional Office
Securities and Exchange Commission
3 World Financial Center, Room 400
New York, NY 10281

Mr. David Blain
c/o Michael Gilbert, Esq.
Dechert LLP
1095 Avenue of the Americas
New York, NY 10036

Michael Gilbert, Esq.
Dechert LLP
1095 Avenue of the Americas
New York, NY 10036
(Counsel for David Blain)

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 19, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13224

In the Matter of

Liberty or Death, Inc.,
Mammoth Organ & Piano, Inc.,
Mozambique, Inc.,
Pachyderm Promoters, Inc.,
Platypus Discoveries, Inc., and
S&M Ventures, Inc.,

Respondents.

ORDER INSTITUTING
PROCEEDINGS AND NOTICE
OF HEARING PURSUANT
TO SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT
OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Liberty or Death, Inc., Mammoth Organ & Piano, Inc., Mozambique, Inc., Pachyderm Promoters, Inc., Platypus Discoveries, Inc., and S&M Ventures, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Liberty or Death, Inc. (CIK No. 1108562) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Liberty or Death is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on March 7, 2000, which reported no assets.

2. Mammoth Organ & Piano, Inc. (CIK No. 1108568) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Mammoth Organ & Piano is delinquent in its periodic filings with the Commission, having not filed any periodic

reports since it filed a Form 10-SB registration statement on March 7, 2000, which reported no assets.

3. Mozambique, Inc. (CIK No. 1108560) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Mozambique is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on March 8, 2000, which reported no assets.

4. Pachyderm Promoters, Inc. (CIK No. 1108567) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Pachyderm Promoters is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on March 7, 2000, which reported no assets.

5. Platypus Discoveries, Inc. (CIK No. 1108569) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Platypus Discoveries is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on March 7, 2000, which reported no assets.

6. S&M Ventures, Inc. (CIK No. 1108518) is a revoked Nevada corporation located in Las Vegas, Nevada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). S&M Ventures is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB registration statement on March 7, 2000, which reported no assets.

B. DELINQUENT PERIODIC FILINGS

7. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed, in whole or in part, to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission, did not receive such letters.

8. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires issuers to file quarterly reports.

9. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

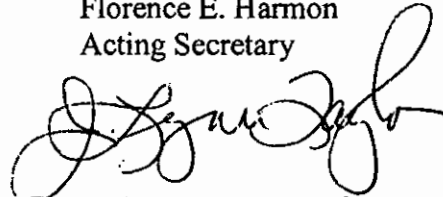
In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to

notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Attachment

Florence E. Harmon
Acting Secretary

A handwritten signature in cursive script, appearing to read "J. Lynn Taylor".

By: J. Lynn Taylor
Assistant Secretary

Appendix 1

**Chart of Delinquent Filings
In the Matter of Liberty or Death Inc., et al.**

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
Liberty or Death, Inc.					
	10-QSB	03/31/00	06/20/00	Not filed	99
	10-QSB	06/30/00	08/14/00	Not filed	97
	10-QSB	09/30/00	11/14/00	Not filed	94
	10-KSB	12/31/00	04/02/01	Not filed	89
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-QSB	06/30/01	08/14/01	Not filed	85
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
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Liberty or Death, Inc.

<i>10-Q</i>	03/31/08	05/15/08	Not filed	4
<i>10-Q</i>	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent 34

Mammoth Organ & Piano, Inc.

<i>10-QSB</i>	03/31/00	06/20/00	Not filed	99
<i>10-QSB</i>	06/30/00	08/14/00	Not filed	97
<i>10-QSB</i>	09/30/00	11/14/00	Not filed	94
<i>10-KSB</i>	12/31/00	04/02/01	Not filed	89
<i>10-QSB</i>	03/31/01	05/15/01	Not filed	88
<i>10-QSB</i>	06/30/01	08/14/01	Not filed	85
<i>10-QSB</i>	09/30/01	11/14/01	Not filed	82
<i>10-KSB</i>	12/31/01	04/01/02	Not filed	77
<i>10-QSB</i>	03/31/02	05/15/02	Not filed	76
<i>10-QSB</i>	06/30/02	08/14/02	Not filed	73
<i>10-QSB</i>	09/30/02	11/14/02	Not filed	70
<i>10-KSB</i>	12/31/02	03/31/03	Not filed	66
<i>10-QSB</i>	03/31/03	05/15/03	Not filed	64
<i>10-QSB</i>	06/30/03	08/14/03	Not filed	61
<i>10-QSB</i>	09/30/03	11/14/03	Not filed	58
<i>10-KSB</i>	12/31/03	03/30/04	Not filed	54
<i>10-QSB</i>	03/31/04	05/17/04	Not filed	52
<i>10-QSB</i>	06/30/04	08/16/04	Not filed	49
<i>10-QSB</i>	09/30/04	11/15/04	Not filed	46
<i>10-KSB</i>	12/31/04	03/31/05	Not filed	42
<i>10-QSB</i>	03/31/05	05/16/05	Not filed	40
<i>10-QSB</i>	06/30/05	08/15/05	Not filed	37

¹Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

Company Name**Form Type****Period
Ended****Due Date****Date
Received****Months
delinquent
(rounded up)****Mammoth Organ &
Piano, Inc.**

10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-KSB	12/31/07	03/31/08	Not filed	6
10-Q	03/31/08	05/15/08	Not filed	4

Total Filings Delinquent

32

Mozambique, Inc.

10-QSB	03/31/00	06/21/00	Not filed	99
10-QSB	06/30/00	08/14/00	Not filed	97
10-QSB	09/30/00	11/14/00	Not filed	94
10-KSB	12/31/00	04/02/01	Not filed	89
10-QSB	03/31/01	05/15/01	Not filed	88
10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42

Company Name	Form Type	Period Ended	Due Date	Date Received	Months delinquent (rounded up)
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Mozambique, Inc.

10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-KSB	12/31/07	03/31/08	Not filed	6
10-Q	03/31/08	05/15/08	Not filed	4
10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent 34

Pachyderm Promoters, Inc.

10-QSB	03/31/00	06/20/00	Not filed	99
10-QSB	06/30/00	08/14/00	Not filed	97
10-QSB	09/30/00	11/14/00	Not filed	94
10-KSB	12/31/00	04/02/01	Not filed	89
10-QSB	03/31/01	05/15/01	Not filed	88
10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49

Company Name**Form Type****Period
Ended****Due Date****Date
Received****Months
delinquent
(rounded up)****Pachyderm
Promoters, Inc.**

10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-KSB	12/31/07	03/31/08	Not filed	6
10-Q	03/31/08	05/15/08	Not filed	4
10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent

34

**Platypus Discoveries,
Inc.**

10-QSB	03/31/00	06/20/00	Not filed	99
10-QSB	06/30/00	08/14/00	Not filed	97
10-QSB	09/30/00	11/14/00	Not filed	94
10-KSB	12/31/00	04/02/01	Not filed	89
10-QSB	03/31/01	05/15/01	Not filed	88
10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54

Company Name
Form Type
**Period
Ended**
Due Date
**Date
Received**
**Months
delinquent
(rounded up)**
**Platypus Discoveries,
Inc.**

10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-KSB	12/31/07	03/31/08	Not filed	6
10-Q	03/31/08	05/15/08	Not filed	4
10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent
34
S&M Ventures, Inc.

10-QSB	03/31/00	06/20/00	Not filed	99
10-QSB	06/30/00	08/14/00	Not filed	97
10-QSB	09/30/00	11/14/00	Not filed	94
10-KSB	12/31/00	04/02/01	Not filed	89
10-QSB	03/31/01	05/15/01	Not filed	88
10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58

Company Name

Form Type

Period
Ended

Due Date

Date
ReceivedMonths
delinquent
(rounded up)

S&M Ventures, Inc.

10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-QSB	09/30/07	11/14/07	Not filed	10
10-KSB	12/31/07	03/31/08	Not filed	6
10-Q	03/31/08	05/15/08	Not filed	4
10-Q	06/30/08	08/15/08	Not filed	1

Total Filings Delinquent

34

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 19, 2008

IN THE MATTER OF

**Quality Resorts of America, Inc.,
Quentra Networks, Inc., and
Quokka Sports, Inc.,**

File No. 500-1

**ORDER OF SUSPENSION
OF TRADING**

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Quality Resorts of America, Inc. because it has not filed any periodic reports since the period ended June 30, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Quentra Networks, Inc. because it has not filed any periodic reports since the period ended September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Quokka Sports, Inc. because it has not filed any periodic reports since the period ended December 31, 2000.

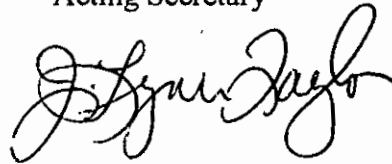
The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

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Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on September 19, 2008, through 11:59 p.m. EDT on October 2, 2008.

By the Commission.

Florence E. Harmon
Acting Secretary

A handwritten signature in cursive script, appearing to read "J. Lynn Taylor".

By: J. Lynn Taylor
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION
17 CFR PARTS 230, 231, 232, 239, 240, 241, and 249

[RELEASE NOS. 33-8957; 34-58597; FILE NO. S7-10-08]

RIN 3235-AK10

**COMMISSION GUIDANCE AND REVISIONS TO THE CROSS-BORDER
TENDER OFFER, EXCHANGE OFFER, RIGHTS OFFERINGS, AND BUSINESS
COMBINATION RULES AND BENEFICIAL OWNERSHIP REPORTING
RULES FOR CERTAIN FOREIGN INSTITUTIONS**

AGENCY: Securities and Exchange Commission.

ACTION: Final rule and Interpretation.

SUMMARY: Almost nine years after the adoption of the original cross-border exemptions in 1999, the Commission is adopting changes to expand and enhance the utility of these exemptions for business combination transactions and rights offerings and to encourage offerors and issuers to permit U.S. security holders to participate in these transactions on the same terms as other target security holders. Many of the rule changes we are adopting today codify existing interpretive positions and exemptive orders in the cross-border area. We also are setting forth interpretive guidance on several topics. In two instances, we have extended the rule changes adopted here to apply to acquisitions of U.S. companies as well, because we believe the rationale for the changes in those instances applies equally to acquisitions of domestic and foreign companies. We also are adopting changes to allow certain foreign institutions to file on Schedule 13G to the same extent as would be permitted for their U.S. counterparts, where specified conditions are satisfied. We also are adopting a conforming change to Rule 16a-1(a)(1) to include the foreign institutions eligible to file on Schedule 13G.

EFFECTIVE DATE: The final rule is effective [insert date 60 days from date of

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publication in the Federal Register].

The interpretive guidance is effective [insert date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Christina Chalk, Senior Special Counsel, or Tamara Brightwell, Senior Special Counsel, at (202) 551-3440, in the Division of Corporation Finance, and Elizabeth Sandoe, Branch Chief, and David Bloom, Special Counsel, at (202) 551-5720, in the Division of Trading and Markets (regarding Rule 14e-5), U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-3628.

SUPPLEMENTARY INFORMATION: We are amending Rules 162,¹ 800² and 802³ under the Securities Act of 1933⁴ and Rule 101⁵ of Regulation S-T.⁶ We also are amending Rules 13d-1,⁷ 13e-3,⁸ 13e-4,⁹ 14d-1,¹⁰ 14d-11,¹¹ 14e-5,¹² and 16a-1¹³ under the

¹ 17 CFR 230.162.

² 17 CFR 230.800.

³ 17 CFR 230.802.

⁴ 15 U.S.C. 77a et seq.

⁵ 17 CFR 232.101.

⁶ 17 CFR 232.10 et seq.

⁷ 17 CFR 240.13d-1.

⁸ 17 CFR 240.13e-3.

⁹ 17 CFR 240.13e-4.

¹⁰ 17 CFR 240.14d-1.

¹¹ 17 CFR 240.14d-11.

¹² 17 CFR 240.14e-5.

¹³ 17 CFR 240.16a-1.

Securities Exchange Act of 1934.¹⁴ We also are making changes to Form S-4,¹⁵ Form F-4,¹⁶ Form F-X,¹⁷ Form CB,¹⁸ Schedule 13G¹⁹ and Schedule TO.²⁰

¹⁴ 15 U.S.C. 78a et seq.

¹⁵ 17 CFR 239.25.

¹⁶ 17 CFR 239.34.

¹⁷ 17 CFR 239.42.

¹⁸ 17 CFR 239.800 and 17 CFR 249.480.

¹⁹ 17 CFR 240.13d-102.

²⁰ 17 CFR 240.14d-100.

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I. BACKGROUND AND SUMMARY

A. General overview of the cross-border exemptions

The existing cross-border exemptions,²¹ as adopted in 1999, are structured as a two-tier system based broadly on the level of U.S. interest in a transaction, measured by the percentage of target securities of a foreign private issuer²² beneficially owned by U.S. holders.²³ The purpose of the exemptions is to address conflicts between U.S. and foreign regulation, thereby facilitating the inclusion of U.S. investors in cross-border transactions. While today's amendments will expand the scope of some of the exemptions, we retain this basic two-tier structure and the threshold U.S. ownership percentages. However, we are revising the manner in which eligibility to rely on the revised exemptions is determined.

Where U.S. holders own no more than 10 percent of the subject securities, a qualifying cross-border transaction will be exempt from most U.S. tender offer rules²⁴

²¹ Generally, the rule citations to the cross-border exemptions throughout this release refer to the exemptions that were adopted in 1999. When applicable, we specify that a citation is to a "new" or "amended" rule.

²² "Foreign private issuer" is defined in Exchange Act Rule 3b-4(c) [17 CFR 240.3b-4(c)].

²³ "U.S. holder" is defined in the cross-border exemptions as any security holder resident in the United States. See Securities Act Rule 800(h) [17 CFR 230.800(h)]; Instruction 2 to Exchange Act Rules 13e-4(h)(8) and (i) [17 CFR 240.13e-4(h)(8) and 240.13e-4(i)] and 14d-1(c) and (d) [17 CFR 240.14d-1(c) and 240.14d-1(d)].

²⁴ The U.S. anti-fraud and anti-manipulation rules and civil liability provisions continue to apply to these transactions. See Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings, Release No. 33-7759, 34-42054 (October 22, 1999) [64 FR 61382] (the "1999 Cross-Border Adopting Release"), Section I.A.

pursuant to Tier I and from the registration requirements of Section 5 of the Securities Act of 1933²⁵ pursuant to Securities Act Rules 801²⁶ and 802. Tier I provides a broad exemption from the filing, dissemination and procedural requirements of the U.S. tender offer rules and the heightened disclosure requirements applicable to going private transactions as defined in Rule 13e-3.²⁷ An issuer that is the subject of a tender offer also is exempt from the obligation to express a position, and provide reasons for its position, about the tender offer to its own security holders under Tier I.²⁸ At the same level of U.S. ownership, Rules 801 and 802 also provide relief from the registration requirements of Securities Act Section 5 for securities issued in rights offerings and business combination transactions.

Where an issuer or acquiror relies on Rules 801 or 802 or the Tier I exemptions, it must furnish a Form CB to the Commission.²⁹ Form CB is a cover sheet to which the issuer or acquiror attaches an English translation of the disclosure document used in the foreign home jurisdiction and disseminated to U.S. target security holders.³⁰ The due date for furnishing Form CB to the Commission is the next business day after the disclosure document used in the foreign home jurisdiction is published or otherwise

²⁵ 15 U.S.C. 77c.

²⁶ 17 CFR 230.801.

²⁷ Exchange Act Rules 13e-3(g)(6) [17 CFR 240.13e-3(g)(6)], 13e-4(h)(8), and 14d-1(c).

²⁸ Exchange Act Rule 14e-2(d) [17 CFR 240.14e-2(d)].

²⁹ Securities Act Rules 801(a)(4)(i) and 802(a)(3)(i) [17 CFR 230.801(a)(4)(i) and 230.802(a)(3)(i)], and Exchange Act Rules 13e-4(h)(8)(iii) and 14d-1(c)(3)(iii) [17 CFR 240.13e-4(h)(8)(iii) and 240.14d-1(c)(3)(iii)].

³⁰ Item 1 of Form CB.

disseminated in accordance with home country rules.³¹ The materials submitted under cover of Form CB are not deemed filed with the Commission, and the filer is not subject to the liability provisions of Section 18 of the Exchange Act.³²

In adopting the cross-border exemptions, we did not intend to create new filing obligations for issuers and acquirors where none existed previously. For that reason, a bidder relying on the Tier I exemption must submit a Form CB only if the tender offer would have been subject to Rules 13e-3 or 13e-4 or Regulation 14D,³³ but for the Tier I exemption. No filing requirement exists for a tender offer subject only to Exchange Act Section 14(e)³⁴ and Regulation 14E,³⁵ accordingly, furnishing a Form CB is not necessary.³⁶

Tier II provides targeted relief from some U.S. tender offer rules for issuers and third-party bidders where U.S. security holders own more than 10 percent, but no more than 40 percent, of the target class. The Tier II exemptions encompass narrowly-tailored relief from certain U.S. tender offer rules, such as the prompt payment, extension and

³¹ Securities Act Rules 801(a)(4)(i) and 802(a)(3)(i) and Exchange Act Rules 13e-4(h)(8)(iii) and 14d-1(c)(3)(iii). If the bidder is a foreign company, it must also file a Form F-X with the Commission appointing an agent for service of process in the United States. See Securities Act Rules 801(a)(4)(i) and 802(a)(3)(i) and Exchange Act Rules 13e-4(h)(8)(iii) and 14d-1(c)(3)(iii).

³² 15 U.S.C. 78r. See also, 1999 Cross-Border Adopting Release, Section II.A.2. An acquiror or other person submitting Form CB is subject to U.S. anti-fraud provisions. See footnote 24 above.

³³ Exchange Act Rules 14d-1 through 14d-11 [17 CFR 240.14d-1 through 17 CFR 240.14d-11].

³⁴ 15 U.S.C. 78n(e).

³⁵ 17 CFR 240.14e-1 through 17 CFR 240.14e-8.

³⁶ See 1999 Cross-Border Adopting Release, Section II.A.2. Regulation 14E applies to all tender offers, including those not subject to Section 13(e) or 14(d) of the Exchange Act. These include tender offers for non-equity securities and securities that are not registered under Section 12 of the Exchange Act [15 U.S.C. 78j], as well as partial offers for less than all of the subject class, where the bidder will not own more than five percent of the subject class of equity securities after the tender offer (based on purchases in the tender offer and ownership in the target before the offer commences).

notice of extension requirements in Regulation 14E. While they do address certain areas of common regulatory conflict, the Tier II exemptions do not provide relief from the registration requirements of Securities Act Section 5, nor do they include an exemption from the additional disclosure requirements applicable to going private transactions by issuers or affiliates.

The scope of the Tier I and Tier II cross-border exemptions and the exemptions from the Securities Act registration requirements provided in Rules 801 and 802 are based broadly on the level of U.S. interest in a given transaction, as measured by the percentage of shares beneficially owned by U.S. holders. In addition to these U.S. ownership thresholds, the cross-border exemptions are conditioned on other requirements, such as the principle that U.S. target security holders be permitted to participate in the offer on terms at least as favorable as those afforded other target holders.³⁷ We retain these basic equal treatment principles in our rule revisions.

B. Background of rule revisions adopted

On May 6, 2008, we proposed revisions to the rules governing certain cross-border business combination transactions, as well as revisions to the beneficial ownership reporting rules for certain foreign institutions.³⁸ These revisions were intended to expand and enhance the utility of the exemptions available for cross-border business combination

³⁷ Securities Act Rules 801(a)(3) and 802(a)(2) [17 CFR 230.801(a)(3) and 230.802(a)(2)]; Exchange Act Rules 13e-4(h)(8)(ii) and (i)(2)(ii) [17 CFR 240.13e-4(h)(8)(ii) and 240.13e-4(i)(2)(ii)]; and 14d-1(c)(2) and (d)(2)(ii) [17 CFR 240.14d-1(c)(2) and 240.14d-1(d)(2)(ii)].

³⁸ See Revisions to the Cross-Border Tender Offer, Exchange Offer, and Business Combination Rules and Beneficial Ownership Reporting Rules for Certain Foreign Institutions, Release No. 33-8917, 34-57781 (May 6, 2008) (the "Proposing Release").

transactions.³⁹ Many of the changes we proposed would codify existing interpretive positions and exemptive orders, and were intended to encourage offerors and issuers in cross-border business combinations to permit U.S. security holders to participate in these transactions in the same manner as other holders. Additionally, we provided guidance regarding several interpretive issues of concern for U.S. and other offerors engaged in cross-border business combinations. We also addressed the applicability of the U.S. all-holders provisions to foreign target security holders in tender offers for domestic issuers. In several instances, we requested comment about whether various rule changes we proposed should apply to tender offers for U.S. companies.⁴⁰

In response to our request for comment on the Proposing Release, we received comments from a variety of groups and constituencies, most of whom expressed their support for our proposed modifications to the current rules. While commenters generally supported our proposed changes, some advocated further modifications to our rules.⁴¹ After considering the comments, we are adopting amendments to the cross-border exemptions and beneficial ownership rules substantially as proposed, but with

³⁹ "Business combination" is defined in Securities Act Rule 800(a) as any "statutory amalgamation, merger, arrangement or reorganization requiring the vote of security holders of one or more participating companies. It also includes a statutory short form merger that does not require a vote of security holders." In this release, we use the term more broadly to include those kinds of transactions, as well as tender and exchange offers. See Securities Act Rule 165(f)(1) [17 CFR 230.165(f)(1)] (defining the term more broadly, to include the types of transactions listed in Rule 145(a) [17 CFR 230.145(a)], as well as exchange offers). A "cross-border" business combination, as that term is used throughout this release, refers to a business combination in which the target company (or the issuer in a rights offering) is a foreign private issuer, as defined in Exchange Act Rule 3b-4(c).

⁴⁰ Additionally, in several instances in the Proposing Release, we solicited comment regarding whether various proposed changes should be extended to the Multijurisdictional Disclosure System ("MJDS") with Canada. We are not adopting any changes to MJDS at this time.

⁴¹ The public comments we received are available for inspection in our Public Reference Room at 100 F Street, NE, Washington, DC 20549 in File No. S7-10-08, or may be viewed at <http://www.sec.gov/rules/proposed/s71008.shtml>.

modifications discussed more fully in this release. We also are adopting two changes to rules applicable to all tender offers, including those for U.S. target companies, where we believe the rule modifications initially proposed in the cross-border context will be useful and in the public interest if applied to all tender offers.⁴²

1. Reasons for the amendments

As discussed in the Proposing Release, before the cross-border exemptions were adopted in 1999,⁴³ cross-border business combination transactions or rights offerings often excluded U.S. holders of a foreign issuer or foreign target company because of actual or perceived conflicts between U.S. and foreign law. Exclusion of U.S. investors deprived them of some or all of the benefits of such cross-border transactions. The cross-border exemptions adopted in 1999 represented an effort to facilitate the inclusion of U.S. security holders in foreign transactions in a manner consistent with our investor protection mandate.

While we believe the exemptions were successful in addressing many areas of conflict between U.S. and foreign law, we recognize that in some instances the exemptions are not operating as optimally as intended, or do not address recurring conflicts of law and practice not anticipated when we adopted them. The revisions we adopt today address frequently arising issues and unintended consequences that have detracted from the usefulness of the existing cross-border exemptions. The revisions

⁴² The rule changes that will apply to all tender offers, including those for domestic target companies: (1) eliminate the maximum time limit on the length of the subsequent offering period and (2) provide the ability to commence an exchange offer upon the filing of a registration statement and before its effectiveness in exchange offers not subject to Rule 13e-4 or Regulation 14D. See amended Exchange Act Rule 14d-11 and amended Securities Act Rule 162.

⁴³ See 1999 Cross-Border Adopting Release.

represent an expansion and refinement of the current exemptions. We believe they will encourage more offers to be extended into the United States.

The amendments we are adopting represent another step in the Commission's efforts to revise its rules relating to transactions involving foreign private issuers.⁴⁴ These changes are intended to address the realities of the modern securities markets and, in particular, the increasing globalization of those markets. Increasingly, U.S. persons seek to diversify their investments by purchasing securities of foreign companies. Their ability to do so, including through direct purchases on foreign exchanges, has been facilitated greatly by the Internet. While the increasing globalization of the securities markets has proved beneficial to U.S. investors and companies, as well as non-U.S. investors and foreign private issuers, it also has increased the potential for regulatory conflicts in the context of cross-border business combination transactions. Whether foreign private issuers list their securities on a U.S. exchange or U.S. investors access

⁴⁴ The Commission has undertaken several recent rulemaking initiatives that impact foreign private issuer reporting and registration requirements. For example, we recently revised our rules to make the U.S. capital markets more attractive to foreign private issuers by allowing the use of financial statements prepared in accordance with International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB"), without a reconciliation to U.S. GAAP. See Acceptance From Foreign Private Issuers of Financial Statements Prepared in Accordance With International Financial Reporting Standards Without Reconciliation to U.S. GAAP, Release No. 33-8879 (December 21, 2007) [73 FR 986]. In addition, we amended the deregistration rules for exiting the U.S. regulatory system when the level of U.S. interest in a foreign private issuer's securities has decreased, such that continued registration is no longer justified. See Termination of a Foreign Private Issuer's Registration of a Class of Securities Under Section 12(g) and Duty to File Reports Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934, Release No. 34-55540 (March 27, 2007) [72 FR 16934]. On August 27, 2008, we adopted changes to the manner of determining the availability of the Rule 12g3-2(b) exemption from Exchange Act registration. See Exemption From Registration Under Section 12(g) of the Securities Exchange Act of 1934 for Foreign Private Issuers, Release No. 34-58465 (September 5, 2008) [73 FR 52752]. Further, on August 27, 2008, we also adopted rule revisions applicable to foreign issuers, intended to improve the accessibility of the U.S. public capital markets and enhance the information available to investors. These revisions were proposed in Foreign Issuer Reporting Enhancements, Release No. 33-8900 (February 29, 2008) [73 FR 13404]. See also, SEC Votes to Modernize Disclosure Requirements to Help U.S. Investors in Foreign Companies (August 27, 2008)(announcing the adoption of three sets of rule amendments).

overseas trading markets to purchase their securities, cross-border business combination transactions frequently present conflicts between U.S. and foreign regulatory systems.

The revisions we are adopting today are intended to address the most frequent areas of conflict or inconsistency with foreign regulations and practice that acquirors encounter in cross-border business combination transactions. We believe the revisions appropriately balance the need to protect U.S. investors through the application of protections afforded by U.S. law, while facilitating transactions that may benefit all security holders, including those in the United States. The expanded availability of the cross-border exemptions will serve the public interest by encouraging bidders to include U.S. holders in cross-border business combination transactions from which they otherwise might be excluded, thereby extending the benefits of those transactions to U.S. investors.⁴⁵ We recognize that these revisions will not eliminate all conflicts in law or practice presented by cross-border business combination transactions. The staff will continue to address those issues not covered by these revisions on a case-by-case basis, as is currently the practice.⁴⁶

⁴⁵ In discussing the changes we are adopting, the focus of the discussion is on acquirors in business combination transactions because the rules changes primarily impact that constituency. However, some of those changes, such as those to the eligibility test for the cross-border exemptions, also affect comparable provisions in the rights offering exemption in Securities Act Rule 801. We discuss the specific changes relating to the rights offering exemption in greater detail in Section II.A.3. below.

⁴⁶ As discussed in the Proposing Release, the staff often provides exemptive or no-action relief by letter in the context of individual cross-border transactions. Pursuant to Rules 30-1 and 30-3 of the SEC's Rules of General Organization [17 CFR 200.30-1 and 200.30-3], we have delegated to the staff the authority to exempt individual bidders and issuers from the application of our rules. No-action and exemptive letters issued by the staff in connection with cross-border transactions may be found on our Web site at <http://www.sec.gov/divisions/corpfin/cf-noaction.shtml> and <http://www.sec.gov/divisions/marketreg/mr-noaction.shtml#rule14c5>.

2. Summary of the amendments

The rule amendments we are adopting address practical problems that have limited the ability of bidders to rely on the exemptions. We believe they also will alleviate some of the burdens on bidders who must comply with two or more regulatory systems in the context of cross-border transactions. Highlights of the amendments, which are adopted as proposed except where otherwise specified, include:

- Modifications to the manner in which the look-through analysis must be conducted under our current rules, to alleviate timing concerns associated with that calculation, including:
 - Changes to the reference date for the calculation of U.S. beneficial ownership to allow calculation as of any date no more than 60 days before and no more than 30 days after the public announcement of the transaction;⁴⁷ and
 - No longer requiring that individual holders of more than 10 percent of the subject securities be excluded from the calculation of U.S. ownership;⁴⁸

⁴⁷ Acquirors in business combinations that are unable to accomplish the look-through analysis as of a date during that range may calculate U.S. ownership as of a date no more than 120 days before public announcement. For rights offerings, the amended rule would permit calculation as of a date within 60 days before or 30 days after the record date. See amended Securities Act Rule 800(h)(1). The proposal included the date range of 60 days before announcement of a business combination only, and did not permit calculation as of a date after announcement.

⁴⁸ This change was not proposed, but the Proposing Release solicited comment on it. After further consideration and review of commenters' responses, we believe this change is appropriate.

- An alternate test for determining eligibility to rely on the cross-border exemptions, based in part on a comparison of average daily trading volume of the subject securities in the United States and worldwide. This alternate test will be available for all non-negotiated transactions and those for which the look-through analysis mandated by our rules may not be conducted;⁴⁹
- Expanded relief under Tier I for affiliated transactions subject to Rule 13e-3 for transaction structures not covered under our current cross-border exemptions, such as schemes of arrangement, cash mergers, or compulsory acquisitions for cash;
- Extension of relief afforded by the Tier II provisions to tender offers not subject to Sections 13(e) or 14(d) of the Exchange Act;
- Expansion of relief afforded under Tier II to eliminate recurrent conflicts between U.S. and foreign law and practice in several areas, including:
 - Allowing multiple foreign offers in conjunction with a concurrent U.S. offer;
 - Permitting bidders to include foreign holders of ADRs in the U.S. offer and, under specified conditions, U.S. holders in the foreign offer(s);
 - Allowing bidders to suspend back-end withdrawal rights while tendered securities are counted;

⁴⁹

Although we did not propose this specific change, we did solicit comment generally on possible changes to the eligibility criteria. See Proposing Release, Section II. For bidders relying on the alternate test because they are unable to conduct the look-through analysis, the ADTV calculation will include a primary trading market component.

- Allowing subsequent offering periods in both cross-border and domestic offers to extend beyond 20 U.S. business days;⁵⁰
- Allowing securities tendered during the subsequent offering period to be purchased within 20 business days from the date of tender, rather than 14 business days as originally proposed;
- Allowing bidders to pay interest on securities tendered during a subsequent offering period, where required under foreign law;
- Allowing separate offset and proration pools for securities tendered during the initial and subsequent offering periods for certain kinds of tender offers;⁵¹
- Permitting bidders to terminate an initial offering period or any voluntary extension of that period before a scheduled expiration date;⁵²
- Codification of three class exemptive letters with respect to the application of Rule 14e-5 for Tier II tender offers;

⁵⁰ We proposed to allow this change only for cross-border tender offers.

⁵¹ Separate pro ration pools would be permitted only for Tier II tender offers that use the "mix and match" offer structure. See Section II.C.4.d. below.

⁵² In the Proposing Release, we set forth interpretive guidance regarding the ability to terminate an initial offering period or voluntary extension of that period before a scheduled expiration date. We solicited comment on whether we should codify the existing interpretive guidance. See Proposing Release, Section II.C.6. We are codifying this guidance in new Exchange Act Rules 13e-4(i)(1)(vii) and 14d-1(d)(2)(ix).

- Expansion of the availability of early commencement to offers not subject to Section 13(e) or 14(d) of the Exchange Act, including offers for domestic target companies;⁵³
- Modification of the cover pages of specified tender offer schedules and registration statements to identify any cross-border exemptions relied upon in conducting the relevant transactions;
- Requiring electronic filing of all Forms CB and Forms F-X, filed in connection with Form CB; and
- Permitting foreign institutions to report on Schedule 13G to the same extent as their U.S. counterparts, subject to certain conditions, and expanding the definition of beneficial ownership in Exchange Act Rule 16a-1(a)(1) to include those foreign institutions.⁵⁴

In addition to these rule amendments, we also are reiterating the interpretive guidance we provided in the Proposing Release, with some modifications. We are providing guidance on the following issues:

- The ability of bidders in tender offers to waive or reduce the minimum tender condition without providing withdrawal rights;
- The application of the all-holders provisions of our tender offer rules to foreign target security holders in transactions subject to U.S. equal treatment provisions;

⁵³ We proposed to allow this change only for cross-border tender offers.

⁵⁴ The change to Rule 16a-1 [17 CFR 240.16a-1] was not proposed, but was requested by commenters. We believe this change is consistent with the regulatory history of aligning the scope of Rule 16a-1(a)(1) with Rule 13d-1(b)(1)(ii).

- The ability of bidders to exclude U.S. target security holders in cross-border tender offers; and
- The availability of the vendor placement procedure for exchange offers.

As discussed in further detail below, the revised rules we adopt today differ in some respects from what we proposed. For example, the alternate eligibility test is a combination of the existing look-through analysis and components of the existing test for non-negotiated transactions. For the revised look-through analysis, we are providing a longer date range than proposed, during which acquirors and issuers can calculate U.S. ownership. Where the acquiror or issuer is not able to accomplish the look-through analysis as of the date in 60 days before and 30 days after public announcement, we provide an extended period to accommodate those situations.

The changes we proposed to the eligibility test would have applied only to business combination transactions; however, those we adopt are applicable to rights offerings also. Another difference between the rule changes we proposed and those we adopt is that two changes are applicable to all business combinations, including those in which the target is a U.S. company. Under our revised rules, bidders conducting tender offers for either U.S. or foreign target companies may extend the subsequent offering period beyond the current 20-business day limit. In addition, offerors in exchange offers for both domestic and foreign targets may commence those offers before the effective date of the registration statement, even where the exchange offer is not subject to specified U.S. tender offer rules.

The revisions adopted today will be effective for transactions that commence after the effective date of the revised rules. To the extent that the parties to transactions other

than those that commence after the effective date wish to rely on these rule changes, requests for relief will be considered on a case-by-case basis. Transition issues and the effective date of the revised rules relating to beneficial ownership reporting are discussed in Section II.F.

II. DISCUSSION

A. Revised eligibility test for the revised cross-border exemptions

We are adopting changes to the eligibility test for the cross-border exemptions that we believe will facilitate the use of the exemptions and reduce the burden of determining eligibility. For negotiated transactions, acquirors must continue to conduct the look-through analysis, as amended today to provide greater flexibility.⁵⁵ Where acquirors are unable to conduct this analysis, we are adopting an alternate test that incorporates elements from the current hostile presumption⁵⁶ for non-negotiated deals, including an element based on average daily trading volume of the subject securities ("ADTV").⁵⁷

The cross-border exemptions require acquirors to query record holders and other nominees to determine U.S. beneficial ownership. For example, acquirors need only "look through" nominees located in the United States, the subject company's jurisdiction

⁵⁵ See new Securities Act Rules 800(h)(6) and (7); Instructions 2 and 3 to amended Exchange Act Rules 13e-4(h)(8) and (i); and Instructions 2 and 3 to amended Exchange Act Rules 14d-1(c) and (d).

⁵⁶ When we refer to the "hostile presumption" in this release, we mean the existing test used to determine eligibility for the cross-border exemptions for non-negotiated transactions, *i.e.*, those not made pursuant to an agreement between the acquiror and the target company. See Securities Act Rule 802(c) [17 CFR 230.802(c)] and Instruction 3 to Exchange Act Rules 14d-1(c) and (d).

⁵⁷ As used in this release, "subject securities" means securities of a target company that are the subject of a tender offer or are sought to be acquired in another kind of business combination transaction.

of incorporation and that of each participant in the business combination transaction, and the jurisdiction that is the primary trading market for the subject securities, if different from the jurisdiction of incorporation.⁵⁸ In addition, acquirors may assume that beneficial holders are residents of the jurisdiction in which the nominee queried has its principal place of business, if after reasonable inquiry the acquiror is unable to obtain information from that nominee.⁵⁹ These limitations on the scope of the required look-through analysis assist the acquiror in accomplishing the required analysis. We are not changing these provisions in our revised rules.

Where acquirors cannot conduct the look-through analysis, however, we are providing an alternate test similar to the hostile presumption for non-negotiated transactions.⁶⁰ Because we recognize that acquirors who do not have the cooperation of the target company may have limited access to information from nominees, this alternate test will be available for all non-negotiated transactions.⁶¹ In the discussion that follows, we provide guidance on the limited circumstances under which the alternate test will be available for negotiated transactions.

The existing cross-border exemptions and the revised exemptions we adopt today continue to be available only when the target company is a foreign private issuer as

⁵⁸ See amended Securities Act Rule 800(h)(3); Instruction 2.iii. to amended Exchange Act Rules 13e-4(h)(8) and (i); and Instruction 2.iii. to amended Exchange Act Rules 14d-1(c) and (d).

⁵⁹ See amended Securities Act Rule 800(h)(4); Instruction 2.iv. to amended Exchange Act Rules 13e-4(h)(8) and (i); and Instruction 2.iv. to amended Exchange Act Rules 14d-1(c) and (d).

⁶⁰ See new Securities Act Rule 800(h)(6); Instruction 3 to amended Exchange Act Rules 13e-4(h)(8) and (i); and Instruction 3 to amended Exchange Act Rules 14d-1(c) and (d).

⁶¹ See new Securities Act Rule 800(h)(6) and Instruction 3 to amended Exchange Act Rules 14d-1(c) and (d).

defined in our rules.⁶² As is the case with the existing cross-border exemptions, the revised exemptions are available equally to both U.S. and foreign acquirors, where the company being acquired qualifies as a foreign private issuer.

Under the current rules and the revisions we adopt today, the percentage of the subject securities held beneficially by U.S. persons is an important element in determining eligibility to rely on the exemptions.⁶³ We continue to believe that U.S. beneficial ownership, as determined by the revised look-through calculation, should be a central element in determining eligibility to rely on the cross-border exemptions. Beneficial ownership is the characteristic of the target subject security holder base that is, in our view, most closely tied to U.S. interest in the subject securities in the context of a business combination transaction or a rights offering.⁶⁴ In the case of business combination transactions, which affect all target security holders whether or not they choose to participate, we believe the percentage of the subject securities that is held by

⁶² See Exchange Act Rule 3b-4(c). For the Securities Act Rule 801 exemptions for rights offerings, the issuer must be a foreign private issuer as defined in that rule. For business combinations such as mergers of equals, where both parties to the transaction will be replaced by a successor entity which issues securities in the amalgamation, U.S. holders may hold no more than 10 percent of the subject class, as if measured immediately after the business combination. See Securities Act Rule 802(a) [17 CFR 230.802(a)].

⁶³ The threshold U.S. beneficial ownership percentages are 10 percent (for Tier I and Securities Act Rules 801 and 802) and 40 percent (for Tier II).

⁶⁴ As noted in the Proposing Release, our focus on U.S. beneficial ownership for business combinations and rights offerings differs from the approach we have taken recently for foreign private issuer deregistration and for purposes of the ability of a foreign private issuer to qualify for the exemption from registration under Exchange Act Rule 12g3-2(b) [17 CFR 240.12g3-2(b)]. See the discussion in the Proposing Release, Section I.A.2.

U.S. holders is the best measure of when U.S. rules should apply.⁶⁵ In addition, because the cross-border exemptions include exemptions from the registration requirements of Section 5 of the Securities Act that are available to both foreign and U.S. acquirors, the focus on the percentage of target securities held by U.S. holders corresponds with the percentage of securities that may be issued without registration by a U.S. acquiror to U.S. target holders. Because securities of U.S. acquirors are likely to have their primary trading market in the United States, it is appropriate to consider the magnitude of these issuances and the resulting flow back into the United States.

The revised rules do not change the threshold percentages of U.S. ownership for reliance on the cross-border exemptions; however, we are changing the manner in which these percentages are determined. To address concerns raised by commenters about the look-through tests for negotiated transactions, we have significantly revised the manner in which that analysis must be performed, including when and under what circumstances it is mandated.⁶⁶ Based on feedback from commenters, we also are eliminating the requirement to exclude large security holders of the target class in calculating the percentage of U.S. ownership.⁶⁷ Commenters advised that this change would expand the

⁶⁵ As we stated in the Proposing Release, using an ADTV test may result in target companies with significant U.S. ownership qualifying for the Tier I and Securities Act Rules 801 and 802 exemptions. Where a bidder, including a U.S. company, is eligible to rely on the Tier I cross-border exemptions, it may issue securities without registration under Securities Act Rule 802. We are concerned that use of an ADTV test for eligibility to rely on the cross-border exemptions would allow bidders, including U.S. bidders, to issue significant amounts of bidder securities to U.S. holders, without the protections of Securities Act registration.

⁶⁶ See amended Securities Act Rule 800(h); Instructions 2 and 3 to amended Exchange Act Rules 13e-4(h)(8) and (i); and Instructions 2 and 3 to amended Exchange Act Rules 14d-1(c) and (d).

⁶⁷ The existing cross-border exemptions require target securities held by holders who individually own more than 10 percent of the subject class to be excluded from both the numerator and the denominator in calculating total U.S. ownership. The exclusion requirement applies to both U.S. and non-U.S. large holders. See Section II.A.1.b. below.

availability of the exemptions because of the concentrated ownership structures of many foreign private issuers.⁶⁸ We believe the cumulative effect of the revisions will facilitate the look-through process by providing greater flexibility to acquirors, and also will allow them to know at an earlier stage in the planning process how U.S. target holders will be treated.

No aspect of the Proposing Release generated more commentary, and more criticism, than this focus on beneficial ownership and the manner in which it must be calculated under our rules.⁶⁹ Despite the revisions to the look-through analysis adopted today, we remain cognizant of the concerns expressed by commenters with respect to the feasibility of the test under certain circumstances.⁷⁰ While we believe the look-through analysis and its focus on beneficial ownership should remain the starting point for determining eligibility to rely on the revised exemptions for negotiated transactions, we also recognize that circumstances exist in which acquirors are unable to conduct the look-through analysis.⁷¹ Therefore, we are adopting an alternate test for such circumstances based, in part, on a comparison of the average daily trading volume of the subject securities in the United States as compared to worldwide trading over a twelve-month period.⁷² The trading volume percentages we established for the ADTV element of the

⁶⁸ See, e.g., letter from Sullivan & Cromwell LLP ("S&C").

⁶⁹ 20 of the 22 comment letters we received addressed this issue, either directly or indirectly.

⁷⁰ These include concerns about cost, burden and confidentiality. See, e.g., letter from Committee on Federal Regulation of Securities, Section of Business Law, American Bar Association ("ABA").

⁷¹ As discussed above, we are not requiring acquirors in hostile transactions to conduct the look-through analysis under our amended rules. This is the same approach as under the existing exemptions. See Instruction 3 to Exchange Act Rules 14d-1(c) and (d).

⁷² See new Securities Act Rules 800(h)(6) and (7); Instruction 3 to amended Exchange Act Rules 13e-4(h)(8) and (i); and Instruction 3 to amended Exchange Act Rules 14d-1(c) and (d).

alternate test are the same as those for the existing hostile presumption.⁷³ The ADTV element of the alternate test is supplemented by other factors, such as the acquiror's actual knowledge of the U.S. ownership percentage of the subject securities, based on reports filed by the target company and others, as well as information from third parties known to the acquiror.⁷⁴

We believe the changes to the look-through test in the cross-border exemptions and the alternate test we adopt today appropriately balance commenters' concerns with our investor protection goals. In our view, these revisions will increase the availability of the cross-border exemptions, including the exemptions from the registration requirements of Section 5 of the Securities Act,⁷⁵ which we anticipate will promote the inclusion of U.S. target holders in more cross-border transactions. We will continue to monitor the application of the revised rules to assess whether additional changes are necessary and in the public interest to facilitate this goal.

1. Changes to the look-through analysis

a. Timing of the calculation

We are adopting, with some modifications, the proposed changes to the timing of and reference date for the calculation of U.S. ownership for determining eligibility to rely

⁷³ See Securities Act Rule 802(c) and Instruction 3.ii. to Exchange Act Rules 14d-1(c) and (d). The thresholds also mirror the maximum percentage limits for U.S. beneficial ownership.

⁷⁴ See new Securities Act Rules 800(h)(6) and (7); Instruction 3.ii. and 3.iii. to amended Exchange Act Rules 13e-4(h)(8) and (i); and Instruction 3.ii. and 3.iii. to amended Exchange Act Rules 14d-1(c) and (d).

⁷⁵ See Securities Act Rules 801 and 802.

on the cross-border exemptions for business combinations.⁷⁶ Under existing rules, acquirors are required to calculate U.S. ownership as of a set date – the 30th day before the commencement of a tender offer or before the solicitation for a business combination other than a tender offer.⁷⁷ The revisions adopted change the reference date to the public announcement of the business combination transaction.⁷⁸ For these purposes, we consider “public announcement” to be any oral or written communication by the acquiror or any party acting on its behalf, which is reasonably designed to inform or has the effect of informing the public or security holders in general about the transaction.⁷⁹ Under our revised rules, an acquiror seeking to rely on the cross-border exemptions may calculate U.S. ownership as of any date no more than 60 days before and no more than 30 days after the public announcement of the cross-border transaction.

The revised rules will allow the calculation to be accomplished based on a range of dates before public announcement of a business combination transaction because we believe that this will allow the parties to a business combination to determine and inform the markets of the treatment of U.S. target security holders at an earlier stage in the

⁷⁶ See amended Securities Act Rule 800(h); Instruction 1.i. to amended Exchange Act Rules 13e-4(h)(8) and (i); and Instruction 2.i. to amended Exchange Act Rules 14d-1(c) and (d). As noted below, we did not propose but solicited comment on similar changes to the timing of the calculation for eligibility for Securities Act Rule 801 (exemption for rights offerings). Today we also are adopting changes to Rule 800(h) that will provide issuers with greater flexibility to use a date within a 60-day range before and a 30-day period after the record date for a rights offering. See amended Securities Act Rule 800(h) and the discussion below.

⁷⁷ See Securities Act Rule 800(h); Instruction 2.i. to Exchange Act Rules 13e-4(h)(8) and (i); and Instruction 2.i. to Exchange Act Rules 14d-1(c) and (d).

⁷⁸ See amended Securities Act Rule 800(h)(1); Instruction 2 to amended Exchange Act Rules 13e-4(h)(8) and (i); and Instruction 2 to amended Exchange Act Rules 14d-1(c) and (d).

⁷⁹ See generally, Instruction 5 to Exchange Act Rules 13e-4(c) and 14d-2 [17 CFR 240.13e-4(c) and 240.14d-2] (defining public announcement for purposes of pre-commencement communications about issuer or third-party tender offers).

planning process. In addition, this change allows the calculation of U.S. ownership to be made before the target security holder base is affected by the public announcement. Most commenters supported the use of announcement as the reference point for the calculation.⁸⁰ Commenters generally also favored the use of a 60-day date range before public announcement, although one party advocated a shorter 30-day range.⁸¹

We expanded the rule to permit the calculation as of a date no more than 30 days after announcement to address commenters' concerns about the confidentiality of the look-through analysis.⁸² Where that analysis must be conducted before announcement, it may compromise the confidentiality of the transaction. By allowing a range of dates both before and after public announcement, the rule is designed to provide acquirors whose home country law permits them to wait to conduct the analysis until after public announcement with flexibility to maintain confidentiality to the greatest extent possible.⁸³ This change was advocated by several commenters.⁸⁴

This 90-day range should be used in most cases. We recognize, however, that the 90-day range may not be enough time in some foreign jurisdictions, depending on the procedures available for obtaining beneficial ownership information. Therefore, our

⁸⁰ See, e.g., The Forum for U.S. Securities Lawyers in London.

⁸¹ See, e.g., letter from Linklaters LLP ("Linklaters"). Another commenter suggested that for rights offering, the reference date should be 30 days before the record date, or alternatively, before announcement. See letter from S&C.

⁸² See letter from Shearman and Sterling LLP ("Shearman").

⁸³ In some foreign jurisdictions, the acquiror may need to conduct the look-through analysis before announcement because home country law may require detailed information about the transaction, including the treatment of U.S. holders, to be included in the announcement.

⁸⁴ Two commenters, Shearman and Davis Polk & Wardwell ("DPW"), advocated a range extending from the 60th day before through the 30th day after announcement. Another commenter, Simpson Thacher & Bartlett LLP ("STB"), suggested a range from the 60th day before through the 60th day after announcement.

revised rules specify that where the issuer or acquiror is unable to complete the look-through analysis as of this 90-day period, it may use a date within 120 days before public announcement.⁸⁵ We considered providing every acquiror and issuer with the flexibility to look through as of a date within the extended 120-day period before announcement. We believe, however, that there should be some limits on dates available to conduct the analysis, and this extended period is warranted only where necessary.⁸⁶ We believe that in most cases, this date range will be sufficient time to conduct the required look-through analysis. Where the acquiror or issuer cannot accomplish the look-through analysis within this time period, it may use the alternate test outlined below.

b. Exclusion of large target security holders

Our revised rules do not affect the percentages of target securities that may be beneficially owned by U.S. holders in order for a transaction to qualify for the exemption. The maximum U.S. ownership percentages remain at no more than 10 percent for reliance on Tier I and Rules 801 and 802 and no more than 40 percent for Tier II.⁸⁷ The look-through analysis by which these percentages are calculated has changed, however. Our revised rules will no longer require that individual holders of more than 10 percent of

⁸⁵ See amended Securities Act Rule 800(h)(1); Instruction 2.i. to amended Exchange Act Rules 13e-4(h)(8) and (i); and Instruction 2.i. to amended Exchange Act Rules 14d-1(c) and (d). This expanded date range is not available for rights offerings. See Section II.A.3. below.

⁸⁶ In the Proposing Release, we expressed concern about a bidder or issuer intentionally choosing a date that presents less than a representative picture of the target security holder base. We noted that the cross-border exemptions are not available for any transaction or series of transactions that technically comply with our rules but are in fact part of a scheme to evade them. See Proposing Release, Section II.A.2.b.

⁸⁷ See Securities Act Rules 801(a)(2) and 802(a)(1) [17 CFR 230.801(a)(2) and 17 CFR 230.802(a)(1)] and Exchange Act Rules 13e-4(h)(8)(i) and (i)(1)(ii) and 14d-1(c)(1) and (d)(2)(ii) [17 CFR 240.13e-4(h)(8)(i), 240.13e-4(i)(1)(ii), and 240.14d-1(c)(1)].

the subject securities be excluded from the calculation of U.S. ownership.⁸⁸ We believe this change will significantly expand the number of cross-border business combinations eligible for the exemptions, while still providing appropriate investor protections.

Although we did not propose this change in the Proposing Release, we solicited comment on it, and many commenters advocated it.⁸⁹ Commenters noted that requiring the exclusion of large target holders generally has the effect of skewing upward the percentage of U.S. ownership of foreign private issuers, which in turn decreases the availability of the cross-border exemptions.⁹⁰ Although existing rules require the exclusion of both U.S. and foreign holders of greater than 10 percent of the subject securities, commenters suggested that the effect of this requirement disproportionately inflates U.S. holdings because holders of large blocks of foreign stock are more likely to be non-U.S. persons.⁹¹ We note that although this may be the case generally, there could be specific fact patterns where this rule change would decrease the availability of the cross-border exemptions because of the particular characteristics of the subject security holder base.⁹² We are persuaded by commenters, however, that we should not treat

⁸⁸ Under the current rules, all securities held by persons or entities that individually hold more than 10 percent of the subject class, whether U.S. or foreign, must be excluded from both the numerator (U.S. ownership) and denominator (worldwide ownership) when calculating U.S. ownership percentages. See Securities Act Rule 800(h)(2) [17 CFR 230.800(h)(2)]; Instruction 2.ii. to Exchange Act Rules 13e-4(h)(8) and (i); and Instruction 2.ii. to Exchange Act Rules 14d-1(c) and (d). Under the amended rules, these securities will be included in both the numerator and denominator.

⁸⁹ See Proposing Release, Section II.A.2.a. See, e.g., letters from Committee on Mergers, Acquisitions and Corporate Control Contests, Association of the Bar of the City of New York ("ABCNY"), DPW, and Linklaters.

⁹⁰ See, e.g., letters from STB and S&C.

⁹¹ See letter from STB.

⁹² This could be the case where a foreign private issuer had a disproportionate number of large U.S. security holders of the subject class.

greater-than-10 percent holders as non-market participants for purposes of the U.S. ownership calculation required by our rules.⁹³ We also believe, based on the staff's own experiences with cross-border transactions since 1999 as well as feedback from the commenters, that eliminating this exclusion requirement will increase the availability of the cross-border exemptions without compromising our investor protection goals.

We are retaining the requirement in our existing rules that securities held by the acquiror be excluded from both the numerator and denominator in calculating U.S. beneficial ownership.⁹⁴ We did not propose a change to this requirement of our existing rules. In assessing what securities should be considered for the calculation, it is appropriate to exclude those held by the acquiror because it will not be participating in the acquisition as a target holder. In addition, acquirors often purchase a minority stake in a target company as part of a series of transactions which, while they may occur in stages over time, are part of the same overall acquisition plan; eliminating the requirement to exclude securities held by the acquiror would not reflect the reality that these series of transactions are typically part of an integrated business combination transaction. One commenter noted that excluding securities held by the acquiror could have the effect of inflating the U.S. ownership figures for the remaining securities in the subject class.⁹⁵ As noted above, however, this will not always be the case; the requirement to exclude securities held by a U.S. acquiror might have the effect of reducing the total U.S. ownership percentages. In addition, the commenter

⁹³ See letter from DPW.

⁹⁴ See amended Securities Act Rule 800(h)(2) and Instruction 2.ii. to amended Exchange Act Rules 14d-1(c) and (d).

⁹⁵ See letter from ABA.

acknowledged that excluding subject securities held by the acquiror does not present the same logistical issues as requiring an acquiror to exclude securities held by third parties, for which it might not have accurate and complete ownership information.⁹⁶

Several commenters suggested that securities held by greater than 10 percent holders should continue to be excluded from the U.S. ownership calculation, where those large holders are otherwise affiliated with the target.⁹⁷ At this time, we are not adopting this recommendation because we believe it may be too cumbersome to require acquirors to determine affiliation. Even if we set objective standards by which affiliation could be determined for these purposes, we believe the approach toward large holders, whether exclusion as under our existing rules, or inclusion under our revised rules, should be consistent for all similarly-situated holders. For this reason, we are not adopting the suggestion of one commenter to exclude from the calculation of U.S. ownership subject securities held by certain U.S. institutional holders.⁹⁸ While the commenter argued that such institutional holders should be excluded from the calculation because our focus should be on retail holders, if we exclude U.S. institutions in determining eligibility to rely on the cross-border exemptions, our rules will apply less frequently to the retail holders who may need them the most. In addition, sophisticated institutional holders benefit from the procedural and other protections of our rules under the Williams Act.⁹⁹

⁹⁶ Id.

⁹⁷ See, e.g., letters from Cleary Gottlieb Steen & Hamilton LLP ("Cleary") and DPW.

⁹⁸ See letter from Allen & Overy, Ashurst LLP, Clifford Chance LLP, Freshfields Bruckhaus Deringer, Herbert Smith LLP, Linklaters LLP, and Norton Rose LLP. This letter advocates disregarding holdings by U.S. institutional investors, such as those qualifying as "QIBs" as defined in Rule 144A, even where such entities individually hold no more than 10 percent of the subject securities.

⁹⁹ Pub. L. No. 90-439, 82 Stat. 454 (1968).

c. Under what circumstances is the issuer or acquiror unable to conduct the look-through analysis to determine eligibility to rely on a cross-border exemption?

As discussed above, the look-through test – as revised today – will remain the primary means of determining eligibility to rely on the cross-border exemptions for negotiated transactions. We continue to believe that extraordinary events in the life of a corporation, such as tender or exchange offers or other kinds of business combination transactions, may pose unique opportunities and risks to security holders. In a tender or exchange offer, where the bidder may present its offer directly to target security holders even where the target company itself does not support the offer, the disclosure and procedural protections of our rules provide critical safeguards for U.S. investors. Unlike capital-raising transactions, the interests of all target security holders, including U.S. holders, are affected by business combinations, whether or not they are permitted to participate in them. Because U.S. beneficial ownership of target securities represents aggregate U.S. economic interest in the target company, we continue to believe that it is the proper standard for determining exemption status. Nevertheless, commenters have pointed out – and the staff's experience has informed us of – some problems that arise in requiring the look-through test. To address these concerns, today we adopt an alternate test, based in part on a comparison of average daily trading volume, which may be used to determine eligibility to rely on the cross-border exemptions. In limited situations,

where an issuer or acquiror is unable to conduct the look-through analysis mandated in our rules, it may use the alternate test described below.¹⁰⁰

Whether an issuer or an acquiror is unable to conduct the look-through analysis required by our rules will depend on the facts and circumstances of the particular analysis. We emphasize, however, that the need to dedicate time and resources to the look-through analysis alone will not support a finding that a bidder is unable to conduct the analysis. Similarly, concerns about the completeness and accuracy of the information obtained from the analysis will not necessarily justify the use of the alternate test. In each instance, the bidder must make a good faith effort to conduct a reasonable inquiry into ascertaining the level of U.S. beneficial ownership. Where issuers and acquirors have questions about the availability of the alternate test, whether in the context of individual cross-border transactions or otherwise, consideration will be given to whether additional guidance is appropriate.

Although we are not providing an exhaustive list of the situations that would justify the use of the alternate test, we do recognize specific factual scenarios when the alternate test could be used. For example, in some foreign jurisdictions, security holder lists are generated only at fixed intervals during the year and are not otherwise available. In those circumstances, where the published information is as of a date outside the range

¹⁰⁰ Cf. Securities Act Rule 409 [17 CFR 230.409] and Exchange Act Rule 12b-21 [17 CFR 240.12b-21] (providing flexibility, under limited circumstances, for registrants when they are unable to provide information required by the Commission's rules).

specified in our revised rules,¹⁰¹ the alternate test may be used unless the acquiror or issuer otherwise has access to more current information. We believe that U.S. ownership information as of a date outside of the expanded range we provide in our revised rules will be outdated and therefore will justify the use of the alternate eligibility test.

We also believe that an acquiror generally will be unable to conduct the required look-through analysis in the manner prescribed by our revised rules when the subject securities are in bearer form.¹⁰² In addition, in certain foreign jurisdictions, nominees may be prohibited by law from disclosing information about the beneficial owners on whose behalf they hold. Where this prohibition extends to the country of residence of the beneficial owners of the subject securities, we believe the alternate test for determining eligibility should be available. Even the issuer itself may be unable to conduct the required look-through analysis and thus may turn to the alternate test under our revised rules.¹⁰³ In addition, where a business combination transaction is non-negotiated (not conducted pursuant to an agreement between the target and the acquiror), the acquiror need not conduct the look-through analysis under our revised rules. This is consistent

¹⁰¹ Under the amended Instructions to the exemptions, as discussed above, the acquiror must obtain information about U.S. beneficial holders as of a date no more than 60 days before and no more than 30 days after the public announcement of the business combination (as of the record date for a rights offering). Where the acquiror cannot obtain information within these time frames, it may use a date no more than 120 days before public announcement. If it cannot conduct the look-through as of date within this extended time frame, the acquiror or issuer is unable to conduct the look-through for purposes of our rules and may rely on the alternate test.

¹⁰² These are securities for which the issuer or other party does not keep a registry of ownership. The possession of the stock certificate is the only proof of ownership for bearer securities.

¹⁰³ See Instruction 3 to amended Exchange Act Rules 13e-4(h)(8) and (i). This is different from the approach in our current rules, where the hostile presumption based on factors other than the look-through analysis is not available to issuers or affiliated bidders.

with the existing rules, premised on the concept that a third party will generally have decreased access to ownership information without the cooperation of the target.¹⁰⁴

2. Elements of the alternate test

Under the revised eligibility test, most acquirors will be required to conduct the look-through analysis, as modified by the rule changes we adopt today and discussed above. Only where an acquiror is unable to conduct the required analysis because of specific circumstances may it turn to the other means of determining eligibility specified in the alternate test.¹⁰⁵ As noted above, acquirors in non-negotiated transactions may continue to rely on the alternate test, which is similar to and replaces the current "hostile presumption."

Under the alternate test, an acquiror may rely on the cross-border exemptions unless average daily trading volume in the United States exceeds the limits set forth in our rules, reports filed by the target company indicate levels of U.S. ownership inconsistent with the limits for the applicable exemption, or the acquiror knows or has reason to know that U.S. ownership exceeds the limits for the applicable exemption. We discuss each element of this alternate test below.

¹⁰⁴ See the Proposing Release, Section II.A.3.a. and the 1999 Cross-Border Adopting Release, Section II.F.3.

¹⁰⁵ See new Securities Act Rule 800(h)(7); Instruction 3 to amended Exchange Act Rules 13e-4(h) and (i); and Instruction 3 to amended Exchange Act Rules 14d-1(c) and (d).

a. Average daily trading volume test

The first prong of our alternate test is based on a comparison of ADTV of the subject securities in the United States, as compared to worldwide ADTV.¹⁰⁶ As revised, this element of the alternate test is satisfied where ADTV for the subject securities in the United States over a twelve-month period ending no more than 60 days before the announcement of the transaction is not more than 10 percent (40 percent for Tier II) of ADTV on a worldwide basis.¹⁰⁷ As noted above, the percentage trading volume figures remain unchanged from the comparable component of the existing test for non-negotiated transactions.¹⁰⁸ We considered decreasing these percentages for purposes of this ADTV element, because our analysis indicates that these trading volume levels do not correspond with the U.S. beneficial ownership levels that remain the focus of our revised eligibility test.¹⁰⁹ However, these ADTV figures are a feature of the comparable ADTV element of the existing hostile presumption, and we have retained the comparable limiting elements focused on U.S. beneficial ownership discussed below. For these reasons, and because the alternate test will be available only in limited circumstances

¹⁰⁶ The comparable prong of the existing hostile presumption test compares "aggregate trading volume of the subject securities on all national securities exchanges in the United States, on the Nasdaq market, or on the OTC market as reported to the NASD" to the worldwide aggregate trading volume. See, e.g., the existing Instruction 3 to Exchange Act Rules 14d-1(c) and (d). Although the revised instruction we adopt today refers to "average daily" instead of "aggregate" trading volume, and eliminates the references to the NASD (or its successor FINRA), we do not view these changes as substantive.

¹⁰⁷ See new Securities Act Rule 800(h)(7)(i); Instruction 3.i. to amended Exchange Act Rules 13e-4(h)(8) and (i); and Instruction 3.i. to amended Exchange Act Rules 14d-1(c) and (d).

¹⁰⁸ See Securities Act Rule 802(c) and Instruction 3 to Exchange Act Rules 14d-1(c) and (d).

¹⁰⁹ See Memorandum from the Office of Economic Analysis (June 5, 2008) (available in the comment file for the Proposing Release at <http://www.sec.gov/rules/proposed/s71008.shtml>).

outside the context of a non-negotiated transaction, we have not changed the percentages for the ADTV test.

The revised rules specify that where a transaction is not made pursuant to an agreement between the acquiror and the target company, the acquiror need not conduct the look-through analysis.¹¹⁰ This is similar to the existing "hostile presumption" for non-negotiated transactions. We made that presumption available in 1999 when the current exemptions were adopted because we recognized that where no such agreement exists, without the cooperation of the target company, the acquiror's ability to obtain information about brokers and other nominees may be limited.¹¹¹ We believe this continues to be the case today.

The revised rules provide acquirors with a range of dates by which they may do the comparison of U.S. and worldwide average daily trading volume. The comparison must be made over a twelve-month period ending no more than 60 days before the public announcement of the transaction.¹¹² The requirement to perform the comparison as of a twelve-month period minimizes the potential for manipulation of the trading volumes both inside and outside the United States. For the reasons discussed above, we believe that providing a range of dates as of which the comparison may be accomplished provides appropriate flexibility for acquirors. In the context of an objective measure such

¹¹⁰ See new Securities Act Rule 800(h)(6) and Instruction 3 to amended Exchange Act Rules 14d-1(c) and (d).

¹¹¹ See 1999 Cross-Border Adopting Release, Section II.F.3.

¹¹² See new Securities Act Rule 800(h)(7)(i); Instruction 3.i. to amended Exchange Act Rules 13e-4(h)(8) and (i); and Instruction 3.i. to amended Exchange Act Rules 14d-1(c) and (d). We proposed to modify the instruction in our rules to mandate a calculation over a twelve-calendar-month period ending no later than 60 days before announcement. We did not receive comments specifically addressing this point.

as ADTV, there should be no concerns about compromising confidentiality by doing this calculation before announcement. Therefore, for purposes of this prong of the alternate test, we are not permitting the acquiror to use a range of dates that extends beyond announcement, as we do for the look-through test discussed above.¹¹³ Using public announcement instead of commencement as the reference point for the calculation will allow acquirors to determine and inform the market and target holders about the treatment of U.S. holders at an earlier stage in the process.

The revised rules also require that there be a "primary trading market" for the subject securities, as that term is defined in our rules,¹¹⁴ in order for the acquiror in a negotiated transaction to rely on the alternate test as a result of being unable to conduct the look-through analysis.¹¹⁵ "Primary trading market" means that at least 55 percent of the trading volume in the subject securities takes place in a single, or no more than two, foreign jurisdictions during a recent twelve-month period.¹¹⁶ In addition, if the trading of the subject securities occurs in two foreign markets, the trading in at least one of the two must be larger than the trading in the United States for that class.¹¹⁷ In our view, the existence of a primary trading market is important because it is designed to ensure that

¹¹³ See Instruction 2 to amended Exchange Act Rules 14d-1(c) and (d).

¹¹⁴ See Exchange Act Rule 12h-6(f)(5).

¹¹⁵ We did not propose, but we solicited comment on, whether we should adopt a primary trading market requirement when using an ADTV measure. See Proposing Release, Section II.A.4. The primary trading market requirement does not apply to the use of the alternate test for non-negotiated transactions.

¹¹⁶ Exchange Act Rule 12h-6(f)(5)(i) [17 CFR 240.12h-6(f)(5)(i)]. Elsewhere in the revised exemptions, we continue to use the term "primary trading market" more narrowly, to refer to the single, principal foreign trading market for the subject securities outside the United States. See footnote 58 in the Proposing Release.

¹¹⁷ Exchange Act Rule 12h-6(f)(5)(ii) [17 CFR 240.12h-6(f)(5)(ii)].

there is a primary foreign regulator with oversight over the transaction. Thus, where there is no primary trading market for the subject securities outside of the United States, an acquiror in a negotiated transaction may not rely on the alternate test. In response to our request for comments, several commenters supported the adoption of a "primary trading market" component if we adopted a test based in whole or in part on ADTV.¹¹⁸

One commenter stated that requiring average daily trading volume in the United States to be compared to trading in the primary trading market, as opposed to the worldwide trading market, would be too restrictive.¹¹⁹ The revised rules require a comparison of U.S. ADTV to worldwide ADTV, thus maximizing the size of the denominator and potentially limiting the U.S. average daily trading volume numbers.¹²⁰

b. Information filed by the issuer with the Commission or home country regulators

The second prong of the alternate test is that the acquiror must consider information about U.S. ownership levels that appear in annual reports or other annual information filed by the issuer with the Commission or with the regulator in its home jurisdiction. It may be disqualified from relying on the cross-border exemption sought if those reports or other filings indicate levels of U.S. ownership that exceed applicable limits for that exemption.¹²¹

¹¹⁸ See letters from Bredin Prat, De Brauw Blackstone Westbroek, Hengeler Mueller, Slaughter and May, and Uria Menéndez, STB, and Sompō Japan Insurance Inc.

¹¹⁹ See letter from ABA.

¹²⁰ This is consistent with the manner in which the calculation is done for purposes of the deregistration rule. See Exchange Act Rule 12h-6(a)(4)(i) [17 CFR 240.12h-6(a)(4)(i)]. Worldwide average daily trading volume for these purposes would include U.S. average daily trading volume.

¹²¹ See amended Securities Act Rule 800(h)(7)(ii); Instruction 3.ii. to amended Exchange Act Rules 13e-4(h)(8) and (i); and Instruction 3.ii. to amended Exchange Act Rules 14d-1(c) and (d).

This element of the alternate test is virtually identical to the comparable element of the existing test for non-negotiated transactions.¹²² The only change from the prior test for non-negotiated transactions is that the revised Instruction specifies that only annual reports or other annual information filed before the public announcement of the transaction must be taken into account by the acquiror. We believe it is appropriate to set a time limit on the information that the acquiror must consider, since the planning process of the transaction and the certainty of the exemption itself may be disrupted by a filing that is made late in the process.

The acquiror's eligibility to rely on a cross-border exemption should not be affected by filings after that time, because the public announcement may contain (and in some foreign jurisdictions, must contain) detailed information about the treatment of U.S. target holders. We do not believe that the acquiror should lose eligibility based on reports filed after announcement; conversely, the acquiror will not gain eligibility to rely on the exemptions based on reports filed after announcement indicating a reduction in the percentage of U.S. holders.

The annual report filed with the Commission by foreign private issuers subject to Exchange Act reporting requires disclosure of the percentage of the class held by U.S. persons.¹²³ Not all foreign private issuers file annual reports with the Commission,

¹²² See Securities Act Rule 802(c)(3) [17 CFR 230.802(c)(3)] and Instruction 3.iii. to Exchange Act Rules 14d-1(c) and (d).

¹²³ Item 7.A.2. of Form 20-F mandates that "[i]nformation shall be provided as to the portion of each class of securities held in [the United States] and the number of record holders in the [United States]." Many foreign private issuers filing Form 20-F provide information about U.S. record ownership only, which is not in and of itself the measure of U.S. ownership used to determine eligibility to rely on the cross-border exemptions.

however.¹²⁴ For those who do not file with the Commission, reports filed in the home jurisdiction may or may not require disclosure of comparable information about U.S. ownership. However, the acquiror may have reason to know U.S. beneficial ownership figures for non-reporting issuers, which also must be taken into account pursuant to the final element of the eligibility test.

c. Reason to know

We refer to the final element in the new alternate test as the “reason to know” element. The existing hostile presumption test for non-negotiated transactions contains a similar element.¹²⁵ This prong of the alternate test provides that an applicable cross-border exemption is not available, even where all other elements of the alternate test are met, if the acquiror “knows or has reason to know” that U.S. beneficial ownership levels exceed the limits for the applicable exemption.¹²⁶

We believe the reason to know element serves a critical function in protecting the interests of U.S. investors under the current hostile presumption. Each other element of the eligibility test has limitations which may translate into an inaccurate and incomplete picture of the subject security holder base. The reason to know element captures information that the acquiror may gain as a result of its own assessment of the target company and the feasibility of the transaction. The acquiror should not be permitted to ignore such information simply because it comes from sources other than those captured

¹²⁴ A foreign private issuer must file an annual report with the Commission only where the foreign private issuer has a class of securities registered under Section 12 of the Exchange Act.

¹²⁵ See Securities Act Rule 802(c)(4) [17 CFR 230.802(c)(4)] and Instruction 3.iv. to Exchange Act Rules 14d-1(c) and (d).

¹²⁶ See new Securities Act Rule 800(h)(7)(iii); Instruction 3.iii. to amended Exchange Act Rules 13e-4(h)(8) and (i); and Instruction 3.iii. to amended Exchange Act Rules 14d-1(c) and (d).

in the other elements of our alternate test. The staff has received numerous questions about what constitutes "reason to know" information about U.S. ownership levels that would preclude reliance on the exemptions under the current hostile presumption. To provide guidance on that issue, we proposed changes to this element of the current hostile presumption test to assist acquirors in determining what constitutes "reason to know."¹²⁷ The proposed changes, which we are adopting today, clarified that an offeror is deemed to have reason to know information about U.S. ownership of the subject class that appears in any filing with the Commission or any regulatory authority in the issuer's home country or (if different) the jurisdiction in which its primary trading market is located.¹²⁸ This change will capture not only filings by the issuer, but also filings by other parties reporting beneficial ownership of the subject securities.¹²⁹

While commenters supported our efforts to provide further specificity on "reason to know," many requested further guidance on this issue, consistent with staff experience that it is an area of concern for practitioners under the current hostile presumption.¹³⁰ Therefore, as adopted, the revised provision contains additional references to specific sources of information that will be attributed to the acquiror.¹³¹ This includes information about U.S. ownership "available from the issuer or obtained or readily

¹²⁷ See proposed Securities Act Rule 802(c)(4) and proposed Instruction 3.iv. to Exchange Act Rules 14d-1(c) and (d).

¹²⁸ Id.

¹²⁹ Only "annual reports" or filings of "annual information" by the issuer are covered in the preceding element of the test. Reports that may be covered by the "reason to know" element of the revised test include beneficial ownership reports filed by third parties reporting ownership in the subject class.

¹³⁰ See, e.g., letter from DPW.

¹³¹ See amended Securities Act Rule 800(h)(7)(iii); Instruction 3.iii. to amended Exchange Act Rules 13e-4(h)(8) and (i); and Instruction 3.iii. to amended Exchange Act Rules 14d-1(c) and (d).

available from any other source that is reasonably reliable.”¹³² “Readily available” for these purposes means publicly available from sources reasonably accessible to the issuer or acquiror at no or limited cost. We do not intend this language to mean that an issuer or acquiror must take into account information publicly available from any source, no matter how obscure or costly to obtain. If the acquiror and the target enter into an agreement pursuant to which the acquiror has the right to obtain information from the target, including information about U.S. ownership, it will be deemed to know any such information known to the target. We believe such an agreement will almost always exist in the context of a negotiated transaction.

Other sources of information of which the acquiror will be deemed to have knowledge under the rule revisions adopted today include, but are not limited to, third-party information providers and other advisors engaged by the parties to the transaction that may have provided information about U.S. ownership. This change to the rule does not require that the parties engage such third parties in order to qualify for eligibility under this element.¹³³ The rule simply requires the acquiror to take into account information that is obtained from a third-party information provider, including information that is readily available from such providers. These examples cited in our revised rules are not intended to be exclusive; an acquiror may have reason to know information from other sources, depending on the particular facts and circumstances of the transaction.¹³⁴

¹³² Id.

¹³³ One commenter requested that we clarify that we are not establishing such a requirement. See letter from Cravath, Swaine, & Moore LLP (“Cravath”).

¹³⁴ The proposed rules note that the sources listed are not intended to be an exclusive list.

We are adopting as proposed the limiting language in this revised instruction that makes it clear that knowledge or reason to know acquired after public announcement will not disqualify the acquiror from relying on the cross-border exemptions.¹³⁵ For the reasons discussed in the preceding section, we believe it is appropriate to include a timing element here, so that the ability to rely on a cross-border exemption is not called into question by knowledge acquired after announcement. Commenters generally supported this change.¹³⁶

3. Changes to eligibility test for rights offerings

The changes to the eligibility test we adopt today also will apply to the calculation of U.S. ownership for rights offerings. Issuers may now calculate U.S. ownership as of a date no more than 60 days before and 30 days after the record date for the rights offering.¹³⁷ Thus, issuers will have greater flexibility on the timing of the calculation of U.S. ownership within a range of dates; however, the reference point for the calculation will continue to be the record date for rights offerings, rather than the date of public announcement for business combinations. This is appropriate because the record date for a rights offering is more closely tied to the specific security holder base that may participate in the transaction.¹³⁸

¹³⁵ We do this by inserting the language the words "before the public announcement" into the first sentence of this amended provision. See new Securities Act Rule 800(h)(7)(iii); Instruction 3.iii. to amended Exchange Act Rules 13e-4(h)(8) and (i); and Instruction 3.iii. to amended Exchange Act Rules 14d-1(c) and (d).

¹³⁶ See, e.g., letter from ABCNY.

¹³⁷ See amended Securities Act Rule 800(h).

¹³⁸ See amended Securities Act Rule 800(h)(1). The expanded date range of up to 120 days if the information is not available within the range otherwise specified is not available for rights offerings. This should not be needed, as it is within the issuer's power to set an appropriate record date.

We solicited comment on, but did not propose changes to, the eligibility test for rights offerings because we did not believe that issuers faced the same problems with the look-through analysis as third-party acquirors did for business combination transactions.¹³⁹ However, several commenters argued that we should also adopt similar changes to the rights offering exemption.¹⁴⁰ It is our understanding that many foreign private issuers continue to exclude U.S. holders from rights offerings available to all other security holders. To the extent that the revisions we adopt today make the exemption for rights offerings more readily available and facilitate the inclusion of U.S. holders, these changes may be useful in promoting our investor protection goals.

Therefore, we are adopting similar changes to the method of calculating U.S. ownership for purposes of the exemption for rights offerings as we adopt today for business combination transactions. This will allow issuers more time to conduct the U.S. ownership calculation at an earlier stage in the transaction planning process. In addition to the changes to the look-through analysis mandated under our revised rules, the alternate test for calculating U.S. ownership also will be available for issuers unable to conduct the look-through analysis.¹⁴¹

¹³⁹ See Proposing Release, Section II.A. This may be because issuers generally have access to greater information about their own security holders, and rights offerings may not be subject to the same time pressures as business combination transactions.

¹⁴⁰ See letters from Cravath and S&C.

¹⁴¹ See new Securities Act Rule 800(h)(6) and (7). This is a change from our existing rules, where the hostile presumption based in part on the average daily trading volume comparison is available only for third-party, unaffiliated acquirors. See, e.g., existing Securities Act Rule 802(c), which applies only to persons other than the issuer of the subject securities and is being replaced by the alternate test.

B. Changes to the Tier I exemptions

1. Expanded exemption from Exchange Act Rule 13e-3

We are adopting as proposed revised Exchange Act Rule 13e-3(g)(6) expands the scope of the exemption from Rule 13e-3 to cover a broader range of cross-border transactions than otherwise would be subject to that Rule. Existing Rule 13e-3(g)(6) exempts the parties engaged in an affiliated cross-border business combination transaction from the application of Rule 13e-3 where that transaction is structured as an issuer or third-party tender offer under the Tier I cross-border exemptions, or as a securities offering made pursuant to Securities Act Rule 802. Transactions such as cash mergers, compulsory acquisitions for cash, and schemes of arrangement not consummated under these rules could be subject to Rule 13e-3 even where they otherwise would have been eligible for the cross-border exemption from that rule, if structured under Tier I or Securities Act Rule 802.

We believe that the form of the transaction should not govern whether Rule 13e-3 applies to a cross-border transaction which otherwise would be eligible for the Tier I exemption from that rule; therefore, we proposed eliminating the limits on the kinds of cross-border transactions that could be covered under the exemption in Rule 13e-3(g)(6). We are adopting this change as proposed. In order to qualify for the expanded exemption from Rule 13e-3, a party must meet all of the conditions for reliance on Rule 802 or Tier I. These conditions such as the requirement that U.S. security holders be treated at least as favorably as foreign security holders, will continue to safeguard the interests of U.S. holders. In addition, a party relying on revised Rule 13-3(g)(6) for affiliated transactions not conducted pursuant to Securities Act Rule 802 or Tier I must submit a Form CB to

the same extent as would be required in a transaction conducted pursuant to those provisions. Because the party relying on the expanded cross-border exemption from Rule 13e-3 would have had an obligation to file a Schedule 13E-3, absent the expanded exemption, a Form CB (and Form F-X where the filer is foreign) will be required.¹⁴²

In the Proposing Release, we solicited comment on how we should accomplish the proposed expansion of the exemption from Rule 13e-3. We asked whether we should revise the rule to list additional transaction structures that would be covered under the expanded exemption, or whether we should simply eliminate any limits on the types of transactions covered, as proposed. The four commenters who addressed this issue supported the change, including our approach of leaving open the kinds of cross-border transactions that may be covered under the expanded exemption, to provide maximum flexibility for the parties covered by Rule 13e-3.¹⁴³

One commenter called for us to extend the exemption from Rule 13e-3 to tender offers conducted pursuant to Tier II, on the grounds that corporate law matters that underpin the enhanced investor protection provisions in Rule 13e-3 are best addressed by home country regulation.¹⁴⁴ We recognize that other jurisdictions may impose equally effective but different safeguards to address the conflict of interests that may exist in a transaction to which Rule 13e-3 applies. We note, however, that Rule 13e-3 is a disclosure provision and we do not believe its application is unduly burdensome,

¹⁴² See Instruction to amended Exchange Act Rule 13e-3(g)(6).

¹⁴³ See letters from ABA, ABCNY, Cravath, and DPW.

¹⁴⁴ See letter from ABCNY.

particularly where U.S. investors make up more than 10 percent of a foreign target's security holder base.

Another commenter called for us to exempt from the application of Rule 13e-3 any transaction subject to a third-party fairness hearing and determination.¹⁴⁵ We decline to expand the exemption in this manner. As noted above, Rule 13e-3 is a disclosure provision and does not regulate the substantive fairness of the underlying transaction. Thus, the fact that an affiliated transaction in a foreign jurisdiction has been found to be fair by an independent tribunal or other third party will be a matter for disclosure under the rule, but in our view, should not affect its general application.

2. Technical changes to Rule 802

We are adopting as proposed the changes to Rule 802(a)(2) and (3) to substitute the word "offeror" for "issuer." This is a correction to the existing rule rather than a substantive change. We did not receive any comments on this technical correction.

C. Changes to the Tier II exemptions

We proposed a number of changes to Tier II in order to alleviate practical difficulties that often result in the need for companies to request specific exemptive or no-action relief.¹⁴⁶ Most commenters did not address the specific changes we proposed, but generally supported our proposed expansion of these exemptions.

¹⁴⁵ See letter from the ABA.

¹⁴⁶ Where we refer in this release to "relief," we mean exemptive or no-action relief provided by letter in the context of an individual transaction, unless otherwise indicated. See footnote 46 above referring to the staff's delegated authority to provide exemptive relief from U.S. rules for specific cross-border transactions. Where we refer to "interpretive guidance," we mean oral positions taken by the staff or written interpretations promulgated by the Division of Corporation Finance in the Manual of Publicly Available Telephone Interpretations available on our Web site. We refer to "Commission guidance" or "Commission interpretive guidance" to mean positions expressed by the Commission in releases.

1. Tier II relief for tender offers not subject to Rule 13e-4 or Regulation 14D

The Tier II exemptions represent targeted modifications to U.S. tender offer rules intended to accommodate differences between U.S. and foreign practice in the context of a cross-border tender offer. Because the Tier II exemptions are contained in Rule 13e-4 and Regulation 14D, the staff receives questions about whether a bidder may rely on these exemptions for a tender offer subject to the provisions of Regulation 14E only. The staff has taken the position that the Tier II exemptions are available for tender offers that would otherwise qualify for those exemptions, but for the fact that the tender offer is not subject to Rule 13e-4 or Regulation 14D. The staff's position was based on the premise that it would be inconsistent for bidders in tender offers subject only to the more basic tender offer provisions in Regulation 14E not to be able to take advantage of the Tier II exemptions, which technically apply to tender offers that are subject to the more extensive regulatory protections in Rule 13e-4 and Regulation 14D. We proposed to change the language of the Tier II exemptions to specifically make it available to offers subject only to Regulation 14E. As we stated in the Proposing Release, we believe the Tier II exemptions should be available for such offers if the conditions in our rules are satisfied; therefore, we are adopting amendments to the rules as proposed to clarify that the Tier II exemptions are available regardless of whether the target securities are subject to Rule 13e-4 or Regulation 14D.¹⁴⁷

¹⁴⁷ See amended Exchange Act Rules 13e-4(i) and 14d-1(d).

Commenters supported the proposed amendments to codify this position.¹⁴⁸

Under the revised rules, the Tier II exemptions will be available to Regulation 14E-only offers only where the exemptions would have been available if those offers were subject to Rule 13e-4 or Regulation 14D. Thus, all of the existing conditions applicable to the Tier II exemptions will apply. Some of the Tier II exemptions may not be necessary for tender offers not subject to the requirements of Rule 13e-4 or Regulation 14D, because Regulation 14E may not have a corresponding regulatory requirement.¹⁴⁹

2. Tier II relief for concurrent U.S. and non-U.S. offers

a. Multiple foreign offers in connection with a U.S. offer

The existing Tier II cross-border exemptions permit a bidder to conduct two separate but concurrent tender offers: one made only to U.S. target security holders and another open only to foreign target holders. In some instances, a tender offer may be subject to more than one regulatory regime outside the United States, particularly where the target's country of incorporation is not the location of the primary trading market for the target securities. In the past, bidders have requested and have been granted relief to conduct more than one foreign offer outside of the United States pursuant to the Tier II exemptions.¹⁵⁰

¹⁴⁸ See, e.g., letter from Cravath.

¹⁴⁹ For example, there is no requirement in Regulation 14E to make a tender offer available to all target security holders. Therefore, the accommodation from the all-holders provisions in Exchange Act Rules 13e-4(i)(2)(ii) and 14d-1(d)(2)(ii) will not be necessary for an offer subject only to Regulation 14E.

¹⁵⁰ See, e.g., Alcan, Inc. (October 7, 2003) ("Alcan"); Asia Satellite Telecommunications Holdings Limited (May 25, 2007); BCP Crystal Acquisition GmbH & Co (February 3, 2004) and Mittal Steel Company N.V. (June 22, 2006) ("Mittal") (providing relief for purchases outside of a U.S. offer for a tender offer that included more than one offer conducted outside of the United States).

Because we believe the use of a multiple offer structure may be helpful in addressing procedural and technical conflicts between tender offer rules and practice, as well as procedural requirements between different jurisdictions, we see no reason to prohibit the use of more than one offer outside the United States in connection with the Tier II exemptions. Three commenters addressed this proposed change; all supported it.¹⁵¹ For the reasons noted above, we are adopting the amendments as proposed to permit the use of more than one offer outside of the United States for tender offers conducted under Tier II.¹⁵² We believe the resulting increased flexibility to resolve regulatory conflicts will promote our goal of facilitating the inclusion of U.S. investors in cross-border tender offers subject to multiple regulatory regimes outside of the United States.

As discussed in the Proposing Release, the amendments we adopt today with respect to the use of a multiple offer structure under Tier II are not intended to permit the use of separate proration pools where such a structure is used in the context of a partial cross-border tender offer.¹⁵³ Under the current as well as the revised rules, bidders who conduct separate foreign and U.S. offers to minimize the difficulties of complying with two different regulatory regimes applicable to the offer must pro rate tendered securities on an aggregate basis, where required under U.S. rules.¹⁵⁴

¹⁵¹ Letters from ABA, Cravath, and S&C.

¹⁵² Amended Exchange Act Rules 13e-4(i)(2)(ii) and 14d-1(d)(2)(ii).

¹⁵³ Two commenters addressed our request for comment on whether we should permit the use of two separate proration pools in cross-border tender offers under Tier II. Both supported the continued use of a single proration pool. See letters from Cleary and Cravath.

¹⁵⁴ See Exchange Act Section 14(d)(6) [15 U.S.C. 78n(d)(6)] and Exchange Act Rules 13e-4(f)(3) [17 CFR 240.13e-4(f)(3)] and 14d-8 [17 CFR 240.14d-8]. See also the discussion in Section II.C.2.c. of the Proposing Release.

b. U.S. offer may include non-U.S. holders of ADRs¹⁵⁵

The existing Tier II exemptions specify that a U.S. offer conducted in connection with a concurrent foreign offer under Tier II may be open to U.S. persons only.¹⁵⁶ This limitation creates a problem because bidders frequently seek to include all holders of ADRs, not only U.S. holders, in the U.S. portion of a dual offer. Additionally, in many instances, the target's home country regulations do not apply, by their terms, to ADRs.¹⁵⁷ So, as a practical matter, most bidders in cross-border tender offers wish to include all holders of ADRs in the U.S. portion of a dual offer. Companies frequently seek individual relief from the staff to address these issues.¹⁵⁸ The staff often has granted relief to permit a U.S. offer in a dual offer structure to include all holders of ADRs, including foreign holders.¹⁵⁹ Commenters generally supported the proposal.¹⁶⁰ Today we are adopting as proposed rule revisions that will allow a bidder in a cross-border tender offer conducted under Tier II to make the U.S. offer available to all holders of ADRs, including non-U.S. holders, to accommodate this preferred offer structure.¹⁶¹

¹⁵⁵ "ADRs" refer to American Depositary Receipts. As in the Proposing Release, we use this term synonymously with American Depositary Shares, or ADSs.

¹⁵⁶ Exchange Act Rules 13e-4(i)(2)(ii) and 14d-1(d)(2)(ii).

¹⁵⁷ See, e.g., Portugal Telecom, SGPS, S.A. (December 19, 2006) ("Portugal Telecom") (noting that the provisions of the Portuguese Securities Code and the rules and regulations of the Portuguese Comissão de Mercado de Valores Mobiliários did not apply to the offer for ADSs of the target company listed on the New York Stock Exchange).

¹⁵⁸ See Harmony Gold Mining Company Limited (November 19, 2004) ("Harmony Gold 2004"); Discount Investment Corporation Ltd. (June 14, 2004); Alcan; Serono S.A. (September 12, 2002) ("Serono S.A."); and Southern Cross (March 5, 2002).

¹⁵⁹ See, e.g., Royal Bank of Scotland plc (July 23, 2007) ("Royal Bank"); E.ON Aktiengesellschaft (December 6, 2006) ("E.ON"); Koninklijke Ahold N.V. (September 10, 2002) ("Koninklijke").

¹⁶⁰ See, e.g., ABA.

¹⁶¹ Amended Exchange Act Rules 13e-4(i)(2)(ii) and 14d-1(d)(2)(ii).

These revisions will eliminate the need for companies to seek individual relief in such circumstances.

As we noted in the Proposing Release, bidders have not requested exemptive or no-action relief to permit the inclusion of foreign persons who hold shares directly in share form in the U.S. offer. Two commenters advocated that we allow the U.S. offer to be made to foreign holders of target shares as well as ADRs. We do not believe such a rule change is warranted at this time, given that this type of relief has not been requested frequently. If circumstances arise that weigh in favor of permitting foreign target holders to be included in the U.S. offer in a particular instance, requests for relief will be considered on a case-by-case basis. Therefore, we are not changing our rules to permit foreign holders who hold in direct share form to participate in the U.S. offer under Tier II.

We emphasize that, as discussed in the Proposing Release, this and other rule changes to the Tier II exemptions are not intended to enable a bidder to make an offer open only to ADR holders. This would be prohibited where the target securities are registered under Section 12 of the Exchange Act and the all-holders provisions of U.S. tender offer rules apply.¹⁶²

c. U.S. holders may be included in foreign offer

We are adopting as proposed revisions allowing a bidder to include U.S. target security holders in a foreign offer conducted under Tier II, under specified conditions. Under the revised rules, when a bidder conducts concurrent U.S. and foreign offers under Tier II, the foreign offer may be open to U.S. target security holders only where: (i) the

¹⁶² See Exchange Act Rules 13e-4(f) [17 CFR 240.13e-4(f)] and 14d-10 [17 CFR 240.14d-10].

laws of the foreign target company's home jurisdiction expressly prohibit the exclusion of any target security holders, including U.S. persons; and (ii) the offer materials distributed to U.S. persons fully and completely describe the risks to U.S. holders of participating in the non-U.S. offer.¹⁶³

This rule change reflects the fact that takeover rules in some non-U.S. jurisdictions do not permit the exclusion of any target security holders from the foreign offer, even where the bidder makes a concurrent U.S. offer that is open to U.S. holders. Where such rules are present, relief has been granted on a case-by-case basis, in order to accommodate the requirements of the applicable foreign regulatory regime.¹⁶⁴ Such relief has been conditioned on the same conditions we now codify in the revised rule, which we believe strikes the appropriate balance between the need to respect a foreign regulatory requirement in a primarily foreign transaction and the need to provide adequate protections for U.S. investors by fully disclosing the risks of participating in a non-U.S. offer not subject to U.S. rules.¹⁶⁵

Commenters generally supported the proposed changes to the Tier II exemptions, including this change. One commenter stated that permitting U.S. persons to be included in a foreign offer where mandated by foreign law and where U.S. investors have received appropriate disclosure concerning the risks of participating in the foreign offer strikes the appropriate investor protection balance.¹⁶⁶

¹⁶³ See amended Exchange Act Rules 13e-4(i)(2)(ii) and 14d-1(d)(2)(ii).

¹⁶⁴ See, e.g., Gas Natural SDG, S.A. (March 2, 2006) ("Gas Natural").

¹⁶⁵ See amended Exchange Act Rules 13e-4(i)(2)(ii) and 14d-1(d)(2)(ii).

¹⁶⁶ Letter from ABA.

We note that the rule change permitting U.S. investors to participate in a non-U.S. offer conducted under the Tier II exemptions does not require them to do so. Under our revised rules, as was the case before today's amendments, any U.S. holder who prefers to tender into the U.S. offer in a multiple offer under Tier II is free to do so.

3. Termination of withdrawal rights while counting tendered securities

We are adopting as proposed the rule revisions permitting a bidder in a cross-border tender offer conducted under Tier II to suspend withdrawal rights during the counting of tendered securities and until those securities are accepted for payment.¹⁶⁷ Rule 13e-4(f)(2)(ii) and Section 14(d)(5) of the Exchange Act require bidders to provide "back-end" withdrawal rights if tendered securities have not been accepted for payment within a certain date after the commencement of a tender offer.¹⁶⁸ Acceptance of securities tendered terminates the back-end withdrawal rights mandated by Rule 13e-4 and the Exchange Act.¹⁶⁹

The requirement to provide back-end withdrawal rights creates problems in cross-border tender offers not generally present in U.S. offers. Differences in the tender, acceptance and payment procedures between U.S. and foreign offers necessitate this relief. The manner in which securities are tendered and centralized for counting in U.S.

¹⁶⁷ See new Exchange Act Rules 13e-4(f)(2)(v) and 14d-1(d)(2)(viii).

¹⁶⁸ For issuer tender offers subject to Rule 13e-4, tendering security holders must be able to withdraw tendered securities after the expiration of 40 business days from the commencement of the tender offer. Exchange Act Rule 13e-4(f)(2)(ii) [17 CFR 240.13e-4(f)(2)(ii)]. For third-party tender offers, Section 14(d)(5) of the Exchange Act states that withdrawal rights exist "at any time after sixty days from the date of [commencement] of the original tender offer...."

¹⁶⁹ Exchange Act Rule 13e-4(f)(2)(ii) states that back-end withdrawal rights arise upon the 41st day after commencement of an offer "if [tendered securities are] not yet accepted for payment." We interpret the back-end withdrawal rights provisions in Section 14(d)(5) of the Exchange Act to terminate upon acceptance of tendered securities.

tender offers typically enable bidders to accept tendered securities almost immediately after the expiration of the initial offering period, thereby terminating back-end withdrawal rights. However, because of differences in the manner in which securities are tendered in many non-U.S. jurisdictions, the centralization and counting of tendered securities can take longer than in the United States.¹⁷⁰ This makes it more likely that back-end withdrawal rights will exist during the counting process in a cross-border tender offer, thereby complicating the counting and payment procedure.

As a result of these difficulties, bidders have sought relief from the application of the back-end withdrawal rights provided under our rules in connection with cross-border tender offers.¹⁷¹ We have recognized that the mechanics of the tendering and counting regimes in other countries justifies different treatment under our rules,¹⁷² and for the same reasons, we believe it is appropriate to provide an exemption in this area. Under the rule revisions we are adopting, back-end withdrawal rights may be suspended after the expiration of an offer while tendered securities are being counted in a cross-border tender offer conducted under Tier II, so long as:

- the bidder has provided an offer period (including withdrawal rights) of at least 20 U.S. business days;¹⁷³

¹⁷⁰ For a description of the counting and centralization process in several European jurisdictions, see Business Objects S.A. (December 5, 2007) and Vodafone AirTouch PLC (December 22, 1999).

¹⁷¹ See, e.g., Barclays PLC tender offer for ABN AMRO Holding N.V. (August 7, 2007) (“Barclays”); Endesa, S.A. (July 3, 2007); and Portugal Telecom.

¹⁷² See Exchange Act Rules 13e-4(i)(2)(iv) and 14d-1(d)(iv) [17 CFR 240.13e-4(i)(2)(iv) and 240.14d-1(d)(iv)]. As a result of the differences in process between the U.S. and various foreign jurisdictions, Tier II currently includes prompt payment relief to allow a bidder meeting the conditions of that exemption to pay for tendered securities in accordance with home country law or practice.

¹⁷³ New Exchange Act Rules 13e-4(f)(2)(v)(A) and 14d-1(d)(2)(viii)(A).

- at the time withdrawal rights are suspended, all offer conditions other than the minimum acceptance condition have been satisfied or waived,¹⁷⁴ and
- back-end withdrawal rights are suspended only until tendered securities are counted and are reinstated immediately after that process, to the extent they are not terminated by the acceptance of tendered securities.¹⁷⁵

Under the rules before today's amendments, back-end withdrawal rights were suspended between the end of an initial offering period and the commencement of a subsequent offering period.¹⁷⁶ We believe the rule change we adopt today is necessary because not every tender offer includes a subsequent offering period. For example, subsequent offering periods are not permitted in issuer tender offers or in third-party offers for less than all of the securities of the target class.¹⁷⁷ A subsequent offering period in a third-party tender offer for all outstanding target securities is at the option of the bidder and is not required under U.S. rules. The rule change we adopt today also operates to suspend back-end withdrawal rights that may exist after the expiration of a subsequent offering period, to the extent the bidder meets the conditions outlined in our rules.

¹⁷⁴ For reasons discussed above, the bidder in a cross-border tender offer may not know at the expiration of the offer whether the minimum tender condition has been satisfied, and the amended rules recognize this issue. See new Exchange Act Rules 13e-4(f)(2)(v)(B) and 14d-1(d)(2)(viii)(B). However, because the tenders of securities must occur before the expiration, even where the counting process occurs after the end of the offer, we view a minimum tender condition as being satisfied at or before expiration, consistent with our view that all non-regulatory conditions must be satisfied or waived as of that date. See footnote 151 in the Proposing Release. Note that the only conditions that may survive the expiration of the initial offering period are regulatory approvals necessary to consummate the tender offer.

¹⁷⁵ New Exchange Act Rules 13e-4(f)(2)(v)(C) and 14d-1(d)(2)(viii)(C).

¹⁷⁶ Exchange Act Rule 14d-1(d)(2)(v) [17 CFR 240.14d-1(d)(2)(v)].

¹⁷⁷ Exchange Act Rule 14d-11(b) [17 CFR 240.14d-11(b)].

The rule changes we adopt today are not intended to eliminate back-end withdrawal rights where a regulatory condition remains outstanding after the expiration of the offer period. Where a lengthy regulatory review process survives the expiration of a tender offer, the back-end withdrawal rights provided under our rules provide an important safeguard for tendering security holders.

Commenters generally supported the proposed changes to Tier II, including this one. One commenter noted that this relief is helpful even where no subsequent offering period is provided, and agreed that the requirement that all offer conditions must be satisfied at the time withdrawal rights are suspended is in the best interests of security holders.¹⁷⁸ Otherwise, security holders could face a prolonged period during which they could not withdraw and would not have received payment for tendered securities.¹⁷⁹ One commenter suggested that we also permit suspension of back-end withdrawal rights while a financing condition remains outstanding at the time withdrawal rights are suspended.¹⁸⁰ The commenter noted that the financing for an offer may be contingent on the satisfaction or waiver of the minimum acceptance condition. At this time, we are not extending the rule to permit the suspension of back-end withdrawal rights while an offer condition, other than a minimum acceptance condition, remains outstanding. As noted above, in our

¹⁷⁸ Letter from ABA.

¹⁷⁹ These provisions allow tendering security holders to withdraw their tendered securities after a certain period of time. Certain regulatory approval processes, such as anti-trust approvals, may be lengthy and back-end withdrawal rights may provide an important safeguard in such cases. See generally, ProSiebenSat.1 Media AG (January 30, 2007) (in granting no-action relief from the prompt payment requirements of Exchange Act Rule 14e-1(c) where a regulatory condition was expected to survive the expiration of a tender offer, the staff explicitly noted that tendering target holders would have withdrawal rights through the date of receipt of such regulatory approvals). Consideration will be given to requests for relief under those circumstances only where a compelling reason exists.

¹⁸⁰ Letter from STB.

view, only conditions for regulatory approvals necessary to the consummation of the offer may survive its expiration.¹⁸¹

4. Subsequent offering period changes

a. Maximum time limit on subsequent offering period eliminated

Based on our experience with foreign rules permitting the use of a subsequent offering period, we revised our rules in 1999 to permit the use of this offer structure in domestic tender offers.¹⁸² Current rules permit a third-party bidder in a tender offer for all of the subject class of securities to include a subsequent offering period during which securities may be tendered and purchased on a rolling or "as tendered" basis if certain conditions are met.¹⁸³ We adopted the subsequent offering period because we believe it benefits target security holders who may want to tender into an offer once the offer is unconditional and will be consummated; once an offer for all outstanding securities is certain to be consummated successfully because all offer conditions have been satisfied or waived, the opportunity to tender into a subsequent offering period and to be paid quickly allows remaining target security holders to be paid before a back-end merger or other second-step transaction.¹⁸⁴ The subsequent offering period also may facilitate a

¹⁸¹ See footnote 174 above and footnote 151 in the Proposing Release.

¹⁸² Regulation of Takeovers and Security Holder Communications, Release No. 33-7760 (October 22, 1999) [64 FR 61408] ("Regulation M-A Adopting Release").

¹⁸³ Exchange Act Rule 14d-11 permits the use of a subsequent offering period in an offer for all securities of the class that is the subject of the tender offer. If the bidder is offering security holders a choice of different forms of consideration, there may be no ceiling on any form of consideration offered. Subsequent offering periods are not permitted for issuer tender offers.

¹⁸⁴ See Regulation M-A Adopting Release, Section II.G.1.

bidder's efforts to reach the thresholds necessary to effect a short-form or "squeeze-out" merger at the levels set by the laws of the relevant jurisdiction.¹⁸⁵

In practice, however, U.S. rules on subsequent offering periods have been a source of conflict with foreign regulations in the context of cross-border tender offers. A conflict often arises because Rule 14d-11 imposes a maximum time limit of 20 U.S. business days on the length of subsequent offering period.¹⁸⁶ Subsequent offering periods of significantly longer duration are common under law or practice in many foreign jurisdictions.¹⁸⁷ To address the conflict, today we are eliminating the maximum time limit on the length of a subsequent offering period in both foreign and domestic tender offers.

As proposed, this rule change would have applied only to Tier II cross-border tender offers. We also solicited comment on whether we should eliminate the 20-business day time limit as to domestic offers. Because we believe the flexibility to

¹⁸⁵ Id.

¹⁸⁶ Another source of conflict is the minimum extension periods set forth in Exchange Act Rules 13e-4(e)(3) and 14d-4(d)(2) [17 CFR 240.13e-4(e)(3) and 240.14d-4(d)(2)]. These rules require an offer to remain open from the date that material changes to the offer materials are disseminated to security holders, as follows: (i) five business days for a prospectus supplement containing a material change other than price or share levels; (ii) 10 business days for a prospectus supplement containing a change in price, the amount of securities sought, the dealer's soliciting fee, or other similarly significant change; (iii) 10 business days for a prospectus supplement included as part of a post-effective amendment; and (iv) 20 business days for a revised prospectus when the initial prospectus was materially deficient.

¹⁸⁷ See RWE Aktiengesellschaft (March 22, 2002) ("RWE") (noting that subsequent offering periods lasting significantly longer than 20 business days are the custom in Great Britain and are permitted under The City Code on Takeovers); Serono S.A. (noting that French law does not set a maximum for the number of days in a subsequent offering and requesting relief for a 30 trading day subsequent offering period, with immediate acceptance of tendered shares on an "as tendered" basis); Rio Tinto plc (July 24, 2007) ("Rio Tinto") (noting that Canadian law sets no maximum period for subsequent offering periods); STATs ChipPAC Ltd. (March 15, 2007) ("STATs ChipPAC") (relief for a subsequent offering period of up to four months from the commencement date); and Harmony Gold 2004 (requesting relief for a subsequent offering of longer than 20 U.S. business days, as permitted under South African law and as is customary market practice in that jurisdiction).

conduct a longer subsequent offering period will be beneficial to bidders and target security holders in U.S. offers as well, we are making this change to our tender offer rules generally.¹⁸⁸ We believe that as a practical matter, eliminating the limit on the time period for a subsequent offering period will benefit target security holders who choose not to tender into an initial offering period. The elimination of the 20-business day time limit will allow security holders more time to tender during the subsequent offering period. Tendering holders will be paid more quickly, thereby avoiding the lengthy process that may be associated with a squeeze-out process. We do not believe that the elimination of this limit will have any negative effects on security holders. Security holders tendering during a subsequent offering period will continue to be protected by the prompt payment provisions, as modified today in the case of Tier II offers, in the event that a subsequent offering is conducted over an extended period of time.¹⁸⁹

Five commenters specifically supported our proposal to eliminate the time limit on the length of the subsequent offering period.¹⁹⁰ Three supported making corresponding changes to the rules applicable to domestic tender offers, as we are doing today.¹⁹¹ One commenter advocated the elimination of the 20-business day limit on the length of the subsequent offering period but expressed support for retaining the minimum three-business day period in our current rules.¹⁹² We did not propose to eliminate the

¹⁸⁸ See amended Exchange Act Rule 14d-11.

¹⁸⁹ See Exchange Act Rule 14d-11(e) [17 CFR 240.14d-11(e)] and amended Exchange Act Rule 14d-1(d)(2)(iv).

¹⁹⁰ See letters from ABA, Cleary, Cravath, Linklaters, and S&C.

¹⁹¹ See letters from ABA, Cleary, and Cravath.

¹⁹² Letter from ABA and Exchange Act Rule 14d-11.

requirement that the subsequent offering period be at least three business days long, and we are not doing so today.¹⁹³ We believe the minimum time period is necessary to give remaining target security holders a meaningful opportunity to exercise the right to tender during this period.

b. Prompt payment of securities tendered during the subsequent offering period

We are adopting a modification of the proposed changes to the payment process for securities tendered during the subsequent offering period in a Tier II cross-border tender offer.¹⁹⁴ U.S. rules mandate that securities tendered during a subsequent offering period must be paid for as soon as they are tendered, on a “rolling” basis.¹⁹⁵ Our revised rules will allow a bidder in a cross-border tender offer conducted pursuant to the Tier II exemptions to “bundle” and pay for securities tendered in the subsequent offering period within 20 business days of the date of tender. For purposes of this rule provision only, a business day will be determined by reference to the relevant foreign jurisdiction; this will provide greater flexibility for bidders, because foreign and U.S. holidays may vary.¹⁹⁶

The requirement to pay for securities tendered during the subsequent offering period on a rolling basis exists because security holders cannot withdraw securities tendered in that period. Therefore, because the tender offer is no longer subject to any

¹⁹³ Exchange Act Rule 14d-11.

¹⁹⁴ See amended Exchange Act Rule 14d-1(d)(2)(iv).

¹⁹⁵ See Exchange Act Rule 14d-11(e). [17 CFR 240.14d-11(e)].

¹⁹⁶ See amended Exchange Act Rule 14d-1(d)(2)(iv). By not defining business day in accordance with the U.S. calendar, we believe this rule modification will be more useful because U.S. and non-U.S. holidays will vary.

conditions,¹⁹⁷ it is appropriate for tendering security holders to be paid immediately upon tender.

In a cross-border tender offer, foreign rules or practice often dictate payment practices during the subsequent offering period that conflict with U.S. rules. For example, foreign law may require securities tendered during the subsequent offering period to be paid for within a certain number of days after the expiration of the subsequent offering period¹⁹⁸ or may require “bundling” of securities and payment on specified periodic take-up dates.¹⁹⁹ In the past, bidders have been granted relief to accommodate conflicts between U.S. rules and non-U.S. law or practice with respect to payment practices during the subsequent offering period.²⁰⁰

This revised rule we adopt today is slightly modified from the proposal in order to provide expanded flexibility to avoid conflicts between U.S. and non-U.S. law and practice and to address concerns raised by commenters that the proposal did not go far enough in this regard. We initially proposed to require payment for securities tendered during the subsequent offering period to be made within 14 business days, but solicited

¹⁹⁷ A subsequent offering period may commence only when all offer conditions have been satisfied or waived. See Exchange Act Rule 14d-11(c) [17 CFR 240.14d-11(c)].

¹⁹⁸ This is the practice in the Netherlands and France, for example. See Barclays and Aventis (June 10, 2004).

¹⁹⁹ For example, under Canadian law, tendered securities must be taken up and paid for within ten calendar days of tender.

²⁰⁰ See Barclays (relief granted to permit payment for securities tendered in the subsequent offering period within five Dutch trading days after the end of that period); Rio Tinto (shares tendered during a subsequent offering period may be taken up and paid for within ten calendar days of the date of tender, in accordance with Canadian law); and Aventis (relief granted to permit payment for securities tendered into a French offer to be made within 12-18 French trading days after the expiration of that period).

comment on whether a shorter or longer period would be appropriate.²⁰¹ As adopted, we are allowing bidders 20 business days to effect payment. The change to 20 business days was requested by one commenter.²⁰² We believe that allowing 20 business days to effect payment should be sufficient in most jurisdictions, and increasing the payment period to 20 business days, rather than 14 business day as proposed, will not be detrimental to investors.

Several other commenters expressed support for allowing bidders to pay for securities tendered during the subsequent offering period in accordance with the target's home country law or practice, rather than fixing a set payment date, as proposed.²⁰³ We are not adopting this change. Because we are eliminating the maximum time period for the subsequent offering period, we believe that maintaining a time limit for payment is appropriate and in the best interests of U.S. investors. Without a time limit for payment, investors tendering securities in the subsequent offering period may face an indefinite waiting period for payment of their tendered securities. Maintaining a time limit is particularly important because target security holders who tender during the subsequent offering period do not have withdrawal rights.²⁰⁴

The rule change we adopt is intended to set a minimum standard for payment for securities tendered during a subsequent offering period. Where local law mandates and local practice permits payment on a more expedited basis, payment must be made more

²⁰¹ See Proposing Release, Section II.C.4.a.

²⁰² See letter from Linklaters.

²⁰³ See letters from ABA, Shearman, and S&C.

²⁰⁴ See note to Exchange Act Rule 14d-11.

quickly than 20 business days from the date of tender to satisfy U.S. prompt payment requirements.²⁰⁵

Although, as noted in the previous section, we are eliminating the limits on the length of the subsequent offering period for domestic as well as cross-border tender offers, we are not adopting corresponding changes to permitted payment practice during the subsequent offering period for domestic offers.²⁰⁶ The changes in permitted payment practice for Tier II cross-border tender offers are necessitated by direct conflicts between U.S. and foreign law and practice; no such conflicts exist for U.S. offers. Moreover, because withdrawal rights are not provided during a subsequent offering period, we believe that in domestic offers where there is no impediment to doing so, it is appropriate to continue to require payment to be made on an as tendered basis.

c. Payment of interest on securities tendered during the subsequent offering period

We are adopting as proposed a rule change permitting bidders in Tier II cross-border tender offers to pay interest on securities tendered during a subsequent offering period, where required under foreign law.²⁰⁷ In some foreign jurisdictions, bidders are legally obligated to pay interest on securities tendered during a subsequent offering

²⁰⁵ The language of amended Exchange Act Rule 14d-1(d)(2)(iv) states "[w]here payment may not be made on a more expedited basis under home jurisdiction law or practice...."

²⁰⁶ See Exchange Act Rule 14d-1(d)(2) [17 CFR 240.14d-1(d)(2)] and Section II.C.4.a. of this release.

²⁰⁷ New Exchange Act Rule 14d-1(d)(2)(vi).

period at a rate set by law.²⁰⁸ Sometimes interest accrues from the actual date of tender; in other jurisdictions, interest accrues from a date certain unrelated to the date of tender.²⁰⁹

Without the rule change we adopt today, paying interest on securities tendered during a subsequent offering period would violate U.S. rules, which mandate that security holders who tender into a subsequent offering period must receive the same consideration as those that tender during the initial offering period.²¹⁰ Because of this prohibition, bidders have requested and received exemptive relief to address the direct conflict of law presented, where foreign law in the relevant jurisdiction requires the payment of interest on securities tendered but U.S. law prohibits it.²¹¹ The rule changes we adopt today codify this relief for Tier II tender offers.

We note that the rule change we adopt today applies only where the payment of interest is mandated by the law of the relevant foreign jurisdiction applicable to the offer. It is not intended to allow bidders to pay more in the subsequent offering period simply as an inducement to tendering.²¹² We believe the general requirement that bidders make the

²⁰⁸ Germany and Brazil are two such foreign jurisdictions. For example, in Brazil, bidders must pay interest at a statutory rate on securities "put" to the bidder after the termination of a successful voluntary offer. We consider such a put right to be a tender offer or to constitute the subsequent offering period in a voluntary offer. See the description of this feature of Brazilian law in Embratel Participacoes S.A. (December 6, 2006) ("Embratel") and Telemar Participacoes S.A. (October 9, 2007) ("Telemar"). See also, Bayer AG (September 26, 2006) ("Bayer") (describing a similar requirement under German law).

²⁰⁹ Id.

²¹⁰ Exchange Act Rules 14d-10 and 14d-11(f) [17 CFR 240.14d-11(f)].

²¹¹ See, e.g., Telemar, Embratel, and Blackstone Entities (December 16, 2004).

²¹² One commenter argued that voluntary interest payments should be permitted. See letter from ABA. However, we believe that the general purposes for which we permit the use of a subsequent offering period are not consistent with the payment of offer consideration different than that provided during the initial offering period, unless specifically required by home country law.

same amount and form of consideration in the initial and subsequent offering periods serves an important function to eliminate any coercion of target security holders, and should be maintained unless it is inconsistent with an express requirement of applicable foreign law.

We have not limited the amount of interest that may be paid on securities tendered during the subsequent offering period. In our experience, the rate of interest set by foreign law generally results in a de minimis payment, but we have not conditioned the application of the revised exemption on the amount of the interest payment. Only one commenter responded to our question regarding whether we should limit the amount of interest that may be paid on securities tendered during the subsequent offering period. That commenter supported our approach of not setting a limit, on the grounds that interest payments would not have a coercive effect under the circumstances where they are permitted by our revised rules.²¹³

Our rule change does not permit the payment of interest on securities tendered during the initial offering period. The only commenter who addressed this question indicated that we should permit interest payments on securities tendered during an initial offering period, where such interest payments are required under home country law.²¹⁴ However, this is not an area where relief is frequently requested, so we do not believe a

²¹³ See letter from ABA.

²¹⁴ See letter from Cravath.

rule change is appropriate at this time.²¹⁵ Consideration will be given to requests for relief in connection with individual cross-border transactions, if local law requires the payment of interest on securities tendered during an initial offering period.

d. Mix and match offers and the initial and subsequent offering periods

We proposed changes to our rules, which we adopt as proposed, to facilitate so-called "mix and match" cross-border tender offers. We view these changes as necessary and appropriate to facilitate the prompt payment for securities tendered during these offer periods, and to permit the use of the mix and match offer structure generally. In a mix and match offer, bidders offer a set mix of cash and securities in exchange for each target security, but permit tendering holders to request a different proportion of cash or securities. These elections by tendering holders are satisfied to the extent that other tendering security holders make offsetting elections for the opposite proportion of cash and securities, subject to a maximum amount of cash or securities that the bidder is willing to issue.²¹⁶

U.S. rules prohibit several features characteristic of mix and match offers. Under U.S. subsequent offering period rules, a bidder must offer the same form and amount of consideration to security holders who tender into both the initial and subsequent offering

²¹⁵ To our knowledge, the staff has never been asked to provide no-action or exemptive relief to permit the payment of interest on securities tendered during an initial offering period. This may be, as one commenter posited, because tendering security holders often have withdrawal rights during an initial offering period, so they may not be deemed to have sold their shares until those rights terminate at the end of the initial offering period. See letter from ABA.

²¹⁶ For a discussion of the mechanics of a mix and match cross-border tender offer, see, e.g., Barclays and Alcan.

periods.²¹⁷ Further, a bidder may not impose a ceiling on any form of alternate consideration offered during the subsequent offering period.²¹⁸

Because of the prompt payment and other requirements of U.S. rules and the requirements of foreign law or practice in cross-border offers, bidders in mix and match offers often request relief to use two different proration and offset pools in their offers: one for securities tendered during the initial offering period and another for those tendered in the subsequent offering period.²¹⁹ The rule revisions we adopt today expressly permit the use of separate offset "pools" for securities tendered during the initial and subsequent offering periods for cross-border tender offers conducted under Tier II.²²⁰ This rule change is necessary because of the U.S. prohibition on the payment of different consideration in the initial and subsequent offering periods.²²¹ New Rule 14d-1(d)(2)(viii) also eliminates the prohibition on a ceiling for the form of consideration in a mix and match cross-border offer under Tier II, where target security holders are able to elect to receive alternate forms of consideration in the offer. Applicable foreign rules generally require the bidder to promptly take up and pay for securities tendered during the initial offering period at the end of that period.²²² In a mix and match offer where the bidder allows tendering security holders to make offsetting elections of cash and bidder

²¹⁷ Exchange Act Rule 14d-11(f).

²¹⁸ Exchange Act Rule 14d-11(b).

²¹⁹ See Barclays and SERENA Software Inc. (April 13, 2004)(setting a cap on the number of bidder shares and cash that would be issued in a mix and match election, with elections for more cash or shares being offset against one another).

²²⁰ New Exchange Act Rule 14d-1(d)(2)(viii).

²²¹ See Exchange Act Rule 14d-11(f).

²²² See, e.g., Germany and the United Kingdom.

securities, the bidder must set the offset or proration "pool" at the end of the initial offering period for the securities tendered during that period, in order to begin the payment process for those securities. Similarly, the bidder must count and offset against each other all securities tendered during the subsequent offering period.

We solicited comment about whether these changes should be extended to tender offers for U.S. target companies. Two commenters argued that these changes should apply to all tender offers, including offers for domestic targets, on the grounds that an acquiror for a U.S. target can accomplish the same result by entering into a merger agreement that provides target security holders with the same elections.²²³ We are not extending these rule changes to tender offers for domestic issuers at this time. U.S. law already permits acquirors to structure business combination transactions in a manner that achieves the same result as the mix and match tender offer structure through the use of the merger structure. We have not received requests for relief in this area in connection with tender offers for U.S. targets; therefore, at this time, we do not believe there is a compelling reason to change our rules to provide this accommodation for U.S. offers.

5. Terminating withdrawal rights immediately after reducing or waiving a minimum acceptance condition

We are reaffirming the interpretive position we expressed in the Proposing Release, with some further modifications, with respect to a bidder's ability in a cross-border tender offer conducted under Tier II to waive or reduce a minimum acceptance condition without providing withdrawal rights. Under U.S. tender offer rules, bidders must ensure that a tender offer remains open and includes withdrawal rights for a

²²³ See letters from ABA and Cleary.

prescribed period after a material change in the terms of the offer.²²⁴ Generally, waiving or reducing the minimum acceptance condition is considered a material change in the terms of the offer that triggers this requirement. A statement in the initial offer materials advising target security holders that the minimum acceptance condition may be reduced or waived is not sufficient to avoid the obligation to inform target security holders of this development if it actually occurs. Such a statement also is not sufficient to avoid the obligation to extend the offering period where required to satisfy the minimum time periods set forth in our rules.²²⁵

The requirement to provide withdrawal rights after a reduction in, or waiver of, a minimum acceptance condition under U.S. rules conflicts with law or practice in certain foreign jurisdictions. The conflicts with U.K. law and practice were the primary basis for the adoption of our original interpretive position when the cross-border exemptions were adopted in 1999.²²⁶ Since that time, we have encountered other foreign jurisdictions with conflicting law or practice regarding the need or the ability of a bidder to provide withdrawal rights after reducing or waiving a minimum acceptance condition in a tender

²²⁴ Exchange Act Rules 13e-4(e)(3) and 14d-4(d). The Commission has expressed the position that the minimum extension periods set forth in those rules apply as general guidelines applicable to all tender offers, including those that are not subject to Rule 13e-4 or Regulation 14D. See footnote 186 above and the discussion in Regulation M-A Adopting Release, Section II.E.2. See also Exchange Act Rule 14e-1(b) [17 CFR 240.14e-1(b)], which states that a tender offer must remain open for a minimum of 10 business days after a change in the consideration offered, the amount of securities sought, or the dealer's soliciting fee.

²²⁵ A bidder must announce that it may reduce or waive the minimum condition at least five business days before it reduces or waives it. See footnote 186 and the 1999 Cross-Border Adopting Release, Section II.B.

²²⁶ See 1998 Cross-Border Proposing Release, Section II.C.2.f.

offer.²²⁷ Because of these conflicts, we believe the basic premise for our interpretive position of permitting flexibility for bidders in Tier II cross-border tender offers to waive or reduce a minimum tender condition without providing withdrawal rights remains valid. As noted in the Proposing Release, however, additional conditions are necessary to assure that the guidance is used for the purposes for which it was originally granted.²²⁸

We will not object if a bidder in a cross-border tender offer satisfying the requirements of Tier II waives or reduces the minimum acceptance condition in the offer without providing withdrawal rights after the reduction or waiver (except where an extension is required under Exchange Act Rule 14e-1),²²⁹ under the following conditions:

- The bidder must announce that it may waive or reduce the minimum acceptance condition at least five business days before the actual waiver or reduction,²³⁰
- The bidder must disseminate the announcement through a press release and other methods reasonably calculated to inform U.S. holders of the possibility of a waiver or reduction, which may include placing an advertisement in a newspaper of national circulation in the United States;²³¹

²²⁷ For example, Netherlands law and practice allows a bidder to reduce or waive a minimum acceptance condition at or after the end of the initial offering period without providing tendering holders with the ability to withdraw their securities after the reduction or waiver. See, e.g., Barclays.

²²⁸ See Proposing Release, Section II.C.5.

²²⁹ Our position on reduction or waiver was never intended to allow a bidder to terminate withdrawal rights required under a mandatory extension of the offer period, i.e., an extension required under Rule 14e-1. See 1999 Cross-Border Adopting Release, Section II.B. We maintain this limitation today in modifying the position.

²³⁰ As noted above, a statement in the initial offering materials will not satisfy this condition.

²³¹ This announcement should be filed on EDGAR, as is generally the practice today.

- The press release must state the exact percentage to which the minimum acceptance condition may be reduced (or if it will be waived, rather than reduced). The bidder must announce its actual intentions regarding waiver or reduction as soon as required under home country rules;
- During the five-day period after the announcement of a possible waiver or reduction, withdrawal rights must be provided;
- The announcement must advise security holders to withdraw tendered securities immediately if their willingness to tender into the offer would be affected by the reduction or waiver of the minimum acceptance condition;
- The procedure for waiving or reducing the minimum acceptance conditions must be described in the offering materials;
- The offer must remain open for at least five business days after the waiver or reduction of the minimum acceptance condition;
- All offer conditions are satisfied or waived when withdrawal rights are terminated;²³²
- The potential impact of the waiver or reduction of the minimum acceptance condition is fully discussed in the initial offering materials or any supplemental materials;²³³ and

²³² See Section II.A. Question 1 in the Third Supplement to the Division of Corporation Finance's Manual of Publicly Available Telephone Interpretations (July 2001) at <http://www.sec.gov/interps/telephone/phonesupplement3.htm>.

²³³ The staff has conditioned a bidder's ability to waive or reduce the minimum acceptance condition without providing withdrawal rights on adequately describing the potential impact of that action in the initial offer materials or in a supplement. See, e.g., Royal Bank.

- The bidder may not waive or reduce the minimum acceptance condition below the percentage required for the bidder to control the target company after the tender offer under applicable foreign law, and in any case, may not reduce or waive the minimum acceptance condition below a majority²³⁴ of the outstanding securities of the subject class.

With respect to the last bullet point above, we initially limited the guidance to apply only where the bidder would not waive or reduce the minimum acceptance condition below a simple majority.²³⁵ We solicited comment on what should be considered a "majority" for these purposes. Consistent with the feedback from one commenter,²³⁶ we have further modified the guidance to address foreign jurisdictions in which some percentage greater than a simple majority may be required to control the target company after the offer. As we modify the guidance today, it may not be relied upon unless the bidder undertakes not to waive below a simple majority, or the percentage threshold required to control the target company under applicable foreign law, if it is greater. We are aware of at least one foreign jurisdiction where a percentage greater than a simple majority is required to control the management and corporate governance of a target company.²³⁷ As discussed in the Proposing Release, in addition to

²³⁴ We consider a "majority" for these purposes to be any number greater than 50 percent of the outstanding securities of the subject class.

²³⁵ See Proposing Release, Section II.C.5.

²³⁶ See letter from ABA.

²³⁷ We have been advised that Germany is one such foreign jurisdiction. Under German law, 75 percent of a target's security holders must approve a "domination agreement" between the target and the bidder in order for the bidder to effectively exercise control of the target company after a tender offer. Therefore, unless the bidder can obtain at least 75 percent of the target's securities in the tender offer, it cannot be assured of the ability to fully integrate the target company. See, e.g., Bayer and Blackstone.

the potential need to provide alternate sets of pro forma financial statements under our existing disclosure rules,²³⁸ we believe reducing the minimum acceptance condition significantly below the level at which it is initially set may fundamentally change the nature of the transaction and the relationship between the offeror and the target company going forward. In particular, where the minimum acceptance condition changes below a majority of the subject class or that greater percentage needed to control the target company, security holders should be afforded withdrawal rights after the change, as the nature of their investment decision may have changed fundamentally.²³⁹

Several commenters argued that placing a newspaper advertisement in a newspaper of national circulation in the United States is unnecessary in the Internet age and unduly burdensome.²⁴⁰ While the use of a newspaper advertisement is not required under all circumstances, we believe in the tender offer context, newsprint media remain an important means of communicating with security holders, and in particular, "back office" personnel at many financial institutions. Although we continue to believe that in most instances today, a newspaper advertisement is an appropriate method of dissemination reasonably calculated to inform U.S. holders, we recognize that as practice changes, and Internet and other means of communication evolve, a newspaper advertisement may in the future become unnecessary.²⁴¹

²³⁸ See Item 5 of Forms S-4 and F-4 and Rule 11-02(b)(8) of Regulation S-X [17 CFR 210.11-02(b)(8)]. Rule 11-02(b)(8) mandates that where a transaction is structured in such a way that significantly different results may occur, additional pro forma presentation must be provided which give effect to the range of possible results.

²³⁹ See Proposing Release, Section II.C.5.

²⁴⁰ See letters from ABA and Cravath.

²⁴¹ Cf. Commission Guidance on the Use of Company Web Sites, Release No. 34-58288 (August 1, 2008).

One of the commenters advocated eliminating the requirement to provide five days notice of a possible waiver or reduction.²⁴² We believe that advance notice of a possible waiver or reduction serves an important function in warning target security holders who may wish to withdraw their tendered securities immediately if their tender decision would be impacted by a change in the minimum acceptance condition. Therefore, we are retaining this condition. Another commenter advocated expanding the ability to waive or reduce a minimum acceptance condition without providing withdrawal rights to the waiver of a financing condition, arguing that this renders the successful completion of the offer more likely and therefore benefits holders.²⁴³ While we do not disagree that some changes in the terms of an offer may be viewed beneficially by target holders, we continue to believe that the provisions of U.S. rules that require extension of an offer period when its terms materially change are appropriate in most instances and should be relaxed only where conflicts between U.S. and foreign law or practice so necessitate. In our experience, bidders have not sought relief to waive a financing condition without providing withdrawal rights in cross-border tender offers. In addition, we believe that in some circumstances, the waiver of a financing condition may present risks to target holders, including those who have already tendered into the offer, because a bidder may waive the financing condition, thinking that financing is secure, when this may not turn out to be the case.

²⁴² See letter from ABA.

²⁴³ See letter from STB.

We reiterate that the ability to rely on our position, as modified above, to terminate withdrawal rights immediately after waiving or reducing a minimum acceptance condition is limited to offers that otherwise satisfy the requirements of the Tier II cross-border exemptions.²⁴⁴ In addition, it may be relied upon only where law or practice in the applicable foreign jurisdiction does not permit the bidder to provide withdrawal rights after the reduction or waiver, as required under U.S. law. We do not believe a bidder in a cross-border offer should be permitted to rely on this position where it is not needed under the requirements of foreign law or practice.

6. Early termination of an initial offering period or a voluntary extension of an initial offering period

Where the expiration date of a tender offer has been set by the bidder, whether in the original offer materials or in supplemental materials announcing an extension of the offer, changing that expiration date requires notice to target security holders before the initial offering period closes and withdrawal rights terminate.²⁴⁵ This extension requirement in U.S. rules conflicts with the law or practice in some foreign jurisdictions, which mandate that once all offer conditions have been satisfied or waived, the initial offering period and withdrawal rights must terminate so that the bidder may begin the

²⁴⁴ See Proposing Release, Section II.C.5.

²⁴⁵ As noted above in footnotes 186 and 224, Exchange Act Rules 13e-4(e)(3) and 14d-4(d)(2) establish minimum time periods during which an offer must remain open after notice of a material change in its terms is communicated to target holders. Although by their terms these periods apply only to early commencement exchange offers, we have stated that we view the time periods set forth in these rules as generally applicable to all tender offers, including those not subject to Rule 13e-4 or Regulation 14D. See Regulation M-A Adopting Release, Section II.E.2. See also, Exchange Act Rule 14e-1(b), which establishes comparable minimum time periods for certain kinds of material changes, such as an increase or decrease in the offer consideration or the amount of securities sought in the offer, and a change in the soliciting dealer's fees.

payment process.²⁴⁶ Generally in these foreign jurisdictions, a subsequent offering period provides a means by which remaining target holders may participate in the offer, so they are not disadvantaged by its early termination.²⁴⁷

Both before and after the adoption of the cross-border exemptions, bidders in cross-border tender offers frequently have sought additional relief from the staff to terminate the initial offering period before its scheduled expiration, thereby terminating withdrawal rights, upon the satisfaction of all offer conditions.²⁴⁸ We solicited comment on whether we should codify existing staff no-action guidance that permits a bidder in a cross-border tender offer conducted under the Tier II exemptions to terminate the initial offering period (or a voluntary extension of that period) if all offer conditions are satisfied, subject to the conditions discussed below. We received two comment letters supporting such a codification, and no objecting comments.²⁴⁹ As one commenter noted, codifying this position will facilitate cross-border tender offers because it would be consistent with law and practice in certain jurisdictions, and transaction participants would not be required to seek individual relief from the staff as is currently the case.²⁵⁰ Therefore, we are amending Exchange Act Rules 13e-4 and 14d-1(d) to codify the

²⁴⁶ We are advised that some of these jurisdictions include the United Kingdom, South Africa, Singapore and China (Hong Kong). See, e.g., RWE (U.K. practice); Harmony Gold Mining Ltd. (March 10, 2005) ("Harmony Gold 2005") (South Africa); STATs ChipPAC (Singapore); and Jilin Chemical Industrial Company Ltd. (December 21, 2005) (Hong Kong Code).

²⁴⁷ Id.

²⁴⁸ See AstraZeneca PLC (May 23, 2006); Harmony Gold 2005; and In the Matter of Central and South West Corp. (September 27, 1995).

²⁴⁹ See letters from ABA and Linklaters.

²⁵⁰ Letter from Linklaters.

guidelines set forth in existing staff guidance to permit early termination, subject to the conditions set forth below, which will be specified in the rules.

Under new Rule 14d-1(d)(2)(ix), bidders in cross-border tender offers conducted under Tier II may terminate an initial offering period, including a voluntary extension of that period, if at the time the initial offering period and withdrawal rights end:

- The initial offering period has been open for at least 20 U.S. business days and all offer conditions have been satisfied;
- The bidder has adequately discussed the possibility and the impact of the early termination in the original offer materials;
- The bidder provides a subsequent offering period after the termination of the initial offering period;
- All offer conditions are satisfied as of the time when the initial offering period ends; and
- The bidder does not terminate the initial offering period or any extension of that period during any mandatory extension required under U.S. tender offer rules.²⁵¹

We also are amending Rule 13e-4 to add a new provision, Rule 13e-4(i)(2)(vii), to allow issuers or affiliates in a Tier II issuer tender offer to early terminate the initial offering period, or voluntary extension of that period, under the same circumstances discussed above.

²⁵¹

A mandatory extension is one required because of a change in the offer consideration, the number of securities sought by the bidder in the tender offer, or in the dealer's soliciting fees. See footnotes 224 and 245 above. See also Exchange Act Rules 13e-4(e)(3), 14d-4(d)(2), and 14e-1(b).

As discussed in the Proposing Release, the position we codify today does not permit early termination upon the waiver of an offer condition.²⁵² When a bidder waives an offer condition, the terms of the offer may be fundamentally altered, such that it may influence the investment decisions of both target holders who have tendered and those who have not yet tendered. Our rules mandate that a tender offer remain open for specified time periods after a material change in the terms of an offer, which would include the waiver of a material offer condition.²⁵³ By contrast, when an offer condition is satisfied, we believe the change is less fundamental in nature, because target security holders know from the outset that the successful consummation of the offer is contingent on the occurrence or non-occurrence of the relevant event.²⁵⁴ For this reason, a bidder may not take advantage of the rules adopted here upon the waiver of an offer condition; the offer (including withdrawal rights) must be extended upon a waiver. To the extent that foreign law in a particular jurisdiction mandates that a bidder terminate an initial offering period and withdrawal rights upon the waiver of all or some offer conditions, requests for relief will be considered on a case-by-case basis.

7. Exceptions from Rule 14e-5 for Tier II cross-border tender offers

We are adopting the proposed amendments to Exchange Act Rule 14e-5, with some minor clarification and one revision. The amendments to the application of Rule 14e-5 for Tier II tender offers that we adopt today seek to modernize and enhance the

²⁵² See Proposing Release, footnote 216.

²⁵³ See Exchange Act Rules 13e-4(e)(3) and 14d-4(d)(2)(i) [17 CFR 240.14d-4(d)(2)(i)].

²⁵⁴ In our experience, foreign rules in certain jurisdictions may limit the number of offer conditions a bidder may impose and may also restrict a bidder's ability to waive those conditions. Therefore, waivers of material offer conditions may occur less frequently in cross-border offers. See, e.g., Gas Natural.

utility of the rule by codifying three class exemptive letters in the cross-border tender offer context.²⁵⁵ In our view, the codification of Rule 14e-5 exemptive class letters will simplify the procedural requirements for foreign tender offers and further promote the extension of such offers to U.S. security holders, without compromising the investor protections of the rule.

Rule 14e-5 safeguards the interests of persons who sell their securities in response to a tender offer. The rule protects investors by prohibiting an offeror from extending greater or different consideration to some security holders by offering to purchase their shares outside the offer, while other security holders are limited to the offer's terms.²⁵⁶ The rule prohibits the disparate treatment of security holders, prohibits the avoidance of proration requirements, and guards against the dangers posed by a bidder's purchases outside an offer that may involve fraud, deception and manipulation.²⁵⁷ Specifically, the rule prohibits purchasing or arranging to purchase any subject securities or any related securities except as part of the tender offer. The rule's prohibitions apply from the time of public announcement of the tender offer until the offer expires.

As amended, new Rules 14e-5(b)(11) and (b)(12) would codify class exemptive letters in three areas: purchases and arrangements to purchase securities of a foreign private issuer (1) pursuant to the non-U.S. tender offer for a cross-border tender offer where there are separate U.S. and non-U.S. offers; (2) by offerors and their affiliates

²⁵⁵ See Mittal; Cash Tender Offer by Sulzer AG for the Ordinary Shares of Bodycote International plc (March 2, 2007) ("Sulzer"); and Rule 14e-5 Relief for Certain Trading Activities of Financial Advisors (April 4, 2007) ("Financial Advisors").

²⁵⁶ 1999 Cross-Border Adopting Release, Section II.C.1.

²⁵⁷ Regulation M-A Adopting Release, Section II.G.5.

outside of a tender offer; and (3) by financial advisor's affiliates outside of a tender offer.

We received seven comment letters that specifically address the proposed amendments to Rule 14e-5.²⁵⁸ In general, commenters expressed support for the proposed codification of the three class letters. The majority of comments relate to Rule 14e-5(b)(12), the second of the two proposed rule amendments. Consequently, we are adopting proposed Rule 14e-5(b)(11) without modification. As discussed below, we are adopting proposed Rule 14e-5(b)(12), with one revision and minor clarification, in response to comments received and upon further analysis.

a. Purchases or arrangements to purchase pursuant to a foreign tender offer(s)

As previously noted, we are adopting proposed Rule 14e-5(b)(11) without modification. Commenters expressed general support for the proposal to permit purchases or arrangements to purchase pursuant to a foreign offer(s) during the Rule 14e-5 prohibited period if certain conditions are satisfied.²⁵⁹ There were no comments opposing this proposed amendment to Rule 14e-5. The exception is conditioned on the existence of specified safeguards to help protect U.S. security holders.²⁶⁰ The exception permits purchases in a foreign offer(s) made concurrently or substantially concurrently with a U.S. offer if each of the conditions of the exception are met.²⁶¹

²⁵⁸ See letters from ABA, ABCNY, Cleary, Cravath, DPW, Osler Hoskin Harcourt LLP ("Osler"), S&C.

²⁵⁹ See, e.g., letters from Cleary, Cravath, and S&C.

²⁶⁰ See Proposing Release, Section II.C.7.

²⁶¹ New Exchange Act Rule 14e-5(b)(11)(i) through (v).

b. Purchases or arrangements to purchase by an affiliate of the financial advisor and an offeror and its affiliates

We are adopting, with one revision, proposed Rule 14e-5(b)(12), which would permit purchases or arrangements to purchase outside of a Tier II tender offer by an affiliate of the financial advisor and an offeror and its affiliates if certain conditions are satisfied, including that the subject company must be a foreign private issuer, and the covered person must reasonably expect that the tender offer qualifies as Tier II. Four commenters expressed support for the proposal.²⁶² No commenters opposed codification of the Sulzer and Financial Advisors class exemptive letters. Some commenters suggested revision or clarification, as discussed below.

We proposed to exclude risk arbitrage trading from the exception applicable to purchasing activity by an affiliate of a financial advisor. We received only one comment letter in response to the request for comment in the proposal to provide information concerning other activity in addition to risk arbitrage that should be excluded from the exception as well as definitions related to risk arbitrage activity. The commenter proposed that we delete proposed paragraph (b)(12)(ii), which would exclude risk arbitrage trading by an affiliate of a financial advisor from the relief afforded to other trading activities that meet the provisions of paragraph (b)(12)(i).²⁶³ We have determined not to adopt an exclusion limited to one particular type of activity and, thus, we are removing paragraph (b)(12)(ii). The condition that purchases or arrangements to purchase cannot be made to facilitate the tender offer should continue to address abusive purchasing activity that the rule is designed to prevent. Any purchasing activity by an

²⁶² Letters from Cleary, Cravath, S&C, and Osler.

²⁶³ Letter from Cleary.

affiliate of a financial advisor, including risk arbitrage, made to facilitate the tender offer would not be eligible for the exception. Accordingly, the exception as adopted contains no risk arbitrage exclusion.

The exception is conditioned on the existence of specified safeguards to help protect U.S. security holders.²⁶⁴ As adopted, Rule 14e-5(b)(12) excepts purchases or arrangements to purchase outside of a Tier II tender offer by an affiliate of the financial advisor and an offeror and its affiliates if the conditions in the adopted rule are met.²⁶⁵

One commenter requested clarification with respect to language contained in the proposing release concerning purchases by financial advisor affiliates outside of a tender offer.²⁶⁶ Adopted Rule 14e-5(b)(12) is premised on the financial advisor's affiliate carrying out its normal business activity when purchasing outside a tender offer, and would not permit purchases or arrangements to purchase to be made to facilitate the tender offer. In order to comply with the adopted exception, the financial advisor's purchasing activities must be "consistent with the [f]inancial [a]dvisor's [a]ffiliates' normal and usual business practices, and ... not conducted for the purpose of promoting or otherwise facilitating the offer, or for the purpose of creating actual, or apparent, active trading in, or maintaining or affecting the price of, the securities of the subject company."²⁶⁷ The commenter noted a statement in the Proposing Release that purchasing

²⁶⁴ See Proposing Release, Section II.C.7.

²⁶⁵ New Exchange Act Rule 14e-5(b)(12).

²⁶⁶ Letter from Cleary.

²⁶⁷ Letter from Cleary (citing Condition 4 in the Financial Advisor letter).

activity effected in reliance on the proposed exception be consistent with the affiliate's prior levels of activity is more restrictive than previous relief granted to financial advisors. The contention is that we previously have focused on the nature of the activity, rather than the level of the activity.

We acknowledge that the barometer for what constitutes the level of normal business activity may fluctuate once there is an announcement of a tender offer. However, if the level of purchasing activity far exceeds the usual or expected level of purchasing activity following the announcement of a tender offer, this could certainly be a red flag of improper facilitation.

Four commenters opposed the condition in proposed Rule 14e-5(b)(12)(i)(G)(2) that financial advisors have an affiliate that is registered as a broker or dealer under Section 15(a) of the Exchange Act in order for such an affiliate to make purchases or arrangements to purchase outside of a tender offer in the Tier II context.²⁶⁸ In general, the commenters stated that the requirement that an affiliate of a financial advisor seeking Rule 14e-5 protection be a U.S. registered broker or dealer provides disincentives to foreign acquirors to include U.S. investors in deals. Two commenters stated that the condition favors financial institutions with U.S. affiliates over international institutions.²⁶⁹ One commenter stated that if the necessary information barriers are in place, there would be adequate protection to U.S. investors despite the absence of a U.S. broker or dealer affiliate.²⁷⁰

²⁶⁸ Letters from ABA, ABCNY, DPW, and S&C.

²⁶⁹ See letters from ABA and S&C.

²⁷⁰ Letter from ABCNY.

While we appreciate that the U.S. broker or dealer affiliate requirement for financial advisors may potentially lead to the exclusion of U.S. investors from certain transactions, we continue to believe this is a fundamental provision to safeguard the interests of U.S. investors. We believe that this requirement strikes the proper balance among the investor protection goals of Rule 14e-5 and the interest of U.S. investors in being included in tender offers.

We received a comment requesting clarification of Rule 14e-5(b)(12)(i)(C) that, "No purchases or arrangements to purchase otherwise than pursuant to the tender offer are made in the United States."²⁷¹ We note that, notwithstanding this condition, in certain circumstances covered persons may engage in such purchases or arrangements to purchase if relying on other existing exceptions from this condition or through attaining no-action relief or exemptive order from the Commission. For example, reliance on the adopted (b)(12) exception would not necessarily preclude reliance on an existing exception, such as the exception in Rule 14e-5(b)(7) for purchases pursuant to contractual obligations.

We received one comment relating to the condition in Rule 14e-5(b)(12)(i)(D) concerning the term "offering materials." The term "offering materials" refers to definitive offer materials and not earlier announcements in relation to the tender offer.²⁷²

We received one comment concerning the condition in proposed Rule 14e-5(b)(12)(i)(F) that for purchases or arrangements to purchase by an offeror and its affiliates the following condition be satisfied: tender offer prices will be increased to

²⁷¹ Letter from Cleary.

²⁷² Letter from Cravath.

match any consideration paid outside of the tender offer that is greater than the tender offer price.²⁷³ The condition to increase the offer consideration to match any higher consideration paid outside the tender offer is satisfied if the laws of the relevant home jurisdiction or the terms of the tender offer provide for matching the higher consideration and the offeror complies with such provision.

Other commenters requested codification of additional Rule 14e-5 or Regulation M relief that was not proposed, including Rule 14e-5 relief for financial institutions.²⁷⁴ Individual requests for relief will continue to be considered on a case-by-case basis for activity that does not fall within the exceptions adopted today or other existing exceptions.

In our view, today's adoption codifying the three Rule 14e-5 exemptive class letters concerning cross-border tender offers will simplify the procedural requirements for foreign tender offers and further promote the extension of such offers to U.S. security holders, without compromising the investor protections of the rule.

D. Expanded availability of early commencement

We proposed rule changes expanding the ability of a bidder to commence an exchange offer before effectiveness of the registration statement filed to register the bidder's securities.²⁷⁵ Under existing rules, the ability to "early commence" an exchange

²⁷³ Id.

²⁷⁴ See, e.g., letter from S&C (stating that financial advisor's affiliates should also be exempted from Regulation M since there are also several class letters for Regulation M that have provided exemptions but have not yet been codified). See also, letter from ABCNY.

²⁷⁵ See proposed Securities Act Rule 162(a) and proposed Exchange Act Rules 13e-4(i)(2)(vi) and 14d-1(d)(2)(x).

offer is available only when an exchange offer is subject to Rule 13e-4 or Regulation 14D.²⁷⁶ Specifically, we proposed to allow issuers and third-party bidders in cross-border exchange offers conducted under Tier II to commence the exchange offer immediately upon the filing of the registration statement filed to register the bidder's securities, even if they were not subject to those rules.²⁷⁷

In the Proposing Release, we solicited comment on whether we should similarly expand the availability of early commencement to exchange offers for domestic companies. Three commenters supported our proposal to make early commencement available for Tier II exchange offers subject only to Regulation 14E.²⁷⁸ All three also advocated making this change as to all exchange offers, including those conducted for U.S. target companies.²⁷⁹ We agree that this option should be available in exchange offers for both domestic and foreign target companies. When we adopted rule revisions permitting early commencement for exchange offers subject to Rule 13e-4 or Regulation 14D, we did so to address a disparity in the regulatory process for cash tender offers and exchange offers. Extending the early commencement option to domestic and foreign exchange offers not subject to Rule 13e-4 or Regulation 14D will further our goal of reducing the regulatory disparity. Therefore, we are amending our rules to allow all

²⁷⁶ Securities Act Rule 162(a) [17 CFR 230.162(a)].

²⁷⁷ See Proposing Release, Section II.D., proposed Securities Act Rule 162(a) and proposed Exchange Act Rules 13e-4(i)(2)(vi) and 14d-1(d)(2)(x). Because foreign law may provide that a tender offer for one class of securities will trigger an obligation to make a contemporaneous offer for a related class, this rule change could enhance the ability of such exchange offers to commence early, and therefore could enhance the speed with which such offers may be effected.

²⁷⁸ See letters from ABA, Cleary, and STB.

²⁷⁹ Id.

exchange offers, including those for domestic target companies not subject to Rule 13e-4 or Regulation 14D, to commence upon the filing of the registration statement registering the offer, under the conditions proposed.²⁸⁰ Amended Securities Act Rule 162(a) will allow early commencement for a "Regulation 14E-only" exchange offer only under the following conditions:

- the bidder provides withdrawal rights to the same extent as would be required under Rule 13e-4 and Regulation 14D;²⁸¹ and
- if there is a material change in the information provided to target security holders, the bidder must disseminate revised materials as required under Exchange Act Rules 13e-4(e)(3) and 14d-4(d) and must hold the offer open with withdrawal rights for the minimum time periods specified in those rules.²⁸²

As is currently the case with exchange offers subject to Rules 13e-4 and Regulation 14D, early commencement will be available for "Regulation 14E-only" offers so long as no securities are purchased until the registration statement is declared effective. The requirement to provide withdrawal rights generally, including after information about a material change is published, sent or given to target security holders, is a critical safeguard where an exchange offer may commence before effectiveness of the underlying registration statement. Without the ability to withdraw tendered securities, the prohibition on purchasing tendered securities before the effectiveness of the underlying registration statement would be rendered ineffective because the tender

²⁸⁰ See amended Securities Act Rule 162(a) and (b).

²⁸¹ This includes back-end withdrawal rights as well as withdrawal rights during an offer.

²⁸² In addition, see below for a discussion of prospectus delivery requirements.

decision would be irrevocable and security holders would be “locked in” to the offer.

The minimum time periods after which an offer must remain open from the time that revised information is disseminated to security holders set forth in Exchange Act Rules 13e-4(e) and 14d-4(d) are important because they allow time for security holders to consider new information.²⁸³

Our revised rules require offerors to provide withdrawal rights in early commencement offers not subject to Exchange Act Rule 13e-4 or Regulation 14D, to the same extent as would be required if the offer were subject to those provisions.²⁸⁴ We note that today we adopt a number of rule revisions that limit the need to provide withdrawal rights for Tier II cross-border tender offers, under the circumstances outlined in our revised rules.²⁸⁵ Offerors not subject to the provisions of Rule 13e-4 or Regulation 14D because, for example, the subject securities are not registered under Section 12 of the Exchange Act, will be able to rely on the revised exemptions available for Tier II cross-border tender offers, to the same extent they would be able to do so were the offer subject to Rule 13e-4 or Regulation 14D. Similarly, bidders may rely on the modified interpretive position we issue today concerning the ability to waive or reduce a minimum acceptance condition without providing withdrawal rights after the waiver or reduction

²⁸³ See discussion in footnotes 186, 225, and 245.

²⁸⁴ The offer materials disseminated to security holders should provide information about withdrawal rights and include the dates before and after which security holders may withdraw securities tendered in the offer.

²⁸⁵ See new Exchange Act Rules 13e-4(i)(2)(vii) and 14d-1(d)(2)(ix) (allowing bidders to terminate an initial offering period immediately upon satisfaction of all offer conditions). See also new Exchange Act Rules 13e-4(i)(2)(v) and 14d-1(d)(2)(vii) (permitting suspension of back-end withdrawal rights while securities are being counted).

occurs.²⁸⁶ Some of the existing cross-border exemptions also limit the need to provide withdrawal rights in certain circumstances;²⁸⁷ we do not believe that bidders in cross-border tender offers not subject to Rule 13e-4 or Regulation 14D should be precluded from relying on these exemptions when they use early commencement.

Concerns about the complex nature of the disclosure and accounting issues that may arise in business combination transactions and the need for adequate time for staff review caused us to reject automatic effectiveness of exchange offer registration statements when we initially made early commencement available in 1999.²⁸⁸ When we adopted early commencement in 1999, we recognized that early commencement alone would not be helpful in reaching our stated goal of equalizing the regulatory treatment of cash versus stock tender offers if the staff review process significantly delayed the ability of the exchange offer to close.²⁸⁹ For that reason, we committed to expediting the staff review process for exchange offers so that they can compete more effectively with cash offers.

²⁸⁶ See Section II.C.5 above.

²⁸⁷ See, e.g., Exchange Act Rule 14d-1(d)(2)(v) (providing that a bidder need not extend withdrawal rights after the close of the initial offering period and before the beginning of the subsequent offering period, notwithstanding the provisions of Section 14(d)(5) of the Exchange Act).

²⁸⁸ See Regulation M-A Adopting Release, Section II.E. The proposing release for Regulation M-A solicited comment on whether automatic effectiveness would be appropriate. Regulation of Takeovers and Security Holder Communications, Release No. 33-7607 (November 3, 1998) [63 FR 67331].

²⁸⁹ This is because of the requirement that securities tendered into an exchange offer that commences early may not be purchased before the registration statement registering the bidder's securities is declared effective. Therefore, although an exchange offer may commence upon the filing of the registration statement, the bidder cannot close the offer and purchase tendered securities until the Commission, through its staff, pursuant to delegated authority, takes the affirmative step of declaring the registration statement effective. *Id.*

The rule changes we adopt today will significantly expand the universe of exchange offers that may commence early. This could result in an increased burden on the staff to complete the review process for such offers on an expedited basis. While the staff intends to continue to afford expedited treatment for these filings, the review process may be somewhat longer in cases involving novel or unusually complex issues, such as exchange offers where the bidder is registering its initial public offering.

Current rules do not permit early commencement for specific types of exchange offers. Early commencement is not available for roll-ups and going-private transactions subject to Exchange Act Rules 13e-4 or Regulation 14D, which are subject to heightened scrutiny under our rules.²⁹⁰ We retain this limitation in our revised rule. Although our revised rules expand the types of exchange offers that may commence before the effectiveness of a registration statement, we do not extend early commencement to offers that are roll-ups or going-private transactions.²⁹¹

Today we also amend Securities Act Rule 162(b) to make it clear that the prospectus delivery requirements, including the requirement to deliver revised prospectuses and prospectus supplements contained in that provision, also will extend to offers not subject to Rule 13e-4 or Regulation 14D.²⁹² Under our revised rules as discussed above, offers not subject to Rule 13e-4 or Regulation 14D, such as those where the subject securities are not registered under Section 12 of the Exchange Act, may now commence before the filing of a registration statement, but only under the same

²⁹⁰ See Exchange Act Rules 13e-4(e)(2) and 14d-4(b) [17 CFR 240.13e-4(e)(2) and 240.14d-4(b)].

²⁹¹ See the Instruction to amended Securities Act Rule 162.

²⁹² See amended Securities Act Rule 162(b).

conditions as would offers subject to Exchange Act Rule 13e-4 or Regulation 14D. The prospectus delivery requirements set forth in Securities Act Rule 162(b) and the dissemination requirements set forth in Exchange Act Rules 13e-4(e) and 14d-4(b) are important safeguards that are designed to ensure that target security holders receive adequate information and adequate time to consider it before their investment decision becomes final. Therefore, offers such as those for unregistered securities that may now commence early under our revised rules must provide those safeguards, including the prospectus delivery requirements in amended Securities Act Rule 162(b).

E. Changes to schedules and forms

1. Form CB

An offeror or issuer relying on the Tier I cross-border exemption in connection with a cross-border business combination transaction or rights offer may be required to furnish to the Commission a Form CB, including an English translation of the offering materials. Under existing rules, only persons already filing reports with the Commission under Section 13(a) or 15(d) of the Exchange Act are required to submit Form CB electronically via the Commission's Electronic Data Gathering, Analysis and Retrieval (EDGAR) system.²⁹³ If the person furnishing the Form CB is not an Exchange Act reporting entity, the Form CB may be submitted in paper; a non-reporting person may submit a Form CB electronically but is not required to do so.²⁹⁴

²⁹³ See Rules 101(a)(1)(vi) and (vii) of Regulation S-T [17 CFR 230.101(a)(1)(vi) and 17 CFR 230.101(a)(1)(vii)].

²⁹⁴ See Rules 101(b)(7) and (8)(i) of Regulation S-T [17 CFR 230.101(b)(7) and 17 CFR 230.101(b)(8)(i)].

We proposed to amend Rule 101(a) of Regulation S-T to require that all Form CBs be submitted electronically. We also proposed to require the electronic filing of Form F-X for appointment of an agent in the United States for service of process when that Form is filed in connection with a Form CB.²⁹⁵ One commenter supported the proposed changes, but voiced concern regarding the potential deterrent effect of mandating electronic filing of these forms.²⁹⁶ This commenter expressed concern that requiring electronic submission of Form CB could present a significant hardship for some non-reporting entities that could tip the balance in favor of complete exclusion of U.S. target holders even where the Tier I cross-border exemption is available. The same commenter noted that the international perceptions of U.S. litigation risk could be compounded by the requirement to file a Form CB on EDGAR. Another commenter did not support the proposal due to the costs and practical issues involved with timely filing of Forms CB and F-X electronically, which the commenter suggested might deter bidders from including U.S. target holders in business combinations.²⁹⁷

We understand that requiring electronic submission of these forms may result in additional costs and timing concerns for foreign companies that are not otherwise

²⁹⁵ Form F-X must be filed by all foreign companies that furnish a Form CB to the Commission and in other circumstances.

²⁹⁶ Letter from ABA.

²⁹⁷ Letter from S&C.

required to file Exchange Act reports electronically with the Commission.²⁹⁸ While we understand the commenters' concerns, we do not believe that requiring the electronic submission of Form CB and the accompanying Form F-X will be a significant burden compared with other considerations that enter into the decision to include or exclude U.S. target holders, and that it will be a benefit to U.S. security holders to have electronic access to this information.²⁹⁹ Additionally, the Form CB is furnished, not filed, and therefore not subject to the liabilities of Section 18 of the Exchange Act.³⁰⁰ With regard to the concern about widespread availability on EDGAR, investors currently can see that a paper Form CB has been submitted when they view a company's filings on EDGAR, although they cannot view the actual document. They can request a copy of the submission from the public reference room. Therefore, we do not believe that requiring electronic submission of the forms will increase potential liability.

We also solicited comment on whether the cover page of Form CB should be modified so that the person submitting the form would be required to specify the level of U.S. ownership supporting reliance on the cross-border exemptions claimed. We are not adopting this change, based on commenters' concerns described in the next section.

²⁹⁸ In order to file electronically, an offeror or issuer that is not already doing so will need to obtain filing codes required to file on EDGAR. An offeror or issuer that does not already have EDGAR filing codes, and to which the Commission has not previously assigned a user identification number, which we call a "Central Index Key (CIK)" code, will obtain the codes by filing electronically a Form ID at <https://www/filermanagement.edgarfiling.sec.gov> and submitting, in paper, by fax, within two business days before or after filing the Form ID, a notarized authenticating document. The authenticating document would need to be manually signed by the applicant over the applicant's typed signature, include the information contained in the Form ID, and confirm the authenticity of the Form ID.

²⁹⁹ We note that in situations in which the electronic submission poses a significant burden, a hardship exemption is available. See Rules 201 and 202 of Regulation S-T [17 CFR 232.201 and 230.202].

³⁰⁰ 15 U.S.C. 78r.

2. Schedule TO, Form F-4 and Form S-4

As proposed, we are adopting changes to Schedule TO and Forms F-4 and S-4 to include boxes on the cover page of the forms that a filing person will be required to check to indicate reliance on one or more applicable cross-border exemptions. The only commenter that addressed this proposal supported it.³⁰¹ We believe the inclusion of this information on the cover page of a tender offer statement or registration statement, filed in connection with a cross-border transaction in which the filer is seeking to rely on an applicable cross-border exemption, will enable the staff to perform the review process more efficiently. The availability of this information will eliminate staff comments that may be based on misperceptions about which exemption the filer is seeking and which U.S. rules apply to the transaction, thereby reducing the time and cost involved for the filer in responding to staff comments. In addition, the availability of this information may expedite staff review, which ultimately will benefit both investors and offerors.

We also solicited comment on whether we should require filers to specify on the cover page of the schedule and forms the percentage of U.S. ownership permitting reliance on the cross-border exemption(s) claimed in connection with the transaction. This information would be available to the filer, because it must be calculated to determine eligibility to rely on the exemptions. Commenters did not support making such a change to the schedule and forms.³⁰² They expressed concerns that such a requirement might subject the filer to litigation risks, given the uncertainties associated

³⁰¹ Letter from ABA.

³⁰² Letters from ABA and STB.

with determining U.S. target ownership levels.³⁰³ We are mindful of these concerns and do not believe this information is critical for investors at this time. Therefore, we are not adopting this requirement.

F. Beneficial ownership reporting by foreign institutions

The beneficial ownership reporting requirements in Sections 13(d)³⁰⁴ and 13(g)³⁰⁵ of the Exchange Act and corresponding regulations³⁰⁶ provide investors and the issuer with information about accumulations of securities that may have the potential to change or influence control of the issuer. The statutory and regulatory framework establishes a comprehensive reporting system for gathering and disseminating information about the ownership of equity securities.

As discussed in the Proposing Release, the beneficial ownership reporting provisions require, subject to exceptions, that any person who acquires more than five percent of a class of equity securities registered under Section 12 of the Exchange Act and other specified equity securities report the acquisition on Schedule 13D within ten days. Persons holding more than five percent of a class of such securities at the end of the calendar year, but not required to report on Schedule 13D, must file a short-form Schedule 13G within 45 days after December 31. These Schedule 13G filers include persons exempt from the requirements of Section 13(d), as well as specified institutional investors holding securities in the ordinary course of business and not with a control purpose. As specified in Rule 13d-1(b)(1)(ii) before the changes adopted today, the types

³⁰³ Id.

³⁰⁴ 15 U.S.C. 78m(d).

³⁰⁵ 15 U.S.C. 78m(g).

³⁰⁶ Regulation 13D Exchange Act Rule 13d-1 et seq. [17 CFR 240.13d-1 et seq.].

of institutional investors that may file on Schedule 13G under that rule include a broker or dealer registered under Section 15(a) of the Exchange Act,³⁰⁷ a bank as defined in Section 3(a)(6) of the Exchange Act,³⁰⁸ an insurance company as defined in Section 3(a)(9) of the Exchange Act,³⁰⁹ an investment company registered under Section 8 of the Investment Company Act of 1940,³¹⁰ an investment adviser registered under Section 203 of the Investment Advisers Act of 1940,³¹¹ an employee benefit plan or pension fund that is subject to the provisions of the Employee Retirement Income Security Act,³¹² and related holding companies and groups.

Under the rules before today's amendment, the list of institutional investors in Rule 13d-1(b)(1)(ii) did not include non-domestic institutions generally, and was limited to institutions such as brokers, dealers, investment advisers and companies registered with the Commission, or regulated banks or insurance companies. Historically, foreign institutions that sought to use Schedule 13G as qualified institutions under Rule 13d-1(b)(1)(ii) needed to obtain an exemptive order from the Commission or, under the current practice, a no-action position from the Division of Corporation Finance. Relief was based upon the requester's undertaking to grant the Commission or the staff access to information that would otherwise be disclosed in a Schedule 13D and the comparability

³⁰⁷ 15 U.S.C. 78o(b).

³⁰⁸ 15 U.S.C. 78c(a)(6).

³⁰⁹ 15 U.S.C. 78c(a)(9).

³¹⁰ 15 U.S.C. 80a-8.

³¹¹ 15 U.S.C. 80b-3.

³¹² Codified principally in 29 U.S.C. 1001-1461.

of the foreign regulatory scheme applicable to the particular category of institutional investor.³¹³

In the Proposing Release, we proposed to amend Rule 13d-1(b)(1)(ii) to include foreign institutions that are subject to a foreign regulatory scheme substantially comparable to the regime applicable to the U.S. institutions listed in subparagraphs (A) – (J) of the current rule. As proposed, to be eligible to file on Schedule 13G, the foreign institution would be required to determine, and certify on Schedule 13G, that it is subject to a regulatory scheme substantially comparable to the regulatory scheme applicable to its U.S. counterparts. In addition to the certification on Schedule 13G, the foreign institution would be required to undertake to furnish to the Commission staff, upon request, the information it otherwise would be required to provide in a Schedule 13D.

The comment letters that addressed this proposal generally supported the amendment. One commenter requested that the Commission clarify that a foreign institution that previously had received a no-action letter regarding the ability to file on Schedule 13G qualifies as a substantially comparable regulated institution for purposes of the amended rule.³¹⁴ Another commenter requested clarification that if an institutional investor previously received no-action relief on the basis that a particular regulatory

³¹³ See, e.g., Canada Pension Plan Investment Board (May 5, 2006)(granting relief for the Canada Pension Plan (CPP) Investment Board to file on Schedule 13G where the Board represented that the Canadian Pension Plan was the functional equivalent of a U.S. private pension fund and the regulatory regime governing the CPP Investment Board was substantially similar to the regulations applicable to U.S. pension funds under the Employee Retirement Income Security Act of 1974) and Citigroup Inc. (May 27, 2004)(granting relief for certain qualifying subsidiaries of Citigroup organized under the laws of England and Wales; the subsidiaries conducted investment banking business, including market-making, through trading in their own accounts and for their customers and represented that they were subject to regulation in the United Kingdom that was comparable to U.S. regulations).

³¹⁴ Letter from Ontario Teachers' Pension Plan Board ("Teachers").

scheme was substantially comparable to the applicable regulatory scheme in the U.S., that the regulatory schemes will be deemed substantially comparable.³¹⁵ Several commenters suggested that we not adopt the requirement that foreign institutional investors undertake to provide the Commission or staff with the information that would be required in a Schedule 13D upon request.³¹⁶

We are adopting the rule revision substantially as proposed, although we are moving the text to Rule 13d-1(b)(1)(ii)(J) and moving the current provision for groups to new subsection (b)(1)(ii)(K).³¹⁷ We are also making a minor modification to the text of new Rule 13d-1(b)(1)(ii)(J) and the certification on Schedule 13G. The modification adds the word "substantially" before "comparable" in the rule text and certification, consistent with our discussion of the standard here and in the Proposing Release.³¹⁸

We do not believe that the requested clarification and elimination of the undertaking are appropriate. Our proposal to extend the ability to file on Schedule 13G to foreign institutional investors was intended to codify the no-action relief granted to certain institutions. The no-action letters issued by the staff are dependent upon the facts presented in each request, including the institution's assessment and determination that the foreign law that governs the institution is substantially comparable to the law applicable to its U.S. institutional counterparts and that it undertake to provide the

³¹⁵ Letter from Cleary.

³¹⁶ Letter from ABA, Cleary, and Teachers.

³¹⁷ We are revising the references in the group provision to include the new subsection (J). Additionally, we are revising the references in subsection (G) to include the new subsection (J).

³¹⁸ In the Proposing Release, we stated "we propose to amend Rule 13d-1(b)(1)(ii) to include foreign institutions that are substantially comparable to the U.S. institutions listed in subparagraphs (A) - (J) of the current rule." (emphasis added) The proposed rule text and certification inadvertently omitted the word "substantially."

information otherwise required by Schedule 13D upon request. Specifically, the letters state:

[t]he foregoing no-action position taken under Rule 13d-1(b)(1)(ii) is based solely upon the facts described and the representations made in your letter. In particular, we note your representations regarding the comparability of the relevant foreign laws that govern [the requesting parties and subsidiaries] and the U.S. laws governing entities of the type listed in Rule 13d-1(b)(1)(ii). We also note your undertaking to furnish upon request the information that would be required by Schedule 13D.³¹⁹

Therefore, an institution's continued reliance upon a no-action letter it received from the staff would be appropriate to the extent that the facts presented in the letter did not differ materially in the future. A foreign institutional investor relying upon a prior letter received from the staff would be responsible for assessing whether or not a subsequent filing of a Schedule 13G was in compliance with the applicable regulations and no-action letter. Nevertheless, when these institutions otherwise will be required to file an amendment to the Schedule 13G, they must provide the certification required under our revised rules in order to continue to file on that Schedule. We do not believe that the amendment, which we are adopting as proposed, changes the obligations of a foreign institutional investor that previously relied upon a no-action letter issued to it by the staff. We believe that this amendment reduces the burden upon investor by eliminating the

³¹⁹ See, e.g., Nataxis S.A., Banque Federale des Banques Populaires and Caisse National des Caisses d'Epargne (October 9, 2007).

need to submit a no-action request to the staff and providing more certainty to the investor as to the availability of Schedule 13G.

We also do not believe that the undertaking to furnish Schedule 13D information is contrary to the Section 13(d) and 13(g) reporting structure or inconsistent with the underlying policy, as asserted by two commenters.³²⁰ We believe that permitting certain foreign institutions to file on Schedule 13G in the same manner as their domestic counterparts is a significant benefit to those foreign institutions, due to the relaxed filing requirements for filing under Rule 13d-1(b)(1)(ii) as compared to Rule 13d-1(a), or even as a passive investor under Rule 13d-1(c). Therefore, we are retaining the undertaking in the certification.

We also solicited comment regarding whether the use of Schedule 13G by foreign institutions relying on the rule should be limited to institutions from jurisdictions that have a bilateral enforcement memorandum with the SEC or institutions that are signatories to the IOSCO Multilateral Memorandum of Understanding concerning consultation, cooperation, and the exchange of information. Only one commenter responded to this question, and stated that it would not object if such a limitation were imposed.³²¹ At this time, we are not so limiting the use of the new rule. We are concerned that such a requirement could unduly restrict foreign institutions' ability to rely on the new rule, and we believe that that the certification requirement provides a sufficient safeguard against the abuse of the amended rule.

³²⁰ See letters from Teachers and ABA.

³²¹ Letter from ABA.

The extension of Schedule 13G filing eligibility pursuant to Rule 13d-1(b)(1)(ii) to foreign institutions will be available only to institutions that acquire and hold the equity securities in the ordinary course of business and not with the purpose or effect of influencing or changing control of the issuer, nor in connection with or as a participant in any transaction that has such a purpose or effect, including any transaction subject to Rule 13d-3(b).³²² Similar to a domestic institution, a foreign institution will need to determine whether it is qualified to use the short-form Schedule 13G at the time it exceeds the beneficial ownership threshold. This initial determination as to form eligibility will require a foreign institution to determine, at the time it exceeds the beneficial ownership threshold, whether it is subject to a foreign regulatory scheme substantially comparable to the regulatory scheme applicable to the corresponding category of U.S. institutional investor.

If the foreign institution made such a determination, it would be eligible to file on Schedule 13G as a qualified institutional investor, as long as it could provide the certification required by Schedule 13G. If at any time before filing a Schedule 13G pursuant to new Rule 13d-1(b)(1)(ii)(J) the foreign institution determined that it was no longer able to rely on the provision, it would be required to file a Schedule 13D in accordance with the rules. Similarly, a foreign institution filing a Schedule 13G would be required to file a Schedule 13D (or a Schedule 13G if it met the requirement for filing as a passive investor) in the event that circumstances change and it determines that it is no longer eligible to rely on new Rule 13d-1(b)(1)(ii)(J). As is the case now, a foreign

³²²

See Exchange Act Rule 13d-1(b)(1)(i) [17 CFR 240.13d-1(b)(1)(i)].

institution also may rely on the passive investor provision in Rule 13d-1(c) to the extent it meets the conditions to do so and file a Schedule 13G rather than a Schedule 13D.

In response to commenters' suggestions,³²³ we also are adopting a corresponding change to Exchange Act Rule 16a-1(a)(1) to include the foreign institutions eligible to rely on Rule 13d-1(b)(1)(ii)(J).³²⁴ While we did not propose this change, it is consistent with our past practice in this area. When we adopted changes to expand the list of qualified institutional investors under Rule 13d-1(b)(1)(ii) to state and local government employee benefit plans, savings associations, and church plans, we also adopted corresponding amendments to Rule 16a-1(a)(1) to include those institutions in the list of persons that are not deemed to be the beneficial owners of securities held for the benefit of third parties.³²⁵

Rule 16a-1(a) sets forth the definition of beneficial ownership for purposes of determining who is a more than 10 percent beneficial owner for purposes of Exchange Act Section 16. Rule 16a-1(a)(1) allows the institutions identified in the rule to exclude from beneficial ownership calculations the shares they hold for the benefit of third parties or in customer or fiduciary accounts in the ordinary course of business, without the purpose or effect of changing control of the issuer, nor in connection with or as a participant in any transaction that has such a purpose or effect, including any transaction

³²³ See letters from ABA and S&C.

³²⁴ See new Exchange Act Rule 16a-1(a)(1)(x). Existing Rule 16a-1(a)(1)(x) and (xi) contain redundant provisions regarding groups. Today's rule amendment replaces the text of subsection (x) with a new provision for foreign institutions. Accordingly, we are revising the references in subsection (xi) to include subsections (i) through (x). We also are revising the reference in subsection (a)(1)(vii) to include new subsection (x).

³²⁵ See Amendments to Beneficial Ownership Reporting Requirements, Release 34-39538 (January 12, 1998).

subject to Rule 13d-3(b). Therefore, these institutions typically will not be 10 percent owners subject to Section 16(a) reporting, Section 16(b) short-swing profit recovery and Section 16(c) restrictions on short sales; however, the public will still be provided with information about their holdings through the Schedule 13G that they file.

When adopting Rule 16a-1(a)(1), the Commission noted that the rule was modeled after Rule 13d-1(b)(1)(ii).³²⁶ We note that this change also codifies a staff interpretive position stating that a foreign institution permitted to file on Schedule 13G rather than Schedule 13D pursuant to a no-action letter is not deemed, for purposes of Section 16, the beneficial owner of securities held for the benefit of third parties or in customer or fiduciary accounts.³²⁷

With respect to transitional matters, foreign institutions comparable to those listed in current Rule 13d-1(b) that are currently filing on Schedule 13G under a no-action letter from the staff may continue to do so, to the extent they continue to meet the conditions upon which the no-action relief was granted; however, as noted above, when these institutions otherwise would be required to file an amendment to the Schedule 13G, they must provide the certification required under our revised rules in order to continue to file on that Schedule. Foreign institutions that do not have no-action letters eligible to rely on the revised rule to file on Schedule 13G may do so, to the extent that the filing deadline

³²⁶ See Ownership Reports and Trading By Officers, Directors and Principal Security Holders, Release No. 34-28869 (February 8, 1991). In proposing that Rule 16a-1(a)(1) rely on the Section 13(d) definitions for determining who is a ten percent holder, we stated: "Congress, in applying Section 16 to ten percent holders, intended to reach those persons who could be presumed to have access to inside information because of their interest in the issuer's securities. Thus, in determining beneficial ownership for purposes of ascertaining who is a ten percent holder, the analysis properly should turn on the person's potential for control." See Ownership Reports and Trading By Officers, Directors and Principal Stockholders, Release No. 34-26333 (December 2, 1988).

³²⁷ CS Holding (January 16, 1992).

for the Schedule 13D they would otherwise be required to file falls after the effective date of these revised rules.

G. Interpretive Guidance

1. Foreign target security holders and U.S. all-holders requirements

Most of this release deals with cross-border business combination transactions where the target is a foreign private issuer. In this section, however, we address an issue involving the treatment of foreign target security holders in tender offers generally, including those for U.S. target companies. The issue of bidders' ability to exclude foreign target security holders is addressed here because it closely relates to the issue of the exclusion of U.S. target security holders in cross-border tender offers, which we discuss in the next section.³²⁸ As we continue to encourage our fellow international securities and takeover regulators to minimize the ability of bidders to exclude U.S. holders from business combination transactions, we recognize the need to take similar steps with regard to the ability of bidders to exclude non-U.S. holders pursuant to our rules.

In the Proposing Release, we provided guidance on the ability of bidders in tender offers for U.S. target companies to exclude foreign target holders in tender offers subject to U.S. all-holders provisions.³²⁹ As we stated previously, the all-holders provisions in

³²⁸ See Section II.G.2. below.

³²⁹ See Exchange Act Rules 13e-4(f) and 14d-10. Some tender offers are not subject to U.S. all-holders requirements, such as offers subject only to Regulation 14E because the target securities are not registered under Section 12 of the Exchange Act.

Rules 13e-4(f) and 14d-10 apply equally to U.S. as well as non-U.S. target holders.³³⁰

Tender offers subject to those requirements must be open to all target security holders, and all target holders must be treated equally.³³¹ The guidance expressed here and in the comparable section of the Proposing Release does not represent new thinking or a change in the Commission's interpretation of existing all-holders rules. Rather, it is simply an effort to remind bidders and others of the position expressed by the Commission when the all-holders rules were adopted in 1986:

- Tender offers subject to the provisions of Section 13(e) or 14(d) of the Exchange Act must be open to all target security holders, including foreign persons;³³² and

³³⁰ See All-Holders and Best-Price Adopting Release, Section III.A.2., which stated "While a tender offer subject to Sections 13(e) and 14(d) of the Williams Act must be held open to all holders of the subject class of securities, including foreign persons, Rules 14d-10(b)(1) and 13e-4(f)(9)(i) make clear that the all-holders requirement does not affect the required dissemination of tender offers. ... The Commission has not interpreted these provisions as requiring dissemination of tender offer materials outside of the United States, and the adoption of the all-holders requirement is not intended to impose any additional requirements in this regard." (emphasis added; footnotes omitted).

³³¹ The equal treatment provision of Rules 13e-4(f) and 14d-10 does not prohibit tender offers for less than all outstanding securities of a subject class, but it does require that all security holders be able to accept the tender offer if they choose.

³³² Pursuant to Exchange Act Rules 13e-4(f) and 14d-10, a bidder may not restrict the offer to target holders as of a particular record date only. See footnote 35 in All-Holders and Best Price Adopting Release. While as a practical matter, the bidder will look to beneficial holders as of a recent date in distributing the offer materials, the offer must be open to all target security holders, including those who purchase after the tender offer commences. See In the Matter of Application of WHX Corp., Exchange Act Release No. 47980 (June 4, 2003), vacated on other grounds, WHX Corp. v. SEC, 362 F.3d 854 (D.C. Cir. 2004).

Although foreign target holders may not be excluded from U.S. tender offers under these provisions, our rules do not require dissemination of offer materials outside the United States.³³³

Because this is not a new position, and generally bidders have not expressed concerns about U.S. all-holders requirements and the ability to exclude foreign target holders, it is not apparent that rule revisions are needed at this time. We note that this may be a function of the jurisdictional predicate for the application of foreign rules to tender offers for U.S. companies. Although U.S. tender offer rules are triggered by making a tender offer using U.S. jurisdictional means, foreign tender offer rules may apply under more limited circumstances, based on the target's country of incorporation or the location of a trading market for its securities.³³⁴ Thus, particularly for cash tender offers, it is not clear that allowing foreign target holders to participate in a U.S. offer generally would present significant burdens or risks for bidders, where no offer materials are distributed outside the United States.

For these reasons, we are not adopting a de minimis or other exception to U.S. all-holders provisions at this time. In special circumstances, however, requests for relief will be considered on a case-by-case basis, particularly where a bidder can demonstrate unusual facts warranting an accommodation from the all-holders provisions of

³³³ See Amendments to Tender Offer Rules: All-Holders and Best-Price, Release No. 34-23421 (July 11, 1986) [51 FR 25873] ("All-Holders and Best-Price Adopting Release"), Section III.A.2. Based on the guidance provided here, a statement that a tender offer is not being made into a particular jurisdiction is permissible where it means that tender offer materials are not being distributed into that jurisdiction. As discussed here, however, it may not mean that tenders from foreign target holders resident there will not be accepted, where an offer is subject to U.S. all-holders requirements. Statements that tenders from target security holders in certain jurisdictions will not be accepted are impermissible, for the reasons discussed above.

³³⁴ See letter from DPW.

Rules 13e-4(f) and 14d-10. For example, relief has been granted in situations where restrictions exist on the levels of securities of a company that may be held by non-U.S. persons.³³⁵ In an exchange offer where unusual facts require relaxation of U.S. all-holders principles, this may include allowing the bidder to provide a cash alternative to foreign target holders in a jurisdiction in which securities may not be issued.³³⁶ However, we believe such relief will rarely be warranted. We generally believe it is in the interests of U.S. investors to enforce U.S. equal treatment principles for the benefit of non-U.S. target security holders, particularly in light of the fact that comparable foreign all-holders requirements often protect U.S. investors by preventing their exclusion from cross-border offers.

In the Proposing Release, we solicited comment on whether any amendments to the U.S. equal treatment provisions were necessary or advisable to allow certain target security holders to be excluded from the offer. Commenters' reactions were mixed.³³⁷ For the reasons discussed above, at this time, we do not believe it is necessary to amend Rules 13e-4(f) and 14d-10 to permit exclusion of foreign target holders from U.S. tender offers. We will monitor this issue with respect to future tender offers to determine whether further Commission action is needed.

³³⁵ See Hallwood Energy Partners, LP (May 1, 1990) and Freeport-McMoran Energy Partners Ltd. (June 19, 1989).

³³⁶ See The Korea Fund (July 1, 2005) (permitting cash alternative for security holders in Japan, where a redemption offer by a fund featured in-kind distribution of the fund's securities, which would require registration in Japan for each issuer of the underlying securities).

³³⁷ Four of the commenters suggested allowing bidders in domestic tender offers to exclude foreign holders under various circumstances. See letters from ABA, ABCNY, Cleary, and Linklaters. Three commenters proposed a de minimis exception to the all-holders rules for both cash and non-cash offers. See letters from ABA, ABCNY, and DPW.

Further, as we noted in the Proposing Release, it is inappropriate for bidders to shift the burden of assuring compliance with the relevant jurisdiction's laws to target security holders by requiring them to certify that tendering their securities complies with local laws or that an exemption applies that allows such tenders without further action by the bidder to register or qualify its offer. Target security holders may not be in possession of relevant facts regarding the bidder's action and the provisions of local law in their home jurisdiction necessary to make such a determination.

2. Exclusion of U.S. target security holders from cross-border tender offers

In the Proposing Release, we provided guidance on the circumstances in which bidders in cross-border tender offers may avoid triggering U.S. tender offer and registration rules.³³⁸ The Commission previously issued interpretive guidance on this subject when the cross-border exemptions were adopted in 1999,³³⁹ and addressed issues raised by the use of the Internet in 1998.³⁴⁰ The guidance expressed here supplements the guidance previously issued in those releases. Several principles have guided the Commission when considering this issue. First, we seek to encourage bidders in cross-border business combination transactions to include U.S. holders³⁴¹ in those transactions. The amendments we adopt today expand the scope of the cross-border exemptions

³³⁸ See Proposing Release, Section II.G.2.

³³⁹ See 1999 Cross-Border Adopting Release, Section II.G.

³⁴⁰ See Statement of the Commission regarding use of Internet Web sites to offer securities, solicit securities transactions or advertise investment services offshore, Release No. 33-7516 (March 23, 1998) [63 FR 14806] ("1998 Internet Release").

³⁴¹ As noted in footnote 23, the term "U.S. holder" is defined as "any security holder resident in the United States." See amended Securities Act Rule 800(h) (although we amended other aspects of this provision, the definition of U.S. holder remains unchanged from the definition in the existing rule).

adopted in 1999. Therefore, we believe these amendments will further limit the circumstances under which bidders will exclude U.S. target holders because of conflicts between U.S. and foreign law or practice. In addition, we believe that when a bidder knowingly permits U.S. holders to participate in a cross-border offer, it must do so in compliance with U.S. rules.

While we encourage bidders to extend cross-border offers to U.S. holders, we recognize that bidders will not always do so and may have legitimate reasons for excluding U.S. holders, particularly where the percentage of target securities they hold is small. Where the subject class of securities is registered under Section 12 of the Exchange Act, and particularly where the subject securities trade on a U.S. exchange, we believe bidders should make every effort to include U.S. holders on the same terms as all other target holders. Exclusionary offers³⁴² for securities of foreign private issuers that trade on a U.S. exchange will be viewed with skepticism where the participation of those U.S. holders is necessary to meet the minimum acceptance condition in the tender offer. When purportedly exclusionary offers are made under those circumstances, we will look closely to determine whether bidders are taking reasonable measures to keep the offer out of the United States.

Where a bidder makes an exclusionary offer, we believe it must take appropriate measures to avoid the application of U.S. jurisdictional means. We identified some precautionary measures bidders may take to avoid triggering U.S. rules in prior releases. The offer materials (and the Web site where they are posted, if any) should clearly state

³⁴² By "exclusionary offer," we mean a tender offer, including an exchange offer, that excludes U.S. holders of the subject class of securities for which the offer is made.

that it is not available to U.S. holders.³⁴³ In addition, we noted that bidders in offshore tender and exchange offers can put in place measures to ensure that tenders are not accepted from, nor securities issued (in the case of an exchange offer) to, U.S. holders.³⁴⁴ These may include, in responding to inquiries and processing letters of transmittal, obtaining adequate information to identify U.S. holders.³⁴⁵ Bidders also could obtain representations from tendering holders, or persons tendering on others' behalf, that the investor(s) tendering the securities are not U.S. holders.³⁴⁶ Similarly, in disseminating the cash or securities consideration to tendering holders, special care should be taken to avoid mailing into the United States.³⁴⁷ A legend or disclaimer stating that the offer is not being made into the United States, or that the offer materials may not be distributed there, is not likely to be sufficient in itself because, if the bidder wants to support a claim that the offer has no jurisdictional connection to the United States, it also will need to take special precautions to prevent sales to or tenders from U.S. target holders.³⁴⁸

In some foreign jurisdictions, local law may prohibit the exclusion of any target security holders in a tender offer for all outstanding securities of a subject class. Such foreign all-holders requirements, like similar U.S. rules, may not require that offer

³⁴³ See 1998 Internet Release, Section III.B.

³⁴⁴ See 1999 Cross-Border Adopting Release, Section II.G.2. As noted in the Proposing Release, bidders should not avoid payments to U.S. target holders in business combinations other than tender offers, where the target company is being merged out of existence, because in these kinds of transactions, unlike in tender offers, all target securities will be acquired in a single transaction.

³⁴⁵ Id.

³⁴⁶ Id.

³⁴⁷ Id.

³⁴⁸ Id.

materials be disseminated into another jurisdiction; however, they generally provide that a bidder in a tender offer for all target securities may not reject tenders from security holders from any jurisdiction, including the United States, should those holders learn of and tender into the offer on their own initiative. Regulators in these jurisdictions may not permit contrary statements about the exclusion of U.S. target security holders in the offer materials. Where a foreign all-holders requirement does not permit a bidder to reject tenders from U.S. holders and does not permit statements that the offer may not be accepted by U.S. holders, it may not be possible for the bidder to take adequate precautionary measures to avoid U.S. jurisdictional means.³⁴⁹

We recognize that bidders may conduct offshore exclusionary offers that are not open to U.S. target holders. However, a bidder may implicate U.S. jurisdictional means if it fails to take adequate measures (whether by choice or because it is unable to do so under applicable foreign law) to prevent tenders by U.S. target holders while purporting to exclude them. Conversely, where tenders are made by nominees on behalf of U.S. holders, and those nominees or holders misrepresent their status as U.S. persons in order to participate in exclusionary offers, the bidder will not be viewed as having targeted the United States.³⁵⁰ However, this position is premised on the bidder having taken adequate

³⁴⁹ See Proposing Release, Section II.G.3. We understand that in many foreign jurisdictions that have such all-holders rules, foreign regulators may grant exemptions to permit exclusion of U.S. and other foreign holders under certain circumstances, such as when U.S. holders make up only a small percentage of the total target security holder base. We are troubled when a bidder announces to the marketplace that it will exclude U.S. target holders before it receives the required approvals from foreign regulatory authorities to do so, and where the announcement itself causes U.S. holders to sell into the marketplace, thereby reducing their numbers to the point at which an exemption to allow exclusion of U.S. holders is acceptable to the foreign regulator.

³⁵⁰ See generally, 1998 Internet Release, Section III.C. and Proposing Release, Section II.G.2.

measures reasonably intended to prevent sales to and tenders from U.S. holders.³⁵¹

Indicia that would put the bidder on notice that the tendering holder is a U.S. holder would include receipt of payment drawn on a U.S. bank, provision of a U.S. taxpayer identification number or statements by the tendering holder that notwithstanding a foreign address, the tendering holder is a U.S. investor. We have explicitly noted that if, after implementing measures intended to safeguard against tenders by U.S. persons, the bidder discovers it has purchased securities from U.S. holders, it should consider other measures that may avoid this lapse in the future.³⁵²

Where a bidder knowingly permits U.S. holders to tender into offers made offshore, whether directly or through foreign intermediaries, we believe it may be difficult to avoid the use of U.S. jurisdictional means. This is especially true where foreign all-holders principles preclude the bidder from preventing tenders from U.S. holders. Several commenters argue that we should expressly permit U.S. institutional holders to participate in offshore exclusionary offers, without triggering U.S. tender offer rules.³⁵³ For exchange offers, they advocate that the provisions of Regulation S would allow such institutional holders to participate in offshore offers without the need for registration under Section 5 of the Securities Act. While this may be true with respect to the registration requirements of the Securities Act, we believe that business combinations are fundamentally different from capital-raising transactions outside the context of a business combination. In the latter case, the U.S. federal securities laws do not establish

³⁵¹ See id.

³⁵² Id.

³⁵³ See, e.g., letter from ABA.

a right of any person to participate in a securities offering; the issuer sets the terms of its offer and determines who may participate, whether through a private placement or otherwise. U.S. tender offer rules, by contrast, establish an all-holders requirement for certain kinds of business combinations, whereby all target holders have a right to participate in an offer on the same terms as all other holders.³⁵⁴ We noted in a prior release that permitting U.S. institutional holders to participate in an offshore offer pursuant to a private placement or under Regulation S while excluding other U.S. holders is inconsistent with all-holders provisions in our tender offer rules.³⁵⁵ In the face of these requirements, we view the ability of institutional holders to participate in an offshore offer very differently under the Williams Act than we do under the provisions that may apply to allow their participation in offshore securities offerings under Regulation S. We continue to believe this fundamental difference warrants different treatment with respect to offshore offers under the Williams Act.

With the expansion of the cross-border exemptions adopted today, we believe there will be fewer circumstances warranting exclusionary offers because it will be easier for bidders to balance the regulatory requirements of foreign and U.S. rules. We note that many bidders do not exclude U.S. target holders from cross-border business combinations, where those offers are eligible for the Tier I or Rule 802 exemptions. In addition, several commenters stated that there is no valid reason to prohibit participation by U.S. holders in cash tender offers, where there is no registration requirement.³⁵⁶ We

³⁵⁴ We recognize that some tender offers, such as those where the target class of securities is not registered under Section 12, are not subject to the all-holders rule.

³⁵⁵ See 1999 Cross-Border Adopting Release at footnote 91.

³⁵⁶ See, e.g., letter from DPW.

agree that the burden on bidders to include U.S. holders in cash cross-border tender offers is not significant and whatever litigation risk would be associated with inclusion is not greater than is present under Tier I and Rule 802.

3. Vendor placements

In the Proposing Release, we included an interpretive section discussing existing staff no-action precedent involving the use of a vendor placement structure. A vendor placement in a cross-border exchange offer occurs when a bidder offers securities to foreign target holders in an offer, but establishes an arrangement whereby securities that would be issued to tendering U.S. target holders are sold offshore by third parties. The bidder (or the third party) remits the proceeds of the sale (minus expenses) to tendering U.S. target holders. In a vendor placement, U.S. holders are not excluded from participating in the offer, but they participate on terms different from those afforded other target security holders.³⁵⁷ Where permissible, the vendor placement procedure allows a bidder in a cross-border exchange offer to extend the offer into the United States without registering the issuance of the securities offered under Section 5 of the Securities Act.

We included a discussion of existing vendor placement no-action letters in the Proposing Release because the staff continues to receive frequent inquiries on the use of this mechanism for cross-border exchange offers.³⁵⁸ When the existing cross-border exemptions were adopted in 1999, they codified the ability of bidders in exchange offers conducted under Tier I to offer cash to U.S. holders in lieu of cash and stock or stock

³⁵⁷ We are advised that some foreign regulators object to the use of the vendor placement procedure on equal treatment and other grounds. Where a vendor placement structure is used in a cross-border exchange offer, it should comply with the laws of the applicable foreign jurisdiction. We do not intend to imply by the discussion here or in the Proposing Release that the use of this structure is required under U.S. law.

³⁵⁸ See Proposing Release, Section II.G.3.

only offered to foreign holders. This ability was conditioned on the bidder having a reasonable basis to believe that the cash offered is substantially equivalent in value to the non-cash consideration offered to foreign target holders.³⁵⁹ When U.S. holders receive a cash alternative as permitted under the Tier I exemption, the process is different than in a vendor placement because the bidder issues a fixed amount of cash directly to U.S. holders. In a vendor placement, by contrast, the bidder technically issues securities, which are then sold abroad on behalf of U.S. persons, who receive the cash proceeds from that sale. The amount of the proceeds a U.S. person receives will depend on the market price of the securities sold.

Since 1999, Tier I has afforded a method by which bidders in cross-border exchange offers may issue cash to U.S. target holders. Therefore, the staff no longer intends to issue vendor placement no-action letters regarding the registration requirements of Section 5. Bidders should employ the vendor placement procedure only to the extent that such procedure does not result in an offer or sale of securities for which registration under Section 5 would be required.

The guidance we provide here, which reiterates the guidance set forth in the Proposing Release and previous relief,³⁶⁰ is intended to provide clarity about the factors

³⁵⁹ See Exchange Act Rules 13e-4(h)(8)(ii)(C) [17 CFR 240.13e-4(h)(8)(ii)(C)] and 14d-1(c)(2)(iii) [17 CFR 240.14d-1(c)(2)(iii)]. U.S. holders who receive cash pursuant to these rules may under specified circumstances request from the bidder an opinion of an independent expert stating that the consideration offered them is substantially equivalent to the non-cash consideration offered to foreign holders. See *id.*

³⁶⁰ See, e.g., Singapore Telecommunications Ltd. (May 15, 2001); Oldcastle, Inc. (July 3, 1986); Electrocomponents PLC (September 23, 1982); Equitable Life Mortgage and Realty Investors (December 23, 1982); Getty Oil (Canadian Operations) Ltd. (May 19, 1983); and Hudson Bay Mining and Smelting Co. Ltd. (June 19, 1985).

that bidders should consider when contemplating the use of the vendor placement procedure. It is not intended to expand the circumstances under which we believe this procedure should be available.³⁶¹ The factors include:

- The level of U.S. ownership in the target company;³⁶²
- The number of bidder securities to be issued in the business combination transaction as a whole as compared to the amount of bidder securities outstanding before the offer;
- The amount of bidder securities to be issued to tendering U.S. holders and subject to the vendor placement, as compared to the amount of bidder securities outstanding before the offer;
- The liquidity and general trading market for the bidder's securities;
- The likelihood that the vendor placement can be effected within a very short period of time after the termination of the offer and the bidder's acceptance of shares tendered in the offer;
- The likelihood that the bidder plans to disclose material information around the time of the vendor placement sales; and
- The process used to effect the vendor placement sales.³⁶³

³⁶¹ One commenter requested that we expand the availability of the vendor placement procedure by making this procedure available whenever the target securities that are the subject of the tender offer are not registered under Section 12 of the Exchange Act. See letter from Cravath. We believe the factors we articulate here, rather than the unregistered status of the target securities, are the appropriate measure of when the vendor placement procedure should be available.

³⁶² As we stated in the Proposing Release, offerors should be particularly cognizant of this factor. See Proposing Release, Section II.G.3.

³⁶³ We assume that the sales will be effected pursuant to the procedure under Category 1 of Regulation S [17 CFR 230.903(b)(1)].

We believe the liquidity of the market for the bidder's securities is relevant to whether registration under Section 5 should be required. Unless the market for the bidder's securities to be sold through the vendor placement process is highly liquid and robust and the number of bidder securities to be issued for the benefit of U.S. target holders relatively small compared to the total number of bidder securities outstanding, a vendor placement arrangement in a cross-border exchange offer would in our view be subject to Securities Act registration under Section 5.

In addition to the factors listed above, we believe it is relevant whether sales of a bidder's securities in the vendor placement process are accomplished within a few business days of the close of the offer and whether the bidder announces material information, such as earning results, forecasts or other financial or operating information, before the sales process is complete. In addition, whether the vendor placement involves special selling efforts by brokers or others acting on behalf of the bidder is relevant. These factors are important because they indicate whether the market price which U.S. investors will receive when the bidder's securities are sold on their behalf is representative. The factors also are designed to ensure that U.S. investors are not effectively making an investment decision with respect to a purchase of securities (which would require registration under the Securities Act), but rather, are making a decision to tender their target securities in exchange for an amount of cash that, although it is not for a fixed sum,³⁶⁴ can be readily determined and estimated based on historic trading prices.

³⁶⁴ Early vendor placement letters featured a fixed price guaranteed by the bidder. However, most letters, including all of the more recent ones, do not include a floor on the cash value to be received by U.S. holders. Rather, they receive whatever proceeds are generated from the sale of the bidder's securities in an overseas market.

Bidders may continue to use the vendor placement procedure in accordance with the guidance set forth here. The vendor placement process, where appropriately used, avoids the need for registration of the bidder securities sold on behalf of U.S. holders under Section 5 of the Securities Act. Where the tender offer also is subject to the equal treatment provisions of U.S. tender offer rules,³⁶⁵ bidders also must seek an exemption from those rules in order to offer U.S. security holders a different form of consideration than what is provided to foreign target holders. In offers subject to the equal treatment provisions of the U.S. tender offer rules, it is not permissible under those rules to exclude most U.S. target holders and include only the U.S. holders (such as large institutional investors) for whom an exemption from Section 5 of the Securities Act is available.³⁶⁶ For the same reasons, issuing securities to some U.S. holders, such as U.S. institutions, while providing cash to all others pursuant to a vendor placement arrangement is inconsistent with the equal treatment requirements of U.S. tender offer rules.³⁶⁷

Most of the vendor placement no-action letters issued by the staff involved tender offers that were not subject to U.S. equal treatment provisions.³⁶⁸ In the future, the staff will consider whether requests for relief from the equal treatment provisions of U.S. tender offer rules where a vendor placement procedure is used are appropriate and in the

³⁶⁵ See Exchange Act Rules 13e-4(f)(8) [17 CFR 240.13e-4(f)(8)] and 14d-10 [17 CFR 240.14d-10].

³⁶⁶ See Proposing Release, Section II.G.3 and footnote 91 in the 1999 Cross-Border Adopting Release.

³⁶⁷ See Proposing Release, Section II.G.3.

³⁶⁸ See footnote 360 above. But see TABCORP Holdings Ltd. (August 20, 1999) (“TABCORP”).

best interests of U.S. security holders.³⁶⁹ We generally believe that cross-border tender offers eligible to be conducted under the Tier I exemption represent the appropriate circumstances under which bidders may provide cash to U.S. target holders while offering securities to foreign target holders.

III. PAPERWORK REDUCTION ACT

Some provisions of the rule amendments adopted today constitute a "collection of information" within the meaning of the Paperwork Reduction Act of 1995 (the "PRA").³⁷⁰ We have submitted the revisions to the Office of Management and Budget ("OMB") for review in accordance with the PRA.³⁷¹

The hours and costs associated with preparing and filing the disclosure, filing the forms and schedules and retaining records required by this regulation constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The titles for the collection of information are:

- (1) "Form S-4" (OMB Control No. 3235-0065);
- (2) "Form F-4" (OMB Control No. 3235-0325);
- (3) "Form ID" (OMB Control No. 3235-0328);

³⁶⁹ One commenter requested clarification on the circumstances under which the Commission will grant relief from the equal treatment provisions of U.S. tender offer rules where a vendor placement procedure is used. See letter from Cleary. The staff no-action letters in this area provide some guidance on the limited circumstances under which the staff has done so in the past. See TABCORP. While each transaction presents unique facts and circumstances, in our view, such relief is not always appropriate, even where a vendor placement procedure otherwise could be used to avoid the registration requirements of Section 5 of the Securities Act.

³⁷⁰ 44 U.S.C. 3501 et seq.

³⁷¹ 44 U.S.C. 3507(d); 5 CFR 1320.11.

- (4) "Form CB" (OMB Control No. 3235-0518);
- (5) "Form F-X" (OMB Control No. 3235-0379);
- (6) "Schedule TO" (OMB Control No. 3235-0515);
- (7) "Securities Ownership – Regulation 13D (Commission Rules 13d-1 through 13d-7 and Schedules 13D and 13G)" (OMB Control No. 3235-0145);
- (8) "Form 3" (OMB Control No. 3235-0104); and
- (9) "Form 4" (OMB Control No. 3235-0287).

A. Summary of the Amendments

1. Amendments to the Tier I exemption and Form CB

The rule amendments add to the types of affiliated transactions that may be effected in reliance on the Tier I exemption from Exchange Act Rule 13e-3(g)(6). A Form CB will be required when an issuer or acquiror relies on the expanded Tier I exemption from Rule 13e-3(g)(6) and publishes or otherwise disseminates an informational document to holders of the subject securities. Because more transactions will be eligible to rely on the exemption from Rule 13e-3 for cross-border transactions, this rule change may result in additional submissions of Form CB. If the exemption were not expanded, however, the issuer or affiliate would be required to comply with the more burdensome filing requirements of Schedule 13E-3 if the issuer or affiliate sought to include U.S. security holders in the transaction. We believe the amended rule and reduced filing requirement will encourage issuers or affiliates to include U.S. security holders in transactions that otherwise may have excluded them to avoid complying with Rule 13e-3 and the corresponding Schedule 13E-3 filing requirements. Domestic or

foreign entities or persons engaged in cross-border business combination transactions will likely be the respondents to the collection of information requirements.

Unlike Schedule 13E-3, Form CB is a notice filing that is little more than a cover sheet that incorporates offer documents sent to security holders pursuant to applicable foreign rules in the issuer's or target's home country. The party furnishing the form must attach an English translation of the offer materials disseminated abroad. Form CB must be submitted by the next U.S. business day after that document is disseminated under home country rules. For purposes of the PRA, we estimate that the additional burden cost resulting from the amendment will be zero.

2. Amendments to Form CB, Forms S-4 and F-4, and Schedule TO

We are adopting amendments to require that all Forms CB, and accompanying Forms F-X, be filed electronically. A person that is not already filing reports electronically with the Commission will be required to obtain access codes to permit the filing of documents on EDGAR. Registrants, individuals, transfer agents, third-party filers or their agents must file a Form ID to request the assignment of access codes that permit the filing of securities documents on EDGAR. This form enables the Commission to assign an identification number (CIK), confirmation code, password and password modification authorization code to each EDGAR filer, each of which is designed to protect the security of the EDGAR system. While we do not expect that the amendments will affect the overall collection of information burden of Forms CB and F-X, we do expect that it will cause additional respondents to file a Form ID each year and, as a result, will increase the annual collection of information burden for that form. We estimated that 65,700 respondents file Form ID each year at an estimated burden of .15

hours per response, all of which is borne internally by the respondent for a total annual burden of 9,855 hours. For fiscal year 2007, a total of 189 Form CBs were filed with the Commission. Of those 189 Form CBs, 100 were filed in paper. We expect the amendments will cause an additional 100 respondents to file a Form ID each year and, as a result, cause an additional annual burden of 15 hours (100 x .15). For purposes of the PRA, we estimated that the additional burden cost resulting from the proposed amendments will be zero.

We are adopting amendments to the cover page of Forms S-4 and F-4 and Schedule TO that will require the filer to check a box specifying the applicable cross-border exemption being relied upon in connection with the transaction. Domestic and foreign persons or entities filing these documents will be the respondents to the collection of information requirement. This change will not affect the substantive obligation to file the forms or schedule. This additional information will allow the staff to better process such filings and monitor the application of the cross-border exemptions. The amount of information required to be included in each Schedule TO and Forms S-4 and F-4 will change minimally with the addition of a check box. Accordingly, for purposes of the PRA, our estimate is that the amount of time necessary to prepare each schedule or form, and hence, the total amount of burden hours, will not change.

3. Amendments to Schedule 13G

Exchange Act Schedule 13G is a short-form filing for persons to report ownership of more than five percent of a class of equity securities registered under Section 12 of the Exchange Act. Generally, the filer must certify that the securities have not been acquired and are not held for the purpose of, or with the effect of, changing or influencing the

control of the issuer of the securities. For purposes of the PRA, we estimate that compliance with the Schedule 13G requirements under Regulation 13D requires 98,800 burden hours in aggregate each year, broken down into 24,700 hours (or 2.6 hours per respondent) of respondent personnel time and costs of \$29,640,000 (or \$3,120 per respondent) for the services of outside professionals.³⁷²

The amendment to Exchange Act Rule 13d-1 will expand the availability of Schedule 13G to foreign institutions governed by a regulatory system substantially comparable to the U.S. regulatory system for domestic institutions. The amendment will allow specified foreign institutions to report beneficial ownership of more than five percent of a subject class of securities on Schedule 13G instead of Schedule 13D. Foreign institutions of the type specified in amended Rule 13d-1(b) will be the likely respondents to the collection of information requirements. If the amendment was not adopted, these institutions either would have to file on Schedule 13D or would be required to seek no-action letters from the staff to permit them to file on Schedule 13G to the same extent as their domestic counterparts, so long as they satisfy certain conditions. Amending the rule will enable foreign institutions meeting the conditions in the rule to

³⁷² These figures assume 9,500 respondents file Schedule 13G with the Commission annually. We estimate that 25 percent of the burden of preparation is carried by the company internally and that 75 percent of the burden of preparation is carried by outside professionals retained by the issuer. These figures estimate an average cost of \$400 per hour for the services of outside professionals, based on our consultations with several registrants and law firms and other persons who regularly assist registrants in preparing and filing with the Commission.

file the Schedule 13G without seeking a no-action letter. Therefore, the amended rule may result in only a slight increase in the number of Schedule 13G filers.³⁷³

For purposes of the PRA, we estimate that the amendments to Schedule 13G will create an incremental burden of two hours per response, which we will add to the existing Schedule 13G burden resulting in a total burden of 117,800 hours.³⁷⁴ We note that the burden associated with the amendments to Schedule 13G initially will be higher with an estimated burden of five hours. Over time, however, we believe that on average the burden will lessen and therefore estimate an incremental burden of two hours per response. Each additional filer will incur a burden of approximately .50 hours of respondent personnel time (25 percent of the total burden) and costs of \$600 for the services of outside professionals (75 percent of the total burden). In sum, we estimate that the amendments to Schedule 13G will increase the annual paperwork burden by approximately 1.50 hours of respondent personnel time³⁷⁵ and a cost of approximately \$1,800 for the services of outside professionals.³⁷⁶

We previously have estimated that Schedule 13D has a total burden of approximately 14.5 hours per response to prepare and is filed by 3,000 respondents annually. For purposes of the PRA, we have estimated that compliance with the

³⁷³ Based on the number of no-action requests in this area in recent years, we believe that approximately three filers per year will benefit from this proposed change and will avoid the time and expense of submitting a no-action request to the staff. In addition, foreign institutions currently filing on Schedule 13D who have not sought no-action relief to file on Schedule 13G will also benefit by becoming eligible to use the shorter Schedule 13G. See discussion above.

³⁷⁴ We currently estimate the burden for preparing a Schedule 13G filing to be 10.4 hours, resulting in a total of 98,800 burden hours in aggregate each year. If each additional filer incurred an additional two hours, the resulting burden would be 117,800 total burden hours ((10.4 hours + two hours) x 9500 respondents).

³⁷⁵ Three additional filers x .50 hours of respondent personnel time = 1.50 aggregate burden hours.

³⁷⁶ Three additional filers x \$600 = \$1,800.

Schedule 13D requirements under Regulation 13D requires 43,500 burden hours in aggregate each year, broken down into 10,875 hours (or 3.6 hours per respondent) of respondent personnel time and costs of \$13,050,000 (or \$4,350 per respondent) for the services of outside professionals.

Based upon these estimates, a foreign institution currently filing a Schedule 13D that will be eligible to file a Schedule 13G pursuant to the amended rule will benefit from a cost reduction of \$630 per respondent.³⁷⁷ As noted above, however, for a number of years, the staff has provided no-action relief to foreign institutions seeking to file a Schedule 13G rather than a Schedule 13D. For those institutions that are already filing a Schedule 13G pursuant to no-action relief, the amended rules will likely only increase the cost associated with providing the required certification in Schedule 13G and will not significantly impact the cost of complying with the requirements of Regulation 13D.

For purposes of PRA, we estimate that the amendments to Exchange Act Rule 16a-1 will reduce the number of Form 3 filers by three respondents, which will reduce the incremental burden by .5 hours per filer, or 1.5 total hours.³⁷⁸ The reduction in three respondents corresponds with the estimated increase in respondents for Schedule 13G relying on the new provision for foreign institutions. In addition, we estimate that the amendments will reduce the number of Form 4 filings by 3 filings, which will reduce the

³⁷⁷ We calculate this figure in the following manner: $\$4,350 - (\$3,120 + \$600) = \630 . The total cost burden of Schedule 13G is estimated currently at an aggregate burden of \$29,640,000 or \$3,120 per respondent ($\$29,640,000 / 9,500$ respondents = \$3,120).

³⁷⁸ We calculate this figure in the following manner: $14,500 \text{ hours} / 29,000 \text{ filers} = .5 \text{ hours reporting burden per filer}$.

incremental burden by .5 hours per filing, or a total of 1.5 total hours.³⁷⁹ For purposes of the PRA, we estimate that the burden cost resulting from the amendments will be zero.

IV. COST-BENEFIT ANALYSIS

We are adopting amendments to our rules that are expected to reduce the overall cost for issuers and acquirors engaged in cross-border business combination transactions. We also provide interpretive guidance regarding the application of certain rules. Under the rule amendments adopted today, much of the no-action and exemptive relief sought in the past will be available without the need for no-action or exemptive letters. As a result, issuers and acquirors will benefit from an increase in regulatory certainty about the U.S. rules governing cross-border business combination transactions and a substantial savings in the cost of preparing letters requesting relief. Decreasing the burden on acquirors of complying with U.S. rules governing business combination transactions is designed to encourage them to extend more transactions to U.S. target holders; therefore, we believe the rule revisions are in the interests of U.S. investors, while continuing to provide appropriate protections. We did not receive any comments regarding the cost of preparing such letters and the amount of time spent working through concerns raised during the review of such letters.

In analyzing the costs and benefits of the revised rules, we compared estimated future cross-border transaction activity that will likely occur under the revised rules with what will likely occur in a benchmark case without the rules.

³⁷⁹ We calculate this figure in the following manner: 112,500 hours/225,000 filings annually = .5 hours reporting burden per filing. Our estimates account for one Form 4 filing per year per filer.

A. Changes to the eligibility test for determining eligibility to rely on the cross-border exemptions

1. Amendments

a. Adoption of the alternate test and revision to test for non-negotiated transactions

The changes we proposed to the test for determining eligibility to rely on the cross-border exemptions for business combination transactions were limited in nature and scope, as are the changes we are adopting today. The changes are intended to address specific problems acquirors have faced in determining whether they can rely on the cross-border exemptions. We are adopting many of the changes as proposed, but we also are adopting an alternate test for situations in which an acquiror is unable to conduct the look-through analysis in a negotiated transaction. The alternative test uses ADTV as one of three elements that must be satisfied. The alternate test we are adopting will replace the hostile presumption. We do not believe the amendments we are adopting will materially affect the cost of undertaking such transactions because an acquiror will continue to be required to conduct the look-through analysis in a negotiated transaction, as it is required to do today. The alternate test will aid acquirors that are unable to conduct the look-through analysis by permitting them to use readily available average daily trading volume numbers to determine eligibility.

We also proposed limited changes to the manner in which U.S. ownership may be calculated for cross-border tender offers accomplished on a non-negotiated or hostile basis. These changes are intended to clarify certain elements of the former "hostile presumption" test, which are now incorporated into the alternate test, that have created uncertainty for acquirors in the past. As discussed above, the alternate test uses public

announcement as the reference date when determining eligibility to use the exemptions. Finally, in this release and the amended rules, we provide some guidance on the "reason to know" element of the alternate test, which we hope will make the application of the test simpler and more certain for acquirors.

i. Benefits

The alternate test we are adopting is expected to reduce costs involved in certain cross-border transactions. As discussed above, a bidder will be able to take advantage of the alternate test in situations where it is unable to conduct the look-through analysis. This may allow an acquiror to avail itself of an exemption that it otherwise would not have been able to use due to its inability to conduct the look-through analysis.

The relative easing of the burden on potential acquirors is expected to translate to monetary benefits to U.S. investors. When an acquiror is unable to conduct the look-through inquiry but is able to satisfy the alternate test, U.S. investors who own securities of the target company may benefit from being included in the tender offer and being eligible to receive tender offer premiums.

ii. Costs

Although the new alternate test is not designed to increase the cost of enacting cross-border transactions, there may be economic costs that arise from the low correlation between ADTV and the level of U.S. beneficial ownership. There may be an economic cost to U.S. investors owning securities in a target company if these U.S. investors no longer receive the Williams Act protection based on the acquiror's reliance on the alternate test. We believe these costs are balanced by the benefit of facilitating U.S. participation in the offer as a result of the availability of the alternate test.

The staff conducted an empirical analysis on the relationship between U.S. beneficial ownership and ADTV and found their correlation to be low.³⁸⁰ Based on the transactions considered, the analysis suggests that the level of trading activity of certain securities in the United States may not accurately reflect the level of U.S. beneficial ownership of those securities. In turn, we may have situations in which U.S. beneficial ownership of a security is high but its trading activity is low, and vice versa.

b. Revised calculation date and inclusion of more than 10 percent holders

Acquirors will now be permitted to calculate the required U.S. beneficial ownership figure within a range of dates that is no more than 60 days before announcement of the transaction and no more than 30 days after the announcement. Before today's amendments, the calculation was required to be done as of the 30th day before commencement of a cross-border business combination transaction. The revision to allow a range of dates is expected to provide acquirors with additional flexibility in structuring transactions and availing themselves of the cross-border exemptions.

Additionally, under the amended rules, the calculation of U.S. beneficial ownership for the look-through analysis will include the securities held by security holders who own more than 10 percent of the target securities. Because we are changing the manner in which the ratio must be calculated, the amendment will result in a change in the transactions that will qualify for the exemption. In most cases, as noted above, this amendment will increase the availability of the exemptions. It is possible, however, that

³⁸⁰ This analysis was based on U.S. beneficial ownership figures that were reported in no-action requests submitted to the staff. In those no-action requests, however, the calculation would have excluded large target security holders, consistent with the Commission's rules at the time. The memorandum outlining the analysis appears in the comment file for the Proposing Release, on our Web site at <http://www.sec.gov/comments/s7-10-08/s71008-8.pdf>.

under the amended rules transactions that may have qualified for an exemption previously may no longer qualify. Specifically, the amendment eliminates any possibility of relying on the Tier I exemption in cases where there is at least one U.S. security holder who owns more than 10 percent of the target securities. A similar situation could arise in which transactions that previously would have qualified for the Tier II exemptions no longer qualify, if there were an unusually large proportion of large U.S. target security holders. Nevertheless, based on our experience and the comment letters received, we believe that the practical effect is to increase the number of transactions that will qualify for exemption.

i. Benefits

We anticipate that the enhanced flexibility to choose a date within a range may make it easier for acquirors to accomplish the required calculation as specified under our rules, thereby promoting use of the exemptions and the inclusion of U.S. holders while reducing the acquirors' burden of seeking no-action or exemptive letters in this area.

Allowing the calculation of U.S. ownership to be conducted within 60 days before public announcement of the transaction will enable acquirors to perform the calculation as of a date when the target's security holder base may be unaffected (or less affected, if there are some changes in response to rumors in the market) by the announcement of the transaction, which is expected to provide a more accurate picture of the security holder base. This change also will allow acquirors more flexibility in planning cross-border business combination transactions, and therefore we expect bidders will be encouraged to engage in these transactions. Additionally, extending the range for calculation of U.S. ownership to no more than 30 days after public announcement is expected to benefit

acquirors who, for confidentiality reasons, wish to announce a business combination transaction prior to conducting a calculation of U.S. ownership. It is unclear whether using public announcement as the reference point for the calculation will have the effect of increasing or reducing U.S. ownership in the target company.

To the extent that inclusion of large target security holders in the calculation of U.S. beneficial ownership will allow for a number of new foreign private issuers to qualify for exemption, the amended rules provide an economic benefit both to U.S. investors and potential acquirors. In particular, primary benefits will accrue to U.S. shareholders of target securities in which U.S. investors hold a relatively large fraction of the securities held by small security holders but a relatively small fraction of securities held by large security holders. In such cases, the securities may not have been eligible for exemption under the prior rules, but will now be eligible. Because all shares held by U.S. investors represent U.S. aggregate economic interest, this extension of the exemption is a benefit to U.S. investors because it may encourage bidders to include U.S. security holders in their offers that otherwise would not have done so.

Even cases where transactions that previously would have qualified for an exemption no longer qualify for it could offer an economic benefit to U.S. investors. The presence of a U.S. investor who is a large target security holder indicates that U.S. investors collectively own a significant portion of the securities. Therefore, it is in the potential bidder's interest to include them in the transaction despite the cost of complying with the Williams Act rules. In this case, U.S. investors will gain from additional disclosure of information from the bidder. This expected benefit will dissipate, however, if the bidder chooses to exclude U.S. holders from the offer.

ii. Costs

The amendments also will impose additional costs, but these costs are expected to be borne mainly by potential bidders. As explained above, when large U.S. holders own a sufficiently large proportion of the target securities, the transaction may no longer qualify for the previously available exemption. For the reasons discussed above, we believe that where there are significant U.S. holdings, potential bidders are likely to continue to include U.S. shareholders in their transactions in order to gain control of the majority of securities. It is possible, however, that in some cases there would be a cost to U.S. investors, if the bidder excluded them from the transaction.

Under the amendments, U.S. investors may lose certain protections under the U.S. rules governing cross-border business combination transactions if the foreign private issuer in which they own securities becomes the subject of such a transaction and the acquiror relies on the cross-border exemptions. To the extent that the applicable cross-border exemptions will exempt the acquiror from compliance with U.S. registration, filing and disclosure requirements, U.S. investors will lose these protections. In such circumstances, however, we believe that the benefit to U.S. investors of being included in the transaction rather than being excluded justifies the cost of reduced protections under U.S. law. Otherwise, we do not believe that U.S. investors will be harmed by the flexibility in calculation of U.S. ownership.

B. Changes to the Tier I exemption

1. Expansion of the Tier I exemption from Exchange Act Rule 13e-3

We are expanding the set of cross-border business combination transactions that are exempt from the requirements of Rule 13e-3. Before these amendments, the cross-

border exemption from Rule 13e-3 applied only to tender or exchange offers or business combinations conducted under Tier I. We are amending the exemption to encompass any kind of affiliated transaction that otherwise meets the conditions of the Tier I exemption, including schemes of arrangement, cash mergers, compulsory acquisitions for cash, and other types of transactions.

a. Benefits

The expansion of the Tier I exemption from Rule 13e-3 will likely result in fewer filings of Schedule 13E-3, thus reducing the costs for issuers and affiliates in cross-border transactions that would otherwise be subject to those rules. As we noted in the Proposing Release, under the rules before today's amendments, the burden of complying with Rule 13e-3 and Schedule 13E-3 may be greater for foreign filers than domestic filers.³⁸¹

Foreign filers may not have a counterpart to these rule provisions in their home jurisdiction and may not be subject to the same fiduciary duty standards that form the basis for this heightened disclosure system for affiliated transactions.

Before the amendment we are adopting today, some entities engaged in affiliated cross-border business combination transactions would have been subject to Rule 13e-3 unless they requested individual exemptive relief. These requests have routinely been granted. To the extent that these kinds of requests will no longer be necessary as a result of the rule revision we adopt today, the revision will result in reduced costs for these entities. Issuers and affiliates may have excluded U.S. holders from transactions where they would have been required to file a Schedule 13E-3. We have been told that entities may have avoided making an offer to U.S. holders to avoid application of these rules,

³⁸¹ See discussion in the Proposing Release, Section V.B.1.a.

although it is difficult to isolate the effect of this provision on the number of entities that chose not to include U.S. holders. During 2007, approximately 110 Schedules 13E-3 were filed, 10 of which were filed by foreign private issuers. During that same period, no requests for relief on this issue were granted. Therefore, we expect the overall effect would not be significant, although the number of transactions that may have been structured to avoid U.S. jurisdictional means would not be reflected by filings on Schedule 13E-3. We believe the rule amendment will result in a cost reduction because it will lower the costs and burdens associated with extending these kinds of transactions into the United States. This amendment will be in the interests of U.S. investors to the extent that the expanded exemption from Rule 13e-3 motivates an acquiror to include U.S. investors in the transaction. Because the exemption applies only where U.S. security holders make up no more than 10 percent of the subject security holder base, and because the heightened disclosure requirements of Schedule 13E-3 may be onerous for foreign filers, we believe this exemption may result in more cross-border transactions being extended to U.S. investors.

b. Costs

U.S. investors of foreign private issuer targets in cross-border business combination transactions that would have been subject to Rule 13e-3 but for our rule amendment will lose the benefits of the disclosure in Schedule 13E-3, to the extent that such disclosure is not required under applicable foreign law. This cost is mitigated by the fact that, without the exemption, U.S. holders may be excluded from the transaction.

We sought data regarding the number of Schedules 13E-3 filed with respect to the securities of foreign private issuers, the number of entities or persons that the proposed

rule amendment would affect, and the increases or decreases in cost that are likely to result, so we could attempt to estimate the costs and benefits associated with any possible reduction of Schedule 13E-3 filings. We did not receive any data from commenters in response to our request. Based on the number of Schedules 13E-3 filed by foreign private issuers in 2007, we do not expect the overall impact to be significant, although the number of transactions that may have been structured to avoid U.S. jurisdictional means would not be reflected by filings on Schedule 13E-3.

2. Technical change to Rule 802 of Regulation C

We are adopting technical changes to the language of Rule 802. These changes are not intended to substantively change the filing obligations under the current rule, and we do not believe they will have any impact on the way that rule currently functions, except to clarify how it may be used. Therefore, the change will minimally affect costs and benefits.

C. Changes to the Tier II cross-border exemptions

The rule changes we adopt today represent an expansion of the cross-border exemptions available to tender offers that meet the conditions outlined in the rules. The Tier II exemptions previously applied to tender offers conducted by third parties, issuers or affiliates, where those tender offers are subject to Rule 13e-4 or Regulation 14D. Today's amendments will expand the relief provided in the Tier II exemptions to address areas of frequent conflict between U.S. and foreign law or practice for which individual relief is frequently requested, and will clarify that the Tier II exemptions also may be used for cross-border tender offers subject only to Regulation 14E of the Exchange Act. We also are expanding Tier II relief for dual offers by allowing offerors to make more

than one concurrent non-U.S. offer, and to allow certain U.S. offers to include non-U.S. persons and certain foreign offers to include U.S. persons. Additionally, we are adopting changes to Rule 14e-5 to codify recent exemptive relief for Tier II-eligible tender offers.

1. Benefits

These changes to the Tier II cross-border exemptions will expand the relief provided for eligible cross-border tender offers.³⁸² The rule changes will reduce the need for bidders to seek individual no-action or exemptive relief from the staff. Since they represent areas in which relief is most frequently requested and granted for these kinds of transactions, the changes will reduce the associated costs and burdens of applying for relief. Where we already have reduced the associated costs and burdens of requesting and granting relief through Rule 14e-5 class exemptive letters, the codification of that relief in rule text benefits market participants by modernizing the rule and enhancing its utility by providing one readily-accessible location for exempted activities. Because the rule changes will make it easier to make purchases outside of a U.S. tender offer in a manner consistent with relief frequently granted in this area, we believe the changes also will have the effect of encouraging acquirors and bidders to extend cross-border tender offers to U.S. target holders on the same terms as all other target security holders.

To the extent that some of the relief codified in today's rule changes was not contemplated in the 1999 Cross-Border Adopting Release and came about only as a result of the staff's issuance of no-action and exemptive letters, we have analyzed the benefits and costs of the proposed revisions against the rules adopted in 1999 rather than against

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See the discussion above regarding the changes to the threshold eligibility determination relating to the calculation of U.S. ownership.

the perceived state of the rules as created by the issuance of no-action relief. When the Tier II exemption was adopted in 1999, by its terms it only applied to tender offers subject to Rule 13e-4 or Regulation 14D. We are expanding the Tier II exemption to apply equally to cross-border tender offers governed by Regulation 14E only. By expanding the Tier II exemption to cover such offers, the changes we are adopting today will allow more acquirors to take advantage of the exemption and thus allow more U.S. investors to benefit from being included in the offer. Expanding the category of offers for which Tier II relief is granted also will allow more flexibility in structuring offers and encourage more acquirors to take advantage of the exemption. Similarly, the changes to the Tier II relief for dual offers and the changes to Rule 14e-5 are intended to address certain foreign regulatory conflicts that were not fully appreciated when the Tier II exemption was adopted in 1999. By revising our rules to address these conflicts, we expect to enhance the applicability of the Tier II exemptions and the exemptions to Rule 14e-5 and therefore encourage more acquirors to take advantage of the exemptions and include U.S. holders in cross-border transactions.

2. Costs

As with transactions governed by Regulation 14D and Rule 13e-4, the cost of reducing the protections of the Williams Act may include reduced procedural and informational safeguards for U.S. investors; however, the exemptions have been designed to reduce such a possibility. We are not aware of any other cost that will be incurred by expanding Tier II relief to tender offers governed by Regulation 14E only. In addition, because these amendments will not change the filing obligations of acquirors, investors would not lose the benefits of any required disclosure. The amendments we are making

to Tier II do not affect the registration requirements of Section 5 of the Securities Act, which are not covered by these exemptions.

The codification of Rule 14e-5 class exemptive letters into rule text is not expected to increase costs to market participants, as the substance of the relief is not being altered. Instead, the mechanism for the relief that is being changed from class exemptive letters to rule exemptions. While permitting purchases outside of a tender offer might negatively impact U.S. investors by weakening the equal treatment and proration protections of our rules, we believe that the conditions imposed on the ability to purchase outside of a Tier II tender offer under the revised rules will help to safeguard the interests of U.S. security holders.

D. Expanded availability of early commencement

1. Amendment to Securities Act Rule 162

The amendments we adopt today will expand the ability to commence an exchange offer before the registration statement filed with respect to the securities offered is declared effective by the Commission. Our previous rules permitted "early commencement" only where an exchange offer was subject to Rule 13e-4 or Regulation 14D. For tender offers conducted under Tier II, we proposed to extend the option to all exchange offers, so long as withdrawal rights and other protections were provided to the same extent as would be required under Rule 13e-4 or Regulation 14D. We solicited comment regarding whether the ability to early commence should be extended to domestic offers as well. Commenters supported the proposed extension of early commencement to all exchange offers conducted under Tier II. They also supported

extending early commencement to domestic offers. As adopted, the rules will permit early commencement for both cross-border and domestic exchange offers.

a. Benefits

We believe the rule amendments will further harmonize the treatment of exchange offers and cash tender offers by eliminating the timing disparity between the commencement of cash tender offers and stock tender offers. Domestic and foreign bidders that may have used a cash tender offer for a transaction due to timing concerns may benefit from elimination of the timing disparity. The amendments will not impact the filing and disclosure obligations of the acquiror under the Securities Act, or the requirement to comply with the tender offer rules in Regulation 14E. Because foreign law may provide that a tender offer for one class of securities will trigger an obligation to make a contemporaneous offer for a related class, this rule change could enhance the ability of such exchange offers to commence early, and therefore may enhance the speed with which such offers may be effected. The amendment to Tier II also may allow combined offers to compete with cash bids.

When used, the rule will provide the benefit to investors of receiving withdrawal rights when they otherwise would not have been required under U.S. rules. The rule amendment also may cause offerors to extend an exchange offer to U.S. target security holders, where concerns about delays arising from the U.S. registration process might otherwise have caused them to exclude U.S. investors.

b. Costs

As discussed above, allowing an early commencement option for an exchange offer may result in additional informational costs in some circumstances. To the extent

that an offeror commences early and disseminates offer materials upon the filing of the underlying registration statement, it may receive staff comments after dissemination. This may present increased costs for offerors who must recirculate in circumstances where they have elected to commence their offer early, before the staff comment process (where applicable) is complete.

E. Changes to forms and schedules

We are adopting changes to the manner in which several forms and schedules are filed. We are requiring that all Form CBs, and Form F-Xs filed in connection with a Form CB, be filed electronically. A Form F-X filed in connection with a Form CB must be filed electronically under the same circumstances.

In addition, we proposed to add a box to the cover page of Schedule TO and Forms S-4 and F-4 where the filing person would specify the applicable cross-border exemption or exemptions being relied upon to conduct the applicable transaction.³⁸³ We are adopting the amendments to those forms as proposed. Under the revised rules, filers relying on the Tier II cross-border exemptions and filing a Schedule TO will be required to indicate which, if any, cross-border exemption they are relying on in conducting their tender offer.

Similarly, filers of Form S-4 or F-4 that are conducting a cross-border transaction under the Tier II exemptions will be required to specify the cross-border exemption claimed on the cover page of those forms. In some cases, they also may be filing a Schedule TO, where the exchange offer is subject to Rule 13e-4 or Regulation 14D. In

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The cover page of Form CB already requires disclosure of this information. However, Form CB needs to be filed only for some cross-border transactions, and only for those conducted under Tier I or Securities Act Rules 801 or 802.

some instances, such as where an exchange offer commences early, a Form S-4 or F-4 may be filed before Schedule TO. It would be helpful for the staff to have this information at the earliest possible time in the offering process; therefore, we are adopting the requirement for Forms S-4 and F-4 as well. The changes we are making to Schedule TO and Forms S-4 and F-4 will have no impact on the obligation of an offeror to file those forms.

1. Benefits

Requiring electronic filing of all Form CBs will benefit investors because these Forms will be more easily accessible. Form CBs currently submitted in paper form may be accessed through our public reference room. Electronic filing will make Form CB accessible to investors more easily and more quickly.

As to the information sought in Form S-4 or F-4 or Schedule TO, we believe this information will serve an important function for purposes of the staff review process and also will benefit filers. Currently, the staff may not be aware when reviewing a registration statement or tender offer statement that the filer is relying upon an applicable cross-border exemption to modify the terms of its offer. Consequently, the staff may not know whether non-compliance with all the rules that would govern a particular transaction is a matter that the staff should pursue through the comment process. Providing this information when the Form S-4 or F-4 or Schedule TO is initially filed will eliminate the need for the staff to issue, and the bidder to respond to, unnecessary comments based on a lack of knowledge about reliance on a cross-border exemption.

2. Costs

We believe the costs associated with the changes to Schedule TO and Forms S-4 and F-4 will be minimal. As discussed above, these changes will not impact the obligation to file the schedule or form, nor will they change the substantive disclosure required. Filers will already know whether, and if so, what cross-border exemption they will rely upon in conducting their transaction. The change will require them only to specify that information for the benefit of the staff and others viewing the filings.

We received two comments in response to the proposal to require e-filing of Form CB. One commenter argued against requiring electronic filing due to the "costs and practical issues."³⁸⁴ Another commenter cautiously supported the proposed changes but expressed concern with the possible deterrent effects of such requirements, such as potential hardships and liability arising from widespread availability of the filings on EDGAR.³⁸⁵ While we understand the commenters' concerns, we do not believe that requiring the electronic submission of Form CB and the accompanying Form F-X will be a significant burden and therefore we are adopting the revisions as proposed. We note that in situations in which the electronic submission poses a significant burden, a hardship exemption is available. Additionally, the Form CB is furnished, not filed, and therefore not subject to Section 18 liability. With regard to the concern about widespread availability on EDGAR, investors can see that a Form CB has been filed when they view a company's filings on EDGAR, although they cannot view the actual document. They can request a copy of the submission from the public reference room. Therefore, we do

³⁸⁴ Letter from S&C.

³⁸⁵ Letter from ABA.

not believe that requiring electronic submission of the forms should increase the potential liability issues. We do not expect these amendments to materially affect the cost burden of these forms.

F. Changes to the beneficial ownership reporting rules

We are amending the beneficial ownership rules to allow foreign institutions of the same type as the domestic institutions listed in Exchange Act Rule 13d-1(b)(1)(ii) to file on Schedule 13G instead of Schedule 13D. The revised rule will permit specified types of institutions to file on Schedule 13G, where those institutions have acquired securities in the ordinary course of their business and not with the purpose or effect of changing or influencing control of the issuer of the subject securities. In order to use Schedule 13G to the same extent as their U.S. counterparts, these foreign "qualified institutional" filers also will have to meet the conditions specified in the revised rule and Schedule 13G. The conditions set forth in the rule and the certification now included in Schedule 13G codify the conditions previously contained in the staff's no-action letters. One such condition is the requirement to certify that the regulatory scheme applicable to that type of institution in its home country is substantially comparable to the regulatory system applicable to its U.S. counterpart. Another such condition is an undertaking to provide to the Commission staff, upon request, the information that would have been required under Schedule 13D.

1. Benefits

The staff commonly grants no-action requests from foreign institutions comparable to the types of institutions listed in Rule 13d-1(b)(1)(ii) to file on Schedule 13G if they meet the conditions outlined in the no-action letters. The release adopting

amendments to the beneficial ownership rules in 1998 discussed the fact that in the past, foreign institutional investors requested exemptive and no-action letters.³⁸⁶ The release also stated that foreign institutions that wanted to use Schedule 13G as a qualified institutional investor should continue to request no-action relief from the staff. Because the staff's issuance of no-action letters was contemplated at the time of the 1998 amendments to the beneficial ownership rules, we only consider the costs and benefits of the proposed rule relevant to the staff's current practice of issuing no-action letters. From this perspective, the rule change would eliminate the costs and burdens on foreign institutions of seeking such relief individually. For foreign institutions that would otherwise have been eligible to file on Schedule 13G as passive investors under the current rules, filing under Rule 13d-1(b) reduces the burden on those filers because the initial filing obligation is less onerous for qualified institutional filers. For example, qualified institutions filing under Rule 13d-1(b) are required to file a Schedule 13G within 45 days after the end of the calendar year in which they own over five percent of the subject class as of the last day of that year. By contrast, passive investors reporting on Schedule 13G pursuant to Rule 13d-1(c) must file their initial report within ten days of the acquisition of more than five percent of the class. Unlike qualified institutional filers, passive investors may not file on Schedule 13G when their ownership equals or exceeds 20 percent of the subject class. No such limit exists for qualified institutional filers.

2. Costs

Schedule 13D requires more extensive disclosure than Schedule 13G. Therefore, to the extent that a filer taking advantage of the rule revisions otherwise would be

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See Amendments to Beneficial Ownership Reporting Requirements, Release No. 34-39538 (January 12, 1998) [63 FR 2854].

required to file a Schedule 13D (or a Schedule 13G as a passive investor), there may be some information cost to U.S. investors by permitting the filer to use Schedule 13G. For instance, Schedule 13D requires information about the purpose of the beneficial owner's transaction in the securities, investment intent, and sources of funding. To the extent that such information may be of value to investors in making informed investment decisions, there will be a cost in permitting these institutions to file on Schedule 13G. We sought comment on the usefulness to investors of requiring these foreign institutions to file on Schedule 13D; however, we did not receive any comments in response to our request. We believe that investors will be able to obtain useful information from Schedules 13G filed by foreign institutions that acquire securities in the ordinary course of business and not with the purpose or effect of influencing control of the issuer. We do not believe the reduction of the amount of information filed by these institutions will be detrimental to investors because such institutions will not have the purpose or effect of influencing control of the issuers in which they hold securities. Thus, some of the additional information that would be required by Schedule 13D would be inapplicable.

Foreign institutions wishing to take advantage of the rule change will incur certain costs to satisfy the conditions for filing on Schedule 13G. In particular, foreign institutions will need to assess whether their home country regulatory scheme is substantially comparable to the regulatory scheme applicable to their U.S. counterparts. This might involve seeking the advice of home country or U.S. legal counsel. However, we believe the incremental costs of complying with the revised rule will be minimal because foreign institutions are commonly granted no-action relief to file on Schedule 13G under the same circumstances as permitted under the new rule.

We also are adopting a corresponding change to Exchange Act Rule 16a-1(a)(1) to include the foreign institutions eligible to rely on Rule 13d-1(b)(1)(ii)(J) in response to two commenters who requested it;³⁸⁷ such a change would be consistent with the agency's regulatory history of aligning the scope of these two rules. Rule 16a-1(a) includes the definition of beneficial ownership for purposes of determining who is a more than 10 percent beneficial owner for purposes of Exchange Act Section 16. Rule 16a-1(a)(1) allows the institutions identified in the rule to exclude from 10 percent ownership calculations the shares they hold for the benefit of third parties or in customer or fiduciary accounts in the ordinary course of business, without the purpose or effect of changing control of the issuer, nor in connection with or as a participant in any transaction that has such a purpose or effect, including any transaction subject to Rule 13d-3(b). Similar to the change to Rule 13d-1(b)(1)(ii)(J), the change we are adopting to Rule 16a-1(a)(1) may have an information cost to U.S. investors because it will exempt certain foreign institutions from Section 16(a) reporting. We do not believe the reduction of the amount of information filed by these institutions will be detrimental to investors because investors will have access to the information provided by these institutions in Schedule 13G.

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See letters from ABA and S&C.

V. CONSIDERATION OF IMPACT ON ECONOMY, BURDEN ON COMPETITION AND PROMOTION OF EFFICIENCY, COMPETITION AND CAPITAL FORMATION

Section 2(b) of the Securities Act³⁸⁸ and Section 3(f) of the Exchange Act³⁸⁹ require us, when engaged in rulemaking, to consider or determine whether an action is necessary or appropriate in the public interest, and to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. When adopting rules under the Exchange Act, Section 23(a)(2) of the Exchange Act³⁹⁰ requires us to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The amendments generally are expected to enhance efficiency in conducting cross-border tender offers and business combination transactions by streamlining the application of U.S. and foreign rules that may apply to those transactions. We expect that they will promote capital formation by facilitating cross-border business combination transactions conducted under multiple, and possibly conflicting, regulatory systems. Some of the rule revisions, such as the changes that broaden the availability of early commencement for exchange offers and the applicability of the Tier II exemptions for tender offers not subject to Exchange Act Rule 13e-4 or Regulation 14D, may be viewed as enhancing competition between competing offers for the same target securities,

³⁸⁸ 15 U.S.C. 77b(b)

³⁸⁹ 15 U.S.C. 78c(f).

³⁹⁰ 15 U.S.C. 78w(a)(2).

because they will make these provisions available to different kinds of offers.

Furthermore, the rule changes are expected to reduce the regulatory burden on entities engaging in cross-border business combination transactions generally, which may promote competition by encouraging additional entities to engage in these types of transactions.

The changes to the test for determining eligibility to rely on the Tier I and Tier II cross-border exemptions and Securities Act Rule 802 under Regulation C are intended to facilitate the application of those exemptions. When the exemptions were adopted in 1999, we determined that the cross-border exemptions would serve to promote the inclusion of U.S. investors in transactions required to be conducted in accordance with a foreign regulatory system. The amendments we adopt today enhance the utility of the exemptions by addressing recurring conflicts between U.S. law and foreign law and practice.

The purpose of the amendment to Exchange Act Rule 13e-3(g)(6) is to expand the exemption from Rule 13e-3 for cross-border transactions meeting the conditions of Tier I. This amendment is expected to reduce regulatory compliance burdens for issuers and affiliates engaged in affiliated cross-border transactions that would otherwise be subject to Rule 13e-3. The ability to avoid the application of Rule 13e-3 for certain cross-border transactions is expected to benefit U.S. investors, because an issuer or affiliate may choose to exclude them if that is the only means to avoid the heightened disclosure burdens of Rule 13e-3. This amendment may increase efficiency for issuers and affiliates engaged in cross-border transactions because they will be able to use transaction

structures that are common abroad but that were not permitted under the exemption before these amendments.

The purpose of the changes to the Tier II tender offer exemptions in Exchange Act Rules 13e-4(i), 14d-1(d) and 14e-5 is to expand those exemptions to better address areas of recurring regulatory conflict. By codifying relief previously granted for individual transactions, the changes are expected to reduce compliance burdens on issuers and bidders who no longer need to seek such relief for each individual transaction. By enhancing the flexibility of U.S. tender offer rules in cross-border transactions, where those rules conflict with common elements of foreign law or practice, we believe the changes will increase the likelihood that bidders will include U.S. investors in these transactions.

We do not anticipate that the changes to Rule 14e-5 will have a significant impact, if any, on the economy because they codify the current scope of activities exempted from that rule's prohibitions through existing class exemptive letters. We believe that the changes to Rule 14e-5 likely will not place any burden on competition, as the rule changes apply equally to all market participants covered by the rule. We believe that the Rule 14e-5 class exemptive letters concerning Tier II cross-border transactions have promoted efficiency and capital formation by eliminating the time and cost burdens associated with individual grants of relief. We believe that the codification of those letters similarly will foster efficiency and cross-border capital formation.

The amendment to Securities Act Rule 162(a), expanding the ability of offerors to commence an exchange offer early where a tender offer is not subject to Regulation 14D or Rule 13e-4, is expected to further equalize the regulatory burden between cash tender

offers and exchange offers, thereby promoting competition. Because foreign rules often contain a mandatory offer requirement, obligating an offeror to make a tender offer for a given class of securities, these rule changes likely will place mandatory offers for unregistered classes of securities on an equal footing with offers for registered equity securities. The ability of offerors to commence an exchange offer early is being extended to domestic offers as well. This change likely will equalize the regulatory burden between cash tender offers and exchange offers in the United States.

The changes to Schedule TO and Forms S-4 and F-4 will likely improve efficiency because disclosure of the exemptions being relied upon by the bidder will aid the staff in its review of these documents and likely eliminate staff comments based upon assumptions as to the exemption being relied upon by the bidder.

VI. FINAL REGULATORY FLEXIBILITY ACT ANALYSIS

This Final Regulatory Flexibility Act Analysis has been prepared in accordance with the Regulatory Flexibility Act.³⁹¹ It relates to revisions to the rules and forms that we are adopting today.³⁹² An Initial Regulatory Flexibility Act Analysis was prepared in accordance with the Regulatory Flexibility Act and included in the Proposing Release.

A. Need for the amendments

These amendments are necessary to facilitate the inclusion of U.S. target security holders in cross-border business combination transactions. The rule changes are expected to result in further reductions in the cost and burdens associated with including U.S.

³⁹¹ 5 U.S.C. 601.

³⁹² Based on an analysis of the language and legislative history of the Regulatory Flexibility Act, Congress does not appear to have intended the Act to apply to foreign issuers. Therefore, we are analyzing the impact on small U.S. entities only.

target holders in those transactions. U.S. target holders previously excluded from such transactions will benefit by having additional transactions extended to them.

The rule changes are incremental in nature and are not a significant departure from the previous cross-border exemptions. The changes further harmonize U.S. and foreign law and practice, and facilitate greater inclusion of U.S. target holders in cross-border transactions. In many instances, the changes codify existing interpretations and exemptive relief. We do not believe any less restrictive alternative to the rule amendments exists that would serve the purpose of the tender offer and registration requirements of the federal securities laws. We did not identify alternatives to the rule amendments that are consistent with their objectives and our statutory authority. The amended rules do not duplicate or conflict with any existing federal rule provisions.

B. Significant issues raised by public comments

An Initial Regulatory Flexibility Analysis was prepared in accordance with the Regulatory Flexibility Act in connection with the Proposing Release, and we solicited comments on any impact the proposed changes might have on small entities. We did not receive any public comments that responded directly to the IRFA or that dealt directly with the proposal's impact on small entities.

C. Small entities subject to the final amendments

The Regulatory Flexibility Act defines "small entity" to mean "small business," "small organization," or "small governmental jurisdiction."³⁹³ The Commission's rules define "small business" and "small organization" for purposes of the Regulatory

³⁹³

5 U.S.C. 601(6).

Flexibility Act for each of the types of entities regulated by the Commission.³⁹⁴ A “small business” and “small organization,” when used with reference to an issuer other than an investment company, generally means an issuer with total assets of \$5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 1,100 issuers that may be considered reporting small entities.³⁹⁵ The revised rules may affect each of the approximately 1,100 issuers that may be considered reporting small entities. The number of reporting or non-reporting small businesses that actually rely on the revised rules, or may otherwise be impacted by the rule revisions, will depend on many factors. Acquirors relying on the exemptions may or may not have reporting obligations under the Exchange Act before engaging in a cross-border business combination transaction. An acquiror’s ability to rely on the exemptions is not determined by the acquiror’s size or market capitalization; however, we believe that small businesses are not typically acquirors in cross-border transactions. We believe that the amendments likely will result in savings to entities (both small and large) that qualify for the exemptions.

D. Reporting, recordkeeping and other compliance requirements

The amended rules do not impose any new reporting, recordkeeping or other compliance requirements on small entities.

³⁹⁴ Securities Act Rule 157 [17 CFR 230.157] and Exchange Act Rule 0-10 [17 CFR 240.0-10] contain the applicable definitions.

³⁹⁵ The estimated number of reporting small entities is based on 2007 data, including the Commission’s EDGAR database and Thomson Financial’s Worldscope database.

E. Agency action to minimize effect on small entities

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the amendments adopted today, the Commission considered the following alternatives: (i) the establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (ii) the clarification, consolidation or simplification of compliance and reporting requirements under the rule for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage from the amendments, or any part thereof, for small entities. Our objective in adopting the amendments is to facilitate the inclusion of U.S. holders in cross-border business combinations. While we considered the above alternatives to accomplish our stated objective, we believe that different compliance or reporting requirements are not necessary because the amendments do not establish any new reporting, recordkeeping, or compliance requirements for small entities. Establishing a different standard for small business entities would impose a greater compliance burden on small entities and would be inconsistent with the benefits provided for all entities that are able to avail themselves of the exemptions.

VII. STATUTORY BASIS AND TEXT OF AMENDMENTS

We are amending the forms and rules under the authority set forth in Sections 3(b), 7, 8, 9, 10, 19 and 28 of the Securities Act, and Sections 12, 13, 14, 23, 35A, and 36 of the Exchange Act.

List of Subjects

17 CFR Parts 230, 231, 232, 239, 240, 241, and 249

Reporting and recordkeeping requirements, Securities.

TEXT OF AMENDMENTS

For the reasons set out in the preamble, we are amending Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 230 – GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

2. Amend §230.162 by revising paragraphs (a) and (b) and adding an Instruction to read as follows:

§ 230.162 Submission of tenders in registered exchange offers.

(a) Notwithstanding section 5(a) of the Act (15 U.S.C. 77e(a)), an offeror may solicit tenders of securities in an exchange offer before a registration statement is effective as to the security offered, so long as no securities are purchased until the registration statement is effective and the tender offer has expired in accordance with the tender offer rules, and either:

- (1) The exchange offer is subject to § 240.13e-4 or §§ 240.14d-1 through 14d-11 of this chapter; or

(2) The offeror provides withdrawal rights to the same extent as would be required if the exchange offer were subject to the requirements of § 240.13e-4 or §§ 240.14d-1 through 14d-11 of this chapter; and if a material change occurs in the information published, sent or given to security holders, the offeror complies with the provisions of § 240.13e-4(e)(3) or § 240.14d-4(b) and (d) of this chapter in disseminating information about the material change to security holders, and including the minimum periods during which the offer must remain open (with withdrawal rights) after notice of the change is provided to security holders.

(b) Notwithstanding Section 5(b)(2) of the Act (15 U.S.C. 77e(b)(2)); a prospectus that meets the requirements of Section 10(a) of the Act (15 U.S.C. 77j(a)) need not be delivered to security holders in an exchange offer that commences before the effectiveness of a registration statement in accordance with the provisions of § 230.162(a) of this section, so long as a preliminary prospectus, prospectus supplements and revised prospectuses are delivered to security holders in accordance with § 240.13e-4(e)(2) or § 240.14d-4(b) of this chapter. This applies not only to exchange offers subject to those provisions, but also to exchange offers not subject to those provisions that meet the conditions in § 230.162(a)(2) of this section.

Instruction to § 230.162 of this section:

Notwithstanding the provisions of § 230.162 of this section above, for going-private transactions (as defined by § 240.13e-3) and roll-up transactions (as described by Item 901 of Regulation S-K (§229.901 of this chapter)), a registration statement registering the securities to be offered must have become effective and only a prospectus

that meets the requirements of Section 10(a) of the Securities Act may be delivered to security holders on the date of commencement.

3. Amend § 230.800 by revising paragraph (h)(1) and(h)(2) and adding paragraphs (h)(6) and (h)(7) to read as follows:

§ 230.800 Definitions for §§ 230.800, 230.801 and 230.802.

* * * * *

(h) * * *

(1) Calculate the percentage of outstanding securities held by U.S. holders as of a date no more than 60 days before or 30 days after the public announcement of a business combination conducted under Rule 802 under the Act or of the record date in a rights offering conducted under Rule 801 under the Act. For a business combination conducted under Rule 802, if you are unable to calculate as of a date within these time frames, the calculation may be made as of the most recent practicable date before public announcement, but in no event earlier than 120 days before public announcement.

(2) Include securities underlying American Depositary Shares convertible or exchangeable into the securities that are the subject of the tender offer when calculating the number of subject securities outstanding, as well as the number held by U.S. holders. Exclude from the calculation other types of securities that are convertible or exchangeable into the securities that are the subject of the tender offer, such as warrants, options and convertible securities. Exclude from those calculations securities held by the acquiror in an exchange offer or business combination;

* * * * *

(6) For exchange offers conducted pursuant to Rule 802 under the Act by persons other than the issuer of the subject securities or its affiliates that are not made pursuant to an agreement with the issuer of the subject securities, the issuer of the subject securities will be presumed to be a foreign private issuer and U.S. holders will be presumed to hold 10 percent or less of the outstanding subject securities, unless paragraphs (h)(7)(i), (ii) or (iii) of this section indicate otherwise.

(7) For rights offerings and business combinations, including exchange offers conducted pursuant to Rule 802 under the Act, where the offeror is unable to conduct the analysis of U.S. ownership set forth in paragraph (h)(3) of this section, the issuer of the subject securities will be presumed to be a foreign private issuer and U.S. holders will be presumed to hold 10 percent or less of the outstanding subject securities so long as there is a primary trading market for the subject securities outside the United States, as defined in Rule 12h-6(f)(5), unless:

(i) Average daily trading volume of the subject securities in the United States for a recent twelve-month period ending on a date no more than 60 days before the public announcement of the business combination or of the record date for a rights offering exceeds 10 percent of the average daily trading volume of that class of securities on a worldwide basis for the same period; or

(ii) The most recent annual report or annual information filed or submitted by the issuer with securities regulators of the home jurisdiction or with the Commission or any jurisdiction in which the subject securities trade before the public announcement of the offer indicates that U.S. holders hold more than 10 percent of the outstanding subject class of securities; or

(iii) The acquiror or issuer knows or has reason to know, before the public announcement of the offer, that the level of U.S. ownership exceeds 10 percent of such securities. As an example, an acquiror or issuer is deemed to know information about U.S. ownership of the subject class of securities that is publicly available and that appears in any filing with the Commission or any regulatory body in the issuer's jurisdiction of incorporation or (if different) the non-U.S. jurisdiction in which the primary trading market for the subject securities is located. The acquiror in a business combination is deemed to know information about U.S. ownership available from the issuer. The acquiror or issuer is deemed to know information obtained or readily available from any other source that is reasonably reliable, including from persons it has retained to advise it about the transaction, as well as from third-party information providers. These examples are not intended to be exclusive.

* * * * *

4. Amend § 230.802 by revising paragraphs (a)(2) and (a)(3) and removing paragraphs (c)(1), (c)(2), (c)(3) and (c)(4).

The revisions read as follows:

§ 230.802 Exemption for offerings in connection with an exchange offer or business combination for the securities of foreign private issuers.

* * * * *

(a) * * *

(2) Equal treatment. The offeror must permit U.S. holders to participate in the exchange offer or business combination on terms at least as favorable as those offered any other holder of the subject securities. The offeror, however, need not extend the offer

to security holders in those states or jurisdictions that require registration or qualification, except that the offeror must offer the same cash alternative to security holders in any such state that it has offered to security holders in any other state or jurisdiction.

(3) Informational documents. (i) If the offeror publishes or otherwise disseminates an informational document to the holders of the subject securities in connection with the exchange offer or business combination, the offeror must furnish that informational document, including any amendments thereto, in English, to the Commission on Form CB (§ 239.800 of this chapter) by the first business day after publication or dissemination. If the offeror is a foreign company, it must also file a Form F-X (§ 239.42 of this chapter) with the Commission at the same time as the submission of the Form CB to appoint an agent for service of process in the United States.

(ii) The offeror must disseminate any informational document to U.S. holders, including any amendments thereto, in English, on a comparable basis to that provided to security holders in the foreign subject company's home jurisdiction.

(iii) If the offeror disseminates by publication in its home jurisdiction, the offeror must publish the information in the United States in a manner reasonably calculated to inform U.S. holders of the offer.

* * * * *

PART 231 – INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

5. Part 231 is amended by adding Release No. 33-8957 and the release date of September 19, 2008, to the list of interpretative releases.

* * * * *

**PART 232 – REGULATION S-T – GENERAL RULES AND REGULATIONS
FOR ELECTRONIC FILINGS**

6. The authority citation for Part 232 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z-3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a-6(c), 80a-8, 80a-29, 80a-30, 80a-37, and 7201 et seq.; and 18 U.S.C. 1350.

* * * * *

7. Amend § 232.101 by:

- a. Revising paragraphs (a)(1)(vi) and (a)(1)(vii);
- b. Removing and reserving paragraph (b)(7); and
- c. Revising paragraph (b)(8).

The revisions read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(vi) Form CB (§§ 239.800 and 249.480 of this chapter) filed or submitted under § 230.801 or 230.802 of this chapter or § 240.13e-4(h)(8), 240.14d-1(c), or 240.14e-2(d) of this chapter;

(vii) Form F-X (§ 239.42 of this chapter) when filed in connection with a Form CB (§§ 239.800 and 249.480 of this chapter);

* * * * *

(b) * * *

(8) Form F-X (§ 232.42 of this chapter) if filed by a Canadian issuer when qualifying an offering statement pursuant to the provisions of Regulation A (§§ 230.251 230.263 of this chapter); and

* * * * *

PART 239 – FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

8. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

9. Form S-4 (referenced in § 239.25) is amended by adding a statement regarding reliance on the cross-border exemptions and check boxes on the cover page immediately before the “Calculation of Registration Fee” table to read as follows:

Note – The text of Form S-4 does not and this amendment will not appear in the Code of Federal Regulations.

FORM S-4

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13e-4(i) (Cross-Border Issuer Tender Offer) ☐

Exchange Act Rule 14d-1(d) (Cross-Border Third-Party Tender Offer) ☐

* * * * *

10. Amend Form F-4 (referenced in §239.34) by adding a statement regarding reliance on the cross-border exemptions and check boxes on the cover page immediately before the "Calculation of Registration Fee" table to read as follows:

Note – The text of Form F-4 does not and this amendment will not appear in the Code of Federal Regulations.

FORM F-4

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13e-4(i) (Cross-Border Issuer Tender Offer) ☐

Exchange Act Rule 14d-1(d) (Cross-Border Third-Party Tender Offer) ☐

* * * * *

11. Amend Form F-X (referenced in § 239.42) by revising the Note to General Instruction II.B.(2) to read as follows:

Note – The text of Form F-X does not and this amendment will not appear in the Code of Federal Regulations.

FORM F-X

APPOINTMENT OF AGENT FOR SERVICE OF PROCESS AND

UNDERTAKING

GENERAL INSTRUCTIONS

* * * * *

II. * * *

B. * * *

(2) * * *

Note: Regulation S-T Rule 101(b)(8) only permits the filing of the Form F-X in paper if filed by a Canadian issuer when qualifying an offering statement pursuant to the provisions of Regulation A (§§ 230.251 - 230.263 of this chapter).

* * * * *

**PART 240 – GENERAL RULES AND REGULATIONS, SECURITIES
EXCHANGE ACT OF 1934**

12. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 et. seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

13. Amend § 240.13d-1 by:

- a. Revising paragraph (b)(1)(ii)(G) and (J);
- b. Removing “and” from the end of paragraph (b)(1)(ii)(I);
- c. Adding paragraph (b)(1)(ii)(K); and
- d. Removing the authority citation following the section.

The revisions and addition reads as follows:

§ 240.13d-1. Filing of Schedules 13D and 13G.

* * * * *

(b)(1) * * *

(ii) * * *

(G) A parent holding company or control person, provided the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries or affiliates that are not persons specified in § 240.13d-1(b)(1)(ii)(A) through (J), does not exceed one percent of the securities of the subject class;

* * * * *

(J) A non-U.S. institution that is the functional equivalent of any of the institutions listed in paragraphs (b)(1)(ii)(A) through (I) of this section, so long as the non-U.S. institution is subject to a regulatory scheme that is substantially comparable to the regulatory scheme applicable to the equivalent U.S. institution; and

(K) A group, provided that all the members are persons specified in § 240.13d-1(b)(1)(ii)(A) through (J).

* * * * *

14. Amend § 240.13d-102 by:

- a. Revising Instruction 12 to the Instruction for the Cover Page before the Notes;
- b. In Item 3 removing the period at the end of paragraphs (a), (b), (c), and (d) and in each place adding a semicolon;
- c. In Item 3 removing the period at the end of paragraph (j) and in its place adding a semicolon and adding paragraph (k); and
- d. In Item 10 redesignating paragraph (b) as paragraph (c) and adding new paragraph (b).

The revision and additions read as follows:

§ 240.13d-102 Schedule 13G – Information to be included in statements filed pursuant to § 240.13d-1(b), (c), and (d) and amendments thereto filed pursuant to § 240.13d-2.

* * * * *

Instructions for Cover Page:

* * * * *

(12) Type of Reporting Person--Please classify each "reporting person" according to the following breakdown (see Item 3 of Schedule 13G) and place the appropriate Symbol on the form:

Category	Symbol
Broker Dealer.....	BD
Bank.....	BK
Insurance Company.....	IC
Investment Company.....	IV
Investment Adviser.....	IA
Employee Benefit Plan or Endowment Fund...	EP
Parent Holding Company/Control Person.....	HC
Savings Association.....	SA
Church Plan.....	CP
Corporation.....	CO
Partnership.....	PN
Individual.....	IN
Non-U.S. Institution.....	FI
Other.....	OO

* * * * *

Item 3. * * *

(j) ☐ A non-U.S. institution in accordance with § 240.13d-1(b)(1)(ii)(J);

(k) ☐ Group, in accordance with § 240.13d-1(b)(1)(ii)(K).

If filing as a non-U.S. institution in accordance with § 240.13d-1(b)(1)(ii)(J),
please specify the type of institution: _____

* * * * *

Item 10. Certification

* * * * *

(b) The following certification shall be included if the statement is filed pursuant to § 240.13d-1(b)(1)(ii)(J), or if the statement is filed pursuant to § 240.13d-1(b)(1)(ii)(K) and a member of the group is a non-U.S. institution eligible to file pursuant to § 240.13d-1(b)(1)(ii)(J):

By signing below I certify that, to the best of my knowledge and belief, the foreign regulatory scheme applicable to [insert particular category of institutional investor] is substantially comparable to the regulatory scheme applicable to the functionally equivalent U.S. institution(s). I also undertake to furnish to the Commission staff, upon request, information that would otherwise be disclosed in a Schedule 13D.

* * * * *

15. Amend § 240.13e-3 by revising paragraph (g)(6) to read as follows:

§ 240.13e-3 Going private transactions by certain issuers or their affiliates.

* * * * *

(g) * * *

(6) Any tender offer or business combination made in compliance with § 230.802 of this chapter, § 240.13e-4(h)(8) or § 240.14d-1(c) or any other kind of transaction that otherwise meets the conditions for reliance on the cross-border exemptions set forth in §

240.13e-4(h)(8), 240.14d-1(c) or 230.802 of this chapter except for the fact that it is not technically subject to those rules.

Instruction to § 240.13e-3(g)(6): To the extent applicable, the acquiror must comply with the conditions set forth in § 230.802 of this chapter, and §§ 240.13e-4(h)(8) and 14d-1(c). If the acquiror publishes or otherwise disseminates an informational document to the holders of the subject securities in connection with the transaction, the acquiror must furnish an English translation of that informational document, including any amendments thereto, to the Commission under cover of Form CB (§ 239.800 of this chapter) by the first business day after publication or dissemination. If the acquiror is a foreign entity, it must also file a Form F-X (§ 239.42 of this chapter) with the Commission at the same time as the submission of the Form CB to appoint an agent for service in the United States.

* * * * *

16. Amend § 240.13e-4 by:

- a. Revising paragraph (h)(8)(i);
- b. Revising the introductory text of paragraph (i);
- c. Revising paragraph (i)(1)(ii);
- d. Revising paragraph (i)(2)(ii);
- e. Adding paragraphs (i)(2)(v) and (vi);
- f. Revising paragraphs 2.i. and ii. to the Instructions to paragraph (h)(8) and (i);
- g. Revising Instruction 3 to paragraphs (h)(8) and (i); and
- h. Redesignating current Instruction 3 as Instruction 4;
- i. Revising the newly redesignated Instruction 4; and

j. Redesignating current Instruction 4 as Instruction 5.

The revisions and additions read as follows:

§ 240.13e-4 Tender offers by issuers.

(h) * * *

(8) Cross-border tender offers (Tier I). * * *

(i) Except in the case of an issuer tender offer that is commenced during the pendency of a tender offer made by a third party in reliance on § 240.14d-1(c), U.S. holders do not hold more than 10 percent of the subject class sought in the offer (as determined under Instructions 2 or 3 to paragraph (h)(8) and paragraph (i) of this section);

* * * * *

(i) Cross-border tender offers (Tier II). Any issuer tender offer (including any exchange offer) that meets the conditions in paragraph (i)(1) of this section shall be entitled to the exemptive relief specified in paragraph (i)(2) of this section, provided that such issuer tender offer complies with all the requirements of this section other than those for which an exemption has been specifically provided in paragraph (i)(2) of this section. In addition, any issuer tender offer (including any exchange offer) subject only to the requirements of section 14(e) of the Act and Regulation 14E (§§ 240.14e-1 through 240.14e-8) thereunder that meets the conditions in paragraph (i)(1) of this section also shall be entitled to the exemptive relief specified in paragraph (i)(2) of this section, to the extent needed under the requirements of Regulation 14E, so long as the tender offer complies with all requirements of Regulation 14E other than those for which an exemption has been specifically provided in paragraph (i)(2) of this section:

* * * * *

(1) * * *

(ii) Except in the case of an issuer tender offer commenced during the pendency of a tender offer made by a third party in reliance on § 240.14d-1(d), U.S. holders do not hold more than 40 percent of the class of securities sought in the offer (as determined in accordance with Instructions 2 or 3 to paragraphs (h)(8) and (i) of this section).

(2) * * *

(ii) Equal treatment—separate U.S. and foreign offers. Notwithstanding the provisions of paragraph (f)(8) of this section, an issuer or affiliate conducting an issuer tender offer meeting the conditions of paragraph (i)(1) of this section may separate the offer into multiple offers: one offer made to U.S. holders, which also may include all holders of American Depositary Shares representing interests in the subject securities, and one or more offers made to non-U.S. holders. The U.S. offer must be made on terms at least as favorable as those offered any other holder of the same class of securities that is the subject of the tender offers. U.S. holders may be included in the foreign offer(s) only where the laws of the jurisdiction governing such foreign offer(s) expressly preclude the exclusion of U.S. holders from the foreign offer(s) and where the offer materials distributed to U.S. holders fully and adequately disclose the risks of participating in the foreign offer(s).

* * * * *

(v) Suspension of withdrawal rights during counting of tendered securities. The issuer or affiliate may suspend withdrawal rights required under paragraph (f)(2) of this

section at the end of the offer and during the period that securities tendered into the offer are being counted, provided that:

(A) The issuer or affiliate has provided an offer period, including withdrawal rights, for a period of at least 20 U.S. business days;

(B) At the time withdrawal rights are suspended, all offer conditions have been satisfied or waived, except to the extent that the issuer or affiliate is in the process of determining whether a minimum acceptance condition included in the terms of the offer has been satisfied by counting tendered securities; and

(C) Withdrawal rights are suspended only during the counting process and are reinstated immediately thereafter, except to the extent that they are terminated through the acceptance of tendered securities.

(vi) Early termination of an initial offering period. An issuer or affiliate conducting an issuer tender offer may terminate an initial offering period, including a voluntary extension of that period, if at the time the initial offering period and withdrawal rights terminate, the following conditions are met:

(A) The initial offering period has been open for at least 20 U.S. business days;

(B) The issuer or affiliate has adequately discussed the possibility of and the impact of the early termination in the original offer materials;

(C) The issuer or affiliate provides a subsequent offering period after the termination of the initial offering period;

(D) All offer conditions are satisfied as of the time when the initial offering period ends; and

(E) The issuer or affiliate does not terminate the initial offering period or any extension of that period during any mandatory extension required under U.S. tender offer rules.

Instructions to paragraph (h)(8) and (i) of this section:

1. * * *

2. * * *

i. Calculate the U.S. ownership as of a date no more than 60 days before and no more than 30 days after the public announcement of the tender offer. If you are unable to calculate as of a date within these time frames, the calculation may be made as of the most recent practicable date before public announcement, but in no event earlier than 120 days before announcement;

ii. Include securities underlying American Depositary Shares convertible or exchangeable into the securities that are the subject of the tender offer when calculating the number of subject securities outstanding, as well as the number held by U.S. holders. Exclude from the calculations other types of securities that are convertible or exchangeable into the securities that are the subject of the tender offer, such as warrants, options and convertible securities;

* * * * *

3. If you are unable to conduct the analysis of U.S. ownership set forth in Instruction 2 above, U.S. holders will be presumed to hold 10 percent or less of the outstanding subject securities (40 percent for Tier II) so long as there is a primary trading market outside the United States, as defined in Rule 12h-6(f)(5), unless:

i. Average daily trading volume of the subject securities in the United States for a recent twelve-month period ending on a date no more than 60 days before the public announcement of the tender offer exceeds 10 percent (or 40 percent) of the average daily trading volume of that class of securities on a worldwide basis for the same period; or

ii. The most recent annual report or annual information filed or submitted by the issuer with securities regulators of the home jurisdiction or with the Commission or any jurisdiction in which the subject securities trade before the public announcement of the offer indicates that U.S. holders hold more than 10 percent (or 40 percent) of the outstanding subject class of securities; or

iii. You know or have reason to know, before the public announcement of the offer, that the level of U.S. ownership of the subject securities exceeds 10 percent (or 40 percent) of such securities. As an example, you are deemed to know information about U.S. ownership of the subject class of securities that is publicly available and that appears in any filing with the Commission or any regulatory body in the home jurisdiction and, if different, the non-U.S. jurisdiction in which the primary trading market for the subject class of securities is located. You are also deemed to know information obtained or readily available from any other source that is reasonably reliable, including from persons you have retained to advise you about the transaction, as well as from third-party information providers. These examples are not intended to be exclusive.

4. United States means the United States of America, its territories and possessions, any State of the United States, and the District of Columbia.

5. The exemptions provided by paragraphs (h)(8) and (i) of this section are not available for any securities transaction or series of transactions that technically complies

with paragraph (h)(8) and (i) of this section but are part of a plan or scheme to evade the provisions of this section.

* * * * *

17. Amend § 240.14d-1 by:

- a. Revising paragraph (a);
- b. Revising paragraph (c)(1);
- c. Revising the introductory text of paragraph (d), paragraphs (d)(1)(ii), (2)(ii) and (d)(2)(iv);
- d. Adding paragraphs (d)(2)(vi), (d)(2)(vii), (d)(2)(viii), and (d)(2)(ix); and
- e. Revising Instructions 2.i., 2.ii., 3., 3.i., 3.ii., and 3.iii. to the Instructions to paragraphs (c) and (d).

The revisions and additions read as follows:

§ 240.14d-1 Scope of and definitions applicable to Regulations 14D and 14E.

(a) Scope. Regulation 14D (§§ 240.14d-1 through 240.14d-101) shall apply to any tender offer that is subject to section 14(d)(1) of the Act (15 U.S.C. 78n(d)(1)), including, but not limited to, any tender offer for securities of a class described in that section that is made by an affiliate of the issuer of such class. Regulation 14E (§§ 240.14e-1 through 240.14e-8) shall apply to any tender offer for securities (other than exempted securities) unless otherwise noted therein.

* * * * *

(c) Tier I. * * *

(1) U.S. ownership limitation. Except the in case of a tender offer that is commenced during the pendency of a tender offer made by a prior bidder in reliance on

this paragraph or § 240.13e-4(h)(8), U.S. holders do not hold more than 10 percent of the class of securities sought in the offer (as determined under Instructions 2 or 3 to paragraphs (c) and (d) of this section).

* * * * *

(d) Tier II. A person conducting a tender offer (including any exchange offer) that meets the conditions in paragraph (d)(1) of this section shall be entitled to the exemptive relief specified in paragraph (d)(2) of this section, provided that such tender offer complies with all the requirements of this section other than those for which an exemption has been specifically provided in paragraph (d)(2) of this section. In addition, a person conducting a tender offer subject only to the requirements of section 14(e) of the Act (15 U.S.C. 78n(e)) and Regulation 14E thereunder that meets the conditions in paragraph (d)(1) of the section also shall be entitled to the exemptive relief specified in paragraph (d)(2) of this section, to the extent needed under the requirements of Regulation 14E, so long as the tender offer complies with all requirements of Regulation 14E other than those for which an exemption has been specifically provided in paragraph (d)(2) of this section:

(1) * * *

(ii) Except in the case of a tender offer that is commenced during the pendency of a tender offer made by a prior bidder in reliance on this paragraph or § 240.13e-4(i), U.S. holders do not hold more than 40 percent of the class of securities sought in the offer (as determined under Instructions 2 or 3 to paragraphs (c) and (d) of this section); and

(2) * * *

(ii) Equal treatment—separate U.S. and foreign offers. Notwithstanding the provisions of § 240.14d-10, a bidder conducting a tender offer meeting the conditions of paragraph (d)(1) of this section may separate the offer into multiple offers: one offer made to U.S. holders, which also may include all holders of American Depositary Shares representing interests in the subject securities, and one or more offers made to non-U.S. holders. The U.S. offer must be made on terms at least as favorable as those offered any other holder of the same class of securities that is the subject of the tender offers. U.S. holders may be included in the foreign offer(s) only where the laws of the jurisdiction governing such foreign offer(s) expressly preclude the exclusion of U.S. holders from the foreign offer(s) and where the offer materials distributed to U.S. holders fully and adequately disclose the risks of participating in the foreign offer(s).

* * * * *

(iv) Prompt payment. Payment made in accordance with the requirements of the home jurisdiction law or practice will satisfy the requirements of § 240.14e-1(c). Where payment may not be made on a more expedited basis under home jurisdiction law or practice, payment for securities tendered during any subsequent offering period within 20 business days of the date of tender will satisfy the prompt payment requirements of § 240.14d-11(e). For purposes of this paragraph, a business day is determined with reference to the target's home jurisdiction.

* * * * *

(vi) Payment of interest on securities tendered during subsequent offering period. Notwithstanding the requirements of § 240.14d-11(f), the bidder may pay interest on securities tendered during a subsequent offering period, if required under applicable

foreign law. Paying interest on securities tendered during a subsequent offering period in accordance with this section will not be deemed to violate § 240.14d-10(a)(2).

(vii) Suspension of withdrawal rights during counting of tendered securities. The bidder may suspend withdrawal rights required under section 14(d)(5) of the Act (15 U.S.C. 78n(d)(5)) at the end of the offer and during the period that securities tendered into the offer are being counted, provided that:

(A) The bidder has provided an offer period including withdrawal rights for a period of at least 20 U.S. business days;

(B) At the time withdrawal rights are suspended, all offer conditions have been satisfied or waived, except to the extent that the bidder is in the process of determining whether a minimum acceptance condition included in the terms of the offer has been satisfied by counting tendered securities; and

(C) Withdrawal rights are suspended only during the counting process and are reinstated immediately thereafter, except to the extent that they are terminated through the acceptance of tendered securities.

(viii) Mix and match elections and the subsequent offering period.

Notwithstanding the requirements of § 240.14d-11(b), where the bidder offers target security holders a choice between different forms of consideration, it may establish a ceiling on one or more forms of consideration offered. Notwithstanding the requirements of § 240.14d-11(f), a bidder that establishes a ceiling on one or more forms of consideration offered pursuant to this subsection may offset elections of tendering security holders against one another, subject to proration, so that elections are satisfied to the greatest extent possible and pro rated to the extent that they cannot be satisfied in full.

Such a bidder also may separately offset and pro rate securities tendered during the initial offering period and those tendered during any subsequent offering period, notwithstanding the requirements of § 240.14d-10(c).

(ix) Early termination of an initial offering period. A bidder may terminate an initial offering period, including a voluntary extension of that period, if at the time the initial offering period and withdrawal rights terminate, the following conditions are met:

- (A) The initial offering period has been open for at least 20 U.S. business days;
- (B) The bidder has adequately discussed the possibility of and the impact of the early termination in the original offer materials;
- (C) The bidder provides a subsequent offering period after the termination of the initial offering period;
- (D) All offer conditions are satisfied as of the time when the initial offering period ends; and
- (E) The bidder does not terminate the initial offering period or any extension of that period during any mandatory extension required under U.S. tender offer rules.

Instructions to paragraphs (c) and (d):

1. * * *

2. * * *

- i. Calculate the U.S. ownership as of a date no more than 60 before and no more than 30 days after public announcement of the tender offer. If you are unable to calculate as of a date within these time frames, the calculation may be made as of the most recent practicable date before public announcement, but in no event earlier than 120 days before announcement;

ii. Include securities underlying American Depositary Shares convertible or exchangeable into the securities that are the subject of the tender offer when calculating the number of subject securities outstanding, as well as the number held by U.S. holders. Exclude from the calculations other types of securities that are convertible or exchangeable into the securities that are the subject of the tender offer, such as warrants, options and convertible securities. Exclude from those calculations securities held by the bidder;

* * * * *

3. In a tender offer by a bidder other than an affiliate of the issuer of the subject securities that is not made pursuant to an agreement with the issuer of the subject securities, the issuer of the subject securities will be presumed to be a foreign private issuer and U.S. holders will be presumed to hold less than 10 percent (40 percent in the case of paragraph (d) of this section) of such outstanding securities, unless paragraphs i., ii., or iii. of this section indicate otherwise. In addition, where the bidder is unable to conduct the analysis of U.S. ownership set forth in Instruction 2 above, the bidder may presume that the percentage of securities held by U.S. holders is less than 10 percent (40 percent in the case of paragraph (d) of this section) of the outstanding securities so long as there is a primary trading market for the subject securities outside the U.S., as defined in Rule 12h-6(f)(5), unless:

i. Average daily trading volume of the subject securities in the United States for a recent twelve-month period ending on a date no more than 60 days before the public announcement of the offer exceeds 10 percent (40 percent in the case of paragraph (d) of

this section) of the average daily trading volume of that class of securities on a worldwide basis for the same period; or

ii. The most recent annual report or annual information filed or submitted by the issuer with securities regulators of the home jurisdiction or with the Commission or any jurisdiction in which the subject securities trade before the public announcement of the offer indicates that U.S. holders hold more than 10 percent (40 percent in the case of paragraph (d) of this section) of the outstanding subject class of securities; or

iii. The bidder knows or has reason to know, before the public announcement of the offer, that the level of U.S. ownership exceeds 10 percent (40 percent in the case of paragraph (d) of this section) of such securities. As an example, a bidder is deemed to know information about U.S. ownership of the subject class of securities that is publicly available and that appears in any filing with the Commission or any regulatory body in the issuer's jurisdiction of incorporation or (if different) the non-U.S. jurisdiction in which the primary trading market for the subject securities is located. The bidder is deemed to know information about U.S. ownership available from the issuer or obtained or readily available from any other source that is reasonably reliable, including from persons it has retained to advise it about the transaction, as well as from third-party information providers. These examples are not intended to be exclusive.

* * * * *

18. Amend § 240.14d-11 by revising the introductory paragraph to read as follows:

§ 240.14d-11. Subsequent offering period.

A bidder may elect to provide a subsequent offering period of at least three business days during which tenders will be accepted if:

* * * * *

19. Amend §240.14d-100 by adding a statement regarding reliance on the cross-border exemptions and check boxes on the cover page immediately before the General Instructions to read as follows:

§ 240.14d-100 Schedule TO. Tender offer statement under section 14(d)(1) or 13(e)(1) of the Securities Exchange Act of 1934.

Securities and Exchange Commission

Washington, D.C. 20549

Schedule TO

Tender Offer Statement under Section 14(d)(1) or 13(e)(1) of the Securities Exchange Act of 1934

* * * * *

If applicable, check the appropriate box(es) below to designate the appropriate rule provision(s) relied upon:

☐ Rule 13e-4(i) (Cross-Border Issuer Tender Offer)

☐ Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

* * * * *

20. Amend § 240.14e-5 by:

a. Removing “and” at the end of paragraphs (b)(9)(v) and (c)(6);

b. Removing the period at the end of paragraphs (b)(10)(v) and (c)(7) and adding in its place “; and”; and

c. Adding paragraphs (b)(11), (b)(12), (c)(8), and (c)(9).

The additions read as follows:

§ 240.14e-5. Prohibiting purchases outside of a tender offer.

* * * * *

(b) Excepted activity. * * *

(11) Purchases or arrangements to purchase pursuant to a foreign tender offer(s).

Purchases or arrangements to purchase pursuant to a foreign offer(s) where the offeror seeks to acquire subject securities through a U.S. tender offer and a concurrent or substantially concurrent foreign offer(s), if the following conditions are satisfied:

(i) The U.S. and foreign tender offer(s) meet the conditions for reliance on the Tier II cross-border exemptions set forth in § 240.14d-1(d);

(ii) The economic terms and consideration in the U.S. tender offer and foreign tender offer(s) are the same, provided that any cash consideration to be paid to U.S. security holders may be converted from the currency to be paid in the foreign tender offer(s) to U.S. dollars at an exchange rate disclosed in the U.S. offering documents;

(iii) The procedural terms of the U.S. tender offer are at least as favorable as the terms of the foreign tender offer(s);

(iv) The intention of the offeror to make purchases pursuant to the foreign tender offer(s) is disclosed in the U.S. offering documents; and

(v) Purchases by the offeror in the foreign tender offer(s) are made solely pursuant to the foreign tender offer(s) and not pursuant to an open market transaction(s), a private transaction(s), or other transaction(s); and

(12) Purchases or arrangements to purchase by an affiliate of the financial advisor and an offeror and its affiliates.

(i) Purchases or arrangements to purchase by an affiliate of a financial advisor and an offeror and its affiliates that are permissible under and will be conducted in accordance with the applicable laws of the subject company's home jurisdiction, if the following conditions are satisfied:

(A) The subject company is a foreign private issuer as defined in § 240.3b-4(c);

(B) The covered person reasonably expects that the tender offer meets the conditions for reliance on the Tier II cross-border exemptions set forth in § 240.14d-1(d);

(C) No purchases or arrangements to purchase otherwise than pursuant to the tender offer are made in the United States;

(D) The United States offering materials disclose prominently the possibility of, or the intention to make, purchases or arrangements to purchase subject securities or related securities outside of the tender offer, and if there will be public disclosure of purchases of subject or related securities, the manner in which information regarding such purchases will be disseminated;

(E) There is public disclosure in the United States, to the extent that such information is made public in the subject company's home jurisdiction, of information regarding all purchases of subject securities and related securities otherwise than pursuant

to the tender offer from the time of public announcement of the tender offer until the tender offer expires;

(F) Purchases or arrangements to purchase by an offeror and its affiliates must satisfy the following additional condition: the tender offer price will be increased to match any consideration paid outside of the tender offer that is greater than the tender offer price; and

(G) Purchases or arrangements to purchase by an affiliate of a financial advisor must satisfy the following additional conditions:

(1) The financial advisor and the affiliate maintain and enforce written policies and procedures reasonably designed to prevent the transfer of information among the financial advisor and affiliate that might result in a violation of U.S. federal securities laws and regulations through the establishment of information barriers;

(2) The financial advisor has an affiliate that is registered as a broker or dealer under section 15(a) of the Act (15 U.S.C. 78o(a));

(3) The affiliate has no officers (or persons performing similar functions) or employees (other than clerical, ministerial, or support personnel) in common with the financial advisor that direct, effect, or recommend transactions in the subject securities or related securities who also will be involved in providing the offeror or subject company with financial advisory services or dealer-manager services; and

(4) The purchases or arrangements to purchase are not made to facilitate the tender offer.

(ii) Reserved.

(c) Definitions. * * *

- (8) Subject company has the same meaning as in § 229.1000 of this chapter; and
- (9) Home jurisdiction has the same meaning as in the Instructions to paragraphs (c) and (d) of § 240.14d-1.

* * * * *

21. Amend § 240.16a-1 by:

- a. Revising paragraph (a)(1)(vii);
- b. Removing "and" from the end of paragraph (a)(1)(ix); and
- c. Revising paragraphs (a)(1)(x) and (xi).

The revisions read as follows:

§ 240.16a-1 Definition of Terms

* * * * *

(a) * * *

(1) * * *

(vii) A parent holding company or control person, provided the aggregate amount held directly by the parent or control person, and directly and indirectly by their subsidiaries or affiliates that are not persons specified in paragraphs (a)(1)(i) through (x), does not exceed one percent of the securities of the subject class;

* * * * *

(x) A non-U.S. institution that is the functional equivalent of any of the institutions listed in paragraphs (a)(1)(i) through (ix) of this section, so long as the non-U.S. institution is subject to a regulatory scheme that is substantially comparable to the regulatory scheme applicable to the equivalent U.S. institution and the non-U.S. institution is eligible to file a Schedule 13G pursuant to § 240.13d-1(b)(1)(ii)(J); and

(xi) A group, provided that all the members are persons specified in § 240.16a-1(a)(1)(i) through (x).

* * * * *

PART 241 – INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

22. Part 241 is amended by adding Release No. 34-58597 and the release date of September 19, 2008, to the list of interpretative releases.

PART 239 – FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 249 – FORMS, SECURITIES EXCHANGE ACT OF 1934

23. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a et seq., 7202, 7233, 7241, 7262, 7264, and 7265; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

24. Amend Form CB (referenced in § 239.800 and § 249.480) by:

- a. Revising General Instruction II.A.(1); and
- b. Revising General Instruction II.A.(4).

Note – The text of Form CB does not and this amendment will not appear in the Code of Federal Regulations.

Form CB

TENDER OFFER/RIGHTS OFFERING NOTIFICATION FORM

(AMENDMENT NO. _____)

* * * * *

GENERAL INSTRUCTIONS

* * * * *

II. Instructions for Submitting Form

A. (1) Regulation S-T Rule 101(a)(1)(vi) (17 CFR 232.101(a)(1)(vi)) requires a party to submit the Form CB in electronic format via the Commission's Electronic Data Gathering and Retrieval system (EDGAR) in accordance with the EDGAR rules set forth in Regulation S-T (17 CFR Part 232). For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 551-8900.

* * * * *

(4) If filing the Form CB in paper in accordance with a hardship exemption, you must furnish five copies of this Form and any amendment to the Form (see Part I, Item 1.(b)), including all exhibits and any other paper or document furnished as part of the Form, to the Commission at its principal office. You must bind, staple or otherwise compile each copy in one or more parts without stiff covers. You must make the binding on the side or stitching margin in a manner that leaves the reading matter legible.

* * * * *

By the Commission.

J. Lynn Taylor
Assistant Secretary

Dated: September 19, 2008


J. Lynn Taylor
Assistant Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
RELEASE NO. 58591A / September 21, 2008

AMENDMENT TO EMERGENCY ORDER PURSUANT TO SECTION 12(k)(2) OF
THE SECURITIES EXCHANGE ACT OF 1934 TAKING TEMPORARY ACTION TO
RESPOND TO MARKET DEVELOPMENTS

Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934 ("Exchange Act"),¹ on September 18, 2008, the Securities and Exchange Commission ("Commission") issued an Emergency Order ("Order") requiring institutional investment managers to report short sales of certain publicly traded securities.² The Order takes effect on September 22, 2008 and requires the filing of a Form SH on September 29, 2008. This amendment relates to the public availability of the information provided by the institutional investment managers when they report such sales and also includes technical amendments.

The Commission is aware of the continued potential of sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could threaten fair and orderly markets. As evidenced by our recent publication of emergency orders under Section 12(k) of the Exchange Act,³ we are concerned about the possible unnecessary or artificial price movements based on unfounded rumors regarding the stability of financial institutions and other issuers exacerbated by short selling. We

¹ 15 USC 78 l(k)(2).

² See Exchange Act Release No. 58591 (September 18, 2008).

³ See Exchange Act Release No. 58166 (July 15, 2008), Exchange Act Release No. 58572 (September 17, 2008).

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also believe that some persons may take advantage of issuers that have become temporarily weakened by current market conditions to engage in inappropriate short selling in the securities of such issuers.

Given the importance of confidence in our financial markets as a whole, we have become concerned about sudden and unexplained declines in the prices of securities. Such price declines can give rise to questions about the underlying financial condition of an issuer, which in turn can create a crisis of confidence without a fundamental underlying basis. This crisis of confidence can impair the liquidity and ultimate viability of an issuer, with potentially broad market consequences.

As a result of these recent developments, the Commission concluded that there continues to exist the potential of sudden and excessive fluctuations of securities prices generally and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Based on this conclusion, the Commission is exercising its powers under Section 12(k)(2) of the Exchange Act.⁴ Pursuant to Section 12(k)(2), in appropriate circumstances the Commission may by order summarily take action to alter, supplement, suspend, or impose requirements or restrictions with respect to matters or actions subject to regulation by the Commission.

We have concluded that it is necessary to require certain institutional investment managers to report information concerning daily short sales of securities. For purposes of this Order, we believe that section 13(f) of the Exchange Act and Rule 13f-1 provide useful and tested terms and definitions that provide a basis for requiring new disclosure.

⁴ This finding of an "emergency" is solely for purposes of Section 12(k)(2) of the Exchange Act and is not intended to have any other effect or meaning or to confer any right or impose any obligation other than set forth in this Order.

The Order therefore requires that an institutional investment manager that exercises investment discretion⁵ with respect to accounts holding section 13(f) securities⁶ having an aggregate fair market value on the last trading day of any month of any calendar year of at least \$100,000,000 must file a new form with the Commission. Specifically, an institutional investment manager who has filed or was required to file a Form 13F for the calendar quarter ended June 30, 2008 under section 13(f) of the Exchange Act and Rule 13f-1(a) thereunder will be required to file a report on new Form SH with the Commission on the first business day⁷ of every calendar week immediately following a week in which it effected short sales.

The Form SH, which must be filed electronically using the Commission's EDGAR system,⁸ must include disclosure of the number and value of securities sold short for each section 13(f) security, except for short sales in options, and the opening short position, closing short position, largest intraday short position, and the time of the largest

⁵ The term "investment discretion" has the same meaning as in Exchange Act Rule 13f-1(b). See 17 CFR § 240.13f-1(b).

⁶ The term "section 13(f) securities" has the same meaning as in Exchange Act Rule 13f-1(c). See 17 CFR § 240.13f-1(c).

⁷ See Exchange Act Rule 0-2 for a description of the business hours of the Commission. 17 CFR § 240.0-2.

⁸ Although we are requiring managers to electronically file Forms SH using our EDGAR system, the Forms SH will be filed on a non-public basis. The Commission is permitting the non-public filing of Form SH in order to maintain fair and orderly securities markets and prevent substantial disruption in the securities markets. The Commission believes that the non-public submission of Form SH may help prevent artificial volatility in securities as well as further downward swings that are caused by short selling, while at the same time, providing the Commission with useful information to combat market manipulation that threatens investors and capital markets. Two weeks after the due date for the Forms SH, the Commission will make the Forms available to the public. We believe that by two weeks after the due date the reasons to maintain the information as non-public will have diminished.

intraday short position, for that security during each calendar day of the prior week.⁹

This disclosure requirement will apply only to short sales effected after the effective date of the Order. In addition, no filing will be required when no short sales of a section 13(f) security have been effected since the previous filing of a Form SH. Finally, an institutional investment manager need not report short positions otherwise reportable if:

(i) the short position in the section 13(f) security constitutes less than one-quarter of one per cent of that class of the issuer's section 13(f) securities issued and outstanding as reported on the issuer's most recent annual or quarterly report, and any current report subsequent thereto, filed with the Commission pursuant to the Exchange Act, unless the manager knows or has reason to believe the information contained therein is inaccurate; and (ii) the fair market value of the short position in the section 13(f) security is less than \$1,000,000.

We believe that the extraordinary circumstances we now confront require the new disclosure requirements we are imposing today. We also believe such disclosure requirements are necessary to protect the integrity and quality of the securities markets and strengthen investor confidence.

IT IS ORDERED that, pursuant to our Section 12(k)(2) powers:

Every institutional investment manager that exercises investment discretion with respect to accounts holding section 13(f) securities and that has filed or was required to file a Form 13F for the calendar quarter ended June 30, 2008, as required under section 13(f) of the Exchange Act and Rule 13f-1(a) thereunder, must file a report on Form SH with the Commission. The Form SH filing must be made on the first business day of each week immediately following a week in which the institutional investment manager has effected any short sale with respect to any section 13(f) security that is not an option. With respect to each section 13(f) security that is not an option, the Form SH filing must reflect the

⁹ No Commission procedure for seeking confidential treatment of information filed with or transmitted to the Commission, such as those in 17 C.F.R. §§ 200.80, 200.83, or 240.24b-2, shall apply to the information that this Order requires to be filed.

number and value of securities sold short during the day as well as the opening short position, closing short position, largest intraday short position, and the time of the largest intraday short position, for that security on each calendar day of the prior week in which the institutional investment manager engaged in trading activity with respect to short sales.

The disclosure requirement will apply only to short sales effected after the effective date of the Order. In addition, no filing will be required when no short sales of a section 13(f) security have been effected since the previous filing of a Form SH.

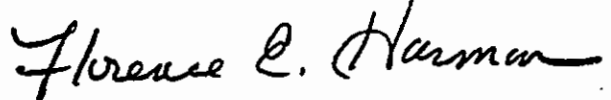
Finally, an institutional investment manager need not report short positions otherwise reportable if: (i) the short position in the section 13(f) security constitutes less than one-quarter of one per cent of that class of the issuer's section 13(f) securities issued and outstanding as reported on the issuer's most recent annual or quarterly report, and any current report subsequent thereto, filed with the Commission pursuant to the Exchange Act, unless the manager knows or has reason to believe the information contained therein is inaccurate; and (ii) the fair market value of the short position in the section 13(f) security is less than \$1,000,000.

Short sale has the meaning set forth in Rule 200(a) of Regulation SHO (17 CFR § 242.200(a)), and terms referenced in that provision shall have the same meaning as set forth in Regulation SHO; and short positions to be reported are those resulting from "short sales" as that term is defined in Rule 200(a) of Regulation SHO.

IT IS FURTHER ORDERED that, pursuant to our Section 12(k)(2) powers, the text of Form SH be as set forth in the attachment to this Order.

This Order shall be effective at 12:01 a.m. EDT on September 22, 2008, the first Form SH shall be required to be filed on September 29, 2008, and this Order shall terminate at 11:59 p.m. on October 2, 2008 unless further extended by the Commission.

By the Commission.



Florence E. Harmon
Acting Secretary

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM SH

**INFORMATION REQUIRED OF INSTITUTIONAL INVESTMENT
MANAGERS PURSUANT TO EMERGENCY ORDER, SECURITIES
EXCHANGE ACT OF 1934 RELEASE NO. 58591, SEPTEMBER 18, 2008**

GENERAL INSTRUCTIONS

1. Rule as to Use of Form SH. Institutional investment managers ("Managers") must use Form SH for reports to the Commission required by the Commission's Emergency Order, Securities Exchange Act of 1934 Release No. 58591, September 18, 2008 and the Amendment to that Order, Securities Exchange Act of 1934 Release No. 58591A, September 21, 2008 (the "Orders"). The Orders provide that every Manager that exercises investment discretion with respect to accounts holding section 13(f) securities, as defined in rule 13f-1(c) under the Securities Exchange Act of 1934 [15 U.S.C. 78m(f)] ("Exchange Act"), who has filed or was required to file a Form 13F for the calendar quarter ended June 30, 2008, must file a non-public report on Form SH with the Commission to report certain information about short sales and short positions. The non-public Form SH filing must be made on the Monday (or, if Monday is a federal holiday, the first business day thereafter) of each calendar week immediately following a Form SH reporting period (*i.e.*, the preceding Monday-Sunday, or seven calendar days) in which the Manager has entered into any new short positions with respect to any section 13(f) securities except for any short position(s) for options ("SH Short Positions"). The non-public Form SH will report SH Short Positions for the Monday-Sunday immediately preceding the Monday on which the Form SH is due to be filed.
2. Rules to Prevent Duplicative Reporting. If two or more Managers, each of which is required by the Orders to file a report on Form SH for the reporting period, exercise investment discretion with respect to the same securities, only one such Manager must include information in its reports on Form SH.

A Manager having information that is required by the Orders to be reported on Form SH, and such information is reported by another Manager (or Managers), such Manager must identify the Manager(s) reporting on its behalf in the manner described in Special Instruction 6.

3. Filing of Form SH. A Form SH report that is filed by a Manager with the Commission shall be non-public upon filing. A Manager must label its Form SH as non-public by adding the phrase **NON-PUBLIC** (in bold and capital letters) at the top and bottom of each page of the entire form, *i.e.*, each page(s) of the Form

SH Cover Page (the "Cover Page"), the Form SH Summary Page (the "Summary Page"), and the Form SH Information Table (the "Information Table").

A Manager must file a Form SH report with the Commission on or before 5:30 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever currently is in effect in Washington, DC ("Eastern Time") on the Monday (or, if Monday is a federal holiday, the first business day thereafter) of each week immediately following the preceding seven calendar day period in which the Manager has entered into any new SH Short Position(s). **The Form SH must be filed electronically using the Commission's EDGAR system.**

4. Official List of Section 13(f) Securities. The official list of section 13(f) securities published by the Commission (the "13F List") lists the securities the holdings of which a Manager is to report on Form 13F. See rule 13f-1(c) [17 CFR 240.13f-1(c)]. Form SH filers may rely on the current 13F List in determining whether they need to report on Form SH information about any particular equity security, excluding short positions on options. The 13F List is available on the SEC's website, at <http://www.sec.gov/divisions/investment/13flists.htm>. Paper copies are available at a reasonable fee from the Securities and Exchange Commission, Public Reference Room, 100 F Street, NE, Washington, DC 20549.

SPECIAL INSTRUCTIONS

1. This form consists of three parts: the Cover Page, the Summary Page, and the Information Table.
2. When preparing the report, omit all bracketed text. Include brackets used to form check boxes.

The Cover Page:

3. The period end date used in the report (and in the EDGAR submission header) is the Sunday before the Form SH is filed. The date should name the month, and express the day and year in Arabic numerals, with the year being a four-digit numeral (*i.e.*, 2008).
4. Amendments to a Form SH must either restate the Form SH in its entirety or include only entries that are being reported in addition to those already reported in a current public Form SH for the same period. If the Manager is filing the Form SH report as an amendment, then the Manager must check the amendment box on the Cover Page; enter the amendment number; and check the appropriate box to indicate whether the amendment (a) is a restatement or (b) adds new entries. Each amendment must include a complete Cover Page and, if applicable, a Summary Page and Information Table. Amendments must be filed sequentially.

5. Present the Cover Page and the Summary Page information in the format and order provided in the form. The Cover Page may include information in addition to the required information, so long as the additional information does not, either by its nature, quantity, or manner of presentation, impede the understanding or presentation of the required information. Place all additional information after the signature of the person signing the report (immediately preceding the Report Type section). Do not include any additional information on the Summary Page or in the Information Table.
6. Designate the Report Type for the Form SH by checking the appropriate box in the Report Type section of the Cover Page, and include, where applicable, the List of Other Managers Reporting for this Manager (on the Cover Page), the Summary Page and the Information Table, as follows:
 - a. If all of the information that a Manager is required by the Orders to report on Form SH is reported by another Manager (or Managers), check the box for Report Type "FORM SH NOTICE," include (on the Cover Page) the List of Other Managers Reporting for this Manager, and omit both the Summary Page and the Information Table.
 - b. If all of the information that a Manager is required by the Orders to report on Form SH is reported in this report, check the box for Report Type "FORM SH ENTRIES REPORT," omit from the Cover Page the List of Other Managers Reporting for this Manager, and include both the Summary Page and the Information Table.
 - c. If only a part of the information that a Manager is required by the Orders to report on Form SH is reported in this report, check the box for Report Type "FORM SH COMBINATION REPORT," include (on the Cover Page) the List of Other Managers Reporting for this Manager, and include both the Summary Page and the Information Table.

Summary Page:

7. Include on the Summary Page the Report Summary, containing the Number of Other Included Managers, the Information Table Entry Total and the Information Table Value Total.
 - a. Enter as the Number of Other Included Managers the total number of other Managers listed in the List of Other Included Managers on the Summary Page, not counting the Manager filing this report. See Special Instruction 8. If none, enter the number zero ("0").
 - b. Enter as the Information Table Entry Total the total number of line entries providing issuer information included in the Information Table.
 - c. Enter as the Information Table Value Total the aggregate fair market value in

U.S. dollars of all securities sold short during the reporting period that are reported in this report, *i.e.*, the total for Column 5 (Value of Securities Sold Short (Day)) of all line entries in the Information Table. The Manager must express this total as a rounded figure, corresponding to the individual Column 4 entries in the Information Table. *See* Special Instruction 9.

8. Include on the Summary Page the List of Other Included Managers. Use the title, column headings and format provided.
 - a. If this Form SH does not report the information that a Manager is required by the Orders to report on Form SH of any Manager other than the Manager filing this report, enter the word "NONE" under the title and omit the column headings and list entries.
 - b. If this Form SH reports the information that a Manager is required by the Orders to report on Form SH of one or more Managers other than the Manager filing this report, enter in the List of Other Included Managers all such Managers together with their respective Form 13F file numbers, if known. (The Form 13F file numbers are assigned to Managers when they file their first Form 13F.) Assign a number to each Manager in the List of Other Included Managers, and present the list in sequential order. The numbers need not be consecutive. The List of Other Managers cannot include the Manager filing this report.

Information Table:

9. In determining the fair market value of securities sold short, a Manager must use the market price of the section 13(f) securities as of the close of floor trading on the New York Stock Exchange ("NYSE") for the day in question. If the securities are sold short on a non-business day, a Manager must use the market price of the section 13(f) securities as of the close of the NYSE for the most recent business day. Such market closing time shall be used to determine the price for all SH Short Positions, irrespective of which U.S. equity market the issuer trades on. Enter values rounded to the nearest one thousand dollars (with "000" omitted).
10. Furnish the Information Table using the table title, column headings and format provided. Provide column headings once at the beginning of the Information Table; repetition of column headings on subsequent pages is not required. Present the table in accordance with the column instructions provided in Special Instructions 10.a.i through 10.a.viii. Do not include any additional information in the Information Table. Begin the Information Table on a new page; do not include any portion of the Information Table on either the Cover Page or the Summary Page.
 - a. Instructions for each column in the Information Table:
 - i. Column 1. Name of Issuer. Enter in Column 1 the name of the

issuer as it appears in the current official list of section 13(f) Securities published by the Commission in accordance with rule 13f-1(c) (the "13F List"). Reasonable abbreviations are permitted.

- ii. Column 2. CUSIP Number. Enter in Column 2 the nine (9) digit CUSIP number of the security for which information is being reported.
- iii. Column 3. Short Position (Start of Day). Enter in Column 3 the number of securities that represent the Manager's short position in the issuer as of the start of each calendar day (or days, in the case of Saturday and Sunday) during the reporting period. The Short Position (Start of Day) for Monday, September 22, 2008 shall be zero.
- iv. Column 4. Number of Securities Sold Short (Day). Enter in Column 4 the aggregate number of securities in the issuer that the Manager sold short for each calendar day (or days, in the case of Saturday and Sunday) during the reporting period.
- v. Column 5. Value of Securities Sold Short (Day). Enter in Column 5 the market value in U.S. dollars of the number of securities reported in Column 4. In valuing such securities, use the fair market value for each security, as set forth in Special Instruction 9, *supra*.
- vi. Column 6. Short Position (End of Day). Enter in Column 6 the number of securities that represent the Manager's short position in the issuer as of the end each calendar day (or days, in the case of Saturday and Sunday) during the reporting period.
- vii. Column 7. Largest Intra-Day Short Position. Enter in Column 7 the number of securities that represent the Manager's largest single short position in the issuer for each calendar day (or days, in the case of Saturday and Sunday) during the reporting period.
- viii. Column 8. Time of Day of Largest Intra-Day Short Position. Enter in Column 7 the time of day (Eastern Time) that the Manager had the largest single short position in the issuer, as reported in Column 7.

11. Preparation of the electronic filing:

Filing documents may be submitted in either ASCII or HTML document format. For ASCII submissions, please note items a, b, and c. Preparation of the filing document

should follow instructions in the EDGAR Filer Manual, (Volume 2) EDGAR Filing available on the SEC's website at <http://www.sec.gov/info/edgar/edmanuals.htm>.

- a. No line on the Cover Page or the Summary Page may exceed 80 characters in length. *See* rule 305 of Regulation S-T [17 CFR 232.305].
- b. No line in the Form SH Information Table may exceed 132 characters in length. *See* rule 305 of Regulation S-T [17 CFR 232.305].
- c. If the Form SH Report Type is "SH ENTRIES REPORT" or "SH COMBINATION REPORT," then place one EDGAR <PAGE> tag at the end of the Cover Page and one <PAGE> tag at the end of the Summary Page. Additional EDGAR <PAGE> tags are not required. Those electing to include additional <PAGE> tags should, for each page containing a <PAGE> tag, include no more than sixty (60) lines per page, including the line on which the <PAGE> tag is placed.
- d. In preparing the Form SH report for electronic filing, a Manager may omit underscoring used in the form to indicate the placement of information that the Manager is to furnish.
- e. Use the following EDGAR submission types for the following Form SH Report Types:

<u>Form SH Report Type</u>	<u>EDGAR Submission Type</u>
FORM SH ENTRIES REPORT	
Initial Filing	SH-ER
Amendments	SH-ER/A
FORM SH NOTICE	
Initial Filing	SH-NT
Amendments	SH-NT/A
FORM SH COMBINATION REPORT	
Initial Filing	SH-ER
Amendments	SH-ER/A

Filings with the form types set forth in this instruction will be filed on a non-public basis.

Paperwork Reduction Act Information

The Office of Management and Budget has approved this collection of information pursuant to 44 U.S.C. § 3507 and 5 C.F.R. § 1320.13. The OMB control number for this collection of information is 3235-0646. An agency may not conduct or sponsor, and a

person is not required to respond to, a collection of information unless it displays a currently valid control number. We estimate that providing the requested information will take, on average, approximately 5 hours. Any member of the public may direct to the Commission any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden. *See* Order 58591A regarding confidentiality.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM SH

FORM SH COVER PAGE

Report for the Period Ended: [Month, Day, Year]

Check here if Amendment []; Amendment Number: _____

This Amendment (Check only one):

☐	is a restatement.
☐	adds new entries.

Institutional Investment Manager Filing this Report:

Name: _____
Address: _____

Form 13F File Number: 28-

The institutional investment manager filing this report and the person by whom it is signed hereby represent that the person signing the report is authorized to submit it, that all information contained herein is true, correct and complete, and that it is understood that all required items, statements, schedules, lists, and tables, are considered integral parts of this form.

Person Signing this Report on Behalf of Reporting Manager:

Name: _____
Title: _____
Phone: _____

Signature, Place, and Date of Signing

[Signature] [City, State] [Date]

Report Type (Check only one):

- ☐ FORM SH ENTRIES REPORT. (Check here if all entries of this reporting manager are reported in this report.)
- ☐ FORM SH NOTICE. (Check here if no entries reported are in this report, and all entries are reported by other reporting manager(s).)
- ☐ FORM SH COMBINATION REPORT. (Check here if a portion of the entries for this reporting manager is reported in this report and a portion is reported by other reporting manager(s).)

List of Other Managers Reporting for this Manager:

[If there are no entries in this list, omit this section.]

Form 13F File Number

Name

28-_____

[Repeat as necessary.]

FORM SH SUMMARY PAGE

Report Summary:

Number of Other Included Managers: _____

Form SH Information Table Entry Total: _____

Form SH Information Table Value Total: _____
(thousands)

List of Other Included Managers:

Provide a numbered list of the name(s) and Form 13F file number(s) of all institutional investment managers with respect to which this Form SH report is filed, other than the manager filing this report.

[If there are no entries in this list, state "NONE" and omit the column headings and list entries.]

No.

Form 13F File Number

Name

28-_____

[Repeat as necessary.]

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM SH

FORM SH COVER PAGE

Report for the Period Ended: _____ [Month, Day, Year] _____

Check here if Amendment ☐; Amendment Number: _____

This Amendment (Check only one): ☐ is a restatement.
☐ adds new entries.

Institutional Investment Manager Filing this Report:

Name: _____
Address: _____

Form 13F File Number: 28- _____

The institutional investment manager filing this report and the person by whom it is signed hereby represent that the person signing the report is authorized to submit it, that all information contained herein is true, correct and complete, and that it is understood that all required items, statements, schedules, lists, and tables, are considered integral parts of this form.

Person Signing this Report on Behalf of Reporting Manager:

Name: _____
Title: _____
Phone: _____

Signature, Place, and Date of Signing

[Signature] [City, State] [Date]

Report Type (Check only one):

- ☐ FORM SH ENTRIES REPORT. (Check here if all entries of this reporting manager are reported in this report.)
☐ FORM SH NOTICE. (Check here if no entries reported are in this report, and all entries are reported by other reporting manager(s).)
☐ FORM SH COMBINATION REPORT. (Check here if a portion of the entries for this reporting manager is reported in this report and a portion is reported by other reporting manager(s).)

List of Other Managers Reporting for this Manager:

[If there are no entries in this list, omit this section.]

Form 13F File Number

Name

28-_____

[Repeat as necessary.]

FORM SH SUMMARY PAGE

Report Summary:

Number of Other Included Managers: _____

Form SH Information Table Entry Total: _____

Form SH Information Table Value Total: _____
(thousands)

List of Other Included Managers:

Provide a numbered list of the name(s) and Form 13F file number(s) of all institutional investment managers with respect to which this Form SH report is filed, other than the manager filing this report.

[If there are no entries in this list, state "NONE" and omit the column headings and list entries.]

No.

Form 13F File Number

Name

28-_____

[Repeat as necessary.]

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27

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
RELEASE NO. 58611 / September 21, 2008

AMENDMENT TO EMERGENCY ORDER PURSUANT TO SECTION 12(k)(2) OF
THE SECURITIES EXCHANGE ACT OF 1934 TAKING TEMPORARY ACTION TO
RESPOND TO MARKET DEVELOPMENTS

Pursuant to Section 12(k)(2) of the Securities Exchange Act of 1934,¹ on September 18, 2008, the Securities and Exchange Commission ("Commission") issued an Emergency Order (the "Order") related to short selling the publicly traded securities of certain financial firms.² The Order was effective immediately. The Commission is issuing this amendment to address current and anticipated technical and operational concerns resulting from the requirements of the Order.

A. Included Financial Firms

The Order applies to the publicly traded securities of certain financial firms, which entities are identified in Appendix A to the Order ("Included Financial Firms"). We are amending the Order to modify the list of Included Financial Firms. As we stated in the Order, recent market conditions have raised concerns that short selling in the securities of a wide range of financial institutions may be causing sudden and excessive fluctuations of the prices of such securities in such a manner to threaten fair and orderly markets. Difficulties with the classification criteria led to the omission of financial institutions falling within these categories. In light of the familiarity of the exchanges listing financial institutions with the nature of their respective businesses, the

¹ 15 USC 78j(k)(2).

² See Securities Exchange Act Release No. 58592 (Sept. 18, 2008)

Commission has determined to amend this Order to provide that the listing markets shall select the individual financial institutions with securities covered by the Order. The Commission expects each national securities exchange listing financial institutions to immediately publish a list, on its internet Web site, of individual listed companies with common equity that will be covered by the Order's prohibition on short sales. The Commission expects these lists to cover banks, savings associations, broker-dealers, investment advisers, and insurance companies, whether domestic or foreign, and the owners of any of these entities.

To the extent an issuer chooses not to be covered by the Order's prohibition on short sales, we have authorized the applicable national securities exchange to exclude that issuer from its list of covered financial firms.

IT IS THEREFORE ORDERED that, pursuant to our Section 12(k)(2) powers, the Order applies to the publicly traded common equity securities of any issuer identified by any national securities exchange listing such securities as being a financial institution (each a "Covered Security" and collectively, "Covered Securities").

B. Options and Futures Contract Expiration

The Order includes an exception from its requirements to allow short sales that occur as a result of automatic exercise or assignment of an equity option held prior to effectiveness of the Order due to expiration of the option. We are amending the Order to also allow short sales that occur as a result of the expiration of futures contracts held prior to effectiveness of the Order.

IT IS THEREFORE ORDERED that, pursuant to our Section 12(k)(2) powers, the requirements of the Order shall not apply to any person that effects a short sale in any

Covered Security as a result of automatic exercise or assignment of an equity option, or in connection with settlement of a futures contract, that is held prior to effectiveness of the Order due to expiration of the option or futures contract.

C. Options Assignments

To allow for creation of long call options, we are amending the Order to except from its requirements, short sales that occur as a result of assignment to call writers upon exercise.

IT IS THEREFORE ORDERED that, pursuant to our Section 12(k)(2) powers, the requirements of the Order shall not apply to the writer of a call option that effects a short sale in any Covered Security as a result of assignment following exercise by the holder of the call.

D. Market Making and Derivatives

In the Order we included an exception until 11:59 p.m. on September 19, 2008 for any person that is a market maker that effects a short sale as part of bona fide market making and hedging activity related directly to bona fide market making in derivatives on the publicly traded securities of any Included Financial Firm. We are amending the exception so that it continues for the duration of the Order. In addition, we are clarifying that the exception applies to all market makers, including over-the-counter market makers, and that it applies to bona fide market making and hedging activity related directly to bona fide market making in exchange traded funds and exchange traded notes of which Covered Securities are a component. The purpose of this accommodation is to permit market makers to continue to provide liquidity to the markets.

To help ensure that this hedging exception does not result in increased short exposure in Covered Securities, we are limiting the exception so that if a customer or counterparty position in a derivative security based on a Covered Security is established after 12:01 a.m. E.D.T on September 22, 2008, a market maker may not effect a short sale in the Covered Security if the market maker knows that the customer's or counterparty's transaction will result in the customer or counterparty establishing or increasing an economic net short position (i.e., through actual positions, derivatives, or otherwise) in the issued share capital of a firm covered by this Order.

IT IS THEREFORE ORDERED that, pursuant to our Section 12(k)(2) powers, the requirements of this Order shall not apply to any person that is a market maker, including an over-the-counter market maker, that effects a short sale as part of a bona fide market making and hedging activity related directly to bona fide market making in (a) derivative securities based on Covered Securities, or (b) exchange traded funds and exchange traded notes of which Covered Securities are a component. Provided, however, if a customer or counterparty position in a derivative security based on a Covered Security is established after 12:01 a.m. E.D.T on September 22, 2008, a market maker may not effect a short sale in the Covered Security if the market maker knows that the customer's or counterparty's transaction will result in the customer or counterparty establishing or increasing an economic net short position (i.e., through actual positions, derivatives, or otherwise) in the issued share capital of a firm covered by this Order.

All market makers relying on this exception to the limitation on short selling shall, as soon as operationally practicable, publish a notice on their internet Web site that, pursuant to this Order, the market maker may not knowingly effect a short sale as part of

bona fide market making and hedging activity related directly to bona fide market making in a derivative security based on a Covered Security, if the customer's or counterparty's transaction will result in the customer or counterparty establishing or increasing an economic net short position (i.e., through actual positions, derivatives, or otherwise) in the issued share capital of a firm covered by the Order.

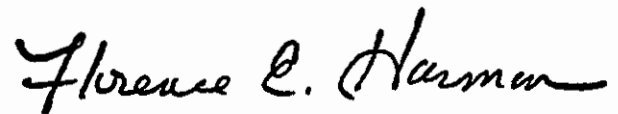
E. Sales of Restricted Securities

We are also amending the Order to clarify that the Order does not apply to persons that effect sales of Covered Securities pursuant to Rule 144 of the Securities Act of 1933 ("Rule 144 Securities").³ This accommodation is necessary because sales of Rule 144 Securities are sales of owned securities.

IT IS THEREFORE ORDERED that, pursuant to our Section 12(k)(2) powers, the Order does not apply to any person that effects a sale pursuant to Rule 144 of the Securities Act of 1933 (17 CFR 230.144) in a Covered Security.

We believe that these amendments are necessary in the public interest and for the protection of investors to maintain fair and orderly securities markets, and to prevent substantial disruption to securities markets.

By the Commission.



Florence E. Harmon
Acting Secretary

³ 17 CFR 230.144.

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 28386 / September 22, 2008

In the Matter of

The Reserve Fund, on behalf of two of its series,
the Primary Fund and the U.S. Government Fund

1250 Broadway
New York, NY 10001-3701

File No. 812-13576

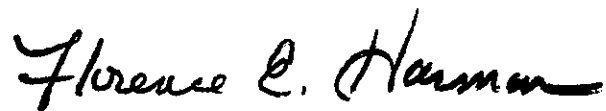
ORDER TEMPORARILY SUSPENDING REDEMPTION OF INVESTMENT COMPANY
SHARES AND POSTPONING PAYMENT FOR INVESTMENT COMPANY SHARES
WHICH HAVE BEEN SUBMITTED FOR REDEMPTION FOR WHICH PAYMENT HAS
NOT BEEN MADE PURSUANT TO SECTION 22(e)(3) OF THE INVESTMENT COMPANY
ACT OF 1940

The Reserve Fund (the "Trust" or the "Applicant"), an open-end management investment company registered with the Commission under the Investment Company Act of 1940 (the "Act"), has filed an application on behalf of two of its series, the Primary Fund and the U.S. Government Fund (the "Funds"), for a temporary order pursuant to section 22(e)(3) of the Act permitting (a) suspension of the right of redemption of their outstanding redeemable securities, and (b) postponement of payment for shares which have been submitted for redemption for which payment has not been made.

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Accordingly, IT IS ORDERED, pursuant to section 22(e)(3) of the Act, that the requested exemption from section 22(e) of the Act is granted until the markets are liquid to a degree that enables each Fund to liquidate portfolio securities without impairing the net asset value of each Fund, or the Commission, on its own initiative, rescinds the order granted herein. This order shall be in effect as of September 17, 2008.

By the Commission.

A handwritten signature in black ink, reading "Florence E. Harmon". The signature is written in a cursive, flowing style.

Florence E. Harmon
Acting Secretary

*Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2783 / September 22, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13228

In the Matter of

EVAN K. ANDERSEN,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Evan K. Andersen ("Respondent" or "Andersen").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and the Respondent's Offer, the Commission finds that:

1. Andersen was a partner and principal of Lydia Capital, LLC ("Lydia Capital"), a registered investment adviser located in Boston, Massachusetts. Between at least June 2006 and April 2007, Andersen acted as an investment adviser to Lydia Capital Alternative Investment Fund LP (the "Fund"). Andersen, 26 years old, is a resident of Boston, Massachusetts.

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2. On September 16, 2008, a final judgment was entered by consent against Andersen, permanently enjoining him from future 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") and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act in a civil action entitled Securities and Exchange Commission v. Lydia Capital, LLC, et al., Civil Action No. 07-CV-10712-RGS, in the United States District Court for the District of Massachusetts.

3. The Commission's amended complaint alleged, among other things, that Andersen sold limited partnership interests and retained investors in the Fund through a series of material misrepresentations and omissions, including but not limited to: (1) materially overstating, and in some instances completely fabricating the Fund's performance; (2) inventing business partners, offices, and investors in an attempt to legitimize the firm and concealing the truth as to why key vendors and banks ceased relationships with the Respondent; (3) making material misstatements and omissions about the significant criminal history of another Lydia Capital partner and principal, and failing to disclose a February 2007 criminal asset freeze in England; (4) making material misstatements and omissions about how the Fund planned to address certain material risks and failing to disclose others; and (5) misstating the nature of the Fund's assets and its investment process. In addition, the Commission's amended complaint alleged that Andersen took approximately \$2.35 million of Fund assets to which he was not entitled.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent Andersen's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 203(f) of the Advisers Act, that Respondent Andersen be, and hereby is, barred from association with any investment adviser.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Florence E. Harmon
Acting Secretary

2

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 22, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13227

In the Matter of

**Ramsin Product Development, Inc.,
Raycomm Transworld Industries, Inc.,
RDC International, Inc.,
Realax Software AG,
ReClaim, Inc., and
Red Bell Brewing Co.,**

Respondents.

**ORDER INSTITUTING
PROCEEDINGS AND NOTICE OF
HEARING PURSUANT TO SECTION
12(j) OF THE SECURITIES
EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents Ramsin Product Development, Inc., Raycomm Transworld Industries, Inc., RDC International, Inc., Realax Software AG, ReClaim, Inc., and Red Bell Brewing Co.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. Ramsin Product Development, Inc. (CIK No. 1044123) is a New York corporation located in Rochester, New York with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Ramsin is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended April 30, 2002, which reported a net loss of \$30,563 for the prior three months.

2. Raycomm Transworld Industries, Inc. (CIK No. 82213) is a void Delaware corporation located in Manalapan, New Jersey with a class of securities registered with

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the Commission pursuant to Exchange Act Section 12(g). Raycomm is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended September 30, 1993, which reported a net loss of \$381,000 for the prior three months.

3. RDC International, Inc. (CIK No. 1107343) is a dissolved Florida corporation located in Sarasota, Florida with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). RDC is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2004, which reported a net loss of over \$13 million since the company's inception on September 8, 1999.

4. Relax Software AG (CIK No. 1049897) is a German corporation located in Karlsruhe, Germany with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Relax is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended December 31, 1999, which reported a net loss of over \$1 million for the prior twelve months.

5. ReClaim, Inc. (CIK No. 832149) is a void Delaware corporation located in Milan, Italy with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). ReClaim is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 1995, which reported a net loss of over \$2.29 million for the prior nine months.

6. Red Bell Brewing Co. (CIK No. 1129615) is a Pennsylvania corporation located in Philadelphia, Pennsylvania with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Red Bell is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2001, which reported a net loss of over \$2.4 million for the prior three months.

B. DELINQUENT PERIODIC FILINGS

7. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

8. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports. Rule 13a-16

requires foreign private issuers to furnish quarterly and other reports to the Commission under cover of Form 6-K if they make or are required to make the information public under the laws of the jurisdiction of their domicile or in which they are incorporated or organized; if they file or are required to file information with a stock exchange on which their securities are traded and the information was made public by the exchange; or if they distribute or are required to distribute information to their security holders.

9. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 or 13a-16 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary

Attachment

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Appendix 1

Chart of Delinquent Filings In the Matter of Ramsin Product Development, Inc., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Ramsin Product Development, Inc.	10-QSB	07/31/02	09/16/02	Not filed	72
	10-QSB	10/31/02	12/16/02	Not filed	69
	10-KSB	01/31/03	05/01/03	Not filed	64
	10-QSB	04/30/03	06/16/03	Not filed	63
	10-QSB	07/31/03	09/15/03	Not filed	60
	10-QSB	10/31/03	12/15/03	Not filed	57
	10-KSB	01/31/04	04/30/04	Not filed	53
	10-QSB	04/30/04	06/14/04	Not filed	51
	10-QSB	07/31/04	09/14/04	Not filed	48
	10-QSB	10/31/04	12/15/04	Not filed	45
	10-KSB	01/31/05	05/02/05	Not filed	40
	10-QSB	04/30/05	06/14/05	Not filed	39
	10-QSB	07/31/05	09/14/05	Not filed	36
	10-QSB	10/31/05	12/15/05	Not filed	33
	10-KSB	01/31/06	05/01/06	Not filed	28
	10-QSB	04/30/06	06/14/06	Not filed	27
	10-QSB	07/31/06	09/14/06	Not filed	24
	10-QSB	10/31/06	12/15/06	Not filed	21
	10-KSB	01/31/07	05/01/07	Not filed	16
	10-QSB	04/30/07	06/14/07	Not filed	15
	10-QSB	07/31/07	09/14/07	Not filed	12
	10-QSB	10/31/07	12/17/07	Not filed	9
	10-KSB	01/31/08	04/30/08	Not filed	5
	10-Q ¹	04/30/08	06/16/08	Not filed	3
Total Filings Delinquent		24			

¹Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Raycomm Transworld Industries, Inc.	10-Q	12/31/93	02/14/94	Not filed	175
	10-K	03/31/94	06/29/94	Not filed	171
	10-Q	06/30/94	08/15/94	Not filed	169
	10-Q	09/30/94	11/14/94	Not filed	166
	10-Q	12/31/94	02/14/95	Not filed	163
	10-K	03/31/95	06/29/95	Not filed	159
	10-Q	06/30/95	08/14/95	Not filed	157
	10-Q	09/30/95	11/14/95	Not filed	154
	10-Q	12/31/95	02/14/96	Not filed	151
	10-K	03/31/96	07/01/96	Not filed	146
	10-Q	06/30/96	08/14/96	Not filed	145
	10-Q	09/30/96	11/14/96	Not filed	142
	10-Q	12/31/96	02/14/97	Not filed	139
	10-K	03/31/97	06/30/97	Not filed	135
	10-Q	06/30/97	08/14/97	Not filed	133
	10-Q	09/30/97	11/14/97	Not filed	130
	10-Q	12/31/97	02/17/98	Not filed	127
	10-K	03/31/98	06/29/98	Not filed	123
	10-Q	06/30/98	08/14/98	Not filed	121
	10-Q	09/30/98	11/16/98	Not filed	118
	10-Q	12/31/98	02/16/99	Not filed	115
	10-K	03/31/99	06/29/99	Not filed	111
	10-Q	06/30/99	08/16/99	Not filed	109
	10-Q	09/30/99	11/15/99	Not filed	106
	10-Q	12/31/99	02/14/00	Not filed	103
	10-K	03/31/00	06/29/00	Not filed	99
	10-Q	06/30/00	08/14/00	Not filed	97
	10-Q	09/30/00	11/14/00	Not filed	94
	10-Q	12/31/00	02/14/01	Not filed	91
	10-K	03/31/01	06/29/01	Not filed	87
	10-Q	06/30/01	08/14/01	Not filed	85
	10-Q	09/30/01	11/14/01	Not filed	82
	10-Q	12/31/01	02/14/02	Not filed	79
	10-K	03/31/02	07/01/02	Not filed	74
	10-Q	06/30/02	08/14/02	Not filed	73
	10-Q	09/30/02	11/14/02	Not filed	70
	10-Q	12/31/02	02/14/03	Not filed	67
	10-K	03/31/03	06/30/03	Not filed	63
	10-Q	06/30/03	08/14/03	Not filed	61

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Raycomm Transworld Industries, Inc.					
	10-Q	09/30/03	11/14/03	Not filed	58
	10-Q	12/31/03	02/17/04	Not filed	55
	10-K	03/31/04	06/29/04	Not filed	51
	10-Q	06/30/04	08/16/04	Not filed	49
	10-Q	09/30/04	11/15/04	Not filed	46
	10-Q	12/31/04	02/14/05	Not filed	43
	10-K	03/31/05	06/29/05	Not filed	39
	10-Q	06/30/05	08/15/05	Not filed	37
	10-Q	09/30/05	11/14/05	Not filed	34
	10-Q	12/31/05	02/14/06	Not filed	31
	10-K	03/31/06	06/29/06	Not filed	27
	10-Q	06/30/06	08/14/06	Not filed	25
	10-Q	09/30/06	11/14/06	Not filed	22
	10-Q	12/31/06	02/14/07	Not filed	19
	10-K	03/31/07	06/29/07	Not filed	15
	10-Q	06/30/07	08/14/07	Not filed	13
	10-Q	09/30/07	11/14/07	Not filed	10
	10-Q	12/31/07	02/14/08	Not filed	7
	10-K	03/31/08	06/30/08	Not filed	3
	10-Q	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent 59

RDC International, Inc.

10-QSB	06/30/04	08/16/04	Not filed	49
10-KSB	09/30/04	12/29/04	Not filed	45
10-QSB	12/31/04	02/14/05	Not filed	43
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-KSB	09/30/05	12/29/05	Not filed	33
10-QSB	12/31/05	02/14/06	Not filed	31
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-KSB	09/30/06	12/29/06	Not filed	21
10-QSB	12/31/06	02/14/07	Not filed	19
10-QSB	03/31/07	05/15/07	Not filed	16
10-QSB	06/30/07	08/14/07	Not filed	13
10-KSB	09/30/07	12/29/07	Not filed	9

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
RDC International, Inc.					
	10-QSB	12/31/07	02/14/08	Not filed	7
	10-QSB	03/31/08	05/15/08	Not filed	4
	10-QSB	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent

17

Realax Software AG

20-F	12/31/00	07/02/07	Not filed	14
20-F	12/31/01	07/01/02	Not filed	74
20-F	12/31/02	06/30/03	Not filed	63
20-F	12/31/03	06/30/04	Not filed	51
20-F	12/31/04	06/30/05	Not filed	39
20-F	12/31/05	06/30/06	Not filed	27
20-F	12/31/06	07/02/07	Not filed	14
20-F	12/31/07	06/30/08	Not filed	3

Total Filings Delinquent

8

ReClaim, Inc.

10-KSB	12/31/95	04/01/96	Not filed	149
10-QSB	03/31/96	05/15/96	Not filed	148
10-QSB	06/30/96	08/14/96	Not filed	145
10-QSB	09/30/96	11/14/96	Not filed	142
10-KSB	12/31/96	03/31/97	Not filed	138
10-QSB	03/31/97	05/15/97	Not filed	136
10-QSB	06/30/97	08/14/97	Not filed	133
10-QSB	09/30/97	11/14/97	Not filed	130
10-KSB	12/31/97	03/31/98	Not filed	126
10-QSB	03/31/98	05/15/98	Not filed	124
10-QSB	06/30/98	08/14/98	Not filed	121
10-QSB	09/30/98	11/16/98	Not filed	118
10-KSB	12/31/98	03/31/99	Not filed	114
10-QSB	03/31/99	05/17/99	Not filed	112
10-QSB	06/30/99	08/16/99	Not filed	109
10-QSB	09/30/99	11/15/99	Not filed	106
10-KSB	12/31/99	03/30/00	Not filed	102
10-QSB	03/31/00	05/15/00	Not filed	100
10-QSB	06/30/00	08/14/00	Not filed	97
10-QSB	09/30/00	11/14/00	Not filed	94

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
ReClaim, Inc.					
	10-KSB	12/31/00	04/02/01	Not filed	89
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-QSB	06/30/01	08/14/01	Not filed	85
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent 51

Red Bell Brewing Co.

	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Red Bell Brewing Co.					
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent		27			

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 22, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13229~

In the Matter of

**R2 Medical Systems, Inc.,
Rachel's Gourmet Snacks, Inc.,
Rain City Enterprises, Inc.,
Range Petroleum Corp.
(n/k/a Range Energy, Inc.), and
RecordLab Corp.,**

Respondents.

**ORDER INSTITUTING
PROCEEDINGS AND NOTICE OF
HEARING PURSUANT TO SECTION
12(j) OF THE SECURITIES
EXCHANGE ACT OF 1934**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against Respondents R2 Medical Systems, Inc., Rachel's Gourmet Snacks, Inc., Rain City Enterprises, Inc., Range Petroleum Corp. (n/k/a Range Energy, Inc.), and RecordLab Corp.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENTS

1. R2 Medical Systems, Inc. (CIK No. 885899) is a California corporation that was merged out of existence and located in Niles, Illinois with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). R2 is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-Q for the period ended July 31, 1994, which reported a net loss of \$111,537 for the prior three months.

2. Rachel's Gourmet Snacks, Inc. (CIK No. 1107508) is an inactive Minnesota corporation located in Bloomington, Minnesota with a class of securities registered with

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the Commission pursuant to Exchange Act Section 12(g). Rachel's is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended September 30, 2002, which reported a net loss of over \$2 million for the prior nine months.

3. Rain City Enterprises, Inc. (CIK No. 1126877) is a permanently-revoked Nevada corporation located in Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Rain City is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-SB on November 14, 2000, which reported a net loss of \$485 since its October 6, 2000 inception.

4. Range Petroleum Corp. (n/k/a Range Energy, Inc.) (CIK No. 1080073) is a British Columbia corporation located in Vancouver, British Columbia, Canada with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). Range is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 20-F for the period ended September 30, 2000, which reported a net loss of \$1.24 million for the prior twelve months. As of September 19, 2008, the company's stock (symbol "RNIYF") was traded on the over-the-counter markets

5. RecordLab Corp. (CIK No. 882692) is a terminated Washington corporation located in Canoga Park, California with a class of securities registered with the Commission pursuant to Exchange Act Section 12(g). RecordLab is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2000, which reported a net loss of over \$2.1 million for the prior three months.

B. DELINQUENT PERIODIC FILINGS

6. As discussed in more detail above, all of the Respondents are delinquent in their periodic filings with the Commission (*see* Chart of Delinquent Filings, attached hereto as Appendix 1), have repeatedly failed to meet their obligations to file timely periodic reports, and failed to heed delinquency letters sent to them by the Division of Corporation Finance requesting compliance with their periodic filing obligations or, through their failure to maintain a valid address on file with the Commission as required by Commission rules, did not receive such letters.

7. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports and Rule 13a-13 requires domestic issuers to file quarterly reports. Rule 13a-16 requires foreign private issuers to furnish quarterly and other reports to the Commission under cover of Form 6-K if they make or are required to make the information public under the laws of the jurisdiction of their domicile or in which they are incorporated or organized; if they file or are required to file information with a stock exchange on which

their securities are traded and the information was made public by the exchange; or if they distribute or are required to distribute information to their security holders.

8. As a result of the foregoing, Respondents failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 or 13a-16 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Respondents an opportunity to establish any defenses to such allegations; and,

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding twelve months, or revoke the registration of each class of securities of the Respondents identified in Section II registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondents shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondents fail to file the directed Answers, or fail to appear at a hearing after being duly notified, the Respondents may be deemed in default and the proceedings may be determined against them upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondents personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this

or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary

Attachment

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

Appendix 1

Chart of Delinquent Filings In the Matter of R2 Medical Systems, Inc., et al.

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
R2 Medical Systems, Inc.					
	10-K	10/31/94	1/30/1995	Not filed	164
	10-Q	01/31/95	3/17/1995	Not filed	162
	10-Q	04/30/95	6/14/1995	Not filed	159
	10-Q	07/31/95	9/14/1995	Not filed	156
	10-K	10/31/95	1/29/1996	Not filed	152
	10-Q	01/31/96	3/18/1996	Not filed	150
	10-Q	04/30/96	6/14/1996	Not filed	147
	10-Q	07/31/96	9/16/1996	Not filed	144
	10-K	10/31/96	1/29/1997	Not filed	140
	10-Q	01/31/97	3/17/1997	Not filed	138
	10-Q	04/30/97	6/16/1997	Not filed	135
	10-Q	07/31/97	9/15/1997	Not filed	132
	10-K	10/31/97	01/29/98	Not filed	128
	10-Q	01/31/98	03/17/98	Not filed	126
	10-Q	04/30/98	06/15/98	Not filed	123
	10-Q	07/31/98	09/14/98	Not filed	120
	10-K	10/31/98	01/29/99	Not filed	116
	10-Q	01/31/99	03/17/99	Not filed	114
	10-Q	04/30/99	06/14/99	Not filed	111
	10-Q	07/31/99	09/14/99	Not filed	108
	10-K	10/31/99	01/31/00	Not filed	104
	10-Q	01/31/00	03/16/00	Not filed	102
	10-Q	04/30/00	06/14/00	Not filed	99
	10-Q	07/31/00	09/14/00	Not filed	96
	10-K	10/31/00	01/29/01	Not filed	92
	10-Q	01/31/01	03/19/01	Not filed	90
	10-Q	04/30/01	06/14/01	Not filed	87
	10-Q	07/31/01	09/14/01	Not filed	84
	10-K	10/31/01	01/29/02	Not filed	80
	10-Q	01/31/02	03/18/02	Not filed	78
	10-Q	04/30/02	06/14/02	Not filed	75
	10-Q	07/31/02	09/16/02	Not filed	72
	10-K	10/31/02	01/29/03	Not filed	68
	10-Q	01/31/03	03/17/03	Not filed	66
	10-Q	04/30/03	06/16/03	Not filed	63

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
R2 Medical Systems, Inc.					
	10-Q	07/31/03	09/15/03	Not filed	60
	10-K	10/31/03	01/29/04	Not filed	56
	10-Q	01/31/04	03/16/04	Not filed	54
	10-Q	04/30/04	06/14/04	Not filed	51
	10-Q	07/31/04	09/14/04	Not filed	48
	10-K	10/31/04	01/31/05	Not filed	44
	10-Q	01/31/05	03/17/05	Not filed	42
	10-Q	04/30/05	06/14/05	Not filed	39
	10-Q	07/31/05	09/14/05	Not filed	36
	10-K	10/31/05	01/30/06	Not filed	32
	10-Q	01/31/06	03/17/06	Not filed	30
	10-Q	04/30/06	06/14/06	Not filed	27
	10-Q	07/31/06	09/14/06	Not filed	24
	10-K	10/31/06	01/29/07	Not filed	20
	10-Q	01/31/07	03/19/07	Not filed	18
	10-Q	04/30/07	06/14/07	Not filed	15
	10-Q	07/31/07	09/14/07	Not filed	12
	10-K	10/31/07	01/29/08	Not filed	8
	10-Q	01/31/08	03/17/08	Not filed	6
	10-Q	04/30/08	06/16/08	Not filed	3
Total Filings Delinquent	55				

Rachel's Gourmet Snacks, Inc.

10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Rachel's Gourmet Snacks, Inc.					
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent	23				

Rain City Enterprises, Inc.

10-KSB	12/31/00	04/02/01	Not filed	89
10-QSB	03/31/01	05/15/01	Not filed	88
10-QSB	06/30/01	08/14/01	Not filed	85
10-QSB	09/30/01	11/14/01	Not filed	82
10-KSB	12/31/01	04/01/02	Not filed	77
10-QSB	03/31/02	05/15/02	Not filed	76
10-QSB	06/30/02	08/14/02	Not filed	73
10-QSB	09/30/02	11/14/02	Not filed	70
10-KSB	12/31/02	03/31/03	Not filed	66
10-QSB	03/31/03	05/15/03	Not filed	64
10-QSB	06/30/03	08/14/03	Not filed	61
10-QSB	09/30/03	11/14/03	Not filed	58
10-KSB	12/31/03	03/30/04	Not filed	54
10-QSB	03/31/04	05/17/04	Not filed	52
10-QSB	06/30/04	08/16/04	Not filed	49
10-QSB	09/30/04	11/15/04	Not filed	46
10-KSB	12/31/04	03/31/05	Not filed	42
10-QSB	03/31/05	05/16/05	Not filed	40
10-QSB	06/30/05	08/15/05	Not filed	37
10-QSB	09/30/05	11/14/05	Not filed	34
10-KSB	12/31/05	03/31/06	Not filed	30
10-QSB	03/31/06	05/15/06	Not filed	28
10-QSB	06/30/06	08/14/06	Not filed	25
10-QSB	09/30/06	11/14/06	Not filed	22
10-KSB	12/31/06	04/02/07	Not filed	17

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
Rain City Enterprises, Inc.					
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1
Total Filings Delinquent	31				
Range Petroleum Corp. (n/k/a Range Energy, Inc.)					
	20-F	09/30/01	04/02/01	Not filed	89
	20-F	09/30/02	04/01/02	Not filed	77
	20-F	09/30/02	03/31/03	Not filed	66
	20-F	09/30/04	03/31/04	Not filed	54
	20-F	09/30/05	03/31/05	Not filed	42
	20-F	09/30/06	03/31/06	Not filed	30
	20-F	09/30/07	04/02/07	Not filed	17
Total Filings Delinquent	7				
RecordLab Corp.					
	10-QSB	06/30/00	08/14/00	Not filed	97
	10-QSB	09/30/00	11/14/00	Not filed	94
	10-KSB	12/31/00	04/02/01	Not filed	89
	10-QSB	03/31/01	05/15/01	Not filed	88
	10-QSB	06/30/01	08/14/01	Not filed	85
	10-QSB	09/30/01	11/14/01	Not filed	82
	10-KSB	12/31/01	04/01/02	Not filed	77
	10-QSB	03/31/02	05/15/02	Not filed	76
	10-QSB	06/30/02	08/14/02	Not filed	73
	10-QSB	09/30/02	11/14/02	Not filed	70
	10-KSB	12/31/02	03/31/03	Not filed	66
	10-QSB	03/31/03	05/15/03	Not filed	64
	10-QSB	06/30/03	08/14/03	Not filed	61
	10-QSB	09/30/03	11/14/03	Not filed	58
	10-KSB	12/31/03	03/30/04	Not filed	54
	10-QSB	03/31/04	05/17/04	Not filed	52
	10-QSB	06/30/04	08/16/04	Not filed	49

Company Name	Form Type	Period Ended	Due Date	Date Received	Months Delinquent (rounded up)
RecordLab Corp.					
	10-QSB	09/30/04	11/15/04	Not filed	46
	10-KSB	12/31/04	03/31/05	Not filed	42
	10-QSB	03/31/05	05/16/05	Not filed	40
	10-QSB	06/30/05	08/15/05	Not filed	37
	10-QSB	09/30/05	11/14/05	Not filed	34
	10-KSB	12/31/05	03/31/06	Not filed	30
	10-QSB	03/31/06	05/15/06	Not filed	28
	10-QSB	06/30/06	08/14/06	Not filed	25
	10-QSB	09/30/06	11/14/06	Not filed	22
	10-KSB	12/31/06	04/02/07	Not filed	17
	10-QSB	03/31/07	05/15/07	Not filed	16
	10-QSB	06/30/07	08/14/07	Not filed	13
	10-QSB	09/30/07	11/14/07	Not filed	10
	10-KSB	12/31/07	03/31/08	Not filed	6
	10-Q ¹	03/31/08	05/15/08	Not filed	4
	10-Q ¹	06/30/08	08/14/08	Not filed	1

Total Filings Delinquent 33

¹Regulation S-B and its accompanying forms, including Forms 10-QSB and 10-KSB, are in the process of being removed from the federal securities laws. See Release No. 34-56994 (Dec. 19, 2007). The removal is taking effect over a transition period that will conclude on March 15, 2009, so by that date, all reporting companies that previously filed their periodic reports on Forms 10-QSB and 10-KSB will be required to use Forms 10-Q and 10-K instead. Forms 10-QSB and 10-KSB will no longer be available, though issuers that meet the definition of a "smaller reporting company" (generally, a company that has less than \$75 million in public equity float as of the end of its most recently completed second fiscal quarter) will have the option of using new, scaled disclosure requirements that Regulation S-K now includes.

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT COMPANY ACT OF 1940
Release No. 28386 / September 22, 2008

In the Matter of

The Reserve Fund, on behalf of two of its series,
the Primary Fund and the U.S. Government Fund

1250 Broadway
New York, NY 10001-3701

File No. 812-13576

ORDER TEMPORARILY SUSPENDING REDEMPTION OF INVESTMENT COMPANY
SHARES AND POSTPONING PAYMENT FOR INVESTMENT COMPANY SHARES
WHICH HAVE BEEN SUBMITTED FOR REDEMPTION FOR WHICH PAYMENT HAS
NOT BEEN MADE PURSUANT TO SECTION 22(e)(3) OF THE INVESTMENT COMPANY
ACT OF 1940

The Reserve Fund (the "Trust" or the "Applicant"), an open-end management investment company registered with the Commission under the Investment Company Act of 1940 (the "Act"), has filed an application on behalf of two of its series, the Primary Fund and the U.S. Government Fund (the "Funds"), for a temporary order pursuant to section 22(e)(3) of the Act permitting (a) suspension of the right of redemption of their outstanding redeemable securities, and (b) postponement of payment for shares which have been submitted for redemption for which payment has not been made.

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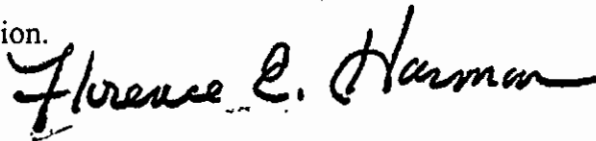
Section 22(e) of the Act provides, in relevant part, that no registered investment company shall suspend the right of redemption, or postpone the date of payment upon redemption except "(3) for such...periods as the Commission may by order permit for the protection of security holders of the company."

Applicant represents that: (1) the board, including a majority of directors that are not interested persons of the Trust: (a) determined, on September 17, 2008, that a suspension of redemption is in the best interest of each Fund's shareholders, and (b) determined, on September 17, 2008, that a postponement of payment for shares which have been submitted for redemption for which payment has not been made is in the best interest of each Fund's shareholders, and (c) will create a plan for the orderly liquidation of each Fund's assets to meet redemption requests and for the appropriate payments to each Fund's shareholders, including those whose redemption orders have been received but not yet paid, which plan is subject to Commission supervision; (2) the Funds have suspended sales; and (3) the Funds will make and keep appropriate records surrounding these events.

Based on the representations in the application, including those relating to the current extraordinary market conditions, the Commission finds that the temporary suspension of the right of redemption and postponement of payment for shares which have been submitted for redemption for which payment has not been made by the Funds is necessary for the protection of their security holders.

Accordingly, IT IS ORDERED, pursuant to section 22(e)(3) of the Act, that the requested exemption from section 22(e) of the Act is granted until the markets are liquid to a degree that enables each Fund to liquidate portfolio securities without impairing the net asset value of each Fund, or the Commission, on its own initiative, rescinds the order granted herein. This order shall be in effect as of September 17, 2008.

By the Commission.

A handwritten signature in cursive script, reading "Florence E. Harmon". The signature is written in dark ink and is positioned to the right of the typed name.

Florence E. Harmon
Acting Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58612 / September 22, 2008

ORDER GRANTING TEMPORARY, CONDITIONAL RELIEF FROM THE NET
CAPITAL RULE FOR BARCLAYS CAPITAL, INC.

Barclays Capital, Inc. ("Barclays Capital") is a broker-dealer registered with the Securities and Exchange Commission ("Commission"). Barclays Capital's ultimate holding company is Barclays Group ("Barclays Group"), which is supervised by the United Kingdom Financial Services Authority. Barclays Group, through Barclays Capital, has entered into an agreement to purchase substantially all of the assets, businesses and personnel of Lehman Brothers Inc. ("Lehman").

On November 9, 2005, the Commission issued an Order approving Lehman's application to use the alternative method of computing net capital contained in Appendix E ("Appendix E") to Rule 15c3-1 (17 CFR 240.15c3-1e) under the Securities Exchange Act of 1934 ("Exchange Act"). In a September 19, 2008 letter to the Commission, Barclays Capital and Barclays Group applied to the Commission for an exemption that would permit Barclays Capital, as successor to a substantial portion of Lehman's assets and liabilities, to continue to use for a temporary period the alternative method of computing net capital contained in Appendix E solely when computing capital charges for the positions it acquires from Lehman.

Pursuant to paragraph (b)(3) of Rule 15c3-1, the Commission may, upon written application, exempt from the provisions of Rule 15c3-1, either unconditionally or on specified terms and conditions, any broker or dealer who satisfies the Commission that,

because of the special nature of its business, its financial position, and the safeguards it has established for the protection of customers' funds and securities, it is not necessary in the public interest or for the protection of investors to subject the particular broker or dealer to the provisions of Rule 15c3-1.

In its letter, Barclays Capital and Barclays Group have represented to the Commission that until such time as the Commission acts on Barclays Capital's application to use the alternate net capital treatment and supervision on a consolidated basis, Barclays Capital will:

- (1) file a draft application promptly, and cooperate and file with the Commission a plan to complete all requirements of such application process (including a timeline) and file a completed application in accordance with Appendix E to Exchange Act Rule 15c3-1 within 180 days of the bankruptcy court's approval of Barclays' acquisition of Lehman's assets. In the event Barclays Capital will not be able to file a completed application with respect to the various provisions related to VaR Models, Barclays Capital will promptly inform the Commission of such; and
- (2) devote the appropriate resources and personnel to support such alternate net capital treatment and supervision on a consolidated basis, including any additional conditions the Commission may find to be necessary or appropriate in the public interest or for the protection of investors.

In addition, Barclays Capital stated in its letter that, based on a pro-forma net capital computation, it would have in excess of \$6.5 billion in Tentative Net Capital, as defined.

In order to facilitate both a smooth transition of the Lehman assets and liabilities to Barclays Capital and continued oversight of this business, the Commission believes some additional conditions are necessary, as follows:

- (1) until such time as the Commission determines otherwise, Barclays Capital must maintain at least \$6 billion in Tentative Net Capital;
- (2) until such time as the Commission determines otherwise, the basic market risk and credit risk computations for the positions Barclays Capital acquires from Lehman must be done using the modeling infrastructure used by Lehman prior to the transfer of Lehman's assets and liabilities to Barclays Capital; and
- (3) until such time as the Commission determines otherwise, the basic market risk and credit risk computations must be supervised by individuals who fully understand the operation of Lehman's models (including the inputs and techniques unique to Lehman's models) and the securities that Lehman has been permitted to model, and that have at least one year of experience working with Lehman's models. According to Barclays Capital's letter, it has agreed to acquire substantially all personnel of Lehman, such that it should have employees that meet these requirements on its staff to continue to meet this condition for the exemption.

Barclays Capital will need to maintain Tentative Net Capital of at least \$6 billion. By increasing its Tentative Net Capital to at least \$6 billion, Barclays Capital will significantly improve its financial position. In addition, the movement of these accounts from Lehman to Barclays Capital will further protect customers by providing for a seamless transfer of customers' accounts from Lehman to a financially sound broker-dealer. Further, this temporary relief is specific to the business Barclays Capital purchases from Lehman, using models already reviewed and approved by the Commission, and the computations will be performed by persons familiar to Lehman's models and processes. This relief will extend only until the Commission acts on Barclays Capital's application to compute market and credit risk capital charges pursuant to Appendix E, which Barclays Capital has agreed to submit within 180 days of the bankruptcy court's approval of Barclays Capital's acquisition of Lehman's assets. As such, because of the special nature of Barclays Capital's business, its financial position, and the safeguards it has established for the protection of customers' funds and securities, the Commission finds that approval of this request, subject to the fulfillment by Barclays Capital and its ultimate holding company Barclays Group of these representations and conditions, is appropriate in the public interest or for the protection of investors.

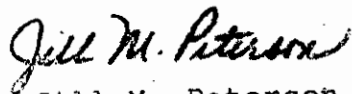
Accordingly,

IT IS ORDERED, under paragraph (b)(3) of Rule 15c3-1 (17 CFR 240.15c3-1) under the Exchange Act, that Barclays Capital may calculate capital charges for the positions it purchases from Lehman Brothers Inc. using the market risk standards of

Appendix E to compute a deduction for market risk on some or all of the positions, instead of the provisions of paragraphs (c)(2)(vi) and (c)(2)(vii) of Rule 15c3-1, and using the credit risk standards of Appendix E to compute a deduction for credit risk on the credit exposures arising from transactions in derivatives instruments, instead of the provision of paragraph (c)(2)(iv) of Rule 15c3-1, subject to the fulfillment by Barclays Capital and Barclays Group of the representations and conditions set forth above.

By the Commission.

Jill M. Peterson
Assistant Secretary


By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 58624 / September 23, 2008

ACCOUNTING AND AUDITING ENFORCEMENT

Release No. 2883 / September 23, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13231

In the Matter of

NORMAN STUMACHER, CPA,

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS PURSUANT
TO SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934 AND RULE 102(e)
OF THE COMMISSION'S RULES OF
PRACTICE, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS AND A
CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that public administrative and cease-and-desist proceedings be, and hereby are, instituted against Norman Stumacher, CPA ("Respondent" or "Stumacher") pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 102(e)(1)(ii) and (iii) of the Commission's Rules of Practice.¹

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the

¹ Rule 102(e)(1)(ii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have engaged in unethical or improper professional conduct.

Rule 102(e)(1)(iii) provides, in pertinent part, that:

The Commission may . . . deny, temporarily or permanently, the privilege of appearing or practicing before it . . . to any person who is found . . . to have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

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purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Public Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 and Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds² that:

A. SUMMARY

Video Without Boundaries, Inc. ("Video"), a consumer electronics company based in Fort Lauderdale, Florida, recorded fictitious revenue and assets at the direction of its sole officer and director through a number of accounting schemes, including improper revenue recognition, in violation of generally accepted accounting principles ("GAAP"). Stumacher audited Video's 2002 and 2003 annual financial statements and issued audit reports containing unqualified audit opinions, representing that the financial statements were presented in conformity with GAAP and that he conducted his audits in accordance with generally accepted auditing standards ("GAAS"). These representations were false because Video's financial statements contained numerous departures from GAAP that materially overstated Video's revenues and understated its net losses. Moreover, contrary to Stumacher's audit reports, his audits were not conducted in accordance with GAAS because he utterly failed to comply with professional standards related to field work and general standards in the performance of his audits. Stumacher thereby violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Rule 10b-5 thereunder and engaged in improper professional conduct within the meaning of Rule 102(e).

B. RESPONDENT

Norman Stumacher, CPA, age 81, of Bellmore, New York, is a certified public accountant licensed in New York since 1965. Since 1990, Stumacher has done business as a sole proprietor. Stumacher served as Video's auditor from April 2001 to February 2005.

² The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

C. OTHER RELEVANT ENTITY

Video was incorporated in 1999 and operates in the consumer electronics market. Since 1999, Video's common stock has been registered with the Commission pursuant to Section 12(g) of the Exchange Act. Video changed its name to MediaREADY, Inc. in September 2006 and, in March 2008, again changed its name to China Logistics Group, Inc.

D. FACTS

1. Video's Fraudulent Accounting Practices

a. Video, at the direction of its sole officer and director, engaged in fraudulent accounting practices that included improper revenue recognition and recording false entries in its annual financial statements for 2002 and 2003.

b. In May 2002, Video signed a contract to provide services to an entertainment company, Cornerstone Entertainment Inc. ("Cornerstone"), in exchange for shares of Cornerstone stock. Although Video received the shares of Cornerstone stock, Video never provided any services to Cornerstone because, shortly thereafter, Cornerstone went out of business. Notwithstanding its representation in its financial statements that "[s]ervice revenue is recognized when services are performed," nearly all of the revenue Video reported in its Form 10-KSB for fiscal year 2002 – \$325,000 of approximately \$331,000 – was based on its improper recognition of services it never provided to Cornerstone.

c. Moreover, although Cornerstone went out of business, Video recorded the Cornerstone stock as an investment (which it valued at approximately \$211,000) in its annual financial statements for 2002. Video even reported a fictitious stock dividend of Cornerstone shares to Video shareholders (which it valued at approximately \$114,000) in its annual financial statements for 2002 and 2003.

d. Commencing in 2003, Video had an informal arrangement with one of its distributors under which Video could ship its products to the distributor's warehouse but the distributor was not obligated to pay for them until it sold them to third party customers. Video used this arrangement to inflate its revenue in 2003. Specifically, in its 2003 Form 10-KSB, nearly all of Video's reported revenue – \$189,000 of about \$191,000 – was based on Video's purported sales to the distributor. In fact, Video did not sell any merchandise to the distributor in 2003, and overstated revenue by fraudulently recognizing the products shipped as sold.

e. As a result of Video's fraudulent accounting practices, Video filed Forms 10-KSB for fiscal years 2002 and 2003 that materially overstated Video's revenues and understated net losses. Video restated its financial statements for the year ended December 31, 2002 in June 2005 and again in September 2005. Video restated its financial statements for the year ended December 31, 2003 in September 2005. Based on the restatements, Video's revenues, net losses, and total assets for fiscal year 2002 were misstated by over 5000%, 12%, and 276%,

respectively. Based on the restatements, Video's revenues, net losses, and total assets for fiscal year 2003 were misstated by over 10,000%, 33%, and 68%, respectively.

2. Stumacher's Failures in Connection With Video's 2002 and 2003 Audits

a. While conducting audits of Video's financial statements for fiscal years 2002 and 2003, Stumacher failed to comply with professional standards related to field work, including standards related to evidential matter, audit risk and materiality, consideration of fraud, analytical procedures and documentation, and general standards, including due professional care in the performance of the audits.

b. Under the professional standards related to field work, Stumacher failed to consider audit risk, fraud, and materiality when planning and performing the audits of Video's financial statements. Stumacher did not develop nor document any audit procedures to assess audit risk. He failed to consider adequately audit risk or identify significant business risks or unusual reporting issues.

c. Additionally, in performing his field work, Stumacher was required to obtain corroborating evidential matter to support the accounting information Video provided. However, Stumacher failed to review any corroborating evidential matter, other than the Cornerstone agreement provided to him by Video's management. He made no other efforts to obtain or review any corroborating evidential matter concerning that agreement, the value of the Cornerstone stock, or the 2003 recorded sales to the distributor.

d. Among other failures related to the auditing standards of field work, Stumacher failed to verify or perform any tests on any of the account balances in the general ledgers, failed to perform any procedures to identify related party transactions, and failed to perform any analytical procedures.

e. Stumacher also failed to prepare and maintain audit documentation to support his audit conclusions or to show a reasonable basis for his audit reports containing unqualified opinions on Video's 2002 and 2003 financial statements. Stumacher failed to create any audit programs, worksheets, schedules or analyses, planning or other memoranda, engagement or management representation letters, or documents reflecting that he observed auditing standards.

f. Contrary to Stumacher's audit reports containing unqualified audit opinions on Video's 2002 and 2003 annual financial statements, his audits were not conducted in accordance with GAAS and Video's financial statements were not presented in conformity with GAAP.

3. Violations

a. Section 10(b) of the Exchange Act and Rule 10b-5 thereunder prohibit a person, in connection with the purchase or sale of a security, from making an untrue statement of a material fact or from omitting to state a material fact necessary to make statements made, in light

of the circumstances under which they were made, not misleading. An auditor violates Section 10(b) of the Exchange Act and Rule 10b-5 thereunder if he prepares and certifies publicly-filed financial statements that he knows, or is reckless in not knowing, are false. *Ponce v. SEC*, 345 F.3d 722, 729-30 (9th Cir. 2003); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215, 1225-27 (10th Cir. 1996). Auditors also violate these provisions by issuing a false audit report. *McGann v. Ernst & Young*, 102 F.3d 390, 397 (9th Cir. 1996); *Ponce*, 345 F.3d at 731 (auditors violated Section 10(b) and Rule 10b-5 by issuing a false audit report).

b. Stumacher willfully violated these antifraud provisions by issuing audit reports, in connection with Video's 2002 and 2003 annual financial statements, which falsely stated that Video's financial statements were presented in conformity with GAAP and that his audits were conducted in accordance with GAAS.

4. **Findings**

a. Based on the foregoing, the Commission finds that Stumacher engaged in improper professional conduct pursuant to Rule 102(e)(1)(ii) of the Commission's Rules of Practice.

b. Based on the foregoing, the Commission finds that Stumacher willfully violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

IV.

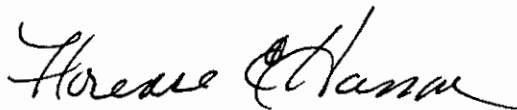
In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Stumacher's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Stumacher shall cease and desist from committing or causing any violations and any future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

B. Stumacher is denied the privilege of appearing or practicing before the Commission as an accountant.

By the Commission.


Florence E. Harmon
Acting Secretary

*Chairman Cox and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2786 / September 23, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13233

In the Matter of

MARK D. LAY,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Mark D. Lay ("Lay" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Mark D. Lay was the Chairman, CEO, Chief Investment Strategist and 35 percent shareholder of MDL Capital Management, Inc. ("MDL Capital"), an investment adviser registered with the Commission. Lay was also a director of MDL Active Duration Fund, Ltd. (the "Fund"), an exempted, open-ended mutual fund company created by MDL Capital and Lay and incorporated under the laws of Bermuda. Lay, age 44, is a resident of Aliquippa, Pennsylvania.

2. On September 15, 2008, a final judgment was entered by consent against Lay, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. Mark D. Lay, et al., Civil Action Number 08-1269, in the United States District Court for the Western District of Pennsylvania.

3. The Commission's complaint alleged, among other things, that:

- a. Between approximately February 2004 and November 2004, MDL Capital and Lay defrauded their client, the Ohio Bureau of Workers' Compensation (the "Bureau"), in connection with the Bureau's investment in the Fund;
- b. MDL Capital and Lay breached their duty to the Bureau by consistently exceeding the 150 percent leverage guideline for the Fund set forth in the Fund's private placement memorandum;
- c. As a result of the fraud, the Bureau incurred losses of approximately \$160 million; and
- d. MDL Capital and Lay misrepresented and failed to disclose to the Bureau the excessive leverage and the true reason for the losses.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Lay's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 203(f) of the Advisers Act, that Respondent Lay be, and hereby is, barred from association with any investment adviser.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

*Chairman Cox and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2785 / September 23, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13232

In the Matter of

MDL CAPITAL MANAGEMENT, INC.,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(e) OF
THE INVESTMENT ADVISERS ACT
OF 1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(e) of the Investment Advisers Act of 1940 ("Advisers Act") against MDL Capital Management, Inc. ("MDL Capital" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(e) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. MDL Capital was an investment adviser that had its principal offices located in Pittsburgh, Pennsylvania. Although MDL Capital is no longer doing business, it is registered as an investment adviser with the Commission. Mark D. Lay was the Chairman, CEO, Chief Investment Strategist and 35 percent shareholder of MDL Capital. At all times relevant to this matter, MDL Capital was the investment adviser to the Ohio Bureau of Workers' Compensation (the "Bureau") and the MDL Active Duration Fund, Ltd. (the "Fund"), an exempted, open-ended mutual fund company created by MDL Capital and Lay and incorporated under the laws of Bermuda.
2. On September 15, 2008, a final judgment was entered by consent against MDL Capital, permanently enjoining it from future violations of Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1) and 206(2) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. Mark D. Lay, et al., Civil Action Number 08-1269, in the United States District Court for the Western District of Pennsylvania.
3. The Commission's complaint alleged, among other things, that:
 - a. Between approximately February 2004 and November 2004, MDL Capital and Lay defrauded their client, the Bureau, in connection with the Bureau's investment in the Fund;
 - b. MDL Capital and Lay breached their duty to the Bureau by consistently exceeding the 150 percent leverage guideline for the Fund set forth in the Fund's private placement memorandum;
 - c. As a result of the fraud, the Bureau incurred losses of approximately \$160 million; and
 - d. MDL Capital and Lay misrepresented and failed to disclose to the Bureau the excessive leverage and the true reason for the losses.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent MDL Capital's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 203(e) of the Advisers Act, that the registration of Respondent MDL Capital Management, Inc. be, and hereby is, revoked.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: *Jill M. Peterson*
Assistant Secretary

*Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT of 1940
Release No. 2784A / September 23, 2008

INVESTMENT COMPANY ACT of 1940
Release No. 28387A/ September 23, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13230

In the Matter of

AmSouth Bank, N.A. (now known
as Regions Bank), and
AmSouth Asset Management, Inc.
(now known as Morgan Asset
Management),

Respondents.

**CORRECTED ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-
AND-DESIST PROCEEDINGS
PURSUANT TO SECTIONS 203(e)
AND 203(k) OF THE INVESTMENT
ADVISERS ACT OF 1940, AND
SECTIONS 9(b) AND 9(f) OF THE
INVESTMENT COMPANY ACT OF
1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS
AND A CEASE-AND-DESIST ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940 ("Advisers Act") and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act") against AmSouth Bank, N.A. and AmSouth Asset Management, Inc. ("Respondents").¹

II.

In anticipation of the institution of these proceedings, Respondents have submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the

¹ AmSouth Bank, N.A. is now part of Regions Bank, a subsidiary of Regions Financial Corporation. AmSouth Asset Management, Inc. is now part of Morgan Asset Management, which is also a subsidiary of Regions Financial Corporation.

Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 203(e) and 203(k) of the Investment Advisers Act of 1940, and Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Order"), as set forth below.

III.

On the basis of this Order and Respondents' Offer, the Commission finds² that

Summary

These proceedings arise out of improper and undisclosed arrangements between AmSouth Bank, N.A. and AmSouth Asset Management, Inc. (collectively "AmSouth"), investment advisers to the AmSouth Funds, and BISYS Fund Services, Inc. ("BISYS"), a mutual fund administrator. AmSouth entered into two written side agreements with BISYS, pursuant to which BISYS rebated a portion of its administration fee to AmSouth so that AmSouth would continue to recommend BISYS as an administrator for the AmSouth Funds to the AmSouth Funds' board of trustees. Through these side agreements, AmSouth used a portion of BISYS' administration fee to pay for marketing expenses related to the AmSouth Funds. AmSouth also used money rebated by BISYS to pay expenses entirely unrelated to marketing, including the salary, bonus, benefits, and country club membership of the president of the AmSouth Funds. Also, under the terms of a side letter in 2000, the AmSouth Funds paid additional moneys to BISYS through a "new fund accounting fee." The fee was not used to compensate BISYS for providing fund accounting services. AmSouth, or a predecessor bank, had spent \$3.5 million more on marketing than BISYS had set aside. In exchange for releasing AmSouth from its obligation to repay these moneys to BISYS, AmSouth agreed to divert \$1 million of the new fund accounting fee to BISYS and recommend retention of BISYS as administrator for a five-year term to the AmSouth Funds board of trustees. The \$1 million generated by the new fund accounting fee would repay part of the \$3.5 million that AmSouth (or a predecessor bank) had overspent from the marketing budget; the remainder of the deficit would be waived. Distribution expenses paid from these rebated administration fees were related to but not provided for by the AmSouth Funds' 12b-1 plan. From July 1999 to June 2004, BISYS rebated \$16,182,034 of its total administration fees of \$49,351,334 to AmSouth pursuant to these side agreements.

² The findings herein are made pursuant to Respondents' Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

In addition to the side agreements, BISYS and AmSouth also entered into an undisclosed consulting arrangement in 2000. Under this consulting arrangement, BISYS and AmSouth agreed that in exchange for AmSouth recommending to the trustees that BISYS provide securities lending services to the AmSouth Funds, BISYS would pay some of the securities lending fees it received back to AmSouth as consulting fees. Under this consulting agreement, AmSouth purportedly provided general marketing advice to BISYS to market AmSouth's own funds and received \$1,161,000 in total consulting fees. Neither the existence of side and consulting agreements nor the terms of these agreements were disclosed to the AmSouth Funds' independent trustees or to the Fund shareholders. As a result, AmSouth Asset Management willfully violated Sections 206(1) and 206(2) of the Advisers Act, and AmSouth Bank and AmSouth Asset Management willfully violated Section 34(b) of the Investment Company Act. Additionally, as a result, AmSouth Bank and AmSouth Asset Management willfully aided and abetted and caused violations of Section 12(b) of the Investment Company Act and Rule 12b-1 thereunder.

A. RESPONDENTS

1. During the relevant period, AmSouth was based in Birmingham, Alabama. AmSouth Bank was a subsidiary of AmSouth Bancorporation, and was an unregistered investment adviser that served as the investment adviser to the AmSouth Funds from October 1, 1987, to May 11, 2001. AmSouth Bank was succeeded as adviser by its wholly-owned subsidiary, AmSouth Investment Management Company, LLC ("AIMCO"), a registered investment adviser, on May 12, 2001. On October 1, 2003, respondent AmSouth Asset Management, Inc. ("AAMI") succeeded AIMCO as adviser to the Funds. In 2005, the assets of the AmSouth Funds were merged into, or otherwise became part of, another mutual fund family which is not managed or advised by any of the Respondents or their successors or affiliates.

2. During the relevant period, AmSouth Asset Management, Inc. was a registered investment adviser based in Birmingham, Alabama, and a wholly-owned subsidiary of AmSouth Bank. From October 1, 2003 through September 23, 2005, AAMI was the investment adviser to the AmSouth Funds. AAMI ceased acting as investment adviser to the AmSouth Funds when the assets of the AmSouth Funds became merged into, or otherwise became a part of, another unaffiliated mutual fund complex.

B. OTHER RELEVANT ENTITIES

3. BISYS Fund Services, Inc. was a Columbus, Ohio-based division of BISYS Investment Services, a wholly-owned subsidiary of The BISYS Group, Inc., a publicly-traded Delaware corporation with its principal executive offices in Roseland, New Jersey. BISYS served as administrator for approximately 50 mutual fund families with total net assets under management of \$275 billion.³ On or about August 1, 2007, Citigroup acquired the BISYS Group, including its mutual fund administrative operations.

³ On September 26, 2006, the Commission instituted a settled administrative and cease-and-desist proceeding against BISYS Fund Services, Inc., arising from its improper marketing arrangements with AmSouth and 26 other mutual fund advisers. In the Matter of BISYS Fund

4. AmSouth Funds was a Massachusetts business trust registered with the Commission as an investment company until September 23, 2005, when AmSouth Funds was merged into another fund complex, the Pioneer Group, and ceased to exist. AmSouth Funds was an open-end investment company that consisted of 23 individual mutual funds with up to three classes of shares each. AmSouth Funds had a board of trustees consisting of two interested and six independent trustees.

C. THE UNDISCLOSED SCHEME AND IMPROPER SIDE AGREEMENTS

1. The Undisclosed Marketing Arrangement

5. The relationship between AmSouth Funds and BISYS, as administrator, was governed by a written administration agreement approved by the AmSouth Funds' board of trustees. The administration agreement provided that BISYS would receive a 20 basis points ("bps") fee for fund administration services for most of the AmSouth Funds.⁴ These services included, but were not limited to, preparing offering documents such as prospectuses and statements of additional information ("SAIs"), compliance reports, and shareholder reports. Marketing services were not included in the administration agreement.

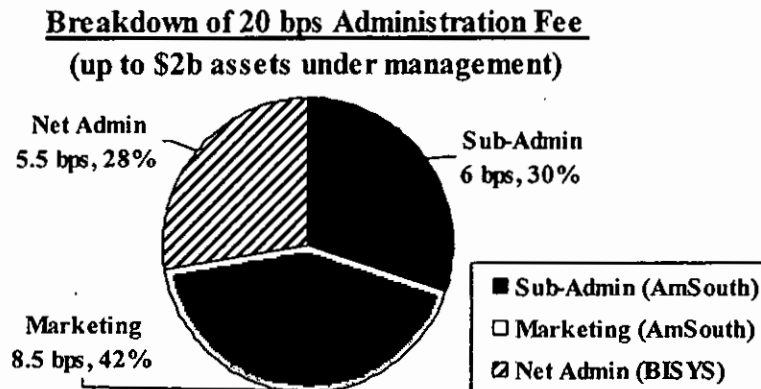
a. AmSouth Negotiates an Undisclosed Side Agreement in 1999

6. On or about October 14, 1999, AmSouth executed a side agreement in the form of a letter from BISYS Fund Services. In the side letter, BISYS agreed to pay a specific amount of the administration fee paid to BISYS by the AmSouth Funds to AmSouth for marketing and sub-administration services in exchange for AmSouth recommending to the AmSouth Funds' trustees that they enter into a contract extension with BISYS to provide administration services. The side letter was important to AmSouth. A senior executive of AmSouth told BISYS' managing director that the side letter was a "deal breaker" and that if BISYS "won't do it," one of BISYS' competitors would.

Services, Inc., Investment Advisers Act of 1940 Release No. 2554, Investment Company Act of 1940 Release No. 27500 (September 26, 2006). BISYS agreed to the issuance by the Commission of a cease-and-desist order prohibiting it from committing or causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act, and Sections 12(b) and 34(b) of the Investment Company Act, and Rule 12b-1(d) thereunder. BISYS also was ordered to pay disgorgement of \$9,698,835 plus prejudgment interest of \$1,703,981.66 and a civil penalty of \$10,000,000 which moneys were included in a Fair Fund for distribution to the victims of BISYS' violations, and it agreed to retain an independent distribution consultant to distribute the Fair Fund and to retain an independent consultant to review and report on its compliance with certain relevant requirements under the Investment Company Act and Advisers Act.

⁴ A "basis point" equals one one-hundredth of one percent. Accordingly, 20 bps equals 0.20%.

7. In the 1999 side letter, AmSouth and BISYS agreed that the AmSouth Funds would pay BISYS a 20 bps fee for administration and fund accounting services, and also agreed that AmSouth would receive part of that fee, between 5 and 6 bps, for providing sub-administration services to the AmSouth Funds. BISYS also agreed to pay AmSouth \$200,000 per year for dedicated marketing personnel and to accrue between 8.5 bps and 12.5 bps (less any waivers) for AmSouth to use for marketing. For assets under management up to \$2 billion, for example, administration fees were divided as follows:



The 1999 side letter thus provided that the soon-to-be entered administration contract for 20 bps would be split two ways: one-fourth to BISYS; and three-fourths (less waivers) to AmSouth, purportedly for sub-administration and marketing.

8. Since the inception of the AmSouth Funds, AmSouth and BISYS used part of the administration fee to pay expenses related to marketing the AmSouth Funds, such as printing brochures and the salaries and expenses of marketing personnel. Generally, AmSouth paid for marketing expenses and BISYS reimbursed AmSouth. Prior to the signing of the 1999 side agreement, AmSouth -- or a bank that AmSouth acquired which had a similar arrangement with BISYS concerning mutual funds it advised -- had spent \$1.2 million more than BISYS had set aside in the marketing budget. Accordingly, in addition to the marketing arrangement described above, AmSouth negotiated a provision in the side agreement that BISYS would forgive the \$1.2 million in marketing budget overspending in exchange for AmSouth recommending to the AmSouth Funds' trustees that BISYS' contract be extended for two years.

9. The 1999 side letter stated that "fund agreements will be amended and restated to reflect the terms set forth in this letter" and that "[o]bviously, while this letter represents our mutual understanding, these terms will become binding upon the execution of the new, definitive fund agreements, which we will finalize over the next thirty days." Except for the overall fee (20 bps) and term (two years), however, the provisions relating to the marketing budget were not included in the subsequently executed administration agreements that were approved by the AmSouth Funds' trustees at a board meeting held on November 23, 1999.

10. The November 23, 1999 AmSouth Funds board meeting was attended by

AmSouth officers familiar with the side letter. No one disclosed the 1999 side letter or its terms to the independent trustees, however. AmSouth knew the AmSouth Funds likely did not receive the lowest cost administration fees because an important part of the negotiations between BISYS and AmSouth was the commitment by BISYS to provide an agreed marketing budget.

b. AmSouth Negotiates a Side Agreement in 2000 Containing a Similar Marketing Arrangement

11. In December 2000, AmSouth and BISYS entered into a new side agreement, through a side letter, in connection with the renegotiation of the overall administration agreement to provide administration services to the AmSouth Funds for a five-year term. The December 2000 side letter was signed on or about December 19, 2000.

12. In the 2000 side letter, the proposed administration fee remained 20 bps (before waivers) for most of the AmSouth Funds. BISYS continued to set aside part of its administration fee for marketing the AmSouth Funds.

13. The 2000 side letter also stated that the marketing budget deficit, or overspending, had reached \$3.5 million, a substantial increase over the previous year's deficit of \$1.2 million. The 2000 side letter provided that, in exchange for AmSouth's recommendation to the Fund trustees that the Funds enter into a five-year administration contract with BISYS, BISYS would eliminate the \$3.5 million fund support deficit. The parties further agreed how the deficit would be eliminated. First, the parties agreed that BISYS could charge the AmSouth Funds a separate 2 basis point "fund accounting fee" for fund accounting services and use this "fund accounting fee" to pay down the deficit by \$1 million. At that time, fund accounting services did not require a separate fee – the services were included in the overall administration fee. Second, the remainder of the deficit, \$2.5 million, would be waived by BISYS so long as BISYS remained administrator to the AmSouth Funds through the end of 2001. The Funds then paid the 2 bps "fund accounting fee." The independent trustees did not know that the fee would be used to pay down part of the marketing deficit; rather, they believed that the fund accounting fee was put in place to support fund accounting services.

14. At the December 19, 2000 AmSouth Funds board meeting, during which the renewal of the administration contract was discussed, AmSouth supported the recommendation that BISYS' contract be renewed for a five-year term but failed to disclose the side agreement signed that same day. AmSouth represented to the Fund trustees that fund management had carefully evaluated alternative providers of administration, fund accounting, and transfer agency services and had concluded that BISYS was the most attractive provider of such services, given the cost and quality of the services. AmSouth also said that locking in a favorable contractual arrangement at this time with BISYS would be in the best interests of the Funds' shareholders.

c. AmSouth Exercises Discretion over the Use of Marketing Funds Pursuant to the Undisclosed Side Letters

15. AmSouth and BISYS both treated the marketing budget as AmSouth's

discretionary funds. Although BISYS paid the marketing expenses directly or by reimbursing AmSouth, the principal decision maker as to how the marketing dollars were used pursuant to the side letter was AmSouth.

16. From at least 1999 through September 2003, BISYS paid certain non-marketing related expenses from the marketing budget. On or about December 31, 1999, AmSouth settled a dispute with a custodian of an AmSouth-acquired mutual fund complex through a payment by BISYS under the marketing budget. Although BISYS required AmSouth to submit written reimbursement requests for marketing expenses, BISYS never rejected its requests until approximately the summer of 2004. In fact, until the fall of 2003, BISYS did not even have internal guidelines or policies governing what constituted a "marketing expense."

17. From July 1999 through June 2004, AmSouth spent approximately \$16.1 million on "marketing." AmSouth spent money designated as "marketing" expenses on items such as the approximate \$200,000 per year salary and bonus, for an AmSouth officer and president of the AmSouth Funds, as well as the \$15,000 initiation fee and \$360 monthly dues for the officer's and Fund president's membership in a golf country club in Birmingham, Alabama.

18. BISYS maintained the marketing budget for AmSouth until October 2004. On or about October 1, 2004, when the marketing budget was terminated, the AmSouth Funds' gross administration fees were reduced by 5 bps from 20 bps to 15 bps, before taking account of waivers.

2. The Undisclosed Consulting Arrangement

19. In addition to the side letters described above with regard to the administration agreement, AmSouth and BISYS entered into another type of arrangement, this time with regard to securities lending. Prior to December 15, 1999, the AmSouth Funds did not have a securities lending agreement with any entity. In late 1999, BISYS and AmSouth agreed that in exchange for AmSouth recommending to the AmSouth Funds' board to retain BISYS to provide securities lending services to the AmSouth Funds, BISYS would use part of its securities lending fee to pay AmSouth for purported services pursuant to the consulting agreement. Under the consulting agreement, AmSouth ostensibly provided BISYS with general marketing advice. The consulting agreement, did not concern securities lending, however. Rather, the consulting agreement was a vehicle for BISYS to pay additional monies to AmSouth. The services provided by AmSouth pursuant to the consulting agreement were provided before, during, and after the termination of the consulting agreement. The only connection between the consulting agreement and the securities lending agreement was that fees paid by the Funds to BISYS for its securities lending services were the source of moneys paid to AmSouth pursuant to the consulting agreement between BISYS and AmSouth.

20. In approximately April 2000, AmSouth and BISYS entered into a consulting agreement, in which AmSouth agreed to provide general consulting services to BISYS "in connection with marketing efforts on behalf of AmSouth Funds" for an unspecified fee. Under this consulting agreement, AmSouth would "render advice and answer inquiries concerning the

marketing of the Funds," "assist in the preparation and implementation of marketing plans for the Funds," and "assist in the preparation and distribution of sales and advertising materials for the Funds." However, these "consulting services" generally were those that AmSouth was already expected to perform as adviser to the Funds and had previously performed without receiving the additional compensation provided for in the consulting agreement.

21. AmSouth received \$1.16 million in quarterly payments from October 6, 2000 through February 1, 2002 under this agreement. AmSouth did not disclose the consulting agreement to the AmSouth Funds' trustees.

22. BISYS made payments to AmSouth purportedly under the consulting agreement out of money originating from the AmSouth Funds' securities lending program that began on December 15, 1999. Through this program, the AmSouth Funds loaned securities in their portfolios for short-term use by other financial institutions. BISYS administered the program for the Funds, and a broker-dealer facilitated the loans. Under the securities lending agreement, the AmSouth Funds received half of the revenue generated from securities lending and the other half of the revenue was to be split by BISYS 50-50 with the broker-dealer as fees for operating the program. Instead, BISYS split the other 50% as follows: 15% to Cantor Fitzgerald, 15% to BISYS, and 20% to AmSouth via consulting payments. Although the board approved the securities lending agreement, the board did not approve or indeed know about, BISYS' fee split with AmSouth.

23. When the consulting agreement was terminated on or about February 2002, the fee split for the securities lending program changed to provide more revenue to the AmSouth Funds (70%) and less to BISYS and the broker-dealer. BISYS and the broker-dealer split the remaining 30%. Accordingly, the securities lending program contained fees that could have been reduced, thereby increasing the returns of the AmSouth Funds.

3. **AmSouth Causes Misleading Partial Disclosures To Be Made to the AmSouth Funds' Trustees and to Fund Shareholders**

24. The independent trustees were generally aware that BISYS provided marketing assistance with respect to the AmSouth Funds from its administration or other service fees. However, the independent trustees were not told specifically how much was spent for marketing or how those monies were spent. The independent trustees also were not told that the marketing budget was ever in an overspent position. They were not told that AmSouth and BISYS secretly agreed to pay down \$1 million of the marketing budget deficit from the new fund accounting fee and to waive the remainder, \$2.5 million, so long as BISYS remained administrator for the entire year 2001. Most importantly, the independent trustees were never told about the marketing side letters or consulting agreement.

25. At the September 23, 2003 AmSouth Funds' board meeting, a BISYS representative made a presentation to the AmSouth Funds' board providing the independent trustees with more detail concerning the marketing payments. He distributed to the AmSouth Funds' board a one-page summary of the program, called the Distribution Assistance Program or

DAP, describing it generally as an "informal arrangement under which BISYS voluntarily expends its own assets in marketing the Funds." He told the trustees that BISYS spent approximately 25% of its administration fee on marketing, and provided them with a one-page bar chart containing a general breakdown of how those moneys were spent. He also told the trustees that "all applicable regulatory rules were being followed." AmSouth reviewed and approved the information underlying the one-page bar chart, which omitted the material facts that the salary, bonus, and country club membership of an officer of AmSouth and president of the AmSouth Funds were paid out of the marketing budget. At that meeting, AmSouth did not disclose that the DAP failed to describe the formal nature of the arrangement in which BISYS agreed to set aside a certain portion of its administration fee to be used at AmSouth's direction in exchange for AmSouth recommending BISYS as administrator to the AmSouth Funds' board.

26. From at least 1999 through September 2005, AmSouth and BISYS each participated in drafting prospectuses and SAIs for the AmSouth Funds. From at least 1999 through November 28, 2003, AmSouth did not disclose to shareholders information concerning the marketing side letters and consulting agreement. In November 28, 2003, AmSouth Funds' SAI stated that "[t]he Distributor [BISYS] and/or its affiliates, may finance from their own resources, certain activities intended to result in the distribution of the Funds' Class A Shares and Class B Shares." This belated disclosure, however, was misleading because it failed to provide shareholders any meaningful information concerning the existence or magnitude of the conflict of interest created by the marketing budget. BISYS did not, in fact, finance distribution activities from its own resources but rather paid for marketing through its administration fees. AmSouth Funds shareholders were never informed that the undisclosed marketing agreements harmed them by diverting part of the administration fee to benefit BISYS (through renewal of administration contracts) and AmSouth (by subsidizing expenses AmSouth would otherwise likely have incurred).

27. Additionally, the administration contract was filed as an exhibit to the SAI. The SAI was materially misleading because the failure to disclose the side letters made the administration agreement incomplete and misleading. The failure to file the side letters as exhibits was materially misleading because Item 23 of Form N-1A requires a registrant to file "[o]ther material contracts not made in the ordinary course of business to be performed in whole or in part after the filing" of the registration statement.

D. VIOLATIONS

28. As a result of the conduct described above, AmSouth Asset Management willfully violated Sections 206(1) and 206(2) of the Advisers Act, which prohibit fraudulent conduct by an investment adviser.

29. As a result of the conduct described above, AmSouth Bank and AmSouth Asset Management willfully violated Section 34(b) of the Investment Company Act, which prohibits the making of any untrue statement of a material fact in any investment company registration statement and makes unlawful for any person to omit to state therein any fact necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading.

30. As a result of the conduct described above, AmSouth Bank and AmSouth Asset Management willfully aided and abetted and caused the AmSouth Funds' violations of Section 12(b) of the Investment Company Act and Rule 12b-1(a)(1) thereunder by failing to comply with their duty under Rule 12b-1(d) to furnish information reasonably necessary to the directors' evaluation of the Rule 12b-1 plan.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest to impose the sanctions agreed to in Respondents AmSouth Bank's and AmSouth Asset Management's Offer.

Accordingly, pursuant to Sections 203(e) and 203(k) of the Advisers Act, and Sections 9(b) and 9(f) of the Investment Company Act, it is hereby ORDERED that:

A. Respondent AmSouth Asset Management cease and desist from committing or causing any violations and any future violations of Sections 206(1) and 206(2) of the Advisers Act, and Respondents AmSouth Bank and AmSouth Asset Management cease and desist from committing or causing any violations and any future violations of Sections 12(b) and 34(b) of the Investment Company Act, and Rule 12b-1 thereunder.

B. IT IS FURTHER ORDERED that, the Respondents shall, jointly and severally, within 30 days of the entry of this Order, pay disgorgement in the amount of \$7,789,282 (\$9,787,282 less the \$1,998,000 previously repaid by AmSouth to the AmSouth Funds), prejudgment interest in the amount of \$2,198,952.81, and \$1,500,000.00 in civil money penalty, for a total amount of \$11,488,234.81, to the Pioneer Funds as described in Section IV.D. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment shall be: (A) made by United States postal money order, certified check, bank cashier's check, bank wire, or bank money order; (B) made payable to the Pioneer Funds as described in Section IV.D.; and (C) submitted under cover letter that identifies AmSouth Bank and AmSouth Asset Management as the Respondents in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Michele Wein Layne, Associate Regional Director, U.S. Securities and Exchange Commission, 5670 Wilshire Blvd, Suite 1100, Los Angeles, CA 90036.

C. IT IS FURTHER ORDERED that, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, interest and penalties referenced in paragraph IV.B. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondents agree that they shall not, after offset or reduction in any Related Investor Action based on Respondents' payment of disgorgement in this action, argue that it is entitled to, nor shall it further benefit by offset or reduction of any part of Respondents' payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondents agree that they shall, within 30 days after entry of a final order

granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondents by or on behalf of one or more investors based on substantially the same facts as found in the Order instituted by the Commission in this proceeding.

D. The Respondents shall distribute the following amounts to the affected Pioneer Funds listed below:

<u>Fund</u>	<u>Distributable Amount</u>
Pioneer Oak Ridge Large Cap Growth Fund	\$494,798.28
Pioneer Oak Ridge Large Cap Growth Fund	\$617,377.74
Pioneer Fund	\$399,790.58
Pioneer Value Fund	\$930,776.79
Pioneer Mid Cap Value Fund	\$514,213.39
Pioneer Growth Opportunities Fund	\$557,179.39
Pioneer International Equity Fund	\$1,091,726.96
Pioneer Research Fund	\$241,597.58
Pioneer Classic Balanced Fund	\$324,772.40
Pioneer Ibbotson Aggressive Allocation Fund	\$111,321.00
Pioneer Ibbotson Growth Allocation Fund	\$147,965.47
Pioneer Ibbotson Moderate Allocation Fund	\$234,015.35
Pioneer Ibbotson Moderate Allocation Fund	\$103,394.12
Pioneer Bond Fund	\$1,263,820.72
Pioneer AMT-Free Municipal Fund	\$105,462.00
Pioneer Tax Free Income Fund	\$651,727.56
Pioneer Tax Free Income Fund	\$73,065.18
Pioneer Government Income Fund	\$344,072.64
Pioneer Short Term Income Fund	\$345,910.75
Pioneer Treasury Reserves Fund	\$324,427.76
Pioneer Cash Reserves Fund	\$1,210,055.78
Pioneer Tax Free Money Market Fund	\$282,495.70
Pioneer Institutional Money Market Fund	\$844,959.67
Pioneer Oak Ridge Large Cap Growth VCT Portfolio	\$33,086.12
Pioneer Fund VCT Portfolio	\$116,835.35
Pioneer Fund VCT Portfolio	\$123,383.65

By the Commission.


 Florence E. Harmon
 Acting Secretary

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 240 and 249

[RELEASE NOS. 33-8959; 34-58620; INTERNATIONAL SERIES RELEASE NO. 1310; File No. S7-05-08]

RIN 3235-AK03

FOREIGN ISSUER REPORTING ENHANCEMENTS

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting a number of amendments to our rules relating to foreign private issuers that are intended to enhance the information that is available to investors. These amendments are part of a series of initiatives that seek to effect changes in our disclosure and other requirements applicable to foreign private issuers in light of market developments, new technologies and other matters in a manner that promotes investor protection and cross-border capital flows. We are adopting amendments that would enable foreign issuers to test their eligibility to use the special forms and rules available to foreign private issuers once a year, rather than continuously. We also are adopting amendments to change the deadline for annual reports filed by foreign private issuers and to eliminate an option under which foreign private issuers are permitted to omit segment data from their U.S. GAAP financial statements, and an amendment to the rule pertaining to going private transactions to reflect the new termination of reporting and deregistration rules for foreign private issuers. In addition, we are adopting amendments that would revise the annual report and registration statement forms used by foreign private issuers to improve certain disclosures provided in these forms.

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DATES: Effective Date: [Insert date 60 days after publication in the Federal Register].

Compliance Dates: The compliance dates are as follows:

- A foreign private issuer must begin to comply with the requirements to provide information pursuant to Item 16G of Form 20-F, which pertains to corporate governance disclosures, for its first fiscal year ending on or after December 15, 2008.
- A foreign private issuer must begin to comply with the amendment to eliminate Instruction 3 to Item 17 of Form 20-F, which permits the omission of segment data in certain circumstances; to provide disclosure pursuant to Item 16F of Form 20-F, which pertains to a change in registrant's certifying accountant; and to provide disclosure about American Depositary Receipts fees and payments for its first fiscal year ending on or after December 15, 2009.
- A foreign private issuer must begin to comply with the requirement to file its Form 20-F annual report on an accelerated basis for its first fiscal year ending on or after December 15, 2011. A foreign private issuer must begin to comply with the requirements to file transition reports pursuant to the amendments to Rules 13a-10(g)(3) and 15d-10(g)(3), and special financial reports pursuant to the amendments to Rule 15d-2(a) for its first fiscal year ending on or after December 15, 2011. In addition, a foreign private issuer must begin to comply with the requirement to prepare financial statements according to Item 18 of Form 20-F in the annual report filed for its first fiscal year ending on or after December 15, 2011.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Senior Special Counsel, Office of International Corporate Finance, Division of Corporation Finance, at

(202) 551-3450, or Craig Olinger, Deputy Chief Accountant, Division of Corporation Finance, at (202) 551-3400, or Jeffrey J. Minton, Chief Counsel, Office of the Chief Accountant, at (202) 551-5300, U.S. Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-3628.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Rule 405¹ of Regulation C,² Form F-1,³ Form F-3⁴ and Form F-4⁵ under the Securities Act of 1933 (“Securities Act”),⁶ Form 20-F⁷ under the Securities Exchange Act of 1934 (“Exchange Act”),⁸ and Exchange Act Rules 3b-4,⁹ 13a-10,¹⁰ 13e-3,¹¹ 15d-2,¹² and 15d-10.¹³ The amendments will: (1) Permit foreign issuers to test their qualification to use the forms and rules available to foreign private issuers on an annual basis, rather than on the

¹ 17 CFR 230.405.

² 17 CFR 230.400 et seq.

³ 17 CFR 239.31.

⁴ 17 CFR 239.33.

⁵ 17 CFR 239.34.

⁶ 15 U.S.C. 77a et seq.

⁷ 17 CFR 249.220f.

⁸ 15 U.S.C. 78a et seq.

⁹ 17 CFR 240.3b-4.

¹⁰ 17 CFR 240.13a-10.

¹¹ 17 CFR 240.13e-3.

¹² 17 CFR 240.15d-2.

¹³ 17 CFR 240.15d-10.

continuous basis that is currently required; (2) Accelerate the filing deadline for annual reports filed on Form 20-F by foreign private issuers under the Exchange Act by shortening the filing deadline from six months to four months after the foreign private issuer's fiscal year-end, after a three-year transition period; (3) Eliminate an instruction to Item 17 of Form 20-F that permits certain foreign private issuers to omit segment data from their U.S. GAAP financial statements; (4) Amend Rule 13e-3 under the Exchange Act by reflecting the new termination of reporting and deregistration rules for foreign private issuers;¹⁴ (5) Require foreign private issuers that are required to provide a U.S. GAAP reconciliation to do so pursuant to Item 18 of Form 20-F; and (6) Amend Form 20-F to require foreign private issuers to disclose information about changes in the issuer's certifying accountant, the fees and charges paid by holders of American Depositary Receipts ("ADRs"), the payments made by the depositary to the foreign issuer whose securities underlie the ADRs, and, for listed issuers, the differences in the foreign private issuer's corporate governance practices and those applicable to domestic companies under the relevant exchange's listing rules.

¹⁴ Although amending Rule 13e-3 is consistent with other Commission initiatives that seek to address changes in our disclosure and other requirements applicable to foreign private issuers, the amendment also will apply to transactions effected by domestic issuers.

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I. Summary

A. Proposed Amendments

In February 2008, we published for comment proposed amendments to rules and forms aimed at enhancing the disclosures that foreign private issuers provide to investors in the U.S. public markets, and improving the accessibility of our public markets to these issuers.¹⁵ The proposed amendments reflect changes in the nature of the global capital markets, as well as advances in technology with respect to the gathering and processing of information, that have occurred since the Commission's adoption of Form 20-F almost 30 years ago. When the Commission adopted Form 20-F, the form used by foreign private issuers¹⁶ to register a class of securities under the Exchange Act and to file annual reports,¹⁷ our objective was to elicit disclosures from foreign private issuers that were as

¹⁵ Release No. 33-8900 (Feb. 29, 2008) [73 FR 13404] (hereinafter "Proposing Release").

¹⁶ "Foreign private issuer" is defined in Exchange Act Rule 3b-4(c). A foreign private issuer is any foreign issuer other than a foreign government, except for an issuer that (1) has more than 50% of its outstanding voting securities held of record by U.S. residents and (2) any of the following: (i) a majority of its officers and directors are citizens or residents of the United States, (ii) more than 50 percent of its assets are located in the United States, or (iii) its business is principally administered in the United States.

¹⁷ Form 20-F is the combined registration statement and annual report form for foreign private issuers under the Exchange Act. It also sets forth disclosure requirements for registration statements filed by foreign private issuers under the Securities Act.

equal as practicable to that provided by domestic issuers.¹⁸ Because of differences in the national laws and accounting regulations applicable to foreign private issuers, we provided specified disclosure accommodations in Form 20-F.¹⁹ However, we indicated that our assessment of the appropriate disclosure requirements for foreign private issuers was part of an ongoing evolutionary process.²⁰

As noted previously in the Proposing Release, there has been a movement toward greater international agreement on the accounting and other non-financial statement disclosures that should be provided by issuers. The Commission has undertaken a number of initiatives that recognize this. For example, we adopted rules last December to permit foreign private issuers to file financial statements with the Commission that are prepared in accordance with International Financial Reporting Standards ("IFRS"), as issued by the International Accounting Standards Board ("IASB"), without reconciliation to generally accepted accounting principles ("GAAP") used in the United States.²¹ Those rules are part of our efforts to foster a single set of globally accepted accounting standards. We also incorporated into Form 20-F all of the International Organization of

¹⁸ See Release No. 34-16371 (Nov. 29, 1979) [44 FR 70132] (hereinafter "Form 20-F Adopting Release").

¹⁹ See id.

²⁰ See id.

²¹ Release No. 33-8879 (Dec. 21, 2007) [73 FR 986].

Securities Commission's ("IOSCO")²² International Disclosure Standards for Cross-Border Offerings and Initial Listings by Foreign Issuers,²³ which pertain to prospectuses prepared by foreign issuers for public offerings and listing of equity securities.²⁴

In addition, the Commission has sought to facilitate cross-border capital flows. When implementing certain provisions of the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley Act"),²⁵ we also provided several significant accommodations to foreign private

²² IOSCO consists of securities regulators from 109 countries ("ordinary" members) who are committed to working together "to promote high standards of regulation to maintain just, efficient and sound markets." IOSCO, General Information About IOSCO, at <http://www.iosco.org/about/>.

²³ Available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD81.pdf>. The IOSCO Technical Committee recently published the International Disclosure Principles for Cross-Border Offerings and Listings of Debt Securities by Foreign Issuers (2007), available at <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD242.pdf>. These IOSCO Principles apply to prospectuses used by foreign issuers for offerings and listings of debt securities. The Commission's prospectus disclosure requirements for debt securities offered by foreign private issuers, which are contained in Form 20-F, are also consistent with these IOSCO Principles.

²⁴ Release No. 33-7745 (Sept. 28, 1999) [64 FR 53900].

²⁵ 15 U.S.C. 7201 et seq.

issuers relating to the requirements on internal control over financial reporting²⁶ and audit committee independence.²⁷ These accommodations recognized non-U.S. practices and requirements. In March 2007, we also adopted rules that made it easier for foreign private issuers to terminate their reporting obligations and deregister their securities.²⁸ We adopted these rules to address concerns that the burdens and uncertainties associated with terminating their registration and reporting obligations under the Exchange Act could serve as a disincentive to foreign private issuers accessing the U.S. public capital markets.²⁹ In a related release,³⁰ we are adopting amendments to Exchange Act Rule

²⁶ We permitted foreign private issuers to comply with the requirement to include in their annual reports management's report on the company's internal control over financial reporting and the auditor's attestation on a delayed basis compared to some domestic issuers. See Release No. 33- 8392 (Feb. 24, 2004) [69 FR 9722] (extending the original compliance dates for accelerated filers to fiscal years ending on or after November 15, 2004, and for companies that are not accelerated filers and for foreign private issuers, to fiscal years ending on or after July 15, 2005); Release No. 33-8545 (Mar. 2, 2005) [70 FR 11528] (adopting an additional one-year extension of the compliance dates for companies that are non-accelerated filers and for foreign private issuers filing annual reports on Forms 20-F or 40-F); Release No. 33-8730A (Aug. 9, 2006) [71 FR 47056] (extending for one year the date by which a foreign private issuer that is an accelerated filer and that files annual reports on Forms 20-F or 40-F must begin to comply with the requirement to provide the auditor's attestation report on internal control over financial reporting). Foreign private issuers also are permitted to report changes in their internal controls over financial reporting on an annual basis, rather than on a quarterly basis as is required of domestic issuers. Release No. 33-8238 (June 5, 2003) [68 FR 36636].

²⁷ See Release No. 33-8220 (Apr. 9, 2003) [68 FR 18788].

²⁸ Release No. 34-55540 (Mar. 27, 2007) [72 FR 16934].

²⁹ Id.

³⁰ Release No. 34-58465 (Sept. 5, 2008).

12g3-2(b)³¹ to expand the availability of this exemption from registration under Section 12(g)³² of the Exchange Act for foreign private issuers, so that a qualified foreign private issuer that meets specified conditions can claim the exemption automatically without regard to the number of its U.S. shareholders. In another related release, we are adopting amendments that expand and enhance the utility of the cross-border exemptions for business combination transactions.³³ These amendments are expected to encourage offerors and issuers in cross-border business combinations, and rights offerings by foreign private issuers to permit U.S. security holders to participate in these transactions in the same manner as other holders.

As part of our continuous assessment of our rules pertaining to foreign private issuers, we proposed amendments to rules and forms last February that reflected our view that some of the disclosure accommodations that we provided to foreign private issuers almost 30 years ago may no longer be appropriate or necessary in light of global market developments and advancements in technology.³⁴ These proposed rule and form amendments sought to balance our dual objectives of enhancing the reporting of information by foreign private issuers, including the timeframe within which investors can have access to that information, and improving the accessibility of our public markets to these issuers. Among other things, we proposed amendments that would permit

³¹ 17 CFR 240.12g3-2(b).

³² 15 U.S.C. 78l(g).

³³ See Release No. 34-58597 (Sept. 19, 2008).

³⁴ See Proposing Release, supra note 15.

reporting foreign issuers to assess their eligibility to use the special forms and rules available to foreign private issuers once a year, rather than on a continuous basis. We also proposed amendments to change the deadline for annual reports filed by foreign private issuers and to eliminate an option under which foreign private issuers may omit segment data from their U.S. GAAP financial statements, and an amendment to the rule pertaining to going private transactions to reflect the new termination of reporting and deregistration rules for foreign private issuers. In addition, we proposed amendments that would revise Form 20-F to improve certain disclosures provided in that form.

B. Principal Comments Received

We received 52 comment letters in response to our proposed rule and form amendments from a variety of market participants.³⁵ The respondents included businesses, financial and legal associations, law firms, accounting firms, depository banks, financial services providers, and one securities exchange. The comments received on most of the proposed amendments were supportive, although commenters provided useful suggestions on several of the proposals. Almost all of the comments received on the proposal to permit foreign issuers to test their status as foreign private issuers once a year, rather than continuously, were very positive. Commenters noted that this proposal would reduce compliance burdens on foreign private issuers, as well as align the testing and transition requirements for foreign private issuer status with the requirements applicable to determining accelerated filer and small reporting company status.

³⁵ These comment letters are available on the Commission's Internet Web site, located at <http://www.sec.gov/comments/s7-05-08/s70508.shtml>, and in the Commission's Public Reference Room in its Washington, DC headquarters.

We also received mainly positive comments about the proposed amendments to require foreign private issuers to disclose in their Form 20-F annual reports changes in and disagreements with their certifying accountant, and significant differences in the corporate governance practices of listed foreign private issuers compared to the corporate governance practices applicable to domestic companies under the relevant exchange's listing standards. While several commenters believed the proposed disclosure would be more useful if it was made on a more timely basis, commenters generally noted that the proposal regarding disclosure of a change in a registrant's certifying accountant would provide investors with useful information, and would be consistent with the disclosure currently required of domestic issuers. With respect to the corporate governance proposal, commenters noted the usefulness of having all of a foreign private issuer's corporate governance information in one location.

In addition, we received primarily positive feedback on our proposed amendments to eliminate the option permitting foreign private issuers to omit segment data from their U.S. GAAP financial statements, to reference the new termination of reporting and deregistration rules applicable to foreign private issuers in Exchange Act Rule 13e-3, and to require annual disclosure in Form 20-F about ADR fees and payments. These proposals were supported as providing useful information to investors, and in the case of Rule 13e-3, providing regulatory consistency with the new deregistration and termination of reporting provisions.

We received a wide range of comments on some of the other proposed amendments. In particular, many commenters opposed the proposal to accelerate the reporting deadline for Form 20-F annual reports. We had proposed amendments to

accelerate the filing deadline for Form 20-F annual reports by shortening the filing deadline from 6 months to within 90 days after the foreign private issuer's fiscal year-end in the case of large accelerated and accelerated filers, and to within 120 days after a foreign private issuer's fiscal year-end for all other issuers, after a two-year transition period. Commenters expressed concern that many foreign private issuers must prepare financial statements according to local GAAP under their home country's laws and regulations, and would need additional time to prepare their financial statements in accordance with U.S. GAAP or IFRS as issued by the IASB, or to reconcile their financial statements to U.S. GAAP for the Form 20-F. Commenters also noted that many foreign private issuers need additional time to translate information into English for Form 20-F, and to provide the additional non-financial statement disclosures that are required in Form 20-F compared to their home country annual reports. Other commenters noted that the proposed acceleration deadlines could well result in filing dates that override annual report filing deadlines in some issuers' home countries, and that, in any case, foreign private issuers provide their home country annual reports to U.S. investors through the submission of those reports on Form 6-K.

We also received a wide range of responses to our proposed amendments to require foreign private issuer that are required to provide a U.S. GAAP reconciliation to do so pursuant to Item 18 of Form 20-F. Although some commenters noted that the proposal to require Item 18 information would provide investors with more complete financial information, others expressed concern about the necessity of the proposed amendments, since many countries are gradually requiring footnote disclosures comparable to U.S. GAAP and Regulation S-X.

C. Summary of Adopted Amendments

We have carefully considered the comments received regarding the proposed amendments and have concluded that it is appropriate to adopt the amendments, substantially as proposed in the case of most of the amendments. Some of the amendments have been modified to reflect suggestions offered by commenters in response to questions posed in the Proposing Release.

The adopted amendments will:

- Permit reporting foreign issuers to assess their eligibility to use the special forms and rules available to foreign private issuers once a year on the last business day of their second fiscal quarter, rather than on a continuous basis, which is currently required;
- Accelerate the reporting deadline for annual reports filed on Form 20-F by foreign private issuers from six months to four months after the issuer's fiscal year-end, after a three-year transition period;
- Amend Form 20-F by eliminating an instruction to Item 17 of that Form that permits certain foreign private issuers to omit segment data from their U.S. GAAP financial statements;
- Amend Exchange Act Rule 13e-3, which pertains to going private transactions by reporting issuers or their affiliates, to reflect the recently adopted deregistration and termination of reporting rules applicable to foreign private issuers;
- Eliminate the availability of the limited U.S. GAAP reconciliation option that is contained in Item 17 of Form 20-F for foreign private issuers that are only

listing a class of securities on a U.S. national securities exchange, or only registering a class of equity securities under Section 12(g) of the Exchange Act, and not conducting a public offering. We also are eliminating this limited reconciliation option for annual reports filed on Form 20-F, and for certain non-capital raising offerings, such as offerings pursuant to reinvestment plans, offerings upon the conversion of securities, or offerings of investment grade securities. Thus, all foreign private issuers that are required to provide a U.S. GAAP reconciliation must do so pursuant to Item 18 of Form 20-F, although required third party financial statements could continue to be prepared pursuant to Item 17 of Form 20-F;

- Amend Form 20-F to require disclosure in annual reports filed on that Form about any changes in the registrant's certifying accountant;
- Amend Form 20-F to require annual disclosure of the fees and other charges paid by holders of ADRs to depositaries, as well as any payments made by depositaries to the foreign private issuers whose securities underlie the ADRs; and
- Amend Form 20-F to require annual disclosure of the significant differences in the corporate governance practices of listed foreign private issuers compared to the corporate governance practices applicable to domestic companies under the relevant exchange's listing standards.

II. Discussion of the Amendments

A. Annual Test for Foreign Private Issuer Status

The Commission's longstanding policy of facilitating the access of foreign issuers to the U.S. capital markets is evidenced by the various accommodations to foreign practices and policies it has provided to foreign issuers that qualify as "foreign private issuers."³⁶ For many companies, the determination of whether they qualify as a foreign private issuer is important because of these accommodations and exemptions.³⁷ However, to make sure that it qualifies for these accommodations, a foreign private issuer that has close to 50% of its outstanding voting securities held of record by U.S. residents may find that it must monitor on a continuous basis the different factors used to assess

³⁶ See supra note 16 for the definition of "foreign private issuer."

³⁷ For example, Exchange Act Rule 3a12-3(b) [17 CFR 240.3a12-3(b)] exempts foreign private issuers from the Commission's proxy rules [17 CFR 240.14a-1 et seq.], and from the insider stock trading reports and short-swing profit recovery provisions under Section 16 [15 U.S.C. 78p] of the Exchange Act. Foreign private issuers also provide any interim reports on the basis of home country regulatory and stock exchange practices, rather than the quarterly reports that are required of U.S. issuers, and executive compensation disclosure on an aggregate basis if the information is reported on such a basis in the issuer's home country. See Item 6.B. of Form 20-F.

foreign private issuer status.³⁸ This can result in uncertainty for these issuers as to which reporting and regulatory requirements will apply to them within a given period of time, as well as increase their compliance burdens.³⁹ This also can result in confusion for investors if the issuer needs to switch between foreign and domestic reporting forms within the same fiscal year.

We proposed amendments to permit foreign private issuers to assess their status once a year on the last business day of their second fiscal quarter as a means of providing greater certainty to both issuers and investors as to the status of these foreign issuers within a given period of time. This is the same date used to determine accelerated filer

³⁸ See note 16 above for a description of the factors that foreign issuers must monitor. The Commission's staff has taken the position that, for the purpose of the exemptions contained in Exchange Act Rule 3a12-3(b), foreign private issuers need to assess their status at the end of each fiscal quarter. In addition, they must assess their status at the completion of any purchase or sale by the issuer of its equity securities (other than in connection with an employee benefit plan or compensation arrangement, conversion of outstanding convertible securities, or exercise of outstanding options, warrants or rights), any purchase or sale of assets by the issuer other than in the ordinary course of business, and any purchase of equity securities of the issuer in a public tender offer or exchange offer by a non-affiliate. Foreign Private Issuers Relying on Rule 3a12-3(b) under the Exchange Act, SEC No-Action Letter, [1993 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶76,667 (Mar. 30, 1993). This letter will be superseded by the amendments.

³⁹ For example, if a foreign issuer concludes that it does not qualify as a foreign private issuer in the middle of its fiscal year, it may find it difficult to change its basis of accounting to U.S. GAAP in order to comply on a timely basis with the reporting requirements applicable to domestic issuers under the Exchange Act. These issuers also face the challenge of modifying their information and processing systems to comply with the domestic reporting and registration regime, as well as the executive compensation disclosure requirements, proxy rules and Section 16 reporting requirements that are applicable to domestic issuers.

status under Exchange Act Rule 12b-2⁴⁰ and smaller reporting company status in Item 10(f)(2)(i)⁴¹ of Regulation S-K.⁴²

The vast majority of comments received on the proposed amendments were highly supportive. Commenters noted that the proposed amendments would benefit investors by eliminating confusion in the markets as to an issuer's status if an issuer needs to move between foreign and domestic reporting forms in the same fiscal year. Commenters also noted that the proposed amendments would also eliminate uncertainty for issuers, and possibly reduce accounting, audit and information technology fees that would otherwise result if an issuer changed its status mid-year. They noted that substantial incremental effort is often required to comply with the Commission's domestic issuer requirements. Commenters also pointed out that the proposed amendments would simplify compliance with the Commission's regulations because this approach would be more consistent with our approach to determining accelerated filer and smaller reporting company status. One commenter suggested that the proposal would increase certainty and predictability for foreign companies with respect to their reporting obligations, which should in turn enhance the attractiveness of the U.S. capital markets by removing a disincentive to register with the Commission.⁴³

⁴⁰ 17 CFR 240.12b-2.

⁴¹ 17 CFR 229.10(f)(2)(i).

⁴² 17 CFR 229.10 et seq. See also Release No. 33-8876 (Dec. 19, 2007) [73 FR 934] (adopting amendments to the disclosure and reporting requirements under the Securities Act and the Exchange Act to expand the number of companies that qualify for the scaled disclosure requirements for smaller reporting companies).

⁴³ See comment letter by Organization for International Investment.

After considering the comments received, we are adopting the amendments as proposed. In addition, we are adopting the proposed amendments that would require a foreign private issuer that determines that it no longer qualifies as a foreign private issuer on the last business day of its second fiscal quarter to comply with the reporting requirements and use the forms prescribed for domestic companies beginning on the first day of the fiscal year following the determination date. We proposed this amendment to give these issuers six months' advance notice that they will need to transition to the domestic forms and applicable reporting requirements. All of the comments that we received on this aspect of the proposal were highly supportive. Under the amendments as adopted, a foreign issuer that does not qualify as a foreign private issuer as of the end of its second fiscal quarter in 2009 would file a Form 10-K in 2010 for its 2009 fiscal year. The issuer would also begin complying with the proxy rules and Section 16, and become subject to reporting on Forms 8-K and 10-Q on the first day of its 2010 fiscal year.

We also are adopting amendments to permit a reporting company that qualifies as a foreign private issuer to avail itself of the foreign private issuer accommodations, including use of the foreign private issuer forms and reporting requirements, beginning on the determination date on which it establishes its eligibility as a foreign private issuer. Although the majority of comments received on this aspect of the proposal were positive, one commenter⁴⁴ contended that the disclosure provided in domestic forms was important enough to require the issuer to file on such forms for the balance of the fiscal year. Nonetheless, we are adopting this distinction because we believe the new foreign private

⁴⁴ See comment letter from CFA Institute Centre for Financial Market Integrity ("CFA Institute").

issuer, who would be eligible to file its annual report for that fiscal year on Form 20-F, need not continue to provide reports on Form 8-K and 10-Q for the remainder of that fiscal year. An issuer that qualifies as a foreign private issuer should be allowed to enter the foreign reporting system immediately and furnish reports on Form 6-K,⁴⁵ especially because it will be subject to the reporting requirements of its home regulator. Any reports that it files with its home regulator will be available to the Commission and the public through its Form 6-K submission. We note that the approach that we are taking here is consistent with our approach to smaller reporting companies.⁴⁶

A few commenters supported requiring a foreign issuer to notify the market, either in the form of a press release and/or via notification on the issuer's website, when it has determined that it has switched its status from domestic issuer to foreign private issuer, or vice versa. Currently, however, foreign private issuers do not provide a notice when they switch from domestic issuer to foreign private issuer status. Moreover, such a notice requirement would be an anomaly in our regulations. In similar contexts, such as with respect to accelerated filers or smaller reporting companies, we do not require

⁴⁵ Foreign private issuers submit current reports to the Commission on Form 6-K [17 CFR 249.306]. Unlike Form 8-K [17 CFR 249.308], which is the current report form used by domestic issuers, there are no specific substantive disclosures that are required by Form 6-K. Instead, foreign private issuers furnish under cover of Form 6-K whatever information that they (i) make or are required to make public pursuant to the law of the jurisdiction of their domicile or in which they are incorporated or organized, or (ii) file or are required to file with a stock exchange on which their securities are traded and which was made public by that exchange, or (iii) distribute or are required to distribute to their security holders. These reports are required to be furnished promptly after the material contained in the report is made public.

⁴⁶ 17 CFR 229.10(f)(2)(i).

issuers to notify the market when they have switched status. Therefore, we are not adopting a notice requirement, although we note that by furnishing a current report on Form 6-K rather than Form 8-K after it changes status, a foreign issuer in essence will be providing notice that it has switched status. Of course, issuers may voluntarily provide explicit notice to the market when they switch from domestic to foreign private issuer status in order to provide enhanced transparency to investors. We note that issuers that lose their foreign private issuer status would be required to file quarterly reports on Form 10-Q or current reports on Form 8-K immediately, thereby effectively providing prompt notice of their new status because of the change in the forms used.

In addition to the amendments noted above, we are adopting amendments requiring a Canadian issuer that files registration statements and Exchange Act reports using the multijurisdictional disclosure system ("MJDS")⁴⁷ to test its status as a foreign private issuer only as of the last business day of its second fiscal quarter. Currently, a Canadian issuer that is eligible to file a Form 40-F⁴⁸ annual report at the end of a fiscal year is presumed to be eligible to use Form 40-F, as well as Form 6-K, from the date of filing until the end of its next fiscal year.⁴⁹ The amendments would require a Canadian issuer that plans to use the MJDS to test its foreign private issuer status earlier in the year. However, it would continue to have to test its eligibility to file annual reports on Form

⁴⁷ 17 CFR 239.37 to 17 CFR 239.41 and 17 CFR 249.240f.

⁴⁸ 17 CFR 249.240f. MJDS filers file annual reports on Form 40-F and current reports on Form 6-K.

⁴⁹ See Release No. 33-6902 (June 21, 1991) [56 FR 30036] (adopting the MJDS system).

40-F based on all of the other requirements of that Form, such as public float, at the end of the fiscal year.⁵⁰ The amendments would not change the responsibility of the Canadian issuer to check its eligibility to use Forms 40-F and 6-K at the end of its fiscal year.

With respect to MJDS filings made pursuant to the Securities Act, a Canadian issuer must test its ability to use the MJDS registration statement forms at the time of filing. As a result of the amendments, a Canadian MJDS filer that does not qualify as a foreign private issuer on the last day of its second fiscal quarter would immediately not be able use the MJDS forms for Securities Act offerings. However, the issuer would still be able to use the other foreign private issuer registration statement forms, such as Form F-3, until the end of its fiscal year.⁵¹

Although we received many comments generally supporting this approach to MJDS filers, several commenters had additional recommendations. A few commenters suggested that a registrant that did not qualify for MJDS status on the testing date should be permitted to use the MJDS registration statement forms until the end of its fiscal year. Some commenters also suggested that MJDS filers be permitted to test their MJDS status on the last business day of their second fiscal quarter, rather than at the end of the year. Other commenters argued that the foreign private issuer eligibility test should be conducted at the end of the year in conjunction with the test for MJDS eligibility, or alternatively, that MJDS filers should be required to test their foreign private issuer eligibility status twice a year.

⁵⁰ See id.

⁵¹ Form F-3 permits a foreign private issuer to incorporate by reference its latest Form 40-F. See Item 6(a) of Form F-3.

After carefully considering all of these comments, we have decided to adopt the MJDS-related amendments as proposed because we believe this approach takes into account the substantial accommodations that have been provided to MJDS filers, including significant disclosure accommodations.⁵² As a result of the amendments, the new foreign private issuer testing date will provide MJDS filers with advance notice that they may need to switch to the domestic issuer forms after the end of the fiscal year. Even if an MJDS filer determines that it no longer qualifies as a foreign private issuer as of the test date, it will be permitted to use the Securities Act registration statement forms, although not the MJDS forms, available to foreign private issuers for the remainder of that fiscal year. The new date for testing foreign private issuer status will provide a substantial accommodation for MJDS filers because, currently, these filers are required to use the domestic forms as soon as they lose their foreign private issuer status.

B. Accelerating the Reporting Deadline for Form 20-F Annual Reports

We proposed amendments to the filing due date for Form 20-F to reflect technological and other developments that have occurred in the nearly 30 years that have elapsed since Form 20-F was first adopted. Our proposed amendments would have accelerated the reporting due date for annual reports filed on Form 20-F by foreign

⁵² Under the MJDS, eligible Canadian issuers may satisfy certain securities registration and reporting requirements of the Commission by providing disclosure documents prepared in accordance with the requirements of the Canadian securities regulatory authorities. The MJDS also allows certain cash tender and exchange offers for securities of Canadian issuers to proceed in accordance with Canadian and provincial or territorial tender offer requirements, instead of in accordance with the Commission's tender offer requirements. For more specific information about the accommodations provided to MJDS issuers, see Release No. 33-6902, supra note 49.

private issuers from six months to 90 days after the issuer's fiscal year-end in the case of large accelerated filers and accelerated filers, and to 120 days after the issuer's fiscal year-end for all other issuers, after a two-year transition period. We also proposed similar conforming amendments for transition reports filed on Form 20-F when a foreign private issuer changes its fiscal year.

In the Proposing Release, we noted that technological advances have made it easier for companies to process and disseminate information quickly. Investors also evaluate and react to information in a shorter timeframe, and many now expect to receive information on a faster basis. Although some information about foreign private issuers is available through their earnings releases and other announcements, investors currently may not have access to the more complete disclosure contained in an issuer's Form 20-F annual report until six months after the end of the issuer's fiscal year. Although the longer filing due date for these reports was initially established as an accommodation to the different disclosure requirements in the foreign private issuers' home jurisdictions,⁵³ many companies that operate globally gather and evaluate information on a vastly expedited basis compared to almost 30 years ago, when Form 20-F was adopted. As a result, such a delayed filing date for these reports is no longer necessary. In the

⁵³ Form 20-F Adopting Release, *supra* note 18 (noting that the Commission decided not to adopt a filing due date for Form 20-F annual reports of four months after the registrant's fiscal year-end in deference to commenters' concerns about the need for more time to comply with applicable foreign regulations, which at that time often permitted annual reports to be furnished to shareholders more than four months after the issuer's fiscal year-end).

Proposing Release, we also noted that foreign private issuers in many jurisdictions are expected to file annual reports with their home securities regulator on a faster timetable.⁵⁴

We received 49 comment letters on the proposed amendments. Some commenters expressed support for the accelerated deadlines as proposed. One of these commenters, a professional association of investment professionals,⁵⁵ urged the Commission to move toward requiring the same filing requirements for foreign private issuers as for domestic issuers. This commenter noted that the value of information in financial statements decreases as the gap between the date of the financial statements and the date of their release increases. This commenter also noted that recently the financial position of some companies has deteriorated significantly over relatively short periods of time. Outdated financial information may make it more likely that investors will misjudge both the viability of the issuer and the value of its securities. Another

⁵⁴ For example, the European Union's ("EU") Transparency Directive requires companies listed on an EU regulated market to file their annual financial reports four months after the end of each financial year at the latest. Directive 2004/109/EC of the European Parliament and of the Council (Dec. 15, 2004). All EU member states were required to implement the Transparency Directive by January 20, 2007. Canadian issuers are also required to file their annual financial statements within a similar timeframe. Under National Instrument 51-102 Continuous Disclosure Obligations, a reporting Canadian issuer must file its annual financial statements within 90 to 120 days after its most recently completed financial year-end, depending on its status as a "venture issuer." Israeli companies are required to file their annual reports within three months of the end of their reporting year, provided that the report is submitted 14 days or more before the date fixed for convening the general meeting at which the company's financial statements will be presented, or within three days of the date when the company's accountant signed his audit opinion, whichever is earlier. Regulation 7, Israeli Securities Regulations (Periodic and Immediate Reports).

⁵⁵ See comment letter from CFA Institute.

supportive commenter, an accounting firm,⁵⁶ noted that accelerating the deadline for Form 20-F would provide investors with timelier and more useful information. It also noted that the overwhelming majority of foreign private issuers' home country securities regulators already have annual report deadlines of either three or four months. However, this commenter pointed out that although a 90-day reporting deadline for accelerated and large accelerated filers would be earlier than their home country deadlines for some issuers, this would still be an accommodation compared to the deadlines of 75 or 60 days faced by their same-sized U.S. counterparts, respectively. This commenter also acknowledged that for foreign private issuers that are still required to reconcile home country GAAP to U.S. GAAP, a 90-day reporting deadline could impose additional, significant burdens. As a result, it recommended accelerating the deadline for these issuers to within 120 days after the foreign private issuer's fiscal year-end. Another commenter, a foreign private issuer,⁵⁷ supported the proposed amendments and indicated that it believed that the amendments would not impose any unreasonable burdens on foreign registrants. However, it also expressed concern about accelerating the reporting deadline for financial statements of non-registrants that are included in the Form 20-F, especially those required to be filed pursuant to Rule 3-09⁵⁸ of Regulation S-X.

We received many more comments expressing concerns about the proposed due dates. Several commenters noted that the burdens faced by foreign issuers in producing

⁵⁶ See comment letter from Ernst & Young ("E&Y").

⁵⁷ See comment letter from Vodafone.

⁵⁸ 17 CFR 210.3-09.

Form 20-F was not related to size (i.e., accelerated or non-accelerated filer), but to whether the issuer needs to produce a second set of full financial statements in accordance with U.S. GAAP, or a reconciliation from their home country accounts to U.S. GAAP.⁵⁹ Commenters noted that the proposal could create a burden for many issuers that are still required to prepare their financial statements in accordance with local GAAP, especially those from some of the emerging markets.⁶⁰ In addition, in certain jurisdictions, bank issuers are required to prepare their primary financial statements in accordance with local GAAP.⁶¹ We also received comments that Industry Guide 3, Statistical Disclosure by Bank Holding Companies, calls for additional disclosures, as well as the classification and disclosure of certain information under different standards than required in the foreign private issuer's home country.⁶²

Commenters also noted that many foreign private issuers need more time than provided under the proposed amendments to translate local financial information into English for Form 20-F;⁶³ to provide the additional disclosures of Form 20-F, such as Item 5 (Operating and Financial Review and Prospects) and the Commission's industry guide

⁵⁹ See, e.g., comment letters from American Bar Association ("ABA") and Linklaters LLP ("Linklaters").

⁶⁰ See, e.g., comment letter from Linklaters.

⁶¹ See comment letters from Mitsubishi UFJ Financial Group, Inc. ("Mitsubishi") and Mizuho.

⁶² See comment letter from Institute of International Bankers, Mitsubishi, and Paul, Weiss, Rifkind, Wharton & Garrison LLP ("Paul Weiss").

⁶³ See, e.g., comment letters from Cleary Gottlieb Steen & Hamilton ("Cleary Gottlieb"), Mitsubishi, Mizuho, and Sociedad Quimica y Minera de Chile S.A.

disclosures; and to satisfy certain requirements of the Sarbanes-Oxley Act.⁶⁴

Commenters noted that many foreign private issuers have limited resources, and must use the same staff to comply with both local filing requirements and the Commission's filing requirements. As a result of the proposed amendments, the staff of these issuers would have to produce financial information for home country purposes on the same timetable as for Form 20-F, rather than in seriatim, as is currently the case.

In addition, commenters indicated that in some cases the proposed due dates would require foreign private issuers to file their Form 20-F before they are required to file their annual reports in their home country. The proposed due dates would in effect override domestic filing requirements.⁶⁵ Commenters noted that when foreign private issuers complete their annual reports for home country filing purposes, they furnish significant financial information to the Commission on Form 6-K, often within 90 days after their fiscal year-end. These commenters asserted that investors typically make investment decisions based on the fiscal year-end financial results disclosed in Form 6-K or through the issuer's press releases, rather than through the Form 20-F.

Several commenters recommended that the Commission adopt a deadline that was linked to the foreign private issuer's home country requirements for filing annual reports.

⁶⁴ These requirements, which are generally not required in home country reporting, include the Section 302 and 906 officer certifications and the review of internal controls over financial reporting.

⁶⁵ See, e.g., comment letters from Linklaters (noting that the 90-day due date is earlier than the annual report due dates required by the EU Member States, China and Brazil) and Gold Fields Limited (noting that the Johannesburg Stock Exchange requires listed issuers to publish annual financial statements within six months after the end of the issuer's financial year).

These commenters suggested that foreign private issuers be required to file Form 20-F annual reports within a specified period after the issuer's home country report is filed.⁶⁶ Others, recognizing that such a deadline would be difficult to implement and confusing to investors, recommended that the Commission accelerate the due date for Form 20-F for all foreign private issuers to five months after the issuer's fiscal year-end.⁶⁷

After carefully considering all of the comments, as well as the benefits to investors of timelier annual reports, we are adopting amendments to accelerate the due date for annual reports filed on Form 20-F, but with modifications from the proposed amendments that respond to some of the concerns that were expressed. Under the amendments as adopted, all foreign private issuers will be required to file their annual reports on Form 20-F within four months after their fiscal year-end, regardless of their

⁶⁶ See comment letters from The Royal Bank of Scotland Group (recommending a due date two to three weeks after the annual report deadline in the issuer's home jurisdiction), European Issuers (recommending a due date that is one month after the due date for annual reports in the issuer's home country), PetroChina Company Limited (recommending a due date that is two months after the issuer's annual report due date in its home country).

⁶⁷ See, e.g., comment letters from Cleary Gottlieb and Mitsubishi.

size, after a three-year transition period.⁶⁸ As discussed above, commenters indicated that the size of the issuer would not affect its ability to file Form 20-F on an expedited basis. Rather, the issue was whether the foreign private issuer was required to prepare a second set of full financial statements in accordance with U.S. GAAP, or a reconciliation from their home country accounts to U.S. GAAP.⁶⁹ In determining that a four-month due date would be appropriate, we note that in the next several years a majority of the foreign private issuers who file annual reports with the Commission will have incentives to use IFRS as issued by the IASB as more countries adopt IFRS as their basis of accounting, or permit companies to use IFRS as issued by the IASB as their basis of accounting. Our recent rule amendments that allow foreign private issuers to file financial statements in accordance with IFRS, as issued by the IASB, without a U.S. GAAP reconciliation should make it easier for many foreign private issuers to prepare their annual reports on Form 20-F.⁷⁰ As indicated in the Proposing Release, we did not propose amendments to

⁶⁸ We are not adopting a similar acceleration in the filing deadline for annual reports filed on Form 40-F, which is used by eligible Canadian issuers under the MJDS. Under the MJDS, issuers who file annual reports on Form 40-F must comply with the substantive disclosure requirements and filing deadlines established by the relevant Canadian securities regulator. In keeping with the purpose of MJDS, which is to facilitate cross-border capital flows between the United States and Canada by streamlining the registration and periodic reporting process for cross-border issuers, the Form 40-F must continue to be filed with the Commission on the same day that the information is due to be filed with the relevant Canadian securities regulatory authority, as set forth in General Instruction D.(3) of Form 40-F. However, we note that a reporting Canadian issuer that is not a "venture issuer" must file its annual financial statements on or before 90 days after its most recently completed financial year-end, while all other Canadian issuers must file their annual financial statements on or before 120 days after their most recently completed financial year-end. See supra note 54.

⁶⁹ See, e.g., comment letters from ABA, E&Y, and Linklaters.

⁷⁰ Release No. 33-8879, supra note 21.

change the age of financial statement requirements for registration statements under the Securities Act or Exchange Act.⁷¹

The new due date also reflects our observation that many foreign private issuers registered with the Commission have a three-month due date for filing annual reports in their home country, and would be accorded an additional month after their home country due dates to prepare the Form 20-F under the new amendments. We note that, based on a review of recent filings, a number of foreign private issuers already file their annual reports on Form 20-F well before the current six-month deadline. In addition, the new due date for Form 20-F will still provide a substantial accommodation to many foreign private issuers, since large accelerated and accelerated domestic filers are required to file annual reports on Form 10-K⁷² within 60 days and 75 days, respectively, of their fiscal year-ends.⁷³ All other domestic issuers are required to file annual reports on Form 10-K within 90 days after their fiscal year-end.⁷⁴ We will continue to monitor market developments to consider whether it would be appropriate to accelerate further the due date for Form 20-F annual reports.

⁷¹ Under Item 8.A.4. of Form 20-F, the last year of audited financial statements may not be older than 15 months at the time of the offering or listing.

⁷² 17 CFR 249.310.

⁷³ See General Instructions A.(2)(a) and (b) of Form 10-K. At the time that we first adopted rule and form amendments to accelerate the filing of the quarterly and annual reports of reporting U.S. issuers, we noted that those amendments would increase the discrepancy in the due dates for filing annual reports between foreign private issuers and larger seasoned U.S. issuers, and indicated that we would continue to consider this issue. Release No. 33-8128 (Sept. 5, 2002) [67 FR 58480]

⁷⁴ See General Instruction A.(2)(c) of Form 10-K.

The amendments that we are adopting today reflect our view that annual reports that are filed on a faster basis would not only provide investors with more timely access to these filings, but also improve the delivery and flow of reliable information to investors and the capital markets, thereby helping to improve the efficiency of the markets. The accelerated deadline for Form 20-F should enable investors in the U.S. markets to get annual reports on a more current basis. As the Commission noted when it adopted the accelerated filing dates for periodic reports filed by domestic issuers,⁷⁵ investors and analysts evaluate the more extensive information provided in periodic reports against the incremental disclosures that are made by an issuer. The accelerated due date will enable this analysis to take place at an earlier time.

Although various commenters recommended that the Form 20-F annual report due date be linked in some manner to the foreign private issuer's annual report due date in its home country, we concluded that this would be confusing for investors and would be difficult to implement.⁷⁶ We also concluded that a due date that is five months after the foreign private issuer's fiscal year-end would not address our concerns about providing more timely information to investors.

As discussed previously, we received several comments about the potential burdens placed on foreign private issuers that provide disclosures under Industry Guide 3,

⁷⁵ See Release No. 33-8128, supra note 73.

⁷⁶ This difficulty would be especially evident for foreign private issuers that are listed only in the United States and are not subject to another securities regulatory reporting regime.

which relates to bank holding companies. We note that the Commission's staff will consider what accommodations with regard to Industry Guide 3 would be appropriate.

When we proposed the amendments, we proposed a two-year transition period for implementation of the accelerated deadline, but also solicited comments on whether a different transition period would be more appropriate. While we received several comments supporting a two-year transition period, several commenters noted that a three-year transition period would ease the burden on many foreign private issuers that will be required to adopt IFRS for home country reporting purposes in 2011. After considering all of the comments received, we have decided to provide a three-year transition period for implementation of the accelerated Form 20-F due date. As adopted, foreign private issuers will be required to file their annual report on Form 20-F within four months after their fiscal year-end for fiscal years ending on or after December 15, 2011. Of course, foreign private issuers may file their Form 20-F annual reports earlier than the current deadline, as numerous issuers now do.

In addition to these amendments, we are adopting amendments that conform the deadline for transition reports filed on Form 20-F, and for the filing of special financial

reports⁷⁷ pursuant to Rule 15d-2 of the Exchange Act. The deadlines for these reports were based on the annual report deadlines for foreign private issuers.⁷⁸ We are amending the due dates for each of these reports so that they are consistent with the new deadline for annual reports filed on Form 20-F.⁷⁹

C. Segment Data Disclosure

Under Item 17 of Form 20-F, foreign private issuers that present financial statements otherwise fully in compliance with U.S. GAAP may omit segment data from their financial statements, and also are permitted to have a qualified U.S. GAAP audit report as a result of this omission. We proposed an amendment to Form 20-F that would eliminate this narrow accommodation.

Most of the comments received on this proposal supported the proposed amendments. However, several commenters suggested permitting a longer transition period to the new rules. For example, a few commenters recommended a three-year transition period, so that the amendment would be effective for fiscal years on or after

⁷⁷ Under Exchange Act Rule 15d-2, a special financial report must be filed if a registrant's Securities Act registration statement did not contain certified financial statements for its last full fiscal year preceding the fiscal year in which the registration statement became effective. Currently, foreign private issuers must file this special financial report by the later of 90 days after the date on which the registration statement became effective, or six months after the end of the registrant's latest full fiscal year (consistent with the current due date of Form 20-F annual reports).

⁷⁸ See Release No. 33-7026 (Nov. 3, 1993) [58 FR 60304].

⁷⁹ We also took this approach when we adopted amendments to accelerate the periodic report filing dates for domestic companies. See Release No. 33-8128, *supra* note 73; Release No. 33-8644 (Dec. 21, 2005) [70 FR 76626] (adopting further refinements to the acceleration rules). See also Release No. 33-6823 (Mar. 13, 1989) [54 FR 10306] (conforming the transition report rules to the periodic report rules).

December 15, 2011 to align the effective date with the timeframe in which many jurisdictions will mandate IFRS reporting.

After considering all of the comments and noting that approximately five foreign private issuers in the past few years have used this accommodation, we have decided to adopt the amendment as proposed. Foreign private issuers will be required to comply with the amendment beginning with their first fiscal years ending on or after December 15, 2009. The delayed compliance date will provide foreign private issuers with sufficient time to establish internal procedures that will enable them to obtain the required information. We are amending Item 17 of Form 20-F by removing Instruction 3 to that Form, which currently permits the omission of segment data from U.S. GAAP financial statements. We believe that an accommodation that permits a few foreign private issuers to present incomplete and non-compliant U.S. GAAP financial statements is no longer necessary or appropriate, especially given recent international developments in financial reporting. For example, in order to file financial statements without reconciliation to U.S. GAAP, foreign private issuers must comply fully with IFRS as issued by the IASB, including presentation of segment data. Accordingly, we have decided not to provide a longer transition period for the new amendment.

D. Exchange Act Rule 13e-3

We are adopting amendments to Exchange Act Rule 13e-3,⁸⁰ which pertains to going private transactions by reporting issuers or their affiliates, to reflect the recently adopted rules pertaining to the ability of foreign private issuers to terminate their

⁸⁰ 17 CFR 240.13e-3.

Exchange Act registration and reporting obligations.⁸¹ Currently, Rule 13e-3 is triggered when an issuer and/or any of its affiliates are engaged in a specified transaction or series of transactions⁸² that have either a reasonable likelihood or a purpose of causing (i) any class of equity securities of the issuer that is subject to Section 12(g) or Section 15(d)⁸³ of the Exchange Act to be held of record by less than 300 persons, or (ii) the securities to be neither listed on any national securities exchange nor authorized to be quoted on an inter-dealer quotation system of any registered national securities association.

Rule 13e-3 requires any issuer or affiliate that engages in a Rule 13e-3 transaction to file a Schedule 13E-3⁸⁴ disclosing its plan to take the company private, and to make prompt amendments to reflect certain information about the proposed transaction. In the Schedule 13E-3, the filing party must disclose the purposes for the transaction, whether any alternative means for accomplishing the stated purposes were considered, the reasons for the structure of the transaction and why it was being undertaken at the time, the effects that the transaction would have on the issuer and its unaffiliated security holders, whether or not the filing party believes the transaction is fair to unaffiliated security

⁸¹ Release No. 34-55540, supra note 28.

⁸² A "Rule 13e-3 transaction" is defined as (i) a purchase of any equity security by the issuer of such security or by an affiliate, (ii) a tender offer, (iii) a proxy solicitation or information statement distribution in connection with a merger or similar transaction, (iv) the sale of substantially all the assets of an issuer to its affiliate, or (v) a reverse stock split. 17 CFR 240.13e-3(a)(3)(i).

⁸³ 15 U.S.C. 78o(d).

⁸⁴ 17 CFR 240.13e-100.

holders, and the factors considered in determining fairness. Rule 13e-3(f)⁸⁵ also requires dissemination of the information required by Schedule 13E-3 to security holders within specified time periods.

When the Commission adopted Rule 13e-3, we emphasized that the Rule would be triggered only if a specified transaction has either the reasonable likelihood or purpose of causing the termination of reporting obligations under the Exchange Act.⁸⁶ Recently, we adopted amendments to the deregistration provisions applicable to foreign private issuers that would permit them to terminate their reporting obligations under the Exchange Act by meeting a quantitative benchmark designed to measure relative U.S. market interest for their equity securities that does not depend on a head count of the issuers' U.S. security holders.⁸⁷ Although Rule 13e-3 does not reflect the termination of registration and reporting provisions that were previously applicable to foreign private issuers, we proposed to amend the Rule to better reflect the current deregistration provisions.

We received several comments on this proposal supporting our efforts to amend Rule 13e-3 to make it consistent with the recently adopted termination of reporting and deregistration provisions. However, two commenters expressed concern that the Rule could be triggered by securities transactions in the ordinary course of business, such as

⁸⁵ 17 CFR 240.13e-3(f).

⁸⁶ Release No. 34-16075 (Aug. 2, 1979) [44 FR 46736].

⁸⁷ Release No. 34-55540, supra note 28.

share repurchases.⁸⁸ One commenter also suggested that the disclosures in Schedule 13E-3 regarding fairness to unaffiliated security holders would not apply in the context of deregistration of a foreign private issuer, especially when the applicable corporate law does not require such determinations, and requested an instruction to the Schedule that would recognize this circumstance. We also received two comments suggesting that the Rule should not apply to a foreign private issuer whose shares will be traded on a foreign securities exchange, and hence subject to home country and/or foreign securities exchange reporting obligations, because its home country disclosures will continue to be available and furnished to the Commission pursuant to Rule 12g3-2(b). One commenter also cited concerns that the application of the Rule could deter the entry of foreign private issuers into the U.S. markets.

At this time, we believe that amending Rule 13e-3 as proposed will modernize one of the Rule's two specified going private effects and assure that the Rule operates

⁸⁸ See comment letters from Cleary Gottlieb and The Hundred Group of Finance Directors ("Hundred Group").

consistently with an important policy purpose expressed at its initial adoption.⁸⁹ By substituting a test foreign private issuers already use to deregister a class of securities in place of the "300 person" test, foreign private issuers will benefit from simplicity and uniformity when making decisions to exit the U.S. reporting system. In addition, adopting the proposed amendment will provide clarity to a Rule that does not distinguish whether the cited effect is triggered when the number of holders of record is projected to fall below 300 persons in the United States or worldwide. Amending Rule 13e-3 will eliminate the need to interpret its indefinite reference to "held of record by less than 300 persons."

We believe that adoption of the proposed amendment to Rule 13e-3(a)(3)(ii)(A) should have a neutral effect on foreign private issuers. As is the case under Rule 13e-3 today, foreign private issuers will remain eligible under the amended Rule to voluntarily take steps to deregister a class of securities without implicating Rule 13e-3. We also do not believe share repurchases made in the ordinary course of an issuer's business are within the scope of Rule 13e-3, as amended, when such transactions are not undertaken with the purpose or reasonable likelihood of producing one of the two going private effects specified in Rule 13e-3.⁹⁰ Currently, share repurchases are only required to

⁸⁹ Release No. 34-16075, supra note 86. The Rule-13e-3 adopting release explained that the Rule was intended to apply when one of the transactions identified in the Rule was undertaken with a purpose of or had a reasonable likelihood of terminating the issuer's reporting obligations and consequently depriving security holders of the benefits of public ownership. See subsection (a) under "Discussion."

⁹⁰ We understand that a trading market may not exist in the U.S. for the shares of a foreign private issuer. For purposes of the Williams Act, ADRs and similar instruments that represent an ownership interest in a class of securities are not considered a class of securities separate from the foreign private issuer's underlying shares. See Release No. 33-6894 (May 23, 1991) [56 FR 24420] at Section II.D.2.

comply with Rule 13e-3 to the extent undertaken with a purpose or with a reasonable likelihood of producing one of the two going private effects identified in Rule 13e-3.⁹¹ Because the amendment only seeks to provide regulatory consistency with the new deregistration and termination of reporting provisions, Rule 13e-3, as amended, will continue to govern share repurchases made in the ordinary course of an issuer's business only when such repurchases are executed with the purpose or reasonable likelihood of causing security holders to lose "the benefits of public ownership,"⁹² and in this case the benefits of U.S. reporting. Accordingly, we are adopting the amendment to Rule 13e-3(a)(3)(ii)(A)⁹³ as proposed. Under the amended Rule, the cited effect is deemed to have occurred when: a domestic or foreign private issuer becomes eligible under Exchange Act Rule 12g-4⁹⁴ to deregister a class of securities; a foreign private issuer becomes eligible under Exchange Act Rule 12h-6⁹⁵ to deregister a class of securities or terminate a

⁹¹ 17 CFR 240.13e-3(a)(3)(ii). See also Release No. 34-14185 (Nov. 17, 1977) [42 FR 60090]. The Rule 13e-3 proposing release explains, "In his testimony before Congress on the provision that was to become Section 13(e)(1), then Commission Chairman Cohen recognized that, while there might be 'perfectly legitimate corporate purposes' [] for a corporation to purchase its own securities, purchases by a corporation of its own securities can be used to affect the control of the corporation. The management may cause the corporation to repurchase shares for the purpose of preserving or improving the management's control position or to counteract the tender offer or other takeover bid." See Hearings on S. 510 Before the Subcomm. on Securities of the Senate Comm. on Banking and Currency, 90th Cong., 1st Sess. 37 (1967) (Senate Hearings") Hearing on H.R. 14475, S. 510 Before the Subcomm. on Commerce and Finance of the House Comm. on Interstate and Foreign Commerce 15 (1967) ("House Hearings").

⁹² Release No. 34-16075, supra note 86.

⁹³ 17 CFR 240.13e-3(a)(3)(ii)(A).

⁹⁴ 17 CFR 240.12g-4.

⁹⁵ 17 CFR 240.12h-6.

reporting obligation; or such issuers become eligible under Exchange Act Rule 12h-3⁹⁶ or Exchange Act Section 15(d) to have a reporting obligation suspended.⁹⁷

When a foreign private issuer or domestic issuer engages in a Rule 13e-3 transaction that would cause the termination or suspension of its registration or reporting obligations under the Exchange Act, Rule 13e-3 is intended to provide the issuer's security holders with one last opportunity to obtain information about the issuer and consider their alternatives. This is equally true in the context of a foreign private issuer or domestic issuer that plans to complete one of the transactions specified in Rule 13e-3(a)(3) for purposes of deregistering a class of securities or terminating or suspending a reporting obligation as it is for a foreign private issuer or domestic issuer that has executed one of the specified Rule 13e-3(a)(3) transactions and is ceasing to file reports because the number of its shareholders falls below 300.

E. Requiring Item 18 Reconciliation in Annual Reports and Registration Statements

We are adopting amendments to eliminate the option to provide financial statements according to Item 17 of Form 20-F in annual reports and registration statements filed on that form. Currently, a foreign private issuer that is only listing a class of securities on a national securities exchange, or only registering a class of securities under Exchange Act Section 12(g), without conducting a public offering of

⁹⁶ 17 CFR 240.12h-3.

⁹⁷ We have made a technical modification to the proposed amendments to Rule 13e-3 to make clear that the Rule may be triggered when a domestic or foreign private issuer's Section 15(d) reporting obligations are suspended pursuant to Section 15(d) or Exchange Act Rule 12h-3.

those securities may provide financial statements according to Item 17 of Form 20-F. In addition, foreign private issuers may provide financial statements according to Item 17 for their annual reports on Form 20-F. Under Item 17, a foreign private issuer must prepare its financial statements and schedules in accordance with U.S. GAAP, or IFRS as issued by the IASB. If its financial statements and schedules are prepared in accordance with another basis of accounting, the issuer must include a reconciliation to U.S. GAAP. This reconciliation must include a narrative discussion of reconciling differences, a reconciliation of net income for each year and any interim periods presented, a reconciliation of major balance sheet captions for each year and any interim periods, and a reconciliation of cash flows for each year and any interim periods.⁹⁸ In contrast, if a foreign private issuer that presents its financial statements on a basis other than U.S. GAAP, or IFRS as issued by the IASB, provides financial statements under Item 18 of Form 20-F, it must provide all the information required by U.S. GAAP and Regulation S-X, in addition to the reconciling information for the line items specified in Item 17.

To eliminate this distinction between the disclosure provided to the primary and secondary markets, we proposed amendments to require Item 18 information for foreign private issuers that are only listing a class of securities on an exchange, or only registering a class of securities under Exchange Act Section 12(g), without conducting a public offering. We also proposed amendments to require Item 18 information for foreign private issuers that file annual reports on Form 20-F.

⁹⁸ See Item 17(c)(2) of Form 20-F.

In addition, foreign private issuers that are making certain non-capital raising offerings, such as an offerings pursuant to reinvestment plans, offerings upon the conversion of securities or offerings of investment grade securities,⁹⁹ currently are permitted to provide Item 17 financial statements in their registration statements under the Securities Act. To ensure that the same type of financial information is provided regardless of the type of offering that is being made, we proposed amendments to require foreign private issuers to file financial statements that comply with Item 18 when registering these types of offerings under the Securities Act.

Many commenters supported the proposals as useful to investors. Commenters noted that the amendments would help ensure that investors receive the complete financial information required by U.S. GAAP and Regulation S-X.¹⁰⁰ However, several other commenters expressed concern about the benefits of the amendments in light of the potential compliance burdens. They also asserted that other countries are gradually requiring footnote disclosures comparable in scope to U.S. GAAP and Regulation S-X, such that the proposed amendments are not necessary.¹⁰¹

⁹⁹ The Commission recently proposed amendments permitting foreign private issuers to comply with the less extensive U.S. GAAP reconciliation requirements under Item 17 in a registration statement or private offering document if the issuer met the proposed new Form F-3 transaction eligibility criteria for registering primary offerings of non-convertible securities. The proposed eligibility criteria would eliminate the current requirement in Form F-3 of an investment grade rating by a nationally recognized statistical rating agency. Release No. 33-8940 (July 1, 2008) [73 FR 40106]. We requested comment on whether, if we decided not to eliminate the option of providing Item 17 financial disclosure, we should revise the Form F-3 eligibility requirements as proposed. *Id.* at Section II.B.2.

¹⁰⁰ *See, e.g.*, comment letter from the CFA Institute.

¹⁰¹ *See, e.g.*, comment letter from Cleary Gottlieb.

After carefully considering all of the comments, we are adopting the amendments as proposed. We believe that a reconciliation that includes the footnote disclosures required by U.S. GAAP and Regulation S-X¹⁰² can provide important additional information.¹⁰³ We also note that the majority of foreign private issuers who do not prepare financial statements in accordance with U.S. GAAP elect to provide financial information pursuant to Item 18, rather than Item 17, of Form 20-F.¹⁰⁴ Under the amendments, Form 20-F and the registration statement forms available to foreign private issuers under the Securities Act (Forms F-1, F-3 and F-4) will require the disclosure of financial information according to Item 18 of Form 20-F for registration statements filed under both the Exchange Act and the Securities Act, as well as for annual reports.

When we proposed the amendments, we did not propose eliminating the availability of Item 17 disclosures for Canadian MJDS filers in light of the special recognition accorded to MJDS filings. We also noted that more countries, including Canada, are expected to adopt IFRS as their basis of accounting, or to permit companies

¹⁰² 17 CFR Part 210.1-01 et seq.

¹⁰³ Under Item 17, an issuer is not required to provide the footnote disclosures required by U.S. GAAP and Regulation S-X, unless these disclosures are otherwise required under its home country GAAP. For example, the footnote disclosures related to pension assets, obligations and assumptions, lease commitments, business segments, tax attributes, stock compensation awards, financial instruments and derivatives, among many others, are not required under Item 17 unless they are otherwise required by the issuer's home country GAAP.

¹⁰⁴ A foreign private issuer's latest annual report filed on Form 20-F and all subsequent Form 20-F annual reports are incorporated by reference into its Form F-3 shelf registration statement. See Item 6 (Incorporation of Certain Information by Reference) in Form F-3. General Instruction I.B.1. of Form F-3 requires foreign private issuers to provide financial statements that comply with Item 18 for primary offerings.

to use IFRS as issued by the IASB as their basis of accounting in the next few years. As a result, we concluded that it would not be appropriate to eliminate the availability of Item 17 in MJDS registration statements. We also proposed maintaining the availability of Item 17 for financial statements of non-registrants that are required to be included in a foreign or domestic issuer's registration statement, annual report or other Exchange Act report. These include significant acquired businesses under Rule 3-05¹⁰⁵ of Regulation S-X, significant equity method investees under Rule 3-09 of Regulation S-X, and exempt guarantors¹⁰⁶ under Rule 3-10(i)¹⁰⁷ of Regulation S-X. The commenters who commented on these accommodations supported them, so the amendments as adopted will not apply to MJDS filers or to the financial statements of non-registrants.

Several commenters who supported the proposed amendments recommended that we establish a compliance date that would provide foreign private issuers with a longer transition period before they would be required to prepare financial statements pursuant to Item 18.¹⁰⁸ Among other things, these commenters noted that the foreign private issuers that provide the Item 17 reconciliation in their annual reports tend to be smaller companies, and that these companies would face significant burdens on their financial

¹⁰⁵ 17 CFR 210.3-05.

¹⁰⁶ A guarantor that is required to file separate financial statements must comply with Item 18.

¹⁰⁷ 17 CFR 210.3-10(i).

¹⁰⁸ See comment letters from BDO Seidman, LLP ("BDO"), Center for Audit Quality ("CAQ"), Deloitte Touche Tohmatsu ("Deloitte"), E&Y, Grant Thornton LLP ("Grant Thornton"), KPMG IFRG Limited ("KPMG"), and PricewaterhouseCoopers LLP ("PricewaterhouseCoopers").

accounting and reporting systems if they are required to provide the additional Item 18 disclosures, as well as comply with the accelerated due date for Form 20-F, at the same time. In addition, they noted that many countries, such as Canada, will be adopting IFRS in 2011. Aligning the compliance date for the adopted amendments with the date on which many countries will be adopting IFRS would reduce the potential burdens on these issuers.

For the reasons enumerated above, we are establishing a compliance date that should provide foreign private issuers with sufficient time to transition to the Item 18 requirements when preparing their financial statements. A foreign private issuer that currently prepares its financial statements according to Item 17 of Form 20-F will not be required to prepare financial statements pursuant to Item 18 until it files an annual report for its first fiscal year ending on or after December 15, 2011. The longer transition period should reduce the impact of these amendments on many of the affected issuers. In addition, because foreign private issuers that prepare financial statements in accordance with IFRS, as issued by the IASB, are not required to prepare a reconciliation to U.S. GAAP, we expect that the number of companies that will be affected by the amendments will be small.

F. Disclosure About Changes in a Registrant's Certifying Accountant

Domestic companies currently report any changes in and disagreements with their certifying accountant in a current report on Form 8-K and in a registration statement on

Form 10¹⁰⁹ under the Exchange Act,¹¹⁰ as well as in their registration statements filed on Forms S-1¹¹¹ and S-4¹¹² under the Securities Act. Among other things, this disclosure provides information about potential opinion shopping situations by issuers. "Opinion shopping" generally refers to the search for an auditor that is willing to support a proposed accounting treatment that is designed to help a company achieve its reporting objectives, even though that treatment could frustrate reliable reporting.¹¹³

Foreign private issuers have not been required to provide this disclosure.¹¹⁴ However, the issues underlying the need for this disclosure also apply to foreign private issuers, and the relationship between issuers and their auditors in this area would seem to be as important for investors. Moreover, foreign private issuers that are listed on the New York Stock Exchange ("NYSE") are already required by that Exchange to notify the

¹⁰⁹ 17 CFR 249.210.

¹¹⁰ In their annual reports on Form 10-K, domestic issuers do not provide the same type of change of accountant disclosure, since they should have reported this information on a more current basis on Form 8-K. However, they do provide the disclosures required by Item 304(b) of Regulation S-K [17 CFR 229.304(b)].

¹¹¹ 17 CFR 239.11.

¹¹² 17 CFR 239.25.

¹¹³ See Release No. 33-6766 (Apr. 7, 1988) (adopting amendments to Form 8-K, Regulation S-K and Schedule 14A [17 CFR 240.14a-101] related to disclosure concerning a change in a registrant's certifying accountant).

¹¹⁴ When we proposed the adoption of Form 20-F, we proposed a disclosure requirement soliciting information about changes in the registrant's certifying accountant. Release No. 34-14128 (Nov. 2, 1977) [42 FR 58684] (contained in proposed Item 24). The disclosure item was not included in Form 20-F. Form 20-F Adopting Release, supra note 18.

public about a change in their auditors,¹¹⁵ although this information is required to be furnished under cover of Form 6-K, which does not have the substantive disclosure requirements of Form 8-K.¹¹⁶ As a result, we proposed amendments that would require substantially the same types of disclosures currently provided by domestic issuers about changes in and disagreements with their certifying accountant. After reviewing the comment letters received on these proposed amendments, most of which were generally supportive, we are adopting the amendments substantially as proposed. As discussed below, in response to a question on this point in the Proposing Release, several commenters suggested that we extend this disclosure requirement to all registration statements, not just initial registration statements filed by foreign private issuers. We have modified the proposal accordingly.

The few commenters who expressed opposition to the proposed amendments, either in whole or in part, expressed concern that foreign private issuers may be required to disclose more information about their former auditors in their Form 20-F annual reports than is required under their home country law.¹¹⁷ In addition, some commenters encouraged the Commission to research and evaluate whether compliance with the proposed requirements would be frustrated or precluded when the disclosure pertains to a foreign-based certifying accountant because of home-country legal requirements, such as

¹¹⁵ Section 204.03 of the NYSE Listed Company Manual.

¹¹⁶ See supra note 45 for a discussion of the differences between Forms 6-K and 8-K.

¹¹⁷ See comment letters from CAQ, Deloitte, Hundred Group, Linklaters, and Sullivan & Cromwell LLP.

privacy laws. Other commenters recommended that we consider mechanisms to require foreign private issuers to provide the disclosure on a timelier basis than proposed.

After considering all of the comments received, we believe that the amendments as proposed achieve an appropriate balance among all of the views that were expressed. Given the usefulness of the information to investors, we believe that foreign private issuers should be required to disclose substantially the same information provided by domestic issuers. Several commenters believed the value of the information to investors would be diminished by the potential time between the change in accountants and the proposed disclosure.¹¹⁸ We recognize that foreign private issuers will be disclosing the information on a delayed basis in their annual reports and registration statements, compared to the current basis required by domestic issuers. However, we do not believe it would be appropriate to adopt a separate current report requirement for foreign private issuers to report this information because they are already required to furnish to the Commission on Form 6-K the material information that they provide to their home country regulator, to their security holders and to the public. To the extent that information about a change in certifying accountant is required by the foreign private issuer's home country, the information would be disclosed in a Form 6-K. Introducing an additional U.S. current report requirement outside of the traditional Form 6-K reporting requirements does not seem appropriate at this time. In addition, because the new disclosure requirement may require a foreign private issuer to disclose more information

¹¹⁸ See comment letters from AngloGold Ashanti Limited; BDO; CAQ; Deloitte; E&Y; Grant Thornton; Harmony Gold Mining Company Limited and PricewaterhouseCoopers.

about its former auditors than may be required by its home country law, permitting foreign private issuers to prepare and provide the disclosure in their annual reports may help reduce the burdens of reporting this information.

With respect to the concern expressed by some commenters regarding potential conflicts between the proposed disclosure and home country legal requirements, we note that we asked commenters to provide details of any restrictions under the foreign issuer's home country law or regulations that would prohibit an auditor from reporting to a foreign regulator about disagreements with the issuer. Most of the commenters did not provide any examples of home country law or regulations that would prohibit such disclosure, but suggested that we conduct further research about possible conflicts.¹¹⁹

As adopted, Item 16F of Form 20-F will elicit the same types of change of accountant disclosures obtained in Item 4.01 (Changes in Registrant's Certifying Accountant) of Form 8-K,¹²⁰ including the disclosure requirements of Item 304(a) of Regulation S-K,¹²¹ which are referenced in Form 8-K, and Item 9 (Changes in and Disagreements with Accountants on Accounting and Financial Disclosure) of Form 10-K,¹²² which refers to the disclosure requirements of Item 304(b) of Regulation S-K. However, because foreign private issuers do not file Forms 8-K and 10-K and are not

¹¹⁹ One commenter suggested that South African law may preclude such disclosures, see comment letter from Deloitte, but the four South African issuers that commented on the Proposing Release did not cite specific restrictions under South African law.

¹²⁰ Item 4.01 of Form 8-K.

¹²¹ 17 CFR 229.304(a).

¹²² Item 9 of Form 10-K.

otherwise subject to Item 304 of Regulation S-K, we are adopting amendments requiring them to provide disclosure about changes in and disagreements with their certifying accountants in their annual reports on Form 20-F, as well as in their registration statements filed on Forms 20-F, F-1, F-3 and F-4.

We are also adopting amendments to Forms F-1, F-3 and F-4, which are used to register public offerings of securities by foreign private issuers under the Securities Act, to require the new Item 16F disclosure requirement about the issuer's changes in and disagreements with their certifying accountant. Although we had not proposed requiring Item 16F disclosure for repeat registrants, we solicited comments on whether this was disclosure that should be provided in connection with all registration statements filed by a foreign private issuer under the Securities Act. Some commenters supported this approach. They noted that this information would be useful in Securities Act registration statements filed by repeat issuers, especially if the change in accountant or disagreement occurred after the filing of the Form 20-F annual report and before the filing of the next Securities Act registration statement.¹²³ As a result, we are adopting amendments to Forms F-1, F-3 and F-4 that will require Item 16F disclosure by all registrants, including repeat issuers. We are also amending Form F-3 so that Item 16F disclosure will be provided in a registration statement at effectiveness, as well as in a prospectus used in connection with a shelf offering.

New Item 16F requires substantially the same information required by Item 304 of Regulation S-K, which contains the disclosure requirements applicable to domestic

¹²³ See comment letters submitted by CAQ, the CFA Institute, and KPMG.

issuers. Among other things, Item 16F requires an issuer to disclose whether an independent accountant that was previously engaged as the principal accountant to audit the issuer's financial statements, or a significant subsidiary on which the accountant expressed reliance in its report, has resigned, declined to stand for re-election, or was dismissed. Item 16F also requires an issuer to disclose any disagreements or reportable events that occurred within the issuer's latest two fiscal years and any interim period preceding the change of accountant. Item 16F(b) solicits disclosure about whether, during the fiscal year in which the change of accountants took place or during the subsequent year, the issuer had similar, material transactions to those which led to the disagreements with the former accountants, and whether such transactions were accounted for or disclosed in a manner different from that which the former accountants would have concluded was required. If so, Item 16F(b) requires the issuer to disclose the existence and nature of the disagreement or reportable event, and also to disclose the effect on the financial statements if the method that would have been required by the former accountants had been followed.

Although the disclosure requirements contained in Item 16F are substantially similar to the disclosure requirements applicable to domestic issuers in Item 304 of Regulation S-K, as proposed, we have eliminated or modified some of the due dates described in Item 304(a)(3) of Regulation S-K because the disclosure is being made on an annual, rather than on a current, basis. For example, although Item 16F would require the issuer to provide a copy of the disclosures that it is making in response to Item 16F to the former accountant, it would not require the issuer to provide the disclosures within the

timeframe specified in Item 304(a)(3) of Regulation S-K.¹²⁴ In addition, we expect that the former accountant would be able to furnish the issuer with a letter stating whether it agrees with the statements made by the issuer in response to Item 16F and, if not, stating the respects in which it does not agree, and that the issuer would be able to file the former accountant's letter as an exhibit to the annual report or registration statement that contains this disclosure at the time that the annual report or registration statement is due. Item 304(a)(3) provides that if the former accountant's letter is not available at the time that the report or registration statement is filed, then the issuer can file the letter with the Commission within ten business days after the filing of the report or registration statement. Because foreign private issuers would be permitted to provide the disclosure in their annual reports, we believe that this accommodation would not be necessary unless the change in accountant occurred less than 30 days prior to the filing of the annual report¹²⁵ or registration statement. As adopted, Item 16F would permit a delayed filing of the former accountant's letter in an annual report or registration statement only if the change in accountant occurred within this 30-day timeframe.

Foreign private issuers will be required to comply with the amendments beginning with their first fiscal year ending on or after December 15, 2009. The delayed

¹²⁴ Item 304(a)(3) of Regulation S-K requires the issuer to provide a copy of the disclosures to the former accountant no later than the day that the disclosures are filed with the Commission. 17 CFR 229.304(a)(3).

¹²⁵ Under General Instruction C.(b) of Form 20-F, the information provided in a Form 20-F annual report should be as of the latest practicable date, unless a disclosure item in the Form explicitly directs otherwise. As a result, changes in the foreign private issuer's certifying accountant that occur after the issuer's fiscal year-end, but before the Form 20-F is filed, would be disclosed in the issuer's Form 20-F annual report.

compliance date should provide these issuers and their accountants with sufficient time to establish internal procedures that will enable them to comply with the new requirements.

G. Annual Disclosure About ADR Fees and Payments

We are adopting amendments that will require foreign private issuers to disclose information about the fees and other charges paid in connection with ADR facilities in their annual reports on Form 20-F.¹²⁶ We proposed these amendments because we believe that ADR holders can benefit from enhanced disclosure in this area, especially in light of new depositary fees that are being charged to ADR holders in connection with sponsored ADR facilities. These new fees include an annual fee for general depositary services, a fee that was formerly prohibited by some exchanges.¹²⁷ Although ADR fees are disclosed in the ADR itself,¹²⁸ ADR holders frequently purchase their ADRs in book-entry form and do not see the disclosures provided in the physical certificate.

Many commenters on the proposed amendments supported the disclosure of the ADR fees paid by ADR holders, noting that complete and regular disclosure of these fees is important in light of their impact on investors. A few, however, noted that these fees are already disclosed in the deposit agreement, on the Form F-6 registration statement

¹²⁶ We noted the importance of transparency in fee disclosures in our 1991 ADR concept release, Release No. 33-6894, supra note 90.

¹²⁷ See Release No. 34-53978 (June 13, 2006) [71 FR 35474] (notice of NYSE rule change to eliminate the requirement that certain services be provided without charge to ADR holders).

¹²⁸ As a technical matter, an ADR is the physical certificate that evidences American Depositary Shares ("ADS"), and an ADS is the security that represents an ownership interest in deposited securities. However, the terms are often used interchangeably by market participants.

filed to register the ADRs with the Commission under the Securities Act, as well as in the Form 20-F that is filed to register the deposited securities under the Exchange Act.¹²⁹

After considering these comments, we have concluded these ADR fees are significant enough to warrant enhanced transparency to investors on an annual basis and will present a minimal additional disclosure burden on foreign private issuers.

We received a variety of comments in reaction to the proposed disclosure requirement regarding payments made by depositary banks to the foreign private issuers whose securities underlie the ADRs. Some commenters expressed concern that the disclosure would have a detrimental effect on the ADR market, would constitute commercially sensitive proprietary information, and would be immaterial to investors.¹³⁰ Other commenters, however, noted that disclosure of such payments would limit the risk that depositary banks would attempt to defray the incentive payments through increased charges to ADR holders.¹³¹ One commenter suggested that disclosure of the aggregate amount of incentive payments made to issuers by depositaries, rather than detailed disclosure of each payment, would avoid undermining competition among depositaries.¹³²

After considering all of these comments, we are adopting the amendments to Form 20-F as proposed. The amendments to Form 20-F revise Item 12.D.3. and the

¹²⁹ Rule 12a-8 [17 CFR 240.12a-8] exempts depositary shares registered on Form F-6 [17 CFR 239.36] under the Securities Act, but not the underlying deposited securities, from the operation of Section 12(a) of the Exchange Act [15 U.S.C. 78j(a)].

¹³⁰ See, e.g., comment letters from the ABA, The Bank of New York Mellon, and Deutsche Bank.

¹³¹ See, e.g., the comment letter from Depositary Management Corporation.

¹³² See *id.*

Instructions to Item 12 to solicit disclosure of the fees paid by ADR holders on an annual basis, including the annual fee for general depositary services. In addition, foreign private issuers will be required to disclose the payments that they have received from depositaries in connection with their ADR programs. Because we believe that the value of the information provided would be diminished if it was provided only on an aggregate basis, issuers must disclose the information on a per payment basis. We believe that information about the types of payments made by depositaries to issuers would be useful to investors because it would enable them to understand the purpose of the payments. The amendments to Item 12.D.3. and the Instructions to Item 12 of Form 20-F will require disclosure of these payments in the registration statement on Form 20-F that is filed for the deposited securities, as well as in the annual report, for sponsored ADR facilities.

To address the concerns about the disclosure of incentive payments made by depositaries to foreign issuers, a foreign private issuer will not be required to disclose this information until it files its annual report for its first fiscal year ending on or after December 15, 2009. This should permit depositary banks and foreign issuers to make appropriate contractual arrangements, as necessary, in light of the new disclosure requirements.

H. Disclosure About Differences in Corporate Governance Practices

We proposed amendments that would require listed foreign private issuers to disclose in their Form 20-F annual reports the significant ways in which their corporate governance practices differ from the practices followed by domestic companies listed on the same exchange. This proposal recognized that foreign private issuers are subject to

different legal and regulatory requirements in their home jurisdictions, and as a result frequently follow different corporate governance practices from domestic companies. Many U.S. securities exchanges exempt listed foreign private issuers from many of their corporate governance requirements,¹³³ but require these issuers to disclose the significant ways in which their corporate governance practices differ from those followed by domestic companies under the relevant exchange's listing standards. Foreign private issuers may provide this disclosure either in their annual reports, and/or on their websites,¹³⁴ and many foreign private issuers opt to provide this disclosure on their websites, rather than in their annual reports.

We reiterate, as we stated when we proposed the amendments, that this disclosure does not imply a preference for any particular type of corporate governance regime. Again, we note that the disclosure should be useful to investors by facilitating their ability to monitor the issuer's corporate governance practices.

The vast majority of comments received on this proposal were supportive. Commenters noted that the proposed amendment would benefit investors by enabling

¹³³ See Section 303A.00 of the NYSE Listed Company Manual (noting that foreign private issuers are permitted to follow home country practice instead of the applicable corporate governance provisions of the NYSE Listed Company Manual, except for the requirements pertaining to audit committees, certain certifications, and certain corporate governance disclosures); Section 4350(a)(1) of the Nasdaq Manual (noting that requirements pertaining to audit committees and audit opinions apply, among other things); and Section 110 of the Amex Company Guide (stating that in evaluating the listing application of a foreign private issuer, "the Exchange will consider the laws, customs and practices of the applicant's country of domicile, to the extent not contrary to the federal securities laws").

¹³⁴ See Section 303A.11 of the NYSE Listed Company Manual; Section 4350(a)(1) of the Nasdaq Manual; and Section 110 of the Amex Company Guide.

them to access all of the corporate governance information about a foreign private issuer in one location. They also noted that the information would provide investors with relevant disclosure of any updates on a foreign private issuer's corporate governance practices.

After considering these comments, we are adopting amendments as proposed to require disclosure of this information in the Form 20-F annual reports filed by all foreign private issuers whose securities are listed on a U.S. exchange. New Item 16G would require foreign private issuers to provide a concise summary in their annual reports of the significant ways in which the foreign private issuer's corporate governance practices differ from the corporate governance practices followed by domestic companies under the relevant exchange's listing standards.

Several commenters expressed the view that the new disclosure item should not require disclosure of more information than foreign issuers currently provide to the exchanges upon which their securities are listed.¹³⁵ Another commenter proposed modifications to the proposed text of Item 16G out of concern that the proposed requirement would inadvertently result in long, boilerplate disclosures.¹³⁶ Other commenters supported presentation of the information in a tabular format, while others expressed concern that requiring a particular type of presentation could encourage a "tick box" approach to corporate governance.¹³⁷ In response to these comments, we have

¹³⁵ See, e.g., the comment letters from the ABA, CAQ, Deloitte, and E&Y.

¹³⁶ See comment letter from Cleary Gottlieb.

¹³⁷ See, e.g., comment letter from the British Bankers' Association.

revised new Item 16G to more exactly track the analogous disclosure requirements of some of the exchanges,¹³⁸ without specifying a particular format for the presentation of this information. We expect that the disclosure provided in response to new Item 16G will be similar, if not the same, as the disclosure that foreign private issuers currently provide in response to the corporate governance disclosure requirements of the exchange on which their securities are listed. Issuers should assess, and in the future re-assess, the format that they believe is most appropriate in their circumstances.

III. Other Matters Considered

At the time that we proposed the amendments discussed above, we also proposed to amend Item 17(a) of Form 20-F to require foreign private issuers to provide, in certain circumstances, the financial information required by Rule 3-05 and Article 11¹³⁹ of Regulation S-X. These rules pertain, respectively, to the financial statements that must be provided for significant, completed acquisitions and the preparation of pro forma financial statements. Although domestic companies must present the financial statements of significant acquired businesses and pro forma financial information in their registration statements under both the Securities Act and the Exchange Act, as well in a

¹³⁸ See Section 303A.11 of the NYSE Listed Company Manual; Section 110 of the Amex Company Guide.

¹³⁹ 17 CFR 210.11 et seq.

Form 8-K current report,¹⁴⁰ foreign private issuers only provide this information in the registration statements that they file under the Securities Act and the Exchange Act.

We proposed amendments to require foreign private issuers to provide the financial information elicited by Rule 3-05 and Article 11 of Regulation S-X in their Exchange Act annual reports. Because foreign private issuers do not file current reports on Form 8-K, we did not propose imposing a requirement that this financial information be presented on a more current basis than annually. We proposed requiring foreign private issuers to provide financial information in their annual reports on Form 20-F about highly significant acquisitions completed during the most recent fiscal year covered by their annual report on that Form. As proposed, the disclosure requirement would have been triggered at the 50% or greater level of significance,¹⁴¹ and would have required the provision of financial statements for three fiscal years as prescribed by Rule 3-05(b)(2)(iv) of Regulation S-X.

¹⁴⁰ Item 2.01 of Form 8-K requires domestic issuers to disclose certain information when they or one of their majority-owned subsidiaries complete an acquisition or disposition of a significant amount of assets, other than in the ordinary course of business. The Form 8-K filed to report this acquisition or disposition must be filed within four business days after the event has occurred. See General Instruction B.1. of Form 8-K. For a business acquisition significant at the 20% or greater level that must be disclosed pursuant to Item 2.01, Item 9.01 of Form 8-K requires the financial statements of the acquired business to be filed with the initial report of the acquisition on Form 8-K, or by amendment no later than 71 calendar days after the date that the initial report on Form 8-K is due.

¹⁴¹ The significance of an acquired business is measured by the comparison of: (1) the registrant's investment in the acquired business (acquisition price) to the registrant's total assets, (2) the acquired business' total assets to the total assets of the registrant, or (3) the acquired business' pre-tax income to the pre-tax income of the registrant. See Rule 1-02(w) [17 CFR 210.1-02] of Regulation S-X.

We received several comments on this proposal. Although many commenters supported the proposal, several also expressed concern about the timeliness of the information that would be provided, since it would be provided in the foreign private issuer's periodic reports (i.e., its annual report), rather than on a current basis. Other commenters questioned the value of requiring foreign private issuers to provide historical financial statements of significant acquirees for three fiscal years. One commenter recommended that foreign private issuers be afforded the flexibility to include financial information based on the relevant IFRS and local auditing standards, and to omit financial information when it cannot be produced without unreasonable burden or expense.¹⁴² Another commenter suggested that we should defer to home country disclosure requirements, and require financial statements only with respect to the most recently completed fiscal year, unless home country law requires more.¹⁴³ This commenter suggested that this approach would avoid the imposition of unnecessary burdens on foreign private issuers, as well as inconsistent disclosure obligations on the issuer, and would avoid creating a disparity in the information available to investors in the issuer's home country and the United States. We are not adopting these amendments at this time, but will continue to consider the proposal in light of the concerns expressed.

IV. Paperwork Reduction Act

A. Background

¹⁴² See comment letter from the New York City Bar.

¹⁴³ See comment letter from the ABA.

The final amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").¹⁴⁴ We have submitted the proposed amendments to the Office of Management and Budget ("OMB") for review in accordance with the PRA.¹⁴⁵ The titles for the affected collections of information are:

- (1) "Form 20-F" (OMB Control No. 3235-0288);
- (2) "Form F-1" (OMB Control No. 3235-0258);
- (3) "Form F-3" (OMB Control No. 3235-0256); and
- (4) "Form F-4" (OMB Control No. 3235-0325).

Form 20-F sets forth the disclosure requirements for annual reports and registration statements filed by foreign private issuers under the Exchange Act, as well as many of the disclosure requirements for registration statements filed by foreign private issuers under the Securities Act. Forms F-1, F-3 and F-4 were adopted pursuant to the Securities Act, and set forth the disclosure requirements for registration statements filed by foreign private issuers to offer securities to the public.

The hours and costs associated with preparing, filing and sending these forms and complying with these rules constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The information collection requirements related to Forms 20-F, F-1, F-3 and F-4 are mandatory. There is no mandatory retention period for the information disclosed, and the information disclosed would be made publicly available on the

¹⁴⁴ 44 U.S.C. 3501 et seq.

¹⁴⁵ 44 U.S.C. 3507(d) and 5 CFR 1320.11.

EDGAR filing system. We have based our estimates of the effect that the adopted rule and form amendments would have on those collections of information primarily on our review of the most recently completed PRA submissions for the affected rules and forms.

The amendments will: (1) Amend Rule 405 of Regulation C under the Securities Act and Exchange Act Rule 3b-4 to permit foreign issuers to test their qualification to use the forms and rules available to foreign private issuers on an annual basis, rather than on the continuous basis that is currently required; (2) Amend Form 20-F to accelerate the filing deadline for annual reports filed by foreign private issuers on Form 20-F, subject to a three-year transition period; and amend Exchange Act Rules 13a-10 and 15d-10, which pertains to transition reports filed by foreign private issuers on Form 20-F, and Exchange Act Rule 15d-2, which pertains to special financial reports filed by foreign private issuers, to conform the due dates for those reports with the due date for annual reports filed on Form 20-F; (3) Amend Form 20-F by eliminating an instruction to Item 17 of that Form, which permits certain foreign private issuers to omit segment data from their U.S. GAAP financial statements; (4) Amend Rule 13e-3, which pertains to going private transactions by reporting issuers or their affiliate, to reflect the recently adopted rules pertaining to the ability of foreign private issuers to terminate their Exchange Act registration and reporting obligations; (5) Amend Form 20-F and Forms F-1, F-3 and F-4 to require foreign private issuers that are required to provide a U.S. GAAP reconciliation to do so pursuant to Item 18 of Form 20-F; (6) Amend Form 20-F, Forms F-1, F-3 and F-4 to require foreign private issuers to disclose information about a change in the issuer's certifying accountant; and (7) Amend Form 20-F to require foreign private issuers to disclose the fees and charges paid by ADR holders, the payments made by the depository

to the foreign issuer whose securities underlie the ADRs, and for listed issuers, the differences in the foreign private issuer's corporate governance practices and those applicable to domestic companies under the relevant exchange's listing rules.

We have based the annual burden and cost estimates of the adopted amendments on the following estimates and assumptions:

- A foreign private issuer incurs or will incur 25% of the annual burden required to produce each Form 20-F, Form F-1, Form F-3, or Form F-4; and
- Outside firms, including legal counsel, accountants and other advisors, incur or will incur 75% of the burden required to produce each Form 20-F, Form F-1, Form F-3, or Form F-4 at an average cost of \$400 per hour.¹⁴⁶

We estimated the average number of hours each entity spends completing the forms and the average hourly rate for outside professionals. That estimate includes the time and the cost of in-house preparers, reviews by executive officers, in-house counsel, outside counsel, independent auditors and members of the audit committee.

We published a notice requesting comment on the collection of information requirements in the Proposing Release and submitted these requirements to OMB for review in accordance with the PRA. Although we received many comment letters on the proposed rule amendments, none specifically addressed the estimated effects of these proposed amendments on the collection of information requirements. In response to the

¹⁴⁶ In connection with other recent rulemakings, we have had discussions with several law firms to estimate an hourly rate of \$400 as the cost to companies for the services of outside professional retained to assist in the preparation of these disclosures. For Securities Act registration statements, we also consider additional reviews of the disclosure by underwriter's counsel and underwriters.

comments received, we have made certain modifications to the proposals. We have decided not to adopt the proposal to require disclosure of significant, completed acquisitions in the Form 20-F annual report, which will reduce our previous estimates of the reporting and cost burdens of preparing Form 20-F. As a result of comments received, we are also adopting a requirement that repeat registrants, rather than only first-time registrants, provide information about a changes in and disagreements with their certifying accountant in their Securities Act registration statements. Because such an event occurs very rarely, this amendment will not significantly affect our estimate of the incremental reporting and cost burdens of this amendment. We are revising our estimates for Forms 20-F and Form F-3 accordingly. Other modifications that we have made to the proposed amendments do not affect our estimate of the incremental burden of the amendments because they will not change the amount of information required to be included by registrants in any of the affected Forms. These amendments include certain modifications to Rule 13e-3 to address technical concerns, a different accelerated due date for Form 20-F annual reports than proposed, and a longer transition period for certain amendments than originally proposed.

B. Burden and Cost Estimates Related to the Amendments

1. Form 20-F

We estimate that currently foreign private issuers file 942 Form 20-Fs each year. We assume that 25% of the burden required to produce the Form 20-Fs is borne internally by foreign private issuers, resulting in 614,891 annual burden hours borne by foreign private issuers out of a total of 2,459,564 annual burden hours. Thus, we estimate that 2,611 total burden hours per response are currently required to prepare the Form 20-

F. We further assume that 75% of the burden to produce the Form 20-Fs is carried by outside professionals retained by foreign private issuers at an average cost of \$400 per hour, for a total cost of \$737,868,600.

The amendment to amend Form 20-F to accelerate the filing deadline for annual reports and transitions reports filed on that Form will not change the amount of information required to be included in Exchange Act reports. In connection with this amendment, we are also adopting amendments to Exchange Act Rules 13a-10 and 15d-10, which pertain to transition reports filed on Form 20-F, and to Exchange Act Rule 15d-2, which pertains to special financial reports filed by foreign private issuers. Our amendments will conform the deadlines for transition reports filed on Form 20-F and for the special financial reports filed by foreign private issuers with the new deadline for annual reports filed on Form 20-F. These amendments also will not change the amount of information required to be included in Exchange Act reports. Therefore, these amendments will neither increase nor decrease the amount of burden hours necessary to prepare annual reports on Form 20-F for the purposes of the PRA.

With respect to our amendment to require foreign private issuers that are required to provide a U.S. GAAP reconciliation to do so pursuant to Item 18 of Form 20-F, we estimate that approximately 200 companies that file Form 20-F will be impacted by the amendment. We expect that the amendment will cause those foreign private issuers to have more burden hours. We estimate that for each of the companies affected by the amendment, there will occur an increase of 2% (52.22 hours) in the number of burden hours required to prepare their Form 20-F, for a total increase of 10,444 hours as a result of this amendment. We expect that 25% of those increased burden hours (2,611 hours)

will be incurred by foreign private issuers. We further expect that 75% of these increased burden hours (7,833 hours) will be incurred by outside firms, at an average cost of \$400 per hour, for a total of \$3,133,200 in increased costs to the respondents of the information collection as a result of this amendment.

With respect to our amendment to require disclosure about a change in the issuer's certifying accountant in annual reports and registration statements filed on Form 20-F, we estimate that approximately 90 companies that file Form 20-F will be impacted by the amendment. The amendment will cause those foreign private issuers to have more burden hours. We estimate that for each of the companies affected by the amendment, there will occur an increase of .75% (19.58 hours) in the number of burden hours required to prepare their Form 20-F, for a total increase of 1,762.2 hours. We expect that 25% of those increased burden hours (440.55 hours) will be incurred by foreign private issuers. We further expect that 75% of these increased burden hours (1,321.65 hours) will be incurred by outside firms, at an average cost of \$400 per hour, for a total of \$528,660 in increased costs to the respondents of the information collection as a result of the amendment.

Our amendment to require disclosure about ADR fees and payments on an annual basis, we estimate that approximately 442 companies that file Form 20-F will be impacted by the amendment. The amendment will cause those foreign private issuers to have more burden hours. We estimate that for each of the companies affected by the amendment, there will occur an increase of .25% (6.53 hours) in the number of burden hours required to prepare their Form 20-F, for a total increase of 2,886.26 hours. We expect that 25% of those increased burden hours (721.57 hours) will be incurred by

foreign private issuers. We further expect that 75% of these increased burden hours (2,164.71 hours) will be incurred by outside firms, at an average cost of \$400 per hour, for a total of \$865,884 in increased costs to the respondents of the information collection as a result of the amendment.

With respect to our amendment to require annual disclosure about differences in a listed foreign private issuer's corporate practices and those applicable to domestic companies under the relevant exchange's listing rule, we estimate that approximately 783 companies that file Form 20-F will be impacted by the amendment. The amendment will not cause a significant change in the burden hours for those foreign private issuers because they already prepare this information for the exchanges on which they are listed.

Our amendment to eliminate an instruction to Item 17 of Form 20-F, which permits certain foreign private issuers to omit segment data from their U.S. GAAP financial statements, we estimate that approximately 5 companies that file Form 20-F will be currently impacted by the amendment. The amendment will cause those foreign private issuers to have more burden hours. We estimate that for each of the companies affected by the amendment, there will occur an increase of 2% (52.22 hours) in the number of burden hours required to prepare their Form 20-F, for a total increase of 261.1 hours. We expect that 25% of those increased burden hours (65.3 hours) will be incurred by foreign private issuers. We further expect that 75% of these increased burden hours (195.83 hours) will be incurred by outside firms, at an average cost of \$400 per hour, for a total of \$78,332 in increased costs to the respondents of the information collection as a result of the amendment.

Because we have decided not to adopt the proposal to amend Form 20-F to require foreign private issuers to provide certain financial information in their annual reports on that Form about a significant, completed acquisition that is significant at the 50% or greater level, we have reduced the estimated burdens and costs associated with preparing Form 20-F.

Thus, we estimate that the amendments to Form 20-F will increase the annual burden borne by foreign private issuers in the preparation of Form 20-F from 614,891 hours to 618,729.5 hours. We further estimate that the amendments will increase the total annual burden associated with Form 20-F preparation to 2,474,918 burden hours, which will increase the average number of burden hours per response to 2627. We further estimate that the amendments will increase the total annual costs attributed to the preparation of Form 20-F by outside firms to \$742,475,400.

2. Form F-1

We estimate that currently foreign private issuers file 42 registration statements on Form F-1 each year. We assume that 25% of the burden required to produce a Form F-1 is borne by foreign private issuers, resulting in 18,890 annual burden hours incurred by foreign private issuers out of a total of 75,560 annual burden hours. Thus, we estimate that 1,799 total burden hours per response are currently required to prepare a registration statement on Form F-1. We further assume that 75% of the burden to produce a Form F-1 is carried by outside professionals retained by foreign private issuers at an average cost of \$400 per hour, for a total cost of \$22,667,400.

We estimate that currently approximately 4 companies that file registration statements on Form F-1 will be impacted by the amendment to require foreign private

issuers to provide disclosure about a change in their certifying accountant in their initial registration statements. The amendment will cause those foreign private issuers to have more burden hours. We estimate that each company affected by the amendment will have a .75% increase (13.49 hours) in the number of burden hours required to prepare their registration statements on Form F-1, for a total increase of 54 hours. We expect that 25% of these increased burden hours (13.5 hours) will be incurred by foreign private issuers. We further expect that 75% of the increased burden hours (40.5 hours) will be incurred by outside firms, at an average cost of \$400 per hour, for a total of \$16,200 in increased costs to the respondents of the information collection as a result of the amendment.

We estimate that none of the companies that file registration statements on Form F-1 will be impacted by the amendment to require foreign private issuers that are required to provide a U.S. GAAP reconciliation to do so pursuant to Item 18 of Form 20-F. In our experience, the companies that use Form F-1 are engaging in capital raising transactions, so that all registrants have been providing financial information according to Item 18. The amendment will be a technical change to the Form without any expected impact on the companies using that Form for collection of information purposes.

Thus, we estimate that the amendments to Form F-1 will increase the annual burden incurred by foreign private issuers in the preparation of Form F-1 from 18,890 hours to 18,904 hours. We further estimate that the amendments will increase the total annual burden associated with Form F-1 preparation to 75,614 burden hours, which will increase the average number of burden hours per response to 1800. We further estimate

that the amendments will increase the total annual costs attributed to the preparation of Form F-1 by outside firms to \$22,683,600.

3. Form F-3

We estimate that currently foreign private issuers file 106 registration statements on Form F-3 each year. We assume that 25% of the burden required to produce a Form F-3 is borne by foreign private issuers, resulting in 4,399 annual burden hours incurred by foreign private issuers out of a total of 17,596 annual burden hours. Thus, we estimate that 166 total burden hours per response are currently required to prepare a registration statement on Form F-3. We further assume that 75% of the burden to produce a Form F-3 is carried by outside professionals retained by foreign private issuers at an average cost of \$400 per hour, for a total cost of \$5,278,800.

We estimate that currently approximately 20 companies that file registration statements on Form F-3 will be impacted by the amendment to require foreign private issuers that are required to provide a U.S. GAAP reconciliation to do so pursuant to Item 18 of Form 20-F. The amendment will cause those foreign private issuers to have more burden hours. We estimate that each company affected by the amendment will have a 2% increase (3.32 hours) in the number of burden hours required to prepare their registration statements on Form F-3, for a total increase of 66.4 hours. We expect that 25% of these increased burden hours (16.6 hours) will be incurred by foreign private issuers. We further expect that 75% of the increased burden hours (49.8 hours) will be incurred by outside firms, at an average cost of \$400 per hour, for a total of \$19,920 in increased costs to the respondents of the information collection as a result of the amendment.

In response to comments received, we have amended F-3 to require foreign private issuers that are repeat registrants to disclose a change in or disagreement with their certifying accountant in their registration statements filed on Form F-3. As proposed, this amendment would have applied only to registration statements used in initial public offerings, and would not have been reflected in our collection of information estimates for Form F-3, since Form F-3 is not available for initial public offerings. We estimate that currently approximately 10 companies that file registration statements on Form F-3 will be impacted by this amendment. The amendment will cause those foreign private issuers to have more burden hours. We estimate that each company affected by the amendment will have a .75% increase (1.245 hours) in the number of burden hours required to prepare their registration statements on Form F-3, for a total increase of 12.45 hours. We expect that 25% of these increased burden hours (3.11 hours) will be incurred by foreign private issuers. We further expect that 75% of the increased burden hours (9.34 hours) will be incurred by outside firms, at an average cost of \$400 per hour, for a total of \$3,736 in increased costs to the respondents of the information collection as a result of the amendment.

Thus, we estimate that the amendments to Form F-3 will increase the annual burden incurred by foreign private issuers in the preparation of Form F-3 from 4,399 hours to 4,418.71 hours. We further estimate that the amendments will increase the total annual burden associated with Form F-3 preparation to 17,674.85 burden hours, which will increase the average number of burden hours per response to 167. We further estimate that the amendments will increase the total annual costs attributed to the preparation of Form F-3 by outside firms to \$5,302,455.

4. Form F-4

We estimate that currently foreign private issuers file 68 registration statements on Form F-4 each year. We assume that 25% of the burden required to produce a Form F-4 is borne internally by foreign private issuers, resulting in 24,497 annual burden hours incurred by foreign private issuers out of a total of 97,988 annual burden hours. Thus, we estimate that 1,441 total burden hours per response are currently required to prepare a registration statement on Form F-4. We further assume that 75% of the burden to produce a Form F-4 is carried by outside professionals retained by foreign private issuers at an average cost of \$400 per hour, for a total cost of \$29,396,400.

We estimate that currently approximately none of the companies that file registration statements on Form F-4 will be impacted by the amendment to require foreign private issuers that are required to provide a U.S. GAAP reconciliation to do so pursuant to Item 18 of Form 20-F. In our experience, the companies that use Form F-4 have all been providing financial information according to Item 18 because of the types of transactions that are registered on that Form, so the amendment will be a technical change to the Form without any expected impact on the companies using it.

We estimate that currently approximately 5 companies that file registration statements on Form F-4 will be impacted by the amendment to require foreign private issuers to provide disclosure about a change in their certifying accountant in their initial registration statements. The amendment will cause those foreign private issuers to have more burden hours. We estimate that each company affected by the amendment will have a .75% increase (10.81 hours) in the number of burden hours required to prepare their registration statements on Form F-1, for a total increase of 54 hours. We expect that

25% of these increased burden hours (13.5 hours) will be incurred by foreign private issuers. We further expect that 75% of the increased burden hours (40.5 hours) will be incurred by outside firms, at an average cost of \$400 per hour, for a total of \$16,200 in increased costs to the respondents of the information collection as a result of the amendment.

Thus, we estimate that the amendments to Form F-4 will increase the annual burden incurred by foreign private issuers in the preparation of Form F-4 from 24,497 hours to 24,511 hours. We further estimate that the amendments will increase the total annual burden associated with Form F-4 preparation to 98,042 burden hours, which will decrease the average number of burden hours per response to 1,442. We further estimate that the amendments will increase the total annual costs attributed to the preparation of Form F-4 by outside firms to \$29,412,600.

5. Other Amendments

The amendments to Securities Act Rule 405 and Exchange Act Rule 3b-4 will revise the definition of "foreign private issuer" to permit foreign issuers to test their status as "foreign private issuers" on the last business day of their second fiscal quarter, rather than continuously, as is currently the case. Our amendments will not change the amount of information required to be included in Securities Act registration statements or Exchange Act reports. Therefore, they will neither increase nor decrease the amount of burden hours necessary to prepare documents under either of those Acts for the purposes of the PRA.

In addition, we do not expect a change in the number of foreign private issuers who will be required to comply with Rule 13e-3, or the burden hours required to prepare

a Schedule 13E-3. With respect to domestic issuers, although we do not expect the number of domestic issuers affected by the amendments to Rule 13e-3 to decrease, we also expect that the Rule amendments will have a negligible effect on these issuers because the smaller reporting companies that will be affected by the amendments could voluntarily deregister and thus avoid any requirement to comply with that Rule.

V. Cost-Benefit Analysis

We are adopting amendments to our rules and forms relating to foreign private issuers that are intended to enhance the information that is available to investors, promote investor protection and facilitate cross-border capital flows.

A. Annual Test for Foreign Private Issuer Status

1. Expected Benefits

The amendments to the definition of “foreign private issuer” contained in Securities Act Rule 405 and Exchange Act Rule 3b-4 will permit reporting foreign issuers to assess their eligibility to use the special forms and rules available to foreign private issuers once a year on the last business day of their second fiscal quarter, rather than continuously, as is currently the case. This is the same date used to determine accelerated filer status under Exchange Act Rule 12b-2 and smaller reporting company status in Item 10(f)(2)(i) of Regulation S-K. As a result, these adopted amendments should simplify compliance with the Commission’s regulations by establishing one date that is used to ascertain an issuer’s status. Foreign issuers should benefit as a result of this simplification of their compliance requirements, which could make the U.S. markets more attractive to them as a source of capital and thereby enhance the competitiveness of the U.S. markets compared to other markets. The amendments are expected to reduce the

cost for foreign issuers of monitoring whether they qualify as foreign private issuers, including the time spent by management in tracking this information. If more foreign issuers are encouraged to remain in the U.S. markets and to make public offerings, investors should also benefit because this will enhance their ability to invest in the securities of foreign issuers that have been registered with the Commission, and that are thus subject to the disclosure requirements and investor protections provided by the federal securities laws.

Once a foreign issuer determines that it no longer qualifies as a foreign private issuer, the amendments will provide the issuer with at least six months' advance notice that it must comply with the domestic issuer forms and rules. This will provide these issuers with more time to comply with the reporting requirements applicable to domestic issuers under the Exchange Act, and to modify their information and processing systems to comply with the domestic reporting and registration regime. This includes the requirements to comply with the more extensive executive compensation disclosure requirements that apply to domestic issuers, as well as the proxy rules and Section 16 reporting requirements under the Exchange Act, which do not apply to foreign private issuers. Because the amendments will provide foreign issuers with advance notice when their status changes, more foreign issuers may be encouraged to remain in the U.S. markets, and investors should benefit from the increased opportunities to invest in foreign securities in the United States.

The amendments should mitigate a burden on foreign issuers by reducing the amount of time and the resources they expend to determine their status pursuant to the four-factor test set forth in the definition of "foreign private issuer." In this respect, the

amendments will be most beneficial to reporting foreign private issuers that have close to 50% of their outstanding voting securities held of record by U.S. residents, since they are most at risk of no longer qualifying as foreign private issuers. The current requirement that foreign issuers continuously test their status can result in confusion for investors if a foreign issuer needs to move between foreign and domestic reporting forms in the same fiscal year. For example, investors may be confused if a foreign issuer determines that it no longer qualifies as a foreign private issuer, and then switches from the foreign private issuer forms (Form 6-K and Form 20-F) to the domestic forms (e.g., quarterly reports on Form 10-Q) in the same fiscal year. In the case of a foreign issuer that loses its foreign private issuer status, the amendments will benefit U.S. investors by eliminating the confusion that could result if the foreign issuer switched forms in the middle of the year. However, the amendments may not be as helpful in reducing investor confusion with respect to foreign private issuers that have been reporting under the domestic regime and that will now be permitted to switch immediately to the foreign private issuer reporting regime upon the determination of their eligibility to do so.

At the same time, foreign issuers that previously did not qualify as foreign private issuers, but that determine that they will qualify as foreign private issuers, will be able to use the foreign private issuer rules and forms immediately under the amendments. This accommodation could encourage more foreign issuers to enter the U.S. markets and to make public offerings, and should benefit investors by enhancing their ability to invest in foreign securities that have been registered with the Commission.

2. Expected Costs

Investors could incur costs from the amendments if foreign issuers that have been reporting under the domestic reporting regime immediately switch over to the foreign private issuer forms once they qualify as foreign private issuers. Because foreign private issuers have different Exchange Act reporting obligations than domestic issuers and file on different forms, some investors may find it confusing if a foreign issuer that had been reporting under the domestic reporting regime switches reporting regimes mid-year. In addition, once a foreign issuer switches status from a domestic issuer to a foreign private issuer, investors will no longer have the benefit of the disclosures that were once provided by the foreign issuer on the domestic forms.

Currently, when a foreign issuer no longer qualifies as a foreign private issuer, it must immediately file quarterly reports on Form 10-Q and current reports on Form 8-K. It must also comply with the Commission's proxy rules and the Section 16 insider stock trading and short-swing profit recovery provisions. Under the amendments, when a foreign issuer determines that it no longer qualifies as a foreign issuer, for the six months following the test date, the foreign issuer will be permitted to continue relying on the rules applicable to foreign private issuers, such as the exemption from the proxy rules and Section 16. The foreign issuer will also be allowed to use the forms reserved for foreign private issuers, and to provide current reports on Form 6-K, rather than Exchange Act reports on Forms 10-Q and 8-K. During that period, investors will not have the benefit of the additional disclosures that the foreign issuer would otherwise be required to provide.

B. Amendments to Form 20-F

The amendments will make several changes to annual reports filed on Form 20-F. We are adopting amendments to accelerate the deadline for annual reports filed on Form

20-F by foreign private issuers. We are also adopting amendments to Form 20-F to require certain additional disclosures in annual reports on that Form. The adopted amendments will require issuers to disclose any changes in and disagreements with the registrant's certifying accountant in their Form 20-F annual reports, as well as in the Securities Act registration statements filed by registrants with the Commission. The amendments will also require disclosure of the fees and other charges paid by ADR holders to depositaries, and any payments made by depositaries to the foreign issuers whose securities underlie the ADRs. In addition, we are adopting amendments to Form 20-F to require disclosure in the annual report about the significant differences in the corporate governance practices of listed foreign private issuers compared to the corporate governance practices applicable to domestic companies under the relevant exchange's listing standards. Another adopted amendment will eliminate an instruction to Item 17 of Form 20-F that permits certain foreign private issuers to omit segment data from the U.S. GAAP financial statements.

In addition to these amendments, we are adopting amendments to eliminate the availability of the limited U.S. GAAP reconciliation option that is contained in Item 17 of Form 20-F for foreign private issuers that are only listing a class of securities on a U.S. national securities exchange, or only registering a class of equity securities under Section 12(g) of the Exchange Act, and not conducting a public offering. The amendments will apply not only to registration statements filed on Form 20-F in the circumstances described above, but also to annual reports filed on that Form. Related to this adopted amendment, we are adopting amendments to eliminate the Item 17 limited reconciliation option for certain non-capital raising offerings, such as offerings pursuant to dividend

reinvestment plans, offerings upon the conversion of securities, or offerings of investment grade securities. The Securities Act registration statement forms available to foreign private issuers (Form F-1, F-3 and F-4) are amended accordingly.

1. Expected Benefits

We anticipate that the adopted amendments to Form 20-F and the related amendments to the Securities Act registration statement forms available to foreign private issuers will provide a significant benefit to U.S. investors by providing them with enhanced disclosure that is more similar to the disclosures provided by domestic issuers, as well as disclosure on an accelerated basis that is more comparable to the timeframe within which domestic issuers file annual reports. Because of the Commission's integrated disclosure system, in which approximately the same information is provided in both the primary and secondary markets, the disclosure requirements contained in Form 20-F are often more comprehensive than the disclosures required by foreign securities regulators. For example, although many foreign regulators require audited financial statements and a form of management's report in annual reports, they do not require disclosure about executive compensation, description about the issuer's business, or a Management's Discussion and Analysis.¹⁴⁷ These additional disclosures are required in the Form 20-F annual reports that foreign private issuers file with the Commission.

Based on a sample of Form 20-F annual reports filed with the Commission in the past few years, we estimate that approximately one-third of all such filers currently file Form 20-F annual reports with us within 120 days after their fiscal year-end. The

¹⁴⁷ In Form 20-F, this disclosure item is contained in Item 5 (Operating and Financial Review and Prospects).

adopted amendment to accelerate the due date for Form 20-F annual reports will thus affect a majority of the foreign private issuers that file on Form 20-F. As a result of the accelerated deadline, investors may be better able to compare the performance of foreign and domestic issuers, since information about both will be provided on a more contemporaneous basis.

The adopted amendments to require additional disclosure in Form 20-F annual reports should help investors better compare foreign and domestic issuers. Currently, domestic issuers provide disclosure about changes in and disagreements with their certifying accountant on a Form 8-K current report. Listed domestic issuers are also required to comply with the corporate governance requirements of the U.S. exchange on which their securities are listed, although foreign private issuers whose securities are listed on the same exchange are exempt. The adopted amendments will provide investors with more comparable information about foreign private issuers regarding possible audit opinion shopping and corporate governance practices.

The adopted amendments to require disclosure about ADR fees and payments made by depositaries to the foreign issuers whose securities underlie the ADRs will make this information more readily available to investors. The placement of this disclosure in annual reports and Form 20-F registration statements should assist investors in determining the fees related to their investments in ADRs, including indirect costs that may be imposed on them if the depositary bank passes along the cost of its payments to foreign issuers to ADR holders. This should better enable investors to determine whether to invest in the ADRs of foreign issuers.

Several of the adopted amendments to Item 17 of Form 20-F may also help ensure that all foreign private issuers provide the same level of financial information, thereby facilitating a readier comparison across all issuers. This could, as a consequence, increase the attractiveness of these companies to investors. For example, the adopted amendments will eliminate the availability of the limited U.S. GAAP reconciliation option in Item 17 of Form 20-F for annual reports, registration statements on Form 20-F that do not involve a public offering, and Securities Act registration statements for certain non-capital raising transactions. Currently, most foreign private issuers that provide U.S. GAAP reconciliation disclose financial information according to Item 18 of Form 20-F. The adopted amendment will require that all foreign private issuers provide this level of disclosure. Another adopted amendment will eliminate the instruction to Item 17 of Form 20-F that permits certain foreign private issuers to omit segment data from their U.S. GAAP financial statements. Although we estimate that less than 10 foreign private issuers use this instruction, the instruction creates an anomaly whereby an issuer is permitted to provide a qualified U.S. GAAP audit report.

2. Expected Costs

Foreign private issuers could incur costs from the adopted amendments to Form 20-F, and the related amendments to the Securities Act registration statements available to foreign private issuers. In order to comply with the adopted accelerated due dates, many foreign private issuers will likely have to implement new systems for preparing information during the transition period to the new rules. They could be required to prepare annual reports on a dual track, one for the annual report filed with their home country regulator and the Form 20-F annual report. According to a sample of Form 20-F

annual reports filed with us, approximately one-third of all such filers file their Form 20-F annual reports within 120 days of their fiscal year-end. The cost of preparing filings on an accelerated basis may therefore vary among issuers. In addition, because of the Commission's integrated disclosure system, in which issuers provide approximately the same disclosures to both the primary and secondary markets, the disclosures required in Form 20-F are more substantial than the information required for annual reports in many foreign jurisdictions. The amendments could thus result in increased costs for foreign private issuers.

The amendments to provide additional disclosures in Form 20-F may also impose additional costs on foreign private issuers. With respect to the adopted disclosure regarding ADR fees and payments made by depositaries, we note that the information about ADR fees is provided in the deposit agreement and form of receipt that are attached as exhibits to the Form F-6 used to register the ADRs under the Securities Act, as well as in the Securities Act registration statement related to the offering of the securities underlying the ADRs. Because the information is already required by the Commission, albeit in filings that most retail investors are not familiar with, we do not believe that the requirement to include this information in the foreign private issuer's annual report on Form 20-F will involve significant compliance costs.

In addition, the information about the payments made by depositaries to foreign private issuers will provide important new information to investors about incentives used by depositaries that may encourage foreign private issuers to sell their securities in ADR form and with a particular depositary bank. If foreign issuers are reluctant to disclose this information, they could be discouraged from entering the U.S. markets, or, if they already

have established ADR facilities in the United States, from maintaining their ADR facilities. This could reduce the opportunities for investors to invest in foreign securities in the United States.

Foreign private issuers could incur some costs related to the proposal to include information about differences in corporate governance practices for listed foreign private issuers. However, the U.S. exchanges already require that this information be prepared. For foreign private issuers that are listed on U.S. exchanges, the amendment will not involve the collection of new information or preparation of new disclosure, but will simply require that the information also be made available in the annual report, where many investors may expect to see it. As a result, we believe the compliance costs of this amendment will be relatively small. Corporate governance information elicited by the amendment will not be required for issuers that are not listed on a U.S. exchange.

The amendments to eliminate the availability of the limited U.S. GAAP reconciliation contained in Item 17 of Form 20-F could result in costs for the affected foreign private issuers because they will now need to collect this information and to prepare additional disclosure in their Form 20-F annual reports. Some commenters expressed concern about the potential compliance burdens associated with the amendment to eliminate the availability of the Item 17 reconciliation, especially because they believe that other countries are gradually requiring footnote disclosures comparable in scope to U.S. GAAP and Regulation S-X. However, based on our review of Form 20-F annual report filings made with us for fiscal year 2006, we estimate that most foreign private issuers already provide financial information according to Item 18 of Form 20-F. In addition, we believe that a reconciliation that includes the footnote disclosures

required by U.S. GAAP and Regulation S-X can provide important additional information to investors. Some commenters also noted that foreign private issuers that provide the Item 17 reconciliation in their annual reports tend to be smaller companies, and that these companies would face significant burdens on their financial accounting and reporting system if they are required to provide the additional Item 18 disclosures and also comply with the accelerated due date for filing Form 20-F annual reports at the same time. To reduce the potential burdens on these issuers, we are providing a three-year transition period before the amendment takes effect, which will align the compliance date for the adopted amendments with the date on which many countries will be adopting IFRS.

The amendment to require segment data in U.S. GAAP financial statements could also result in costs for the affected foreign private issuers because of the need to collect this information and to prepare additional disclosure in their Form 20-F annual reports. However, we note that approximately five foreign private issuers will be affected by the requirement to provide segment data.

Foreign private issuers will also incur costs in connection with the amendment to require disclosure about any changes in and disagreements with the registrant's certifying accountant in Form 20-F annual reports and in Securities Act registration statements filed by registrants. In addition to the preparation costs of including this information in the Form 20-F, the foreign private issuer could also incur certain costs associated with the requirement to obtain a letter from its former accountant stating whether it agrees with the disclosure provided by the issuer in the document filed with the Commission.

Investors may incur costs to the extent that the amendments to Form 20-F discourage foreign private issuers from registering or maintaining their registration with the Commission. If foreign private issuers deregister or do not register their securities under the Securities Act or the Exchange Act, there may be reduced opportunities for investment by U.S. investors in the securities of foreign issuers. Although each of the adopted amendments will affect a different number of foreign private issuers, for purposes of the Paperwork Reduction Act, we estimate that these new disclosures will result in an increased paperwork burden of 25 hours for all respondents and \$4,606,800 for Form 20-F.

C. Exchange Act Rule 13e-3

1. Expected Benefits

We believe that the amendment to Exchange Act Rule 13e-3, which pertains to going private transactions by reporting issuers or their affiliates, to reflect the recently adopted rules pertaining to the ability of foreign private issuers to terminate their Exchange Act registration and reporting obligations will benefit investors. By amending this Rule, the test for determining when a domestic issuer undertakes a going private transaction will also change. The amendment will help ensure that Rule 13e-3 covered the types of transactions that were intended when the Commission first adopted the Rule. Investors will benefit because more foreign private issuers are expected to be able to terminate their registration and reporting obligations under the Exchange Act as a result of these recently adopted amendments. If more foreign private issuers decide to conduct going private transactions to terminate their registration or reporting obligations, the amendment to Rule 13e-3 will require more foreign private issuers to comply with that

Rule and to file a Schedule 13E-3, as required by that Rule. Similarly, modernizing Rule 13e-3 to apply equally to domestic issuers when a transaction identified in the Rule results in the issuer becoming eligible to terminate or suspend its reporting obligations is consistent with the policy purpose supporting the Rule's initial adoption. Investors will benefit from the additional disclosures that will be provided.

2. Expected Costs

Foreign private issuers and domestic issuers may incur additional costs in connection with the adopted amendment to Rule 13e-3(a)(3)(ii)(A) if Rule 13e-3 is more easily triggered because of the reference to the new termination of registration and reporting requirements that apply to foreign private issuers. These costs will include, for example, the cost of preparing, filing and disseminating a Schedule 13E-3, as well as any required amendments to that Schedule, with the Commission.

VI. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

When engaging in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, Section 2(b) of the Securities Act¹⁴⁸ and Section 3(f) of the Exchange Act¹⁴⁹ require us to consider whether the action will promote efficiency, competition and capital formation. When adopting rules under the Exchange Act, Section 23(a)(2) of the Exchange Act¹⁵⁰ requires us to consider the impact that any new rule will have on competition. In addition, Section 23(a)(2)

¹⁴⁸ 15 U.S.C. 77b(b).

¹⁴⁹ 15 U.S.C. 78c(f).

¹⁵⁰ 15 U.S.C. 78w(a)(2).

prohibits us from adopting any rule that will impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In the Proposing Release, we considered the proposed amendments in light of the standards set forth in the above referenced statutory sections. We solicited comment on whether, if adopted, the proposed rule amendments would result in any anti-competitive effect or would promote efficiency, competition and capital formation. In addition, we encouraged commenters to provide empirical data or other facts to support their views on any anti-competitive effects or any burdens on efficiency, competition or capital formation that may result from adoption of the proposed amendments.

We did not receive any empirical data in this regard concerning the proposed amendments. However, with respect to our amendment to require more disclosure about payments made by depositaries in connection with ADR facilities, one commenter suggested that disclosure of the aggregate amount of incentive payments made by depositaries to foreign private issuers whose securities underlie the ADRs, rather than disclosure about each payment, would avoid undermining competition among depositaries. We believe that information about the types of payments made by depositaries to issuers would be useful to investors because it would enable them to understand the purpose of the payments, and that the disclosure of that information on an aggregate basis would undercut the value of the disclosure. Accordingly, we continue to believe the new rules will contribute to efficiency, competition and capital formation.

The purpose of the amendments to Securities Act Rule 405 and Exchange Act Rule 3b-4, which will permit foreign issuers to assess their eligibility to use the special forms and rules available to foreign private issuers once a year, are expected to facilitate

capital formation by foreign issuers in the U.S. capital markets. The adopted amendments should reduce regulatory compliance burdens for foreign private issuers that rely on the adopted amendments because of the reduction in monitoring costs. Reduced compliance burdens are expected to lower the cost of raising capital in the United States for those issuers. In addition, the competitiveness of the U.S. markets may be enhanced because the reduced monitoring costs may make the markets more attractive to them. The reduction in compliance burdens may also promote efficiency because foreign issuers will no longer need to continuously test their qualification as foreign private issuers.

The amendments to Form 20-F will accelerate the reporting deadline for annual reports on Form 20-F. The amendments to Exchange Act Rules 13a-10 and 15d-10, which pertain to transition reports filed on Form 20-F, and the amendments to Exchange Act Rule 15d-2, which pertain to special financial reports filed by foreign private issuers, will conform the due dates for these reports with the new due date for annual reports on Form 20-F. Several of the adopted amendments to Form 20-F will require more disclosure in the annual reports filed by foreign private issuers. The disclosures required will include information about any changes in and disagreements with the registrant's certifying accountant, ADR fees and payments made by depositaries to the foreign issuers whose securities underlie the ADR, and information about corporate governance. In addition, the amendments will eliminate the availability of the limited U.S. GAAP reconciliation option contained in Item 17 of Form 20-F, and will eliminate an instruction to Item 17 of that Form, which permits certain foreign private issuers to omit segment data from their U.S. GAAP financial statements.

These amendments will create a more level playing field between foreign private issuers and U.S. issuers because they will require disclosures from foreign private issuers that are currently required of domestic issuers. Foreign private issuers that file annual reports on Form 20-F will also be required to provide these annual reports in a timeframe that is closer to the annual report due dates imposed on domestic issuers. As a result, the amendments should put foreign private issuers and domestic issuers in a more similar position with respect to their compliance obligations under the Commission's regulations, although the incremental costs of complying with these amendments may also create a disincentive for some foreign private issuers to enter the U.S. capital markets.

The amendments may also facilitate capital formation by foreign companies in the U.S. capital markets by enabling investors to obtain more information about these companies in a timeframe that will make the information useful to them and in a manner that will allow for greater comparability to domestic issuers. This could affect the allocation of capital between foreign private issuers and domestic issuers.

The amendments to Exchange Act Rule 13e-3, which reflect the newly adopted rules pertaining to the termination and deregistration of the reporting obligations of foreign private issuers, could require more foreign private issuers and domestic issuers to comply with that Rule and to file a Schedule 13E-3 as a result if more issuers decide to conduct going private transactions to terminate their registration and reporting obligations. This additional compliance obligation could create a disincentive for foreign private issuers to enter the U.S. markets.

VII. Regulatory Flexibility Act Certification

Under Section 605(b) of the Regulatory Flexibility Act,¹⁵¹ the Commission certified that the proposed amendments to Rule 405 of Regulation C, Form F-1, Form F-3, and Form F-4 under the Securities Act, and Form 20-F, Rule 3b-4, Rule 13a-10, Rule 13e-3, and Rule 15d-10 under the Exchange Act contained in this release, if adopted, will not have a significant economic impact on a substantial number of small entities. It included this certification in Part VIII of the Proposing Release. While the Commission encouraged written comments regarding this certification, no commenters responded to this request.

VIII. Statutory Authority and Text of Final Amendments

We are adopting amendments to the rules and forms pursuant to the authority set forth in Sections 6, 7, 10 and 19 of the Securities Act, as amended, and Sections 3, 12, 13, 15, 23 and 36 of the Exchange Act, as amended.

List of Subjects

17 CFR Parts 230, 239, 240 and 249

Reporting and recordkeeping requirements, Securities.

Text of the Amendments

For the reasons set out in the preamble, the Commission is amending Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 230 – GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read in part as follows:

¹⁵¹ 5 U.S.C. 605(b).

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

2. Section 230.405 is amended by revising the definition of "foreign private issuer" to read as follows:

§230.405 Definition of terms.

* * * * *

Foreign private issuer. (1) The term foreign private issuer means any foreign issuer other than a foreign government except an issuer meeting the following conditions as of the last business day of its most recently completed second fiscal quarter:

(i) More than 50 percent of the outstanding voting securities of such issuer are directly or indirectly owned of record by residents of the United States; and

(ii) Any of the following:

(A) The majority of the executive officers or directors are United States citizens or residents;

(B) More than 50 percent of the assets of the issuer are located in the United States; or

(C) The business of the issuer is administered principally in the United States.

(2) In the case of a new registrant with the Commission, the determination of whether an issuer is a foreign private issuer shall be made as of a date within 30 days prior to the issuer's filing of an initial registration statement under either the Act or the Securities Exchange Act of 1934.

(3) Once an issuer qualifies as a foreign private issuer, it will immediately be able to use the forms and rules designated for foreign private issuers until it fails to qualify for this status at the end of its most recently completed second fiscal quarter. An issuer's determination that it fails to qualify as a foreign private issuer governs its eligibility to use the forms and rules designated for foreign private issuers beginning on the first day of the fiscal year following the determination date. Once an issuer fails to qualify for foreign private issuer status, it will remain unqualified unless it meets the requirements for foreign private issuer status as of the last business day of its second fiscal quarter.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

3. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

4. Form F-1 (referenced in §239.31) Part I is amended by:

- a. Revising paragraph (c) of Item 4;
- b. Adding paragraph (d) to Item 4;and
- c. Revising the Instruction to Item 4A.

The revisions and addition read as follows:

[Note: The text of Form F-1 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.]

FORM F-1

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

* * * * *

PART I

* * * * *

Item 4. Information with Respect to the Registrant and the Offering.

Furnish the following information with respect to the Registrant.

* * * * *

(c) For the registrant's fiscal years ending before December 15, 2011, information required by Item 17 of Form 20-F may be furnished in lieu of the information specified by Item 18 thereof if the only securities being registered are non-convertible securities that are "investment grade securities," as defined below, or the only securities to be registered are to be offered:

1. upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted on a pro rata basis to all existing security holders of the class of securities to which the rights attach and there is no standby underwriting in the United States or similar arrangement; or

2. pursuant to a dividend or interest reinvestment plan; or

3. upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer.

(d) For the registrant's fiscal years ending on or after December 15, 2009, information required by Item 16F of Form 20-F.

* * * * *

Item 4A. Material Changes.

* * * * *

Instruction.

For the registrant's fiscal years ending before December 15, 2011, financial statements or information required to be furnished by this Item shall be reconciled pursuant to either Item 17 or Item 18 of Form 20-F, whichever is applicable to the primary financial statements. For the registrant's fiscal years ending on or after December 15, 2011, financial statements or information required to be furnished by this Item shall be reconciled pursuant to Item 18 of Form 20-F.

5. Form F-3 (referenced in §239.33) is amended by:

- a. Revising General Instruction I.B.2.;
- b. Revising General Instruction I.B.3.;
- c. Revising General Instruction I.B.4.; and
- d. Revising the Instruction to Item 5.

The revisions read as follows:

[Note: The text of Form F-3 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.]

FORM F-3**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

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GENERAL INSTRUCTIONS

I. * * *

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B. Transaction Requirements

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2. Primary Offerings of Non-convertible Investment Grade Securities. Non-convertible securities to be offered for cash if such securities are "investment grade securities." A non-convertible security is an "investment grade security" if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Exchange Act (§240.15c3-1(c)(2)(vi)(F) of this chapter)) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade. For the registrant's fiscal years ending before December 15, 2011, in the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20-F. For the registrant's fiscal years ending on or after December 15, 2011, in the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement must comply with Item 18 of Form 20-F.

3. Transactions Involving Secondary Offerings. Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities. In the case of such securities, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20-F for a registrant's fiscal years ending before December 15, 2011; and for the registrant's fiscal years ending on or after December 15, 2011, the financial statements

included in this registration statement must comply with Item 18 of Form 20-F. In addition, Form F-3 may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction C to Form S-8 (§239.16b of this chapter).

In the case of such securities, the financial statements included in this registration statement must comply with Item 18 of Form 20-F (§249.220f of this chapter).

4. Rights Offerings, Dividend or Interest Reinvestment Plans, and Conversions or Warrants. Securities to be offered: (a) upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted pro rata to all existing security holders of the class of securities to which the rights attach; or (b) pursuant to a dividend or interest reinvestment plan; or (c) upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer. In the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20-F for the registrant's fiscal years ending before December 15, 2011; and for the registrant's fiscal years ending on or after December 15, 2011, the financial statements included in this registration statement must comply with Item 18 of Form 20-F. The registration of securities to be offered or sold in a standby underwriting in the United States or similar arrangement is not permitted pursuant to this paragraph. See paragraphs B.1., B.2., and B.3. of this Instruction.

* * * * *

Item 5. Material Changes.

* * * * *

Instructions.

1. For a registrant's fiscal years ending before December 15, 2011, financial statements or information required to be furnished by this Item shall be reconciled pursuant to either Item 17 or 18 of Form 20-F, whichever is applicable to the primary financial statements. For a registrant's fiscal years ending on or after December 15, 2011, financial statements or information required to be furnished by this Item shall be reconciled pursuant to Item 18 of Form 20-F.

2. Material changes to be disclosed pursuant to Item 5(a) include changes in and disagreements with registrant's certifying accountant. For the registrant's fiscal years ending on or after December 15, 2009, disclosure pursuant to Item 16F of Form 20-F should be provided as of the date of the registration statement or prospectus.

* * * * *

6. Form F-4 (referenced in §239.34) is amended by:
- a. Revising Instruction 1 to Item 11;
 - b. Revising Item 12(b)(2) introductory text;
 - c. In Item 12(b)(3)(vi)(B), removing the period and adding in its place a semicolon;
 - d. Revising Item 12(b)(3)(vii);
 - e. In Item 12(b)(3)(viii), removing the period and adding in its place “; and” and adding Item 12(b)(3)(ix);
 - f. Revising Instruction 1 to Item 13;
 - g. Revising Item 14(h);
 - h. In Item 14(i), removing the period and adding in its place “; and”;

- i. Adding Item 14(j); and
- j. In Item 17(b)(5)(ii), removing the period and adding in its place “; and” and adding Item 17(b)(6).

The revisions and additions read as follows:

[Note: The text of Form F-4 does not, and the amendments thereto will not, appear in the Code of Federal Regulations.]

FORM F-4

REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

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Item 11. Incorporation of Certain Information by Reference.

* * * * *

Instructions

1. For the registrant's fiscal years ending before December 15, 2011, all annual reports or registration statements incorporated by reference pursuant to Item 11 of this Form shall contain financial statements that comply with Item 18 of Form 20-F, except that financial statements of the registrants may comply with Item 17 of Form 20-F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F-3. For the registrant's fiscal years ending on or after December 15, 2011, all annual reports or registration statements incorporated by reference pursuant to Item 11 of this Form shall contain financial statements that comply with Item 18 of Form 20-F.

* * * * *

Item 12. Information With Respect to F-3 Registrants.

(b) ***

(2) For the registrant's fiscal years ending before December 15, 2011, include financial statements and information as required by Item 18 of Form 20-F, except that financial statements of the registrant may comply with Item 17 of Form 20-F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F-3. For the registrant's fiscal years ending on or after December 15, 2011, include financial statements and information as required by Item 18 of Form 20-F. In addition, provide:

(3) ***

(vii) For the registrant's fiscal years ending before December 15, 2011, financial statements required by Item 18 of Form 20-F, except that financial statements of the registrant may comply with Item 17 of Form 20-F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F-3, and financial information required by Rule 3-05 and Article 11 of Regulation S-X with respect to transactions other than that pursuant to which the securities being registered are to be issued. (Schedules required under Regulation S-X shall be filed as "Financial Statement Schedules" pursuant to Item 21 of this Form, but need not be provided with respect to the company being acquired if information is being furnished pursuant to Item 17(a) of this Form.) For the registrant's fiscal years ending on or after December 15, 2011, financial statements required by Item 18 of Form 20-F, and financial information required by Rule 3-05 and Article 11 of Regulation S-X with respect to

transactions other than that pursuant to which the securities being registered are to be issued;

* * * * *

(ix) For the registrant's fiscal years ending on or after December 15, 2009, Item 16F of Form 20-F, change in registrant's certifying accountant.

Item 13. Incorporation of Certain Information by Reference.

* * * * *

Instructions

1. For the registrant's fiscal years ending before December 15, 2011, all annual reports incorporated by reference pursuant to Item 13 of this Form shall contain financial statements that comply with Item 18 of Form 20-F, except that financial statements of the registrants may comply with Item 17 of Form 20-F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F-3. For the registrant's fiscal years ending on or after December 15, 2011, all annual reports incorporated by reference pursuant to Item 13 of this Form shall contain financial statements that comply with Item 18 of Form 20-F.

* * * * *

Item 14. Information With Respect to Foreign Registrants Other Than F-3 Registrants.

* * * * *

(h) For the registrant's fiscal years ending before December 15, 2011, financial statements required by Item 18 of Form 20-F, except that financial statements of the registrants may comply with Item 17 of Form 20-F if the only securities being registered are investment grade securities as defined in the General Instructions to Form

F-1; and for the registrant's fiscal years ending on or after December 15, 2011, financial statements required by Item 18 of Form 20-F. In addition, financial information required by Rule 3-05 and Article 11 of Regulation S-X with respect to transactions other than that pursuant to which the securities being registered are to be issued. (Schedules required by Regulation S-X shall be filed as "Financial Statement Schedules" pursuant to Item 21 of this Form.);

* * * * *

(j) For the registrant's fiscal years ending on or after December 15, 2009, Item 16F of Form 20-F, change in registrant's certifying accountant.

* * * * *

Item 17. Information With Respect to Foreign Companies Other Than F-3 Companies.

* * * * *

(b) * * *

(6) For the registrant's fiscal years ending on or after December 15, 2009, Item 16F of Form 20-F, change in registrant's certifying accountant.

* * * * *

PART 240 – GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

7. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p,

78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

8. Section 240.3b-4 is amended by:

- a. Revising paragraph (c) introductory text;
- b. Adding paragraphs (d) and (e); and
- c. Removing the authority citations following the section.

The revision and addition read as follows:

§240.3b-4 Definition of “foreign government,” “foreign issuer” and “foreign private issuer”.

* * * * *

(c) The term foreign private issuer means any foreign issuer other than a foreign government except for an issuer meeting the following conditions as of the last business day of its most recently completed second fiscal quarter:

* * * * *

(d) Notwithstanding paragraph (c) of this section, in the case of a new registrant with the Commission, the determination of whether an issuer is a foreign private issuer will be made as of a date within 30 days prior to the issuer’s filing of an initial registration statement under either the Act or the Securities Act of 1933.

(e) Once an issuer qualifies as a foreign private issuer, it will immediately be able to use the forms and rules designated for foreign private issuers until it fails to qualify for this status at the end of its most recently completed second fiscal quarter. An issuer’s determination that it fails to qualify as a foreign private issuer governs its eligibility to use the forms and rules designated for foreign private issuers beginning on the first day of

the fiscal year following the determination date. Once an issuer fails to qualify for foreign private issuer status, it will remain unqualified unless it meets the requirements for foreign private issuer status as of the last business day of its second fiscal quarter.

9. Section 240.13a-10 is amended by revising paragraph (g)(3) to read as follows:

§240.13a-10 Transition reports.

* * * * *

(g) * * *

(3) The report for the transition period shall be filed on Form 20-F responding to all items to which such issuer is required to respond when Form 20-F is used as an annual report. The financial statements for the transition period filed therewith shall be audited. The report shall be filed within the following period:

(i) Within six months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later, for new fiscal years ending before December 15, 2011; and

(ii) Within four months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later, for new fiscal years ending on or after December 15, 2011.

* * * * *

10. Section 240.13e-3 is amended by revising paragraph (a)(3)(ii)(A) to read as follows:

§240.13e-3 Going private transactions by certain issuers or their affiliates.

(a) * * *

(3) * * *

(ii) * * *

(A) Causing any class of equity securities of the issuer which is subject to section 12(g) or section 15(d) of the Act to become eligible for termination of registration under Rule 12g-4 (§240.12g-4) or Rule 12h-6 (§240.12h-6), or causing the reporting obligations with respect to such class to become eligible for termination under Rule 12h-6 (§240.12h-6); or suspension under Rule 12h-3 (§240.12h-3) or section 15(d); or

* * * * *

11. Section 240.15d-2 is amended by revising paragraph (a) and removing the authority citations following the section to read as follows:

§240.15d-2 Special financial report.

(a) If the registration statement under the Securities Act of 1933 did not contain certified financial statements for the registrant's last full fiscal year (or for the life of the registrant if less than a full fiscal year) preceding the fiscal year in which the registration statement became effective, the registrant shall, within 90 days after the effective date of the registration statement, file a special report furnishing certified financial statements for such last full fiscal year or other period, as the case may be, meeting the requirements of the form appropriate for annual reports of the registrant. If the registrant is a foreign private issuer as defined in §230.405 of this chapter, then the special financial report shall be filed on the appropriate form for annual reports of the registrant and shall be filed within the following period:

(i) By the later of 90 days after the date on which the registration statement became effective, or six months following the end of the registrant's full fiscal year, for fiscal years ending before December 15, 2011; and

(ii) By the later of 90 days after the date on which the registration statement became effective, or four months following the end of the registrant's latest full fiscal year, for fiscal years ending on or after December 15, 2011.

* * * * *

12. Section 240.15d-10 is amended by revising paragraph (g)(3) to read as follows:

§240.15d-10 Transition reports.

* * * * *

(g) * * *

(3) The report for the transition period shall be filed on Form 20-F responding to all items to which such issuer is required to respond when Form 20-F is used as an annual report. The financial statements for the transition period filed therewith shall be audited. The report shall be filed within the following period:

(i) Within six months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later, for new fiscal years ending before December 15, 2011; and

(ii) Within four months after either the close of the transition period or the date on which the issuer made the determination to change the fiscal closing date, whichever is later, for new fiscal years ending on or after December 15, 2011.

* * * * *

PART 249 - FORMS, SECURITIES EXCHANGE ACT OF 1934

13. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a et seq. and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

14. Form 20-F (referenced in §249.220f) is amended by:

- a. Revising General Instructions A.(b) and E.(c);
- b. Revising Item 12.D introductory text, Item 12.D.3, and Instruction 1 to Item 12;
- c. Revising Item 12.D. to revise the phrase "American depositary receipts" to read "American Depositary Receipts" and adding Item 12.D.4;
- d. Adding Item 16F and Instructions to Item 16F;
- e. Adding Item 16G and an Instruction to Item 16G;
- f. Revising Instruction 3 to Item 17; and
- g. Revising Instruction 1 to Item 18.

The additions and revisions read as follows:

[Note: The text of Form 20-F does not, and the amendments thereto will not, appear in the Code of Federal Regulations.]

FORM 20-F

* * * * *

GENERAL INSTRUCTIONS**A. Who May Use Form 20-F and When It Must Be Filed.**

* * * * *

(b) A foreign private issuer must file its annual report on this Form within the following period:

(1) Within six months after the end of the fiscal year covered by the report for fiscal years ending before December 15, 2011; and

(2) Within four months after the end of the fiscal year covered by the report for fiscal years ending on or after December 15, 2011.

* * * * *

E. Which Items to Respond to in Registration Statements and Annual Reports.

* * * * *

(c) Financial Statements.

(1) For an issuer's fiscal years ending before December 15, 2011, an Exchange Act registration statement or annual report filed on this Form must contain the financial statements and related information specified in Item 17 of this Form. We encourage you to provide the financial statements and related information specified in Item 18 of this Form in lieu of Item 17, but the Item 18 statements and information are not required. In certain circumstances, Forms F-1, F-3 or F-4 for the registration of securities under the Securities Act require that you provide the financial statements and related information specified in Item 18 in your annual report on Form 20-F. Consult those Securities Act forms for the specific requirements and consider the potential advantages of complying with Item 18 instead of Item 17 of this Form. Note that Items 17 and 18 may require you to file financial statements of other entities in certain circumstances. These circumstances are described in Regulation S-X.

(2) For the issuer's fiscal years ending on or after December 15, 2011, an Exchange Act registration statement or annual report filed on this Form must contain the financial statements and related information specified in Item 18 of this Form. Note that Items 17 and 18 may require you to file the financial statements of other entities in certain circumstances. These circumstances are described in Regulation S-X.

(3) The financial statements must be audited in accordance with U.S. generally accepted auditing standards, and the auditor must comply with the U.S. standards for auditor independence. If you have any questions about these requirements, contact the Office of Chief Accountant in the Division of Corporation Finance at (202) 551-3400.

* * * * *

Item 12. Description of Securities Other than Equity Securities.

* * * * *

D. American Depositary Shares. If you are registering securities represented by American Depositary Receipts in a sponsored facility, provide the following information.

* * * * *

3. Describe all fees and charges that a holder of American Depositary Receipts may have to pay, either directly or indirectly. Indicate the type of service, the amount of the fees or charges and to whom the fees or charges are paid. In particular, provide information about any fees or charges in connection with (a) depositing or substituting the underlying shares; (b) receiving or distributing dividends; (c) selling or exercising rights; (d) withdrawing an underlying security; (e) transferring, splitting or grouping

receipts; and (f) general depositary services, particularly those charged on an annual basis. Provide information about the depositary's right, if any, to collect fees and charges by offsetting them against dividends received and deposited securities.

4. In addition, describe all fees and other direct and indirect payments made by the depositary to the foreign issuer of the deposited securities.

Instructions to Item 12:

1. You do not need to provide the information called for by this Item if you are using the form as an annual report for your fiscal years ending before December 15, 2009. For your fiscal years ending on or after December 15, 2009, except for Item 12.D.3. and Item 12.D.4, you do not need to provide the information called for by this Item if you are using this form as an annual report.

* * * * *

Item 16F. Change in Registrant's Certifying Accountant.

(a)(1) If during the registrant's two most recent fiscal years or any subsequent interim period, an independent accountant who was previously engaged as the principal accountant to audit the registrant's financial statements, or an independent accountant who was previously engaged to audit a significant subsidiary and on whom the principal accountant expressed reliance in its report, has resigned (or indicated it has declined to stand for re-election after the completion of the current audit) or was dismissed, then the registrant shall:

(i) State whether the former accountant resigned, declined to stand for re-election or was dismissed and the date thereof.

(ii) State whether the principal accountant's report on the financial statements for either of the past two years contained an adverse opinion or a disclaimer of opinion, or was qualified or modified as to uncertainty, audit scope, or accounting principles; and also describe the nature of each such adverse opinion, disclaimer of opinion, modification, or qualification.

(iii) State whether the decision to change accountants was recommended or approved by:

(A) Any audit or similar committee of the board of directors, if the issuer has such a committee; or

(B) The board of directors, if the issuer has no such committee.

(iv) State whether during the registrant's two most recent fiscal years and any subsequent interim period preceding such resignation, declination or dismissal there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreement(s), if not resolved to the satisfaction of the former accountant, would have caused it to make reference to the subject matter of the disagreement(s) in connection with its report. The disagreements required to be reported in response to this Item include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this Item are those that occur at the decision-making level, i.e., between personnel of the registrant responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report. Also:

(A) Describe each such disagreement;

(B) State whether any audit or similar committee of the board of directors, or the board of directors, discussed the subject matter of each of such disagreements with the former accountant; and

(C) State whether the registrant has authorized the former accountant to respond fully to the inquiries of the successor accountant concerning the subject matter of each of such disagreements and, if not, describe the nature of any limitation thereon and the reason therefore.

(v) Provide the information required by paragraph (a)(1)(iv) of this Item for each of the kinds of events (even though the registrant and the former accountant did not express a difference of opinion regarding the event) listed in paragraphs (a)(1)(v) (A) through (D) of this Item, that occurred within the registrant's two most recent fiscal years and any subsequent interim period preceding the former accountant's resignation, declination to stand for re-election, or dismissal ("reportable events"). If the event led to a disagreement or difference of opinion, then the event should be reported as a disagreement under paragraph (a)(1)(iv) of this Item and need not be repeated under this paragraph.

(A) The accountant's having advised the registrant that the internal controls necessary for the registrant to develop reliable financial statements do not exist;

(B) The accountant's having advised the registrant that information has come to the accountant's attention that has led it to no longer be able to rely on management's representations, or that has made it unwilling to be associated with the financial statements prepared by management;

(C)(1) The accountant's having advised the registrant of the need to expand significantly the scope of its audit, or that information has come to the accountant's attention during the time period covered by Item 16F(a)(1)(iv), that if further investigated may:

(i) Materially impact the fairness or reliability of either: a previously issued audit report or the underlying financial statements; or the financial statements issued or to be issued covering the fiscal period(s) subsequent to the date of the most recent financial statements covered by an audit report (including information that may prevent it from rendering an unqualified audit report on those financial statements); or

(ii) Cause it to be unwilling to rely on management's representations or be associated with the registrant's financial statements; and

(2) Due to the accountant's resignation (due to audit scope limitations or otherwise) or dismissal, or for any other reason, the accountant did not so expand the scope of its audit or conduct such further investigation; or

(D)(1) The accountant's having advised the registrant that information has come to the accountant's attention that it has concluded materially impacts the fairness or reliability of either (i) a previously issued audit report or the underlying financial statements, or (ii) the financial statements issued or to be issued covering the fiscal period(s) subsequent to the date of the most recent financial statements covered by an audit report (including information that, unless resolved to the accountant's satisfaction, would prevent it from rendering an unqualified audit report on those financial statements); and

(2) Due to the accountant's resignation, dismissal or declination to stand for re-election, or for any other reason, the issue has not been resolved to the accountant's satisfaction prior to its resignation, dismissal or declination to stand for re-election.

(2) If during the registrant's two most recent fiscal years or any subsequent interim period, a new independent accountant has been engaged as either the principal accountant to audit the registrant's financial statements, or as an independent accountant to audit a significant subsidiary and on whom the principal accountant is expected to express reliance in its report, then the registrant shall identify the newly engaged accountant and indicate the date of such accountant's engagement. In addition, if during the registrant's two most recent fiscal years, and any subsequent interim period prior to engaging that accountant, the registrant (or someone on its behalf) consulted the newly engaged accountant regarding:

(i) Either: The application of accounting principles to a specified transaction, either completed or proposed; or the type of audit opinion that might be rendered on the registrant's financial statements, and either a written report was provided to the registrant or oral advice was provided that the new accountant concluded was an important factor considered by the registrant in reaching a decision as to the accounting, auditing or financial reporting issue; or

(ii) Any matter that was either the subject of a disagreement (as defined in Item 16F(a)(1)(iv) and the related instructions to this Item) or a reportable event (as described in Item 16F(a)(1)(v)), then the registrant shall:

(A) So state and identify the issues that were the subjects of those consultations;

(B) Briefly describe the views of the newly engaged accountant as expressed orally or in writing to the registrant on each such issue and, if written views were received by the registrant, file them as an exhibit to the annual report requiring compliance with this Item 16F(a);

(C) State whether the former accountant was consulted by the registrant regarding any such issues, and if so, provide a summary of the former accountant's views; and

(D) Request the newly engaged accountant to review the disclosure required by this Item 16F(a) before it is filed with the Commission and provide the new accountant the opportunity to furnish the registrant with a letter addressed to the Commission containing any new information, clarification of the registrant's expression of its views, or the respects in which it does not agree with the statements made by the registrant in response to Item 16F(a). The registrant shall file any such letter as an exhibit to the annual report containing the disclosure required by this Item.

(3) The registrant shall provide the former accountant with a copy of the disclosures it is making in response to this Item 16F(a). The registrant shall request the former accountant to furnish the registrant with a letter addressed to the Commission stating whether it agrees with the statements made by the registrant in response to this Item 16F(a) and, if not, stating the respects in which it does not agree. The registrant shall file the former accountant's letter as an exhibit to the annual report or registration statement containing this disclosure. If the change in accountants occurred less than 30 days prior to the filing of the annual report or registration statement and the former accountant's letter is unavailable at the time of the filing, then the registrant shall request the former accountant to provide the letter as promptly as possible so that the registrant

can file the letter with the Commission within ten business days after the filing of the annual report or registration statement. In either case, the former accountant may provide the registrant with an interim letter highlighting specific areas of concern and indicating that a more detailed letter will be forthcoming. If not filed with the annual report or registration statement containing the registrant's disclosure under this Item 16F(a), then the interim letter, if any, shall be filed by the registrant by amendment promptly.

(b) If: (1) In connection with a change in accountants subject to paragraph (a) of this Item 16F, there was any disagreement of the type described in paragraph (a)(1)(iv) or any reportable event as described in paragraph (a)(1)(v) of this Item;

(2) During the fiscal year in which the change in accountants took place or during the subsequent fiscal year, there have been any transactions or events similar to those which involved such disagreement or reportable event; and

(3) Such transactions or events were material and were accounted for or disclosed in a manner different from that which the former accountants apparently would have concluded was required, the registrant shall state the existence and nature of the disagreement or reportable event and also state the effect on the financial statements if the method had been followed which the former accountants apparently would have concluded was required. These disclosures need not be made if the method asserted by the former accountants ceases to be generally accepted because of authoritative standards or interpretations subsequently issued.

Instructions to Item 16F:

1. Item 16F applies to all annual reports and registration statements filed on Form 20-F for the issuer's fiscal years ending on or after December 15, 2009.

2. The disclosure called for by paragraph (a) of this Item need not be provided if it has been previously reported, as that term is defined in Rule 12b-2 under the Exchange Act (§240.12b-2 of this chapter). The disclosure called for by paragraph (b) of this Item must be furnished, where required, notwithstanding any prior disclosure about accountant changes or disagreements.

3. The information required by paragraph (a) of this Item need not be provided for a company being acquired by the registrant in a transaction being registered on Form F-4 that is not subject to the filing requirements of either Section 13(a) or 15(d) of the Exchange Act.

4. The term "disagreements" as used in this Item shall be interpreted broadly to include any difference of opinion concerning any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure which (if not resolved to the satisfaction of the former accountant) would have caused it to make reference to the subject matter of the disagreement in connection with its report. It is not necessary for there to have been an argument to have had a disagreement, merely a difference of opinion. For purposes of this Item, however, the term "disagreements" does not include initial differences of opinion based on incomplete facts or preliminary information that were later resolved to the former accountant's satisfaction by, and providing the registrant and the accountant do not continue to have a difference of opinion upon, obtaining additional relevant facts or information.

5. In determining whether any disagreement or reportable event has occurred, an oral communication from the engagement partner or another person responsible for rendering the accounting firm's opinion (or his/her designee) will generally suffice as the

accountant advising the registrant of a reportable event or as a statement of a disagreement at the "decision-making level" within the accounting firm and require disclosure under this Item.

6. The term "board of directors" as used in this Item 16F has the meaning set forth in §240.10A-3(e)(2).

Item 16G. Corporate Governance.

If the registrant's securities are listed on a national securities exchange, provide a concise summary of any significant ways in which its corporate governance practices differ from those followed by domestic companies under the listing standards of that exchange.

Instruction to Item 16G:

A registrant must provide the information required in Item 16G beginning with the annual report that its files for its first fiscal year ending on or after December 15, 2008. Item 16G only applies to annual reports, and not to registration statements on Form 20-F. Registrants should provide a brief and general discussion, rather than a detailed, item-by-item analysis.

Item 17. Financial Statements.

* * * * *

Instructions:

* * * * *

3. For its fiscal years ending before December 15, 2009, if the registrant presents its financial statements according to generally accepted accounting principles in the United States except for SFAS No. 131 and if it furnishes the information relating to

categories of activity required by Items 4.B.1. and 4.B.2. of this Form, then such financial statements will be considered to comply with this Item, even if the auditor's report is qualified for noncompliance with SFAS No. 131. Such report and financial statements, however, must comply with all other applicable requirements.

Item 18. Financial Statements.

Instruction to Item 18:

1. For fiscal years ending before December 15, 2009, all of the instructions to Item 17 also apply to this Item, except Instruction 3 to Item 17, which does not apply. For all fiscal years ending on or after December 15, 2009, all of the instructions to Item 17 also apply to this Item.

By the Commission.



Florence E. Harmon
Acting Secretary

Dated: September 23, 2008

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 58632 / September 24, 2008

Admin. Proc. File No. 3-12903

In the Matter of the Application of

MICHAEL SASSANO
c/o Graeme W. Bush, Esq.
Zuckerman Spaeder LLP
1800 M Street, N.W.
Suite 1000
Washington, D.C. 20036

For Review of Disciplinary Action Taken by
NYSE REGULATION, INC.

OPINION OF THE COMMISSION

NATIONAL SECURITIES EXCHANGE -- REVIEW OF DISCIPLINARY
PROCEEDING

Failure to Provide Requested Testimony

Former associated person of member firm of national securities exchange asserted the privilege against self-incrimination in response to exchange's request for testimony. Held, exchange's findings of violation and imposition of sanctions are sustained.

APPEARANCES:

Graeme W. Bush and Shawn P. Naunton, of Zuckerman Spaeder LLP, for Michael Sassano.

Susan Light, Myles Orosco, and Jacqueline Davis, for Financial Industry Regulatory Authority, Inc., Department of Enforcement, on behalf of NYSE Regulation, Inc.

Appeal filed: December 3, 2007
Last brief received: March 11, 2008

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I.

Michael Sassano, a former registered representative of Oppenheimer & Co., Inc. ("Oppenheimer"), a member firm of the New York Stock Exchange, LLC ("NYSE" or the "Exchange"), appeals from NYSE disciplinary action. 1/ The NYSE found that Sassano failed to comply with NYSE requests to provide testimony in connection with NYSE market timing investigations, and thereby violated NYSE Rule 477. 2/ The NYSE censured Sassano and barred him from membership, allied membership, approved person status, and from employment or association in any capacity with any NYSE member or member organization. 3/ We base our findings on an independent review of the record.

II.

a. Initial Failure to Testify. On December 8, 2003, the NYSE's Division of Enforcement ("NYSE Enforcement") notified Sassano that it was investigating allegations that he had "engaged in a trading strategy in which [he] frequently purchased and sold mutual fund shares to capitalize on price discrepancies in different markets commonly known as 'market timing.'" Oppenheimer had previously received a subpoena from the Attorney General of the State of New York ("NYAG") on October 31, 2003 regarding a market timing investigation by the NYAG.

Our Division of Enforcement ("SEC Enforcement") also sent subpoenas throughout late 2003 and 2004 to both Oppenheimer and Sassano in connection with its investigations into

1/ On July 26, 2007, the Commission approved proposed rule changes in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. See Securities Exchange Act Rel. No. 56146 (July 26, 2007), 91 SEC Docket 517. Pursuant to this consolidation, the member firm regulatory and enforcement functions and employees of NYSE Regulation, Inc. were transferred to NASD, and the expanded NASD changed its name to Financial Industry Regulatory Authority, Inc. See Exchange Act Rel. No. 56148 (July 26, 2007), 91 SEC Docket 522. Because the disciplinary action here was taken before the NYSE-NASD consolidation of regulatory operations, we continue to use the designation "NYSE" in this opinion.

2/ NYSE Rule 477 generally states that an NYSE member, or an associated person of an NYSE member, who has been terminated must comply, for up to a year after termination, with an NYSE request to provide testimony or be subject to disciplinary sanctions, including a bar.

3/ Under the NYSE decision, Sassano received a three-month period to testify before the bar would become permanent. The bar commenced on December 3, 2007, and became permanent on March 3, 2008 when he had not testified by that date.

mutual fund trading practices. 4/ On August 17, 2004, Sassano's counsel sent SEC Enforcement written confirmation of Sassano's intention to invoke the Fifth Amendment right against self-incrimination in response to an SEC Enforcement subpoena. 5/ On September 20, 2004, SEC Enforcement sent a letter rescheduling Sassano's testimony for October 8, 2004, and documenting its accommodation of three separate rescheduling requests by Sassano's counsel.

On September 24, 2004, NYSE Enforcement sent Sassano a request to appear for testimony in connection with the Exchange's market timing investigation. On September 29, 2004, Sassano's counsel requested an adjournment of the scheduled testimony. NYSE Enforcement granted the request, rescheduling the testimony for October 26, 2004. On October 25, 2004, Sassano's counsel requested another adjournment of Sassano's testimony, and NYSE Enforcement again accommodated the request, rescheduling the testimony for November 11, 2004. That same day, on October 25, 2004, Sassano's employment at Oppenheimer terminated.

On November 9, 2004, two days before the scheduled NYSE testimony, Sassano's counsel proposed a third extension. At this point, NYSE Enforcement stated that the testimony would not be rescheduled a third time. The next day, on November 10, 2004, Sassano's counsel

4/ On July 20, 2005, the NYAG and the Commission settled market timing cases against Canadian Imperial Holdings Inc. and CIBC World Markets Corp. and related corporate entities ("CIBC"), which were the parent companies of Sassano's division at Oppenheimer prior to January 2003. The press release announcing the NYAG settlement noted that the settlement "was reached in conjunction with the Securities and Exchange Commission which announced a parallel settlement" the same day. On December 17, 2007, Oppenheimer executed an Acceptance, Waiver and Consent ("AWC") settling the Exchange's enforcement action against Oppenheimer.

NYSE Enforcement has submitted an unopposed motion for leave to adduce the AWC pursuant to Commission Rule of Practice 452. See 17 C.F.R. § 201.452 (stating that a motion for leave to adduce additional evidence "shall show with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously"). We have determined to grant NYSE Enforcement's motion.

5/ The Fifth Amendment to the United States Constitution provides that no person shall be compelled in any criminal case to be a witness against himself. U.S. CONST. amend. V.

Unless otherwise indicated, references herein to Sassano's "counsel" refer to Sassano's attorneys during the period in which the NYSE issued its requests for testimony. Several weeks before the issuance of the NYSE Hearing Board decision, Sassano's then-counsel withdrew from their representation of Sassano before the NYSE. Sassano subsequently retained new counsel.

called again to request an adjournment of the on-the-record testimony and settlement talks in lieu of such testimony. Although NYSE Enforcement staff left voicemail messages with Sassano's counsel that day to discuss the request, their calls were not returned prior to the scheduled start of Sassano's testimony. Sassano did not appear for his still-scheduled testimony on November 11, 2004.

b. Attorney Proffer. Beginning on November 12, and November 29, 2004, after Sassano had failed to appear for his November 11 testimony, his counsel and NYSE Enforcement discussed Sassano's cooperation with the investigation and the possibility that he would supply information through his counsel instead of by on-the-record sworn testimony.

Sassano's counsel also separately suggested the possibility of an "attorney proffer" with SEC Enforcement in connection with the market timing investigation by SEC Enforcement. Sassano's counsel asked SEC Enforcement staff "whether they had any objection to [NYSE] Enforcement attending the attorney proffer." SEC Enforcement staff did not raise any objections, and Sassano's counsel invited NYSE Enforcement to attend the SEC Enforcement proffer. In a written affirmation (the "Affirmation") submitted in connection with the NYSE proceedings, 6/ NYSE Enforcement represented that, between January 24, 2005 and March 15, 2005, NYSE Enforcement, SEC Enforcement, and the NYAG "discussed the logistics of scheduling and clarifying the scope of [counsel]'s proposed attorney proffer." The Affirmation further stated that these discussions were "a direct result of [counsel]'s request that the SEC and [NYSE] Enforcement jointly attend his proposed proffer." 7/

Sassano's counsel mandated that the proffer discussion "be based on and limited exclusively to those issues presented to counsel prior to the proffer." Accordingly, on March 8, 2005, SEC Enforcement sent Sassano's counsel a letter listing topics to be addressed at the proffer. On April 6, 2005, NYSE Enforcement informed Sassano's counsel that NYSE Enforcement representatives would be attending the proffer, and requested that the proffer address "market timing activity at Oppenheimer," but did not otherwise supplement the list of proffer topics provided by SEC Enforcement.

6/ A Senior Vice President of NYSE Enforcement signed and submitted the Affirmation, which represents that it was prepared based on a review of "[NYSE] Enforcement's confidential investigative file and discussions with Enforcement staff."

7/ Although an affidavit by Sassano's counsel represents that he had "engaged in discussions with representatives of" both SEC Enforcement and NYSE Enforcement "[i]n or about March and April 2005" regarding a joint proffer, the Affirmation submitted by the NYSE represents that the discussions between SEC Enforcement, NYSE Enforcement and the NYAG took place "during the period from January 24, 2005 to March 15, 2005" and "[a]s a direct result of [counsel]'s request that" SEC Enforcement and NYSE Enforcement both attend the proffer.

Representatives of SEC Enforcement and NYSE Enforcement attended the attorney proffer on April 12, 2005. The Affirmation represents that "[a]lthough [Sassano's counsel] discussed areas that [Sassano] could testify about, [counsel] did not offer any specific information" at the proffer. According to an affidavit executed by Sassano's counsel ("Counsel Affidavit") in connection with the appeal before us of the NYSE decision, NYSE Enforcement staff "did not ask any questions about mutual fund trading practices at Oppenheimer" during the proffer and "did not request any information relating to any specific subjects." The Counsel Affidavit also states that, at the end of the proffer, NYSE Enforcement staff asked "if Mr. Sassano would make himself available to the SEC at some point in the future for questioning" and if Sassano "would give truthful answers to the SEC were he to testify."

On April 19, 2005, NYSE Enforcement declined the proposal for cooperation outlined at the attorney proffer. The Affirmation represents that, in so doing, NYSE Enforcement "specifically indicated that [NYSE Enforcement staff] spoke for [NYSE] Enforcement only."

c. Subsequent Failure to Testify. Prior to the April 12 attorney proffer, on March 16, 2005, NYSE Enforcement had issued another request for Sassano's on-the-record testimony in connection with its Oppenheimer investigation. ^{8/} NYSE Enforcement's letter requested that Sassano appear for testimony on April 26, 2005. On April 20, 2005, after NYSE Enforcement had declined Sassano's proposal outlined at the proffer, Sassano's counsel sent written confirmation that Sassano would not appear for his scheduled testimony before NYSE Enforcement. On April 22, 2005, NYSE Enforcement sent a letter to Sassano's counsel memorializing its attempts to schedule Sassano's testimony (the "April 22 Letter"). The April 22 Letter noted that "[d]uring the period November 11, 2004 and March 2005, Enforcement, counsel and other regulatory entities engaged in several telephone conversations regarding Sassano's cooperation in this matter." The April 22 Letter did not provide further detail about these conversations. ^{9/} The April 22 Letter also observed that NYSE Enforcement had previously informed Sassano that failure to comply with the requests for testimony could result in formal disciplinary proceedings. Sassano did not appear for testimony before NYSE Enforcement on April 26, 2005, and to date has not testified before NYSE Enforcement.

^{8/} The initial NYSE Enforcement request for testimony issued on September 24, 2004 indicated that the request for testimony was related to an investigation of allegations that Sassano had himself engaged in market timing. The second NYSE Enforcement request for testimony issued on March 16, 2005 did not directly refer to NYSE Enforcement's investigation of Sassano's trading activities, but instead stated that NYSE Enforcement was investigating "allegations that [Oppenheimer] failed to supervise and control the activities of its employees with regard to its sale of mutual funds."

^{9/} But see supra notes 6-7 and accompanying text.

III.

On November 15, 2005, NYSE Enforcement charged Sassano with violating NYSE Rule 477 by "fail[ing] to provide testimony in connection with matters that occurred during the course of his employment with a member organization." Sassano did not file an answer with the NYSE Hearing Board. ^{10/} However, in a series of letters beginning on March 27, 2006 and citing our March 24, 2006 decision in Frank P. Quattrone, ^{11/} Sassano requested that the Hearing Officer stay the disciplinary action and conduct "a hearing to determine whether the NYSE was engaged in 'state action.'" On December 5, 2006, the NYSE Hearing Officer "direct[ed Sassano] to make an offer of proof . . . that provides the specific factual basis necessary to find 'state action' on the part of the NYSE."

By letter to the parties dated March 27, 2007, the Hearing Officer found, based on a review of submissions by Sassano and NYSE Enforcement, that Sassano had "not made out [his state action] claim but ha[d] alleged sufficient facts to require limited discovery to resolve the matter." The Hearing Officer ordered additional discovery regarding "how [NYSE] Enforcement came to be included in" the attorney proffer with SEC Enforcement; the statement in Sassano's December 19, 2006 submission to the Hearing Officer claiming that "[b]oth the SEC staff and the [NYSE Enforcement] staff advised that they would talk among themselves and make a decision on a joint attendance;" and the reference in the April 22 Letter to "conversations between Enforcement and other regulatory entities during the period November 11, 2004 and March 2005."

In response to the discovery issues identified by the Hearing Officer, on April 9, 2007 NYSE Enforcement submitted the Affirmation, ^{12/} which describes the period beginning with NYSE Enforcement's first written request for Sassano's testimony on September 24, 2004 through the issuance of the Charge Memorandum on November 15, 2005 in connection with Sassano's failure to testify. The Affirmation states that Sassano's counsel had first suggested the provision of "'information' to [NYSE] Enforcement in lieu of his testifying" one day before his scheduled testimony on November 11, 2004. According to the Affirmation, the April 22 Letter's reference to "conversations between Enforcement and other regulatory entities during the period

^{10/} On January 6, 2006, NYSE Enforcement filed a motion to deem the facts alleged in the November 15, 2005 charge memorandum (the "Charge Memorandum") admitted as true based on Sassano's failure to file an answer to the Charge Memorandum as required under NYSE Rule 476(d). On January 12, 2006, after the standard deadline for filing an answer, Sassano's counsel sent a letter to trial counsel for NYSE Enforcement disputing allegations in the Charge Memorandum and requesting that NYSE Enforcement "reconsider its commencement of an enforcement proceeding against" Sassano.

^{11/} Exchange Act Rel. No. 53547 (Mar. 24, 2006), 87 SEC Docket 2155.

^{12/} See supra notes 6-7 and accompanying text.

- November 11, 2004 and March 2005" identified by the Hearing Officer in ordering additional discovery "merely referenced that conversations were held among all of the parties involved in planning for [Sassano]'s proposed cooperation via the attorney proffer." The Affirmation also states that "there was no flow of information from [NYSE] Enforcement to the SEC regarding [Sassano]'s conduct." 13/

On April 25, 2007, the Hearing Board issued its decision, finding that "[NYSE] Enforcement's attendance at [the] attorney's proffer conducted by [Sassano]'s then counsel for the SEC and [NYSE] Enforcement was not initiated by the SEC or [NYSE] Enforcement" and concluding that "[a]fter reviewing and considering all of the submissions . . . [Sassano] had not made out his claim of 'State Action.'" The Hearing Board accordingly found that Sassano's failure to provide testimony constituted a violation of NYSE Rule 477, and censured and barred Sassano. The NYSE Board of Directors affirmed the Hearing Board decision on October 17, 2007. 14/ This appeal followed.

IV.

Sassano acknowledges that he failed to appear in response to the NYSE's requests for testimony as described above. Such failure establishes prima facie evidence of a violation of

13/ The Affirmation also states that on March 16, 2005, NYSE Enforcement and SEC Enforcement "had a telephone conversation, during which the SEC advised [NYSE Enforcement] about its Wells process" but that NYSE Enforcement "was not invited to join in any proposed issuance of the SEC's Wells notice."

14/ The NYSE Hearing Board found that Sassano violated NYSE Rule 477. The NYSE Board of Directors on appeal stated that Sassano had "requested a review of a Hearing Officer's determination that he had violated NYSE Rule 476(a) by failing to testify as requested by" NYSE Enforcement. The Board of Directors stated that it affirmed the decision of the Hearing Board "in all respects."

NYSE Rule 476(a)(11) requires persons associated with member firms to respond to requests for information from the Exchange. NYSE Rule 477 extends this requirement to persons formerly associated with a member firm for up to one year after the Exchange receives notice of their termination. Although the initial request for Sassano's testimony was sent on September 24, 2004, before his employment terminated in October 2004, he was no longer employed at Oppenheimer at the time of either of the dates of his scheduled testimony on November 11, 2004 and April 26, 2005. Sassano does not raise as an issue, and we do not believe, that the reference to Rule 476(a) as the basis for Sassano's appeal changes the result here. The Board of Directors made clear that it was reviewing whether Sassano provided testimony as requested and affirmed the Hearing Board's decision in its totality.

NYSE Rule 477. ^{15/} Sassano argues, however, that he could not be forced to testify because he was entitled to invoke his Fifth Amendment right against self-incrimination. ^{16/} Sassano argues that NYSE Enforcement's investigation was "inextricably intertwined" with investigations by SEC Enforcement and the NYAG, and that the requests for testimony issued by NYSE Enforcement accordingly constituted "state action" entitling him to invoke his right against self-incrimination. On appeal, Sassano requests reversal of the NYSE decision or, alternatively, a remand of his case to the NYSE for further discovery regarding his state action claim.

The "Fifth Amendment restricts only governmental conduct and will constrain a private entity only insofar as its actions are found to be 'fairly attributable' to the government." ^{17/} The U.S. Supreme Court has held that a private party's actions may constitute state action only if there is such a "close nexus between the State and the challenged action" that the seemingly private behavior 'may be fairly treated as that of the State itself.'" ^{18/} The factors considered by the Court as "bear[ing] on the fairness of such an attribution" include whether a challenged activity "results from the State's exercise of its 'coercive power,'" ^{19/} whether "the State has provided such significant encouragement, either overt or covert, that the [private] choice must in law be deemed to be that of the State;" ^{20/} or whether "a private actor operates as a 'willful participant in

^{15/} See, e.g., Warren E. Turk, Exchange Act Rel. No. 55942 (June 22, 2007), 90 SEC Docket 2802, 2805 (stating that a failure to appear for testimony establishes a prima facie violation of NYSE Rule 477); Louis F. Albanese, 53 S.E.C. 294, 297-98 (1997) (sustaining NYSE disciplinary action for violation of NYSE Rule 477 where applicant failed to cooperate immediately with NYSE investigation); Wallace E. Lin, 50 S.E.C. 196, 199 (1990) (sustaining NYSE disciplinary action for violation of Rule 477 where applicant refused to testify in Exchange investigation), aff'd, 933 F.2d 1014 (9th Cir. 1991)(Table); cf. Justin F. Ficken, Exchange Act Rel. No. 54699 (Nov. 3, 2006), 89 SEC Docket 685, 690-91 ("The failure to respond to NASD's requests for testimony demonstrates a prima facie violation of [analogous NASD Rule].").

^{16/} See supra note 5.

^{17/} D.L. Cromwell Inv., Inc. v. NASD Regulation, Inc., 279 F.3d 155, 161 (2d Cir. 2002) (citing Lugar v. Edmondson Oil Co., 457 U.S. 922, 937 (1982)).

^{18/} Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n, 531 U.S. 288, 295 (2001) (citing Jackson v. Metropolitan Edison Co., 419 U.S. 345, 351(1974)).

^{19/} Id. at 296.

^{20/} Blum v. Yaretsky, 457 U.S. 991, 1004 (1982) (stating that "[m]ere approval of or acquiescence in the initiatives of a private party is not sufficient to justify holding the State responsible for those initiatives under the terms of the Fourteenth Amendment").

joint activity with the State or its agents." 21/ Some courts have described this last fact pattern as the "joint action" test, 22/ and have focused on inquiries such as whether "the state has so far insinuated itself into a position of interdependence with the private entity that it must be recognized as a joint participant in the challenged activity" 23/ or whether "the particular actions challenged are inextricably intertwined with those of the government." 24/

The "burden of demonstrating joint activities sufficient to render [a self-regulatory organization ("SRO")] a state actor is high, and that burden falls on the party asserting state action." 25/ In order to meet this burden, Sassano must demonstrate "a nexus between the state and the specific conduct of which plaintiff complains." 26/ Accordingly, in this case, Sassano must demonstrate a specific nexus between the government and the Exchange's requests for testimony triggering Sassano's invocation of the Fifth Amendment.

Sassano claims that NYSE Enforcement conducted its investigation jointly with investigations by SEC Enforcement and the NYAG, and that the NYSE requests for testimony thereby constituted "state action." In support, Sassano claims that NYSE Enforcement, SEC Enforcement, and the NYAG "shared information, attended meetings and worked together extensively" and that this cooperation continued "throughout a three-year period beginning in late 2003." We have explicitly said, however, that "cooperation and information sharing between the Commission and an SRO will rarely render the SRO a state actor, and the mere fact of such cooperation is generally insufficient, standing alone, to demonstrate state action." 27/

21/ Brentwood Acad., 531 U.S. at 296. See also Quattrone, 87 SEC Docket at 2164 n.25 ("NASD asserts correctly that no evidence existed that the Commission coerced, directed, or encouraged NASD to issue the [request pursuant to analogous NASD rule], but no hearing was held on this issue. Moreover, Quattrone did not need to show that NASD made the request solely at the Commission's behest, but only that NASD engaged in willful participation in joint action with the Commission.").

22/ Turk, 90 SEC Docket at 2807.

23/ Kirtley v. Rainey, 326 F.3d 1088, 1093 (9th Cir. 2003); see also Turk, 90 SEC Docket at 2807.

24/ Mathis v. PG&E, 75 F.3d 498, 503 (9th Cir. 1996); see also Turk, 90 SEC Docket at 2807.

25/ Turk, 90 SEC Docket at 2809.

26/ Desiderio v. NASD, 191 F.3d 198, 207 (2d Cir. 1999) (emphasis in original).

27/ Turk, 90 SEC Docket at 2809-10; see also Desiderio, 191 F.3d at 207; Scher v. NASD, 386 F. Supp. 2d 402, 408 (S.D.N.Y. 2005) (Mukasey, J.) (finding, where an NASD

(continued...)

In seeking to overcome this hurdle, Sassano cites: (i) the temporal proximity of events in the investigations by the NYAG, SEC Enforcement, and NYSE Enforcement; (ii) cooperation between SEC Enforcement and NYSE Enforcement in connection with the attorney proffer; (iii) the inclusion of transcripts of testimony taken by NYSE Enforcement in the document production made in connection with the SEC Enforcement investigation; and (iv) language in a Form U4 filed by Oppenheimer that seemed to characterize the various regulatory investigations of Sassano's trading as a single investigation. ^{28/} He highlights these circumstances in asserting that "the investigations of [NYSE Enforcement], the SEC and the NYAG were so interdependent and inextricably intertwined that" the investigations by the various regulators "were tantamount to one joint investigation."

Sassano notes that "all three investigations were opened within a span of six weeks," and asserts that "all three investigations proceeded together in coordinated lockstep fashion." Sassano also points out that NYSE Enforcement first requested Sassano's testimony on September 24, 2004, after Mr. Sassano's counsel confirmed on August 17, 2004 Sassano's intention to invoke the Fifth Amendment before SEC Enforcement, and several days after SEC Enforcement had confirmed on September 20, 2004 that Sassano's testimony before the Commission had again been rescheduled at the request of Sassano's counsel. According to Sassano, "the virtual coordination of these events strongly suggests that the SEC advised [NYSE Enforcement] that Mr. Sassano would invoke his Fifth Amendment privilege, and that as a result

^{27/} (...continued)

investigator shared information with the district attorney's office with which he once worked approximately one year after plaintiff's on-the-record interview before NASD, that "such collaboration," which ultimately led to plaintiff's criminal prosecution, "does not in itself demonstrate that a 'close nexus' existed between the challenged conduct of the NASD and a state actor"), aff'd, 218 F. App'x 46 (2d Cir. 2007) (summary order). But see D.L. Cromwell, 279 F.3d at 163 (noting that NASD's Criminal Prosecution Assistance Unit "was in fact working with the government, and when it does it may well be a state actor," but that the actions of the unit "cannot fairly and automatically be imputed to the rest of" the NASD Department of Enforcement when it was "effectively 'walled off' from the rest of the department).

^{28/} The Counsel Affidavit and other exhibits to Sassano's brief in support of his application for review by the Commission were not included in the record considered by the NYSE below. Sassano has submitted motions to adduce as additional evidence: the Counsel Affidavit, an excerpt of testimony by Peter Valverde, one of Sassano's colleagues at Oppenheimer, and a Form U4 filed by Oppenheimer in April 2004. As discussed, see supra note 4, such motions are governed by Commission Rule of Practice 452. We have determined to admit these documents pursuant to that rule.

[NYSE Enforcement] sought Mr. Sassano's testimony with the intent of launching this proceeding against him." 29/

In D.L. Cromwell Inv. Inc., v. NASD Regulation, Inc., however, the court declined to find that an NASD request for information constituted state action based on "the chronology of certain events" in simultaneous government and NASD investigations regarding the appellants' trading in shares of a particular company. 30/ The Cromwell appellants contended that NASD's requests for on-the-record interviews constituted state action triggering their right to invoke the privilege against self-incrimination, noting that NASD's requests for testimony "followed shortly after individual appellants contested grand jury subpoenas," and that NASD "refused to delay the [requested testimony] until after completion of the Eastern District's criminal investigation." 31/ The Second Circuit affirmed the district court's finding that this evidence showed only that NASD and the government "pursued similar evidentiary trails because their independent investigations were proceeding in the same direction." 32/ In reaching this conclusion, the Cromwell court credited consistent testimony by NASD staff indicating that NASD's requests for information "issued directly from [NASD] as a product of its private investigation" and that "none of the demands [for testimony] was generated by governmental persuasion or

29/ Sassano also argues that the timing of NYSE Enforcement's settlement with Oppenheimer and a settlement in an SEC Enforcement administrative proceeding against another Oppenheimer employee a week later reflects joint action. As noted below, however, this similarity of timing in investigations into the same subject matter involving many defendants and several regulatory agencies is insufficient to substantiate Sassano's claim that NYSE Enforcement "was following the lead of then-New York Attorney General Eliot Spitzer, and was relying entirely upon the joint investigative efforts of the NYAG and the SEC."

30/ 279 F.3d at 162 (affirming district court's decision to deny appellants' request to enjoin an NASD request for an on-the record interview and rejecting appellants' claim that NASD was acting "as a willing tool of" federal prosecutors in a government investigation).

31/ Id.

32/ Id. at 162-63.

collusion." 33/ Similarly, in Turk, we concluded that evidence that SEC Enforcement and NYSE Enforcement requested an individual's testimony "within one month of each other" and "brought charges in connection with their respective investigations on the same day" were insufficient to establish state action. 34/

We thus agree with the Exchange that the timing of the actions in the simultaneous regulatory investigations is insufficient to prove a "causal connection between the requests for testimony" in the separate investigations, or that "the SEC guided [NYSE] Enforcement's investigation." The overlapping timing in the correspondence regarding the various investigations, particularly in light of Sassano's repeated requests for rescheduling of testimony, does not establish that these were other than parallel investigations of the same underlying activities, the same conclusion reached by the court in Cromwell.

Moreover, despite Sassano's assertions that the investigations were conducted jointly over a three-year period, Sassano does not provide evidence that either of NYSE Enforcement's requests for testimony were "generated by governmental persuasion or collusion," 35/ or that SEC Enforcement "exercised significant control and influence over the [NYSE Enforcement] investigation." 36/ We similarly do not find that the timing of these requests for testimony indicates that the government "ha[d] so far insinuated itself into a position of interdependence with [NYSE Enforcement] that it must be recognized as a joint participant" 37/ in the requests

33/ Id. at 163. The court credited the testimony of NASD staff members despite the appellants' attempts to buttress the state action claim by noting, among other things, "the statement of an unidentified FBI agent to an individual appellant that 'we are working with the NASD -- they know exactly what is going on' . . . questions posed by [NASD Enforcement] regarding two documents that Cromwell believes had been seized previously by the FBI; . . . [and NASD Enforcement]'s knowledge of certain government witnesses." Id. at 162.

34/ Turk, 90 SEC Docket at 2809. Sassano attempts to distinguish Turk by arguing that his case "involves extensive evidence of coordination between [NYSE Enforcement], the SEC and the NYAG over a time period spanning several years." We address this evidence below (see infra notes 40 and 43); however, this alleged coordination occurred after Sassano had already failed to testify at the NYSE.

35/ D.L. Cromwell, 279 F.3d at 163.

36/ Gregg Heinze, Exchange Act Rel. No. 56100 (July 19, 2007), 91 SEC Docket 303, 311.

37/ Turk, 90 SEC Docket at 2807 (citations omitted).

for testimony, or that the requests for testimony are "inextricably intertwined" 38/ with investigations by the government. We therefore reject Sassano's contention that the chronology of events in the investigations evidences state action.

Sassano also argues that the circumstances surrounding the joint attendance of SEC Enforcement and NYSE Enforcement at the attorney proffer, including NYSE Enforcement's deference to Commission staff at that proffer, demonstrates that it had engaged in willful joint action with government officials. Sassano highlights the fact that NYSE Enforcement, unlike SEC Enforcement, did not send a list of discussion topics prior to the proffer, despite notice that the discussion at the proffer "would be limited exclusively to issues raised beforehand."

- Additionally, Sassano's counsel represents, and NYSE Enforcement does not dispute, that during the proffer, NYSE Enforcement "did not ask any questions about mutual fund trading practices at Oppenheimer and did not request any information relating to any specific subjects." Sassano further notes that NYSE Enforcement's inquiries at the proffer were limited solely to whether "Mr. Sassano would make himself available to the SEC at some point in the future for additional questioning," and "if Mr. Sassano would give truthful answers to the SEC" in response to such additional questioning. The Counsel Affidavit also states that NYSE Enforcement did not seek "any additional information from" Sassano's counsel after the proffer despite counsel's offer "to make [him]self available . . . at some point in the future for further discussion on behalf of Mr. Sassano." Sassano argues that these actions at the proffer reveal NYSE Enforcement's "complete reliance on the SEC's inquiries," and that such reliance demonstrates that NYSE Enforcement was "working jointly with the SEC at the proffer." Sassano further contends that cooperation with SEC Enforcement at the proffer "rendered [NYSE Enforcement] a 'state actor' and its investigation 'state action,'" giving rise to Fifth Amendment protections. 39/

However, the relevant issue here is whether the NYSE's requests for Sassano's testimony -- not the NYSE's actions in connection with a proffer that occurred almost seven months after the Exchange's initial request for testimony -- may be fairly attributed to the state. 40/ Evidence

38/ Id. (citations omitted).

39/ Sassano argues that NYSE Enforcement "was not acting independently at all, but instead was relying upon" the investigative efforts of SEC Enforcement and the NYAG. NYSE Enforcement's issuance of the requests for testimony giving rise to this proceeding undermines any inference that NYSE Enforcement investigation was simply passively relying on the investigative efforts of government agencies rather than pursuing a separate investigation.

40/ See D.L. Cromwell, 279 F.3d at 163 (finding no state action where NASD Enforcement issued requests for information "as a product of its private investigation" and "none of the demands [for information] was generated by governmental persuasion or collusion . . ."); see also Kirtley v. Rainey, 326 F.3d at 1093 (indicating that joint action inquiry focuses

(continued...)

of cooperation between NYSE Enforcement and SEC Enforcement in connection with the proffer could standing alone suggest that such cooperation resulted from an integrated joint investigation by NYSE Enforcement and SEC Enforcement. Such evidence might be sufficient to support a respondent's request for an opportunity to develop evidence on the possibility of state-SRO joint action. ^{41/} However, unlike in Quattrone, the NYSE has already afforded Sassano the opportunity to develop further evidence regarding the degree of cooperation between NYSE and the Commission. Our consideration of the evidence produced by Sassano and the totality of all the evidence leads us to conclude that Sassano did not meet his burden of showing that the NYSE requests for Sassano's testimony were inextricably intertwined with the government investigations.

The evidence indicates that the joint participation at the proffer actually occurred at Sassano's counsel's suggestion, not as a result of any SEC Enforcement guidance of or control over the NYSE Enforcement investigation, nor as a result of interdependence between the investigations as a whole. The Affirmation expressly represents that "there was no flow of information from [NYSE] Enforcement to the SEC regarding [Sassano's] conduct" and that references in the record to conversations between NYSE Enforcement and "other regulatory

^{40/} (...continued)

on whether "the state has so far insinuated itself into a position of interdependence with the private entity that it must be recognized as a joint participant in the challenged activity" (emphasis added)); Mathis v. PG&E, 75 F.3d at 503 (focusing the joint action test on whether "the particular actions challenged are inextricably intertwined with those of the government" (emphasis added)); Desiderio v. NASD, 191 F.3d at 207 (indicating that a theory based on the nexus between actions by a private actor and the state must be based on evidence of "a nexus between the state and the specific conduct of which plaintiff complains" (emphasis in original)).

^{41/} In Quattrone, we credited evidence indicating that investigations by an SRO and government agencies were conducted jointly, and accordingly held that the respondent had "earned the right to present evidence regarding whether NASD's role in the Joint Investigation rendered the [request for testimony] state action." Quattrone, 87 SEC Docket at 2164-65 & n.27 (finding that summary judgment was inappropriately granted in the NASD's favor when the respondent "introduced facts indicating that the request was part of the Joint Investigation or, at the least, that he could have believed reasonably that this was the case"). We note that Quattrone presented considerably stronger evidence that the government and SRO investigations, as a whole, were inextricably intertwined than is indicated in the present case. Evidence of a joint investigation in Quattrone included, among other things, written statements from the NASD that its investigation was part of a joint investigation with the Commission and that "any resolution of the matter will need to involve all three regulators" (i.e., NYSE, the NASD, and SEC Enforcement), and Congressional testimony by the then-Director of SEC Enforcement indicating that the investigations were conducted jointly. Id. at 2156-57 and 2159.

entities' . . . merely referenced that conversations were held among all of the parties involved in planning for [Sassano]'s proposed cooperation via the attorney proffer." Notwithstanding Sassano's claim that the discovery ordered by the Hearing Officer was insufficient, the Affirmation covers the period starting from NYSE Enforcement's first written request for Sassano's testimony in September 2004 through the issuance of the NYSE Enforcement Charge Memorandum in November 2005. In this light, the evidence does not justify a finding that any cooperation at the proffer resulted from an overall joint investigation by NYSE Enforcement and the government agencies, nor does it justify a finding that the NYSE Enforcement investigation as a whole, or the specific NYSE Enforcement requests for testimony, were inextricably intertwined with the governmental investigations. 42/

Sassano's remaining claims are similarly insufficient to buttress his state action defense. Sassano notes that NYSE Enforcement "questioned Mr. Valverde [one of Sassano's coworkers] and subsequently forwarded his testimony to the SEC's Division of Enforcement." Although the Exchange does not dispute Sassano's claim that the transcript of testimony taken by NYSE was shared with SEC Enforcement, it is worth noting that the Valverde testimony was taken by the Exchange in December 2005 -- well after the Exchange's requests for Sassano's testimony issued in September 2004 and March 2005 and even after the issuance of the NYSE Enforcement Charge Memorandum giving rise to this case. In any event, NYSE Enforcement and SEC Enforcement both conducted investigations of market timing activities. Given the common subject matter of these investigations, it is hardly surprising that NYSE Enforcement took testimony that would be germane to SEC Enforcement's investigation. The fact that NYSE Enforcement pursued testimony from another CIBC employee after Sassano had twice failed to testify undermines Sassano's claim that NYSE Enforcement was simply relying on the investigative efforts of government agencies rather than pursuing a separate investigation. Moreover, courts have explicitly held that sharing of information and formal testimony between an SRO and the Commission is insufficient to establish state action. 43/ We do not find that the

42/ Sassano's argument to the contrary notwithstanding, even joint action by SEC Enforcement and NYSE Enforcement at the proffer would not, under these facts, automatically transform the entire NYSE Enforcement investigation into a joint investigation with SEC Enforcement, nor would it retroactively convert the prior NYSE Enforcement requests for testimony into state action, if the two agencies had not been acting jointly when those requests were issued. See supra note 40 and infra note 43.

43/ Scher v. NASD, 386 F. Supp. 2d at 408 (finding, where an NASD investigator shared information with the district attorney's office with which he once worked approximately one year after plaintiff's testimony, that "such collaboration," which ultimately led to the plaintiff's criminal prosecution, "does not in itself demonstrate that a 'close' nexus' existed between the challenged conduct of the NASD and a state actor"); see also U.S. v. Finnerty, 411 F. Supp. 2d 428, 433 (S.D.N.Y. 2006) (stating that "[t]he mere fact that the
(continued...)

forwarding of Valverde's December 2005 NYSE Enforcement testimony to SEC Enforcement establishes that the NYSE's requests for Sassano testimony were issued in September 2004 and March 2005 as part of a single joint investigation by NYSE Enforcement and SEC Enforcement. 44/

Sassano also points to a statement in a Form U4 filed by Oppenheimer which characterizes the various investigations by "NASD, NYSE, USAO, SEC, MASS SEC COMMISSION, NYAG, ET AL." as "one investigation by all regulators." 45/ However, this cursory reference to the various investigations appears in a regulatory filing by Oppenheimer and not by any of the investigating regulators. Such a filing, particularly by an entity itself under investigation in connection with the same activities, does not in any way establish the nature of the relationship between NYSE Enforcement's investigation and the investigations of the Commission and the NYAG for purposes of the state action test.

In sum, Sassano has not presented evidence meeting the high standard required to establish a state action defense. Sassano's evidence does suggest possible coordination between the government agencies and NYSE personnel, particularly with respect to the preparation for, and participation in, the attorney proffer. The evidence indicates that Sassano himself initiated much of that coordination, which occurred after Sassano had already refused to appear for NYSE testimony. In addition, under the "joint action" test, Sassano is required to present evidence reflecting not just general collaboration or cooperation between the SRO and a government

43/ (...continued)

Government may have requested and received documents from the NYSE in the course of its investigation does not convert the investigation into a joint one").

44/ Sassano states that SEC Enforcement produced the Valverde NYSE testimony in connection with the administrative proceeding against Sassano but did not include any other transcripts of testimony by NYSE Enforcement. On this basis, he concludes that the Valverde transcript "represents the only testimony taken by [NYSE Enforcement] in connection with its so-called independent investigation of Mr. Sassano and mutual fund trading practices at Oppenheimer" and uses this opportunity to request "focused discovery to probe whether [NYSE Enforcement] questioned any additional Oppenheimer and/or [CIBC] employees besides Mr. Valverde, or whether [NYSE Enforcement] simply relied upon the investigatory interviews conducted by the SEC and NYAG." The key question is whether the NYSE acted on behalf of SEC Enforcement in seeking Sassano's on the record testimony. See supra note 43. The possibility of the opposite -- NYSE reliance on testimony obtained by SEC Enforcement -- is only remotely probative on this key issue and is even less so considering, as we said, the NYSE and the SEC Enforcement staffs permissibly may share information and cooperate.

45/ Sassano indicates that the Form U4 was filed upon Sassano's suspension of employment from Oppenheimer.

agency, but evidence suggesting an "interdependence" between the government investigations and the SRO's requests for testimony triggering his invocation of his Fifth Amendment right. Sassano's evidence falls short of suggesting that NYSE's requests for his testimony were "inextricably intertwined" with the investigations by the NYAG or SEC Enforcement or that the government investigations were so "interdependent" with the requests for testimony that the government "must be recognized as a joint participant" in those requests. 46/

V.

Sassano has requested further discovery to substantiate his theory that the NYSE engaged in state action. Unlike previous cases remanded on this basis, however, we believe that the NYSE has already afforded Sassano sufficient opportunity to present and develop his state action claim. We have previously remanded cases in which the applicants had been limited in their ability to introduce evidence on the state action question in the SRO proceedings below, for instance when an SRO had not made its employees "available for testimony at a respondent's request or produced affidavits responding to" reasonable and credible evidence suggesting state action. 47/ We have also provided for an opportunity to develop further evidence regarding state action claims in cases in which the SRO's initial consideration of such claims had not been able to take into account significant developments in the law regarding the state action defense. 48/

46/ See generally Mathis v. PG&E, 75 F.3d at 503; Kirtley v. Rainey, 326 F.3d at 1093. Sassano also alleges statements suggesting cooperation between the NYAG and SEC Enforcement, e.g., requests by the SEC that "representative of the NYAG's office . . . attend Mr. Sassano's deposition," and a statement by SEC Enforcement to Sassano's counsel that "the SEC and NYAG were working together in investigating Mr. Sassano." Sassano also argues that "it was a matter of public record . . . that the NYAG was working hand-in-hand with the SEC to jointly investigate" one of Sassano's colleagues. Although these allegations may suggest cooperation between the two government agencies, they are not indicative of cooperation between NYSE Enforcement and either government agency.

Additionally, Sassano alleges that "counsel for CIBC and Oppenheimer, respectively, were sharing documents and information regarding alleged market timing activities obtained during the course of employee interviews . . . with the SEC, the NYAG and [NYSE Enforcement]." However, any such cooperation by counsel for CIBC and Oppenheimer would not indicate a joint investigation by NYSE Enforcement and either government agency.

47/ Ficken, 89 SEC Docket at 695.

48/ Id. at 694 (noting that "NASD did not have the opportunity to evaluate [the Commission's Quattrone decision] before ruling on Ficken's claims"); Turk, 90 SEC Docket at 2810

(continued...)

Sassano claims that he has presented "specific evidence" supporting his state action claim that "entitles [him] to additional discovery to make out this claim" despite the NYSE's express consideration of his state action claim during the hearing below. There are, however, limitations on the opportunity for discovery on the question of state action. We have specifically cautioned that applicants "may not use the discovery process to go on a fishing expedition in the hopes that some evidence will turn up to support an otherwise unsubstantiated theory" of state action. 49/ We have also noted that an appeal based solely on a state action defense is subject to dismissal if the applicant "fail[s] to introduce sufficient evidence" to justify his state action claim. 50/ Moreover, such evidence must be presented at the "initial evidentiary hearing, so that the record is fully developed in the first instance when the case is before the SRO." 51/ We further stated that "[n]ot every defense of state action deserves discovery and a hearing" and that discovery must be based on "a reasonable and credible basis to conclude that the SRO's . . . seemingly private behavior 'may be fairly treated as that of the state itself.'" 52/

The proceedings below afforded Sassano the opportunity to present and develop evidence supporting his state action claim. 53/ The Exchange specifically considered Sassano's state

48/ (...continued)

n.27 (specifically noting the "unusual posture of the appeal" and indicating that "the evidence presented to date might be the result of more than cooperation and . . . Turk's NYSE evidentiary hearing occurred before the issuance of our decisions in Quattrone and Ficken"; Heinze, 91 SEC Docket at 311 (granting remand where the respondent had "identified specific evidence that warrants a further opportunity to develop and present his state action claim" and "the NYSE considered Heinze's case without the full benefit of all our recent decisions on this issue").

49/ Ficken, 89 SEC Docket at 695 n.36 (citing G.K. Scott & Co., 51 S.E.C. 961, 973 (1994)).

50/ Turk, 90 SEC Docket at 2810 n.27.

51/ Id.

52/ Id. at 2807 n.15 (citing Brentwood Acad., 531 U.S. at 295).

53/ Compare Heinze, 91 SEC Docket at 311 (finding that "Heinze had identified specific evidence that warrant[ed] a further opportunity to develop and present his state action claim" when Heinze's contentions, including an assertion that an NYSE attorney informed Heinze that SEC Enforcement "had instructed the NYSE to limit the amount of information about his investigation that the Exchange provided to Heinze," raised "the possibility that [SEC Enforcement] exercised significant control over the NYSE's investigation of Heinze").

action claims in light of the criteria set forth in Quattrone and its progeny. ^{54/} Moreover, the Hearing Officer, after allowing Sassano to make an offer of proof on his state action claim, ordered further "limited discovery" regarding evidence of cooperation between NYSE Enforcement and SEC Enforcement in connection with the attorney proffer, which was Sassano's most credible evidence in support of his joint action argument. That additional discovery did not ultimately substantiate his state action claim.

We have indicated that, in order to obtain further discovery, an applicant is required "to state the precise manner in which [the facts he does possess] support[] his claims," to explain "why he needs additional discovery," to "state with some precision the materials he hope[s] to obtain with further discovery," and to explain "exactly how" the further information would support his claims. ^{55/} Sassano has not made any such attempt to focus the scope of his requested further discovery. For instance, although the Affirmation addressed communications between the various regulatory entities, he requests further discovery regarding, among other things, "the scope and extent of any cooperation, communication and/or sharing of information between [NYSE Enforcement], the SEC and the NYAG regarding their investigations of Mr. Sassano, CIBC and Oppenheimer" without indicating how such further discovery would elaborate or expand the evidence included in the Affirmation. ^{56/} Nor has Sassano identified the actual materials he hopes to obtain upon further discovery, or how such materials would support his claim. His discovery requests are broad and general, suggesting the forbidden fishing expedition. In this light, Sassano has not established a reasonable and credible basis to support his request on appeal to reopen the discovery process.

^{54/} The Hearing Officer found that Sassano "had not made out his claim of 'State Action'" on April 25, 2007, after our decisions in Quattrone and Ficken. In addition, in denying Sassano's request for additional discovery on appeal, the NYSE Board of Directors expressly stated that it had considered "the relevant decisional law (including the SEC's decisions in Quattrone, Ficken, Turk and Heinze)."

^{55/} Ficken, 89 SEC Docket at 695-96 n.37 (citing Krim v. BancTexas Group, Inc., 989 F.2d 1435, 1442-43 (5th Cir. 1993)).

^{56/} Sassano also argues, "merely by way of example," that he is entitled to additional discovery regarding "the circumstances surrounding [NYSE Enforcement's] complete reliance upon the investigatory efforts of the SEC at the attorney proffer, and [NYSE Enforcement's] determination not to pose any questions of its own at the proffer; the extent of the [NYSE Enforcement's] joint participation with the SEC and NYAG in investigatory interviews of CIBC and/or Oppenheimer employees;" and whether NYSE Enforcement questioned any other CIBC or Oppenheimer employees. See supra note 44.

VI.

Section 19(e)(2) of the Securities Exchange Act of 1934 directs us to sustain the NYSE's sanctions unless we find, having due regard for the public interest and the protection of investors, that the sanctions are excessive or oppressive or impose an unnecessary or inappropriate burden on competition. ^{57/} Sassano asks that we modify the penalty imposed by the NYSE to "provide Mr. Sassano with twelve months within which to comply with [NYSE Enforcement]'s request for testimony (instead of the three months provided in the NYSE Decision), and to impose a bar of limited duration rather than a permanent bar." Sassano urges that "in the event [he] ultimately complies with [NYSE Enforcement's] request for testimony . . . a bar of limited duration not exceeding two years would be appropriate." ^{58/}

We sustain the sanctions imposed by the NYSE because, as explained below, we conclude that Sassano's failure to appear for on-the-record testimony in this case demonstrates that he poses too great a risk to the markets and investors protected by the self-regulatory system to be permitted to remain in the securities industry. We also conclude that the sanctions imposed on Sassano will have the salutary effect of deterring others from engaging in the same serious misconduct.

NYSE Rule 477(c) expressly contemplates that the failure to testify may result in a permanent bar. ^{59/} "Because of limited Commission resources, Congress has given [SROs] significant front-line responsibility in ensuring that broker-dealers and their associated persons are complying with applicable statutes, rules, regulations, and ethical obligations." ^{60/} As we have repeatedly emphasized, it is vitally important to the self-regulatory system that SRO investigators be able to obtain information and testimony from member firms and associated

^{57/} 15 U.S.C. § 78s(e)(2). Sassano does not claim, and the record does not show, that NYSE's action imposed an undue burden on competition.

^{58/} See *supra* note 3.

^{59/} Under NYSE Rule 477(c), a former employee of a member organization that "is adjudged guilty in a proceeding under Rule 476 of having refused or failed to comply" with any requirement to appear or testify "may be barred from being a member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization permanently, or for such period of time as may be determined"

^{60/} *PAZ Sec., Inc.*, Exchange Act Rel. No. 54656 (Apr. 11, 2008) __ SEC Docket __, __ (quoting *Charles C. Fawcett, IV*, Exchange Act Rel. No. 56770 (Nov. 8, 2007) 91 SEC Docket 3147, 3157), *appeal docketed*, No. 08-1188 (D.C. Cir. May 13, 2008).

persons promptly and without conditions. 61/ Because the SROs lack subpoena power, they "necessarily rel[y] upon the full and prompt cooperation of [their] members and associated persons in conducting an investigation." 62/ Vigorous enforcement of Rule 477, therefore, helps ensure the continued strength of the self-regulatory system -- and thereby enhances the integrity of the securities markets and protects investors -- by "barring individuals and firms who have already demonstrated a refusal to be investigated." 63/ We have recently held that "[a] complete failure to respond to a request for information . . . renders the violator presumptively unfit for employment in the securities industry." 64/

Sassano has admitted throughout these proceedings that he has not appeared for on-the-record NYSE testimony. The Exchange's original request for such testimony has been outstanding since September 2004. Nevertheless, Sassano failed to appear for an interview even after the Exchange twice rescheduled his testimony at the request of his counsel, and after two separate requests for testimony by the Exchange. We have previously observed that a failure to respond until after the imposition of disciplinary sanctions "is tantamount to a complete failure to respond." 65/ Moreover, the NYSE's determination to bar Sassano was consistent with sanctions we have expressly affirmed in other SRO proceedings involving a failure to testify. 66/

61/ Albanese, 53 S.E.C. at 298.

62/ Id. at 297-98; see also Richard J. Rouse, 51 S.E.C. 581, 584 (1993) (finding rule requiring NASD members and associates to comply with its information requests to be "a key element in the NASD's effort to police its members").

63/ PAZ Sec., Inc., __ SEC Docket at __.

64/ Id. at __.

65/ Id. at __.

66/ See, e.g., Fawcett, 91 SEC Docket at 3158 (upholding bar for violation of analogous NASD rule).

We find that no factors mitigate the severity of Sassano's violative conduct. 67/ Sassano had no legitimate basis for refusing to testify before the NYSE. Instead, aware of the consequences, Sassano refused to comply with NYSE Enforcement's requests in contravention of his duty to cooperate fully and promptly with those requests. 68/ Lesser sanctions may, in certain circumstances, be appropriate for an incomplete or dilatory response to requests for information or a failure to respond where mitigating circumstances exist. However, in light of Sassano's complete failure, without mitigation, to respond to the Exchange's repeated requests for testimony, we conclude that the bar is not "excessive or oppressive" within the meaning of Exchange Act Section 19(e)(2). 69/

We concur in the NYSE's determination that Sassano's misconduct demonstrates that he poses too great a risk to the self-regulatory system -- and the markets and investors it protects -- to be permitted to remain in the securities industry. We conclude, therefore, that the sanctions imposed by the NYSE to redress that risk serve the public interest and are neither excessive nor

67/ Sassano has argued that "compelling [him] to testify before the [NYSE] while the SEC proceeding is pending would be highly prejudicial to [him] in the [SEC] enforcement proceeding" and "would enable the SEC's Division of Enforcement to effectively end run the provisions of Rule 230(g) of the SEC's own Rules of Practice . . . preclud[ing] the issuance of investigatory subpoenas for the purpose of obtaining evidence relevant to the proceeding 'after the institution of proceedings.'" On July 18, 2008, the SEC Enforcement proceeding against Sassano was settled. See Michael Sassano, Exchange Act Rel. No. 58193 (July 18, 2008), __ SEC Docket __. Given the settlement of the SEC Enforcement proceeding, Sassano's prejudice argument is moot.

Moreover, we are not aware of any offer by Sassano to comply with the NYSE Enforcement requests for testimony now that any threat that such testimony would be used in the SEC Enforcement investigation has subsided. In any event, the existence of a parallel ongoing SEC Enforcement investigation did not justify Sassano's refusal to testify before the NYSE. See Fawcett, 91 SEC Docket at 3158 (sustaining bar for failing to provide information despite applicant's claim that he was "faced with a Hobson's choice: either provide testimony that might incriminate him in then-pending proceedings before the [Commission] and [the NYAG], or be barred by [NASD] from practicing his profession").

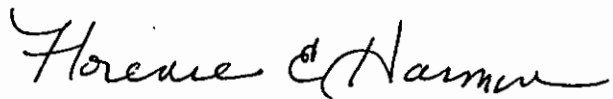
68/ Cf. Joseph G. Chiulli, 54 S.E.C. 515, 524 (2000) (stating that, by registering with NASD, respondent "agreed to abide by its rules which are unequivocal with respect to an associated person's duty to cooperate with NASD investigations"). As we have previously noted, "even if the failure to respond does not result in direct improper financial benefit to respondents or harm to investors, it is serious because it impedes detection of such violative conduct." PAZ Sec., Inc., __ SEC Docket at __.

69/ Fawcett, 91 SEC Docket at 3157-58.

oppressive. The bar is also an appropriate remedy because it will serve as a deterrent to others who may be inclined to ignore NYSE requests for testimony, thereby protecting the investing public by encouraging the timely cooperation that is essential to the prompt discovery and remediation of misconduct. 70/

An appropriate order will issue. 71/

By the Commission (Chairman CCX and Commissioners CASEY, AGUILAR, and PAREDES); Commissioner WALTER not participating.



Florence E. Harmon
Acting Secretary

70/ In making this determination, we are mindful that although "general deterrence is not, by itself, sufficient justification for expulsion or suspension . . . it may be considered as part of the overall remedial inquiry." PAZ Sec., Inc. v. SEC, 494 F.3d 1059, 1066 (D.C. Cir. 2007) (quoting McCarthy v. SEC, 406 F.3d 179, 189 (2d Cir. 2005)).

71/ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 58632 / September 24, 2008

Admin. Proc. File No. 3-12903

In the Matter of the Application of

MICHAEL SASSANO
c/o Graeme W. Bush, Esq.
Zuckerman Spaeder LLP
1800 M Street, N.W.
Suite 1000
Washington, D.C. 20036

For Review of Disciplinary Action Taken by

NYSE REGULATION, INC.

ORDER SUSTAINING DISCIPLINARY ACTION TAKEN BY NATIONAL SECURITIES
EXCHANGE

On the basis of the Commission's opinion issued this day, it is

ORDERED that the disciplinary action taken by NYSE Regulation, Inc. against Michael
Sassano, be, and it hereby is, sustained.

By the Commission.



Florence E. Harmon
Acting Secretary

*Chairman Cox and
Commissioner Watter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58636 / September 24, 2008

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2885 / September 24, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13236

In the Matter of

BALLY TECHNOLOGIES,
INC.,

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST
PROCEEDINGS PURSUANT TO SECTION
21C OF THE SECURITIES EXCHANGE ACT
OF 1934, MAKING FINDINGS, AND
IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Bally Technologies, Inc. ("Bally" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Respondent

1. **Bally**, a Nevada corporation based in Las Vegas, Nevada, designs, manufactures and distributes gaming machines and monitoring systems for casinos. Bally operates on a fiscal year that ends on June 30. Bally's common stock is registered under Section 12(b) of the Exchange Act. Bally trades on the New York Stock Exchange.

Background

2. Bally materially misstated its reported revenue in its financial statements for the fiscal year ended June 30, 2003, the first two quarters of fiscal 2004, and the second and third quarters of fiscal 2005. Bally included its improper financial results in press releases and filings with the Commission relating to these periods. Bally also made materially misleading disclosures and omissions in certain filings and public statements during the relevant period. In December 2005 and November 2006, Bally restated its financial results for the affected periods.

3. Bally's reported revenues were misstated due to its improper recognition of revenue on a bill and hold basis and revenue recognition on other transactions that was improper under Generally Accepted Accounting Principles ("GAAP").²

Bally's Bill and Hold Transactions

4. Bally accounted for two types of transactions on a bill and hold basis. First, Bally recognized revenue on a bill and hold basis on several individual sales to specific customers. Second, Bally routinely recognized revenue on a bill and hold basis for games sold to New Jersey casinos that were stored at quarter end in its Atlantic City, New Jersey warehouse. These games were awaiting approval from New Jersey state regulators, which was required before the games could be operated on a casino floor.

5. Bally's improper bill and hold sales to both specific and New Jersey customers resulted in the overstatement of its reported net sales revenue by \$8.4 million in the fourth quarter of fiscal 2003 and by \$8.8 million and \$10.2 million in the first and second quarters of fiscal 2004. As a result, Bally should have reported net income from continuing operations for the fourth quarter of fiscal 2003 of \$12.2 million, rather than the \$15 million that it did report. In the first

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

² A bill and hold sale is one in which delivery has not occurred, and requires adherence to specific criteria before revenue can be recognized on the transaction. See *In the Matter of Stewart Parness*, Accounting and Auditing Enforcement Rel. No. 108 (August 5, 1986), Staff Accounting Bulletin 104, *Revenue Recognition*.

quarter of fiscal 2004, Bally should have reported a net loss from continuing operations of \$0.1 million rather than income of \$2.6 million. In the second quarter of fiscal 2004, Bally should have reported net income from continuing operations of \$11.1 million rather than the \$14.2 million it did report. In addition, these bill and hold sales led to a \$.06 overstatement of Bally's reported earnings per share ("EPS") for the fourth quarter of fiscal 2003 and \$.05 and \$.06 cent overstatements of Bally's reported quarterly EPS numbers in the first and second quarters of fiscal 2004, respectively.

6. Bally improperly recorded revenue on a bill and hold basis on one individual customer transaction in the fourth quarter of fiscal 2003, three individual customer transactions in the first quarter of fiscal 2004, and one individual customer transaction in the second quarter of fiscal 2004. Bally improperly recorded revenue on the New Jersey transactions throughout this period as well. Bally improperly recognized revenue on each of these transactions because it failed to meet one or more of the bill and hold criteria.

7. For each transaction, Bally could not demonstrate that the customer requested that the transaction take place on a bill and hold basis. Bally also failed to meet the requirement of a fixed schedule for delivery on each of the bill and hold transactions. In four cases, Bally relied on alleged delivery schedules that were indefinite and insufficient for purposes of GAAP. Moreover, in three of the transactions, true risk of ownership had not passed to the customers. Bally also failed to meet the criterion requiring completeness of the equipment in its bill and hold transactions with one customer. Finally, Bally failed to segregate the bill and hold inventory for at least one transaction.

8. Bally also improperly recognized revenue on a bill and hold basis for games it sold to New Jersey customers when the games were stored in its New Jersey warehouse at quarter end. The games were manufactured in Nevada and shipped, by Bally, to its New Jersey warehouse, to await inspection by state regulators. The New Jersey games did not qualify for bill and hold revenue recognition and Bally's records do not support such revenue recognition. Specifically, Bally failed to meet the criteria relating to risk of ownership passing to the buyer, fixed schedule for delivery, and customer request that the transaction be on a bill and hold basis.

Improper Disclosure Relating to Bill and Hold Transactions

9. Bally did not disclose its use of bill and hold practices, which it should have disclosed under GAAP, in any of its public filings during fiscal 2003 and 2004. Instead, Bally's 2003 and 2004 Forms 10-K and Forms 10-Q for 2004 contained the misleading disclosure that "[r]evenue from sales of gaming machines is generally recognized at the time products are shipped and title has passed to the customer." This disclosure was misleading since it failed to explain that Bally recognized revenue on a bill and hold basis.

10. Moreover, when the company stopped recognizing revenue on a bill and hold basis, the company's disclosures regarding its failure to meet earnings guidance for the quarter were misleading. In its earnings press release dated April 21, 2004 and attached to a Form 8-K filed the same day, Bally disclosed that "1,250 units to be delivered in the March 2004 quarter were delayed

until the June quarter at the request of three customers, due primarily to the delay in the completion of their new or expanded gaming facilities being constructed." However, these units were not delayed due to construction. Instead, the revenue for these units was not recognized in the quarter because Bally decided to stop recognizing revenue on a bill and hold basis. The company made a similar disclosure in its earnings release call on April 21, 2004.

11. In addition, Bally's disclosures regarding its first restatement were misleading. In its Form 10-K for the year ended June 30, 2005, Bally stated that revenue recognition adjustments were made because "the [c]ompany identified instances where the timing or amount of revenue recognized was not in accordance with SOP 97-2," which Bally had recently adopted. In reality, revenue recognition was improper under any GAAP, including the accounting policies that the company was using at the time revenue was first recognized.

Other Transactions Involving Improper Revenue Recognition Under GAAP

12. For the quarter ended December 31, 2004, Bally improperly recognized approximately \$3.8 million of revenue on a first shipment of games to an Oklahoma company that had agreed to purchase 1,500 video poker games over the course of three quarters, beginning with the second quarter ended December 31, 2004. Such revenue recognition was improper for two reasons. First, as of the quarter end, Bally was aware that the customer could not meet its payment obligations without a loan from its bank and that the customer's loan application remained pending. Collectibility of the receivable from the customer therefore was not reasonably assured, as required by GAAP. Second, Bally had not fulfilled its obligation to obtain approval of the games by an independent testing agency, which was necessary for the games to be legally operated in Oklahoma. The delivery of the games to the customer therefore was not complete as of the quarter end.

13. For the quarter ended March 31, 2005, Bally improperly recognized approximately \$6.8 million of revenue on two additional shipments of games to the Oklahoma customer. The recognition of revenue on the second shipment was improper because that shipment was stored temporarily at a Bally warehouse in Oklahoma and was not actually delivered to the customer until April 6, 2005. More generally, shortly after the close of the quarter—and before Bally issued its earnings release and filed its 10-Q—it became clear that the customer likely would not be able to meet its payment obligations under the parties' contract. On April 7, 2005, Bally learned that the customer's bank would not advance additional funds until the customer placed a high percentage of games in tribal casinos and that the customer's efforts to place games were going poorly. By the end of April, Bally was considering a 12 month payment plan for the customer, but doubted the customer's ability to make payments under such an arrangement, even if it involved shifting the bulk of their payment obligations to a balloon payment at the end of the term. Under these circumstances, Bally had no basis for concluding that collection of amounts billed to the customer was reasonably assured under GAAP.

14. For the quarter ended December 31, 2004, Bally also improperly recognized \$5.65 million in revenue on the capital lease of 375 games to a casino located in Washington. The recognition of revenue was improper due to, among other things, a lack of persuasive evidence

that an arrangement existed, as required by GAAP. Bally relied on purchase orders issued by the casino and other documents to recognize the revenue on the 375 games. These purchase orders and other documents, however, did not reflect certain important terms of the transaction, notably that the casino wanted to purchase, not lease the games, and the sale price that was eventually agreed upon for the 375 games.

Violations

15. As a result of the conduct described above, Bally violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission information, documents, and annual, current, and quarterly reports as the Commission may require, and mandate that current and periodic reports contain such further material information as may be necessary to make the required statements not misleading.

16. Because Bally improperly recorded revenue, its books, records and accounts did not, in reasonable detail, accurately and fairly reflect its transactions and dispositions of assets.

17. In addition, Bally failed to implement internal accounting controls relating to its revenue accounts which were sufficient to provide reasonable assurances that these accounts were accurately stated in accordance with generally accepted accounting principles.

18. As a result of the conduct described above, Bally violated Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

19. Lastly, as a result of the conduct described above, Bally violated Section 13(b)(2)(B) of the Exchange Act, which requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles.

Bally's Remedial Efforts

20. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Bally's Offer.

Accordingly, it is hereby ORDERED that:

Pursuant to Section 21C of the Exchange Act, Respondent Bally cease and desist from committing or causing any violations and any future 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.

By the Commission.



Florence E. Harmon
Acting Secretary

*Chairman Cok and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 58634 / September 24, 2008

INVESTMENT ADVISERS ACT OF 1940

Release No. 2788 / September 24, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13235

In the Matter of

SIRIOS CAPITAL
MANAGEMENT, L.P.,

Respondent.

ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934
AND SECTION 203(e) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS AND IMPOSING
REMEDIAL SANCTIONS AND A CEASE-
AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(e) of the Investment Advisers Act of 1940 ("Advisers Act") against Sirios Capital Management, L.P. ("Respondent" or "Sirios").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities

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Exchange Act of 1934 and Section 203(e) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

Summary

These proceedings arise out of violations of Rule 105 of Regulation M of the Exchange Act by Sirios, an investment manager of hedge funds and long-only funds. On two occasions on or about August 7, 2003 and on or about March 13, 2006 ("the relevant period"), Sirios violated Rule 105 in connection with short sales made in advance of public offerings by Centene Corporation ("Centene") and Las Vegas Sands Corporation ("Las Vegas Sands"). Sirios sold securities short within five business days before the pricing of each offering, and covered the short sales, in whole or in part, with shares purchased in the offerings, resulting in profits of \$198,069.

Respondent

1. Sirios is a Boston, Massachusetts-based investment manager to 11 hedge funds and long-only funds and serves as sub-adviser to one unaffiliated account, and provides investment management services on a discretionary basis to U.S. and non-U.S. private investment funds. In January 2006, Sirios registered with the Commission as an investment adviser and withdrew its registration in September 2006.

Other Relevant Entities

2. Centene is headquartered in St. Louis, Missouri. Centene's stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange.

3. Las Vegas Sands is headquartered in Las Vegas, Nevada. Las Vegas Sands' stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange.

Background

4. At all relevant times, Rule 105 of Regulation M, "Short Selling in Connection with a Public Offering," ("Rule 105") provided, in pertinent part:

In connection with an offering of securities for cash pursuant to a registration statement ... filed under the Securities Act, it shall be unlawful for any person to cover a short sale with offered securities purchased from an underwriter or broker

or dealer participating in the offering, if such short sale occurred during the ... period beginning five business days before the pricing of the offered securities and ending with such pricing. . . .

17 C.F.R. § 242.105(a)(1). This five business day or shorter period is referred to herein as the "restricted period." Rule 105 is prophylactic and prohibits the conduct irrespective of the short seller's intent in effecting the short sale.

5. During the relevant period, Sirios violated Rule 105 in connection with short sales made in advance of public offerings by two companies, Centene and Las Vegas Sands, resulting in profits of \$198,069.

6. On July 22, 2003, Centene announced that it filed a registration statement with the Commission for a secondary public offering of 3,000,000 shares of its common stock through underwriters on a firm commitment basis. On August 7, 2003, Centene priced that secondary offering of 3,000,000 shares of common stock at \$25.00 per share. Thus, the restricted period under Rule 105 ran from August 1, 2003 through August 7, 2003.

7. Prior to the Centene offering and during the restricted period, on August 1, 2003, Sirios sold short 23,000 shares of Centene at a price of \$28.56 per share. Sirios received 230,000 shares of Centene in the secondary offering on August 7, 2003, at a price of \$25.00 per share. Sirios used shares acquired in the secondary offering to cover a portion of its short position of 23,000 shares. Covering a portion of this restricted period short sale with offering shares resulted in a profit of \$36,134 to the funds advised by Sirios. Prior to the restricted period, Sirios also held a short position in Centene.

8. On February 14, 2006, Las Vegas Sands announced that it filed a registration statement for a secondary public offering of 55,000,000 shares of its stock through an underwriter on a firm commitment basis. On March 13, 2006, Las Vegas Sands priced that secondary offering of 55,000,000 shares at \$50.25 per share. Thus, the restricted period under Rule 105 ran from March 7, 2006 through March 13, 2006.

9. Prior to the Las Vegas Sands offering and during the restricted period, on March 7, 2006, Sirios sold short 23,300 shares of Las Vegas Sands at a price of \$57.20 per share. Subsequently, on March 13, 2006, Sirios purchased 200,000 shares of Las Vegas Sands in the secondary offering at \$50.25 per share. Sirios used shares acquired in the secondary offering to cover its short position of 23,300 shares. Covering this restricted period short sale with offering shares resulted in a profit of \$161,935 for the funds advised by Sirios. Prior to the restricted period, Sirios also held a short position in Las Vegas Sands.

10. As a result of the conduct described above, Sirios willfully¹ violated Rule 105 of Regulation M, which makes it "unlawful for any person to cover a short sale with offered

¹ A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting

securities purchased from an underwriter or broker or dealer participant in the offering, if such short sale occurred during the period beginning five business days before the pricing of the offered securities and ending with the pricing.”

Sirios' Remedial Efforts

11. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Sirios and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Sirios' Offer.

Accordingly, pursuant to Section 21C of the Exchange Act and Section 203(e) of the Advisers Act it is hereby ORDERED that:

A. Respondent Sirios cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M.

B. Respondent Sirios is censured.

C. IT IS FURTHER ORDERED that Respondent shall, within ten (10) days of the entry of this Order, pay disgorgement of \$198,069, plus prejudgment interest in the amount of \$38,989.69 and pay a civil penalty in the amount of \$50,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Alexandria, VA 22312, Stop 0-3; and (D) submitted under cover letter that identifies Sirios as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to John T. Dugan, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, Boston Regional Office, 33 Arch St., Floor 23, Boston, MA 02110.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor “also be aware that he is violating one of the Rules or Acts.” *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

*Chairman Cox and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 58637 / September 24, 2008

ACCOUNTING AND AUDITING ENFORCEMENT

Release No. 2886 / September 24, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13237

In the Matter of

ROBERT L. SAXTON, CPA

Respondent.

ORDER INSTITUTING CEASE-AND-DESIST
PROCEEDINGS PURSUANT TO SECTION
21C OF THE SECURITIES EXCHANGE ACT
OF 1934, MAKING FINDINGS, AND
IMPOSING A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act"), against Robert L. Saxton ("Saxton" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Respondent

1. **Robert L. Saxton**, age 54, is a resident of Las Vegas, Nevada. Saxton served as chief financial officer ("CFO") of Bally from March 2000 through March 2005 when he became executive vice president of sales. Saxton left Bally in July 2006. Saxton became licensed as a certified public accountant in Nevada in 1984, but his license expired in 1989 and his current status is inactive.

Related Party

2. **Bally Technologies, Inc.** ("Bally"), a Nevada corporation headquartered in Las Vegas, Nevada, has been in business since 1968 and operates on a fiscal year that ends on June 30. During the relevant time period, Bally designed, manufactured, and distributed gaming machines and monitoring systems for casinos. Bally's common stock is registered with the Commission under Section 12(b) of the Exchange Act and trades on the New York Stock Exchange.

Background

3. While Saxton was CFO, Bally materially misstated its reported revenue in its financial statements for the year ended June 30, 2003 and the first two quarters of 2004. Bally included its misleading financial results in press releases and filings with the Commission relating to these periods. Bally also made materially misleading disclosures and omissions in certain filings and public statements during the relevant period. In December 2005 and November 2006, Bally restated its financial results for the affected periods.

4. Bally's reported revenues were misstated due to its recognition of revenue on a bill and hold basis that was improper under Generally Accepted Accounting Principles ("GAAP").²

Bally's Bill and Hold Transactions

5. Bally accounted for two types of transactions on a bill and hold basis. First, Bally recognized revenue on a bill and hold basis on several individual sales to specific customers. Second, Bally routinely recognized revenue on a bill and hold basis for games sold to New Jersey casinos that were stored at quarter end in its Atlantic City, New Jersey warehouse. These games

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

² A bill and hold sale is one in which delivery has not occurred, and requires adherence to specific criteria before revenue can be recognized on the transaction. See *In the Matter of Stewart Parness*, Accounting and Auditing Enforcement Rel. No. 108 (August 5, 1986), Staff Accounting Bulletin 104, *Revenue Recognition*.

were awaiting approval from New Jersey state regulators, which was required before the games could be operated on a casino floor.

6. Bally's improper bill and hold sales to both specific and New Jersey customers resulted in the overstatement of its reported net sales revenue by \$8.4 million in the fourth quarter of fiscal 2003 and by \$8.8 million and \$10.2 million in the first and second quarters of fiscal 2004. As a result, Bally should have reported net income from continuing operations for the fourth quarter of fiscal 2003 of \$12.2 million, rather than the \$15 million that it did report. In the first quarter of fiscal 2004, Bally should have reported a net loss from continuing operations of \$0.1 million rather than income of \$2.6 million. In the second quarter of fiscal 2004, Bally should have reported net income from continuing operations of \$11.1 million rather than the \$14.2 million it did report. In addition, these bill and hold sales led to a \$.06 overstatement of Bally's reported earnings per share ("EPS") for the fourth quarter of fiscal 2003 and \$.05 and \$.06 cent overstatements of Bally's reported quarterly EPS numbers in the first and second quarters of fiscal 2004, respectively.

7. Bally improperly recorded revenue on a bill and hold basis on one individual customer transaction in the fourth quarter of 2003, three individual customer transactions in the first quarter of 2004, and one individual customer transaction in the second quarter of 2004. Bally improperly recorded revenue on the New Jersey transactions throughout this period as well. Bally improperly recognized revenue on each of these transactions because it failed to meet one or more of the bill and hold criteria.

8. For each transaction, Bally could not demonstrate that the customer requested that the transaction take place on a bill and hold basis. Bally also failed to meet the requirement of a fixed schedule for delivery on each of the bill and hold transactions. In four cases, Bally relied on alleged delivery schedules that were indefinite and insufficient for purposes of GAAP. Moreover, in three of the transactions, true risk of ownership had not passed to the customers. Bally also failed to meet the criterion requiring completeness of the equipment in its bill and hold transactions with one customer. Finally, Bally failed to segregate the bill and hold inventory for at least one transaction.

9. Bally also improperly recognized revenue on a bill and hold basis for games it sold to New Jersey customers when the games were stored in its New Jersey warehouse at quarter end. The games were manufactured in Nevada and shipped, by Bally, to its New Jersey warehouse, to await inspection by state regulators. The New Jersey games did not qualify for bill and hold revenue recognition and Bally's records do not support such revenue recognition. Specifically, Bally failed to meet the criteria relating to risk of ownership passing to the buyer, fixed schedule for delivery, and customer request that the transaction be on a bill and hold basis.

10. Saxton was ultimately responsible for assuring the accuracy of Bally's periodic and current filings while he served as Bally's CFO. Saxton knew that Bally had recognized revenue on bill and hold transactions, but he did not take sufficient steps to ensure that this revenue was recognized in accordance with GAAP. Saxton reviewed and signed filings with the Commission in which Bally materially overstated its revenues as a result of improper revenue recognition on a

bill and hold basis. In addition, Saxton certified Bally's Form 10-K for the year ended June 30, 2003 and Forms 10-Q for the quarters ended September 30, 2003 and December 31, 2003.

Improper Disclosure Relating to Bill and Hold Transactions

11. Bally did not disclose its use of bill and hold practices, which it should have disclosed under GAAP, in any of its public filings during 2003 and 2004. Instead, Bally's 2003 and 2004 Forms 10-K and Forms 10-Q for 2004 contained the misleading disclosure that "[r]evenue from sales of gaming machines is generally recognized at the time products are shipped and title has passed to the customer." This disclosure was misleading since it failed to explain that Bally recognized revenue on a bill and hold basis.

12. Moreover, when the company stopped recognizing revenue on a bill and hold basis, the company's disclosures regarding its failure to meet earnings guidance for the quarter were misleading. In its earnings press release dated April 21, 2004 and attached to a Form 8-K filed the same day, Bally disclosed that "1,250 units to be delivered in the March 2004 quarter were delayed until the June quarter at the request of three customers, due primarily to the delay in the completion of their new or expanded gaming facilities being constructed." However, these units were not delayed due to construction. Instead, the revenue for these units was not recognized in the quarter because Bally decided to stop recognizing revenue on a bill and hold basis. The company made a similar disclosure in its earnings release call on April 21, 2004.

13. Saxton was ultimately responsible for Bally's improper disclosures. He reviewed Bally's filings with the Commission, but did not take sufficient steps to ensure that the filings accurately and completely disclosed Bally's revenue recognition policy. Moreover, Saxton, who participated in the April 21, 2004 earnings call, knew that Bally had decided to stop recognizing revenue on a bill and hold basis, but Saxton did not take sufficient steps to ensure that the reason for Bally's missed guidance was accurately disclosed.

Books, Records, and Internal Controls

14. As described above, Bally improperly recorded revenue for the year ended June 30, 2003 and for the quarters ended September 30, 2003 and December 31, 2003. Therefore, its books, records, and accounts did not, in reasonable detail, accurately and fairly reflect its transactions and dispositions of assets. Saxton was ultimately responsible for Bally's books, records, and accounts, but failed to take the steps necessary to assure their accuracy.

15. Bally failed to implement internal accounting controls relating to its recording of revenue that were sufficient to provide reasonable assurances that its accounts were accurately stated in conformity with GAAP. Saxton was ultimately responsible for Bally's internal accounting controls but failed to take the steps necessary to assure their sufficiency.

Violations

16. As a result of the conduct described above, Bally violated and Saxton caused Bally to violate Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11, and 13a-13 thereunder, which require every issuer of a security registered pursuant to Section 12 of the Exchange Act to file with the Commission information, documents, and annual, current, and quarterly reports as the Commission may require, and mandate that current and periodic reports contain such further material information as may be necessary to make the required statements not misleading.

17. As a result of the conduct described above, Bally violated and Saxton caused Bally to violate Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect their transactions and dispositions of their assets.

18. As a result of the conduct described above, Bally violated and Saxton caused Bally to violate Section 13(b)(2)(B) of the Exchange Act, which requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP.

19. Rule 13b2-1 under the Exchange Act prohibits any person from, directly or indirectly, falsifying or causing to be falsified any book, record, or account subject to Section 13(b)(2)(A) of the Exchange Act. Bally's books, records, and accounts were subject to Section 13(b)(2)(A) of the Exchange Act. As a result of the conduct described above, Saxton violated Rule 13b2-1 under the Exchange Act.

20. Rule 13a-14 under the Exchange Act requires financial officers to certify in quarterly and annual Commission filings that, among other things, they have read the filing; that it does not contain any untrue statements, or omissions, of material facts; and that the filing fairly presents the financial condition and results of operations and cash flows of the issuer. As a result of the conduct described above, Saxton violated Rule 13a-14 under the Exchange Act.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Saxton's Offer.

Accordingly, it is hereby ORDERED that:

Pursuant to Section 21C of the Exchange Act, Respondent Saxton cease and desist from causing any violations and any future 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, 13a-13 thereunder and from committing or causing any violations of Exchange Act Rules 13a-14 and 13b2-1..

By the Commission.

A handwritten signature in cursive script, reading "Florence E. Harmon".

Florence E. Harmon
Acting Secretary

*Chairman Cok and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 8960 / September 24, 2008

SECURITIES EXCHANGE ACT OF 1934

Release No. 58633 / September 24, 2008

ACCOUNTING AND AUDITING ENFORCEMENT

Release No. 2884 / September 24, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13234

In the Matter of

BEAZER HOMES USA, INC.,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 8A OF THE SECURITIES ACT
OF 1933 AND SECTION 21C OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING A
CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Beazer Homes USA, Inc. ("Beazer" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933 and Section 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing a Cease-and-Desist Order ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. In certain periods between 2000 and 2007, Beazer, acting through certain of its officers and employees, fraudulently misstated its net income for the purpose of improperly managing its quarterly and annual earnings. In May 2008, as a result of its earnings management and other errors, Beazer restated its financial statements to reflect adjustments for the fiscal years 1998 through 2006, as well as the first and second quarters of fiscal year 2007. Beazer restated its fiscal year 2006 net income from \$389 million to \$369 million (a reduction of \$20 million or 5%). Beazer also restated its fiscal 2005 net income from \$263 million to \$276 million (an increase of \$13 million or 5%) and increased its beginning retained earnings for the fiscal year 2005 by \$34 million (from \$742 million to \$776 million or 5%) to reflect the cumulative effect of adjustments for the fiscal years 1998 through 2004. Finally, Beazer also restated its net loss for the first quarter of fiscal year 2007 from \$59 million to \$80 million (an increased loss of \$21 million or 36%), and its net loss for the second quarter of fiscal year 2007 from \$43 million to \$57 million (an increased loss of \$14 million or 33%).

Respondent

2. Beazer, a Delaware corporation headquartered in Atlanta, Georgia, is a homebuilder with operations in at least twenty-one states. Since March 1994, Beazer's common stock has been registered with the Commission pursuant to Section 12(b) of the Exchange Act and listed on the New York Stock Exchange under the symbol BZH. On June 6, 2006, Beazer issued and sold a \$275 million aggregate amount of its 8.125% Senior Notes due 2016 in a private placement to qualified institutional buyers pursuant to Rule 144A and in offshore transactions pursuant to Regulation S. On August 15, 2006, Beazer filed an S-4 registration statement offering to exchange \$275 million in new notes for the notes issued on June 6, 2006. The prospectus filed with the registration statement incorporates by reference Respondent's annual and quarterly reports. In a June 2006 private placement, Beazer also issued \$103 million of junior subordinated notes. Additionally, in November 2005, Beazer announced an increase to 10 million shares of its prior repurchase plan which resulted in 3.65 million of its shares being repurchased during fiscal 2006 for an aggregate purchase price of \$205.4 million.

Beazer's Earnings Management

3. Between approximately 2000 and 2007, Beazer, acting through certain of its officers and employees, fraudulently misstated certain of its quarterly and annual net income by intentionally managing its earnings. From approximately 2000 to 2005, a period of strong growth and financial performance for Beazer, Beazer decreased its reported net income by

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

improperly increasing certain reported operating expenses. This created improper accruals, or "reserves," in Beazer's books and records. In certain quarters, the existence of these reserves had the effect of smoothing Beazer's earnings, *i.e.*, allowing Beazer to report earnings that still met or exceeded analysts' expectations for its quarterly net income and earnings per share ("EPS") while permitting it to improperly defer a portion of its income to future periods.

4. Beginning in the first quarter of fiscal year 2006, Beazer's financial performance began to decline. In order to continue to meet or exceed analysts' expectations for its quarterly net income and EPS, Beazer began reversing many of its previously created, improper reserves. In certain instances, Beazer also began purposefully not recognizing certain current period expenses. These actions had the effect of reducing Beazer's operating expenses and thereby improperly increasing its net income.

5. Additionally during fiscal 2006 and the first two quarters of fiscal 2007, Beazer, again acting through certain of its officers and employees, improperly recognized income from the sale of approximately 360 model homes to three separate investor pools compiled and sponsored by a third party entity (the "Investor Pools").

The Improper Accruals and Reversals

6. Between approximately 2000 and 2007, Beazer created, and later reversed, improper accruals and reserves by, among other ways, manipulating the amounts recorded in two series of accounts in order to manage earnings. These accounts were the land inventory accounts and the house cost to complete accounts.

7. The Land Inventory Accounts. As part of its homebuilding and sales operations, Beazer regularly acquired large parcels of land upon which it constructed houses. Beazer recorded this purchased land as an asset on its balance sheet in accounts denoted as "land inventory accounts." Also recorded in these accounts were capitalized costs for the common development of the parcel, such as costs for sewer systems and streets. Each Beazer subdivision under construction had at least one land inventory account associated with it in Beazer's general ledger.

8. As subdivisions were built, Beazer allocated the land acquisition cost, as well as past and future common development costs, to individual home lots which were then offered for sale. When a home sale was recorded in Beazer's general ledger, all associated homebuilding costs, including the costs of the land recorded in the land inventory account, were expensed to cost of sales. As part of these journal entries, the land inventory account was reduced and a cost of sales expense account increased to reflect the value of the land and improvements that Beazer sold with the house. Because Beazer sold houses within a subdivision as the development of that subdivision progressed, the land expense recorded for any particular house sale was necessarily an estimate. As individual houses in a development were sold, the land inventory accounts were decreased by an amount representing the amounts of the land and development costs allocated to each individual house. Shortly after the final house in a development had been sold, the balance in the land inventory account would be at or near zero.

9. In certain quarters between 2000 through 2007, however, Beazer, acting through certain officers and employees, manipulated the amounts recorded in the land inventory accounts in order to manage earnings. Specifically, in various quarters during fiscal years 2000 through 2005, Beazer over-allocated land inventory expense to individual properties sold. This over-allocation caused Beazer to report more expense and less profit on each sold house in certain subdivisions. When all or most of the houses in a development were eventually sold, these over-allocations resulted in the affected land inventory accounts having negative (or credit) balances. The credit balances that resulted from the intentional over-allocation were then improperly held open in Beazer's general ledger—acting, in effect, as improper reserves. By these actions, Beazer understated its net income by a total of \$42 million for fiscal years 2000 through 2005.

10. Beginning at least by the second quarter of 2006, Beazer, acting through certain officers and employees, began to reverse the excess reserves existing in the land inventory accounts, which increased then-current period earnings. The credit balances in land inventory accounts were debited, *i.e.*, zeroed out, and a cost of sales expense credited, *i.e.*, reduced. This improperly reduced expenses and increased Beazer's earnings. During 2006, Beazer overstated its cumulative reported net income of \$389 million by \$16 million by "zeroing out" credit balances in its land inventory accounts. For the first two quarters of fiscal 2007, Beazer understated its cumulative reported net loss of \$102 million by \$1 million due to the reversal of improper land inventory reserves.

11. The House Cost to Complete Accounts. Under its accounting policies, Beazer recorded revenue and profit on the sale of a house after the close of the sale of that house to a third party. In the journal entries to record the sale, Beazer typically reserved a portion of its profit earned on the house. This reserve, called a "house cost to complete" reserve, was established to cover any known and unknown expenses that Beazer might incur on the sold house after the close, such as outstanding invoices, unbudgeted cost overruns, minor repairs or final cosmetic touchups. Although the amount of this reserve varied by region, it was typically \$2,000 to \$4,000 per house, above known outstanding invoices. Beazer's policy was to reverse any unused portion of the house cost to complete reserve within four to nine months after the house's close, taking any unused portion into income at that time. Although creation of such a house cost to complete reserve is proper, in some instances, Beazer, acting through certain officers and employees, utilized these reserves to manage improperly its earnings. In various quarters between 2000 and 2005, Beazer over-reserved house cost to complete expenses in order to defer profit to future periods. In later periods, Beazer eliminated these cost to complete reserves, resulting in inflated profits for those periods. In certain instances, Beazer also purposefully did not recognize certain current period house cost to complete expenses, again resulting in inflated profits for those periods.

12. Between fiscal years 2000 and 2005, Beazer understated its net income by \$6 million due to excess house cost to complete accruals. During fiscal year 2006, when Beazer began to reverse some of the excess accruals, Respondent overstated its net income by over \$1.2 million. Beazer also understated its cumulative net loss for the first two quarters of fiscal 2007 by \$1 million.

The Sale-Leaseback Transactions

13. As part of its marketing activities, Beazer typically builds and furnishes between one and five model homes for each of its housing developments. Prior to 2006, Beazer typically retained ownership of the large majority (upwards of 70-80%) of its model homes, and entered into sale-leaseback arrangements with third parties for the remaining ones. Beginning in fiscal 2006, Beazer significantly increased the number of model homes it leased. At the end of fiscal 2006, Beazer had leased 557 of its 793 model homes or 70%. Beazer improperly accounted for more than half of these leased model homes as sale-leasebacks in order to improve Beazer's financial results.

14. Specifically, beginning near the end of fiscal 2005, Beazer, acting through certain of its officers and employees, engaged in negotiations with the third party entity representing the Investor Pools concerning possible sale-leaseback transactions for Beazer's model homes. Pursuant to the transaction terms under discussion, the Investor Pools would purchase certain Beazer model homes at 92% of the homes' appraised value. Beazer would then lease the model homes, at monthly lease payments equal to the Investor Pools' purchase price multiplied by the current 30 day LIBOR rate plus 450 basis points (prorated on a monthly basis). Beazer would also retain a right to receive a percentage of the appreciation of the model home upon its sale at the end of the lease term (the "Appreciation Rights").

15. However, Beazer's outside auditor informed certain Beazer officers and employees that any Appreciation Rights represented a "continuing interest" that, pursuant to Generally Accepted Accounting Principles ("GAAP"), required Beazer to record the transactions as financing, not as sale-leasebacks. This proper accounting treatment would not have permitted Beazer to record the model home sales revenue and profit at the beginning of the lease term.

16. In order to circumvent GAAP, and deceive its outside auditor, Beazer, acting through certain officers and employees, caused the model home sale-leaseback written agreements with the Investor Pools to omit any reference to Appreciation Rights and recorded the model home transactions as sale-leasebacks, recognizing home sales revenue in fiscal 2006. Based upon the terms of the written agreements, the outside auditor agreed that the transactions qualified for sale-leaseback accounting. However, unbeknownst to the outside auditor, Beazer, acting through certain officers and employees, and the Investor Pools had also entered into oral side agreements which contained the Appreciation Rights, and allowed Beazer to receive a percentage of the model homes' price appreciation upon their sale at the end of the lease term.

17. As a result of Beazer's improper recording of these transactions as sale-leasebacks, Beazer overstated its fiscal year 2006 revenues by \$117 million and net income by \$14 million. For the first two quarters of fiscal 2007, Beazer understated its cumulative revenue by \$2.6 million and overstated its cumulative net loss by \$3.9 million due to the improper sale-leasebacks accounting.

Beazer's Anti-fraud Violations: Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 Thereunder

18. As a result of the conduct described above, Beazer violated Section 17(a) of the Securities Act, which prohibits materially false or misleading statements, or material omissions in the offer or sale of any security. Specifically, Beazer knowingly departed from GAAP and misstated its net income for certain periods in its registration statements and other filings with the Commission and other investor disclosures by using certain reserves and other accrued liabilities to recognize profits in 2006 and 2007 that were earned from 2000 through 2005. Beazer also intentionally and improperly recognized sales revenue from certain model home lease transactions, due to Respondent's use of sale-leaseback accounting treatment for these transactions despite knowing that such treatment was not in accordance with GAAP.

19. Additionally, Beazer violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibit fraudulent conduct in connection with the purchase or sale of securities. As set forth above, Beazer made untrue statements of material facts in registration statements, periodic reports filed with the Commission and other investor disclosures or omitted to state therein any fact necessary in order to prevent the statements made therein, in the light of the circumstances under which they were made, from being materially misleading. Specifically, Beazer falsely stated its net income in certain periods in various Commission filings and other investor disclosures.

Beazer's Reporting Violations: Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 Thereunder

20. Also as a result of the conduct described above, Beazer violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 promulgated under the Exchange Act, which require that every issuer of a security registered pursuant to Section 12 of the Exchange Act files with the Commission information, documents, and annual and quarterly reports as the Commission may require, and mandate that periodic reports contain further material information as may be necessary to make the required statements not misleading.

Beazer's Record Keeping and Internal Control Violations: Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act

21. As a result of the conduct described above, Beazer violated Section 13(b)(2)(A) of the Exchange Act, which requires reporting companies to make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer.

22. As a result of the conduct described above, Beazer violated Section 13(b)(2)(B) of the Exchange Act, which requires all reporting companies to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP. Beazer's insufficient internal controls failed to prevent the recording of the fraudulent accounting

entries in its general ledger and caused Respondent to file with the Commission financial statements that failed to conform with GAAP.

Beazer's Remedial Efforts

23. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

Undertakings

24. Respondent shall cooperate fully with the Commission in any and all investigations, litigations or other proceedings relating to or arising from the matters described in this Order. In connection with such cooperation, Respondent has undertaken:

a. To produce, without service of a notice or subpoena, any and all documents and other information requested by the Commission's staff;

b. To use its best efforts to cause its employees to be interviewed by the Commission's staff at such times as the staff reasonably may direct;

c. To use its best efforts to cause its employees to appear and testify truthfully and completely without service of a notice or subpoena in such investigations, depositions, hearings or trials as may be requested by the Commission's staff; and

d. That in connection with any testimony of Respondent to be conducted at deposition, hearing or trial pursuant to a notice or subpoena, Respondent:

(i.) Agrees that any such notice or subpoena for Respondent's appearance and testimony may be served by regular mail on its attorney, David G. Januszewski, Esq., at Cahill Gordon & Reindel LLP, Eighty Pine Street, New York, New York 10005-1702; and

(ii.) Agrees that any such notice or subpoena for Respondent's appearance and testimony in an action pending in a United States District Court may be served, and may require testimony, beyond the territorial limits imposed by the Federal Rules of Civil Procedure.

25. In determining whether to accept the Offer, the Commission has considered these undertakings.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanction agreed to in Respondent Beazer's Offer.

Accordingly, it is hereby ORDERED that:

Pursuant to Section 8A of the Securities Act and Section 21C of the Exchange Act, Respondent Beazer cease and desist from committing or causing any violations and any 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, 13a-11 and 13a-13 promulgated under the Exchange Act.

By the Commission.

Florence E. Harmon
Acting Secretary


By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58662 / September 26, 2008

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2889 / September 26, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13240

In the Matter of

URS KAMBER, CA

Respondent.

**ORDER INSTITUTING PUBLIC
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO RULE 102(e) OF THE
COMMISSION'S RULES OF PRACTICE,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission (the "Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Urs Kamber (the "Respondent" or "Kamber") pursuant to Rule 102(e)(3) of the Commission's Rules of Practice.¹

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2. below, which are admitted, Respondent

¹ Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder. .

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102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions (the "Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Kamber, age 55, is a chartered accountant ("CA") licensed to practice in Switzerland, and has been since 1979. From September 2001 through October 2003, he was the Chief Financial Officer of Centerpulse Ltd., a Swiss public company that manufactured and marketed various medical devices. From January 2001 through October 2003, Centerpulse's American Depository Shares were registered in the United States pursuant to Section 12(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and were traded on the New York Stock Exchange under the symbol "CEP."

2. On August 1, 2008, a final judgment was entered against Kamber, permanently enjoining him from future violations of Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13a-14 and 13b2-1 thereunder, and from aiding and abetting future 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 thereunder, in the civil action entitled Securities and Exchange Commission v. Urs Kamber, et al., Civil Action Number 1:07-cv-01867 (JDB), in the United States District Court for the District of Columbia. Kamber was also ordered to pay \$65,013 in disgorgement of ill-gotten gains, \$22,824 in prejudgment interest, and a \$50,000 civil money penalty.

3. The Commission's complaint alleged that Kamber and others engaged in a fraudulent scheme to inflate Centerpulse's reported earnings during the second half of 2002 by manipulating reserves and refusing to recognize expenses and liabilities. The complaint also alleged that, as a result of the scheme, Centerpulse issued and furnished to the Commission false and misleading earnings releases for the third and fourth quarters of 2002, and issued and filed with the Commission a false and misleading annual report for fiscal 2002, which materially overstated Centerpulse's third quarter 2002 reported pretax income by approximately \$32 million, and its fourth quarter 2002 and fiscal year 2002 reported pretax income by at least \$26.4 million.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent Kamber's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Kamber is suspended from appearing or practicing before the Commission as an accountant.

B. After 5 years from the date of this Order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Respondent, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the Respondent's or the firm's quality control system that would indicate that the Respondent will not receive appropriate supervision;

(c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

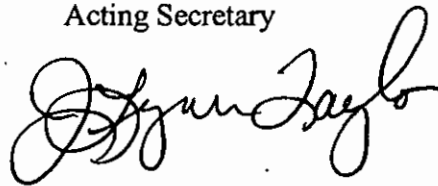
(d) Respondent acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his status as an accountant is

current and he has resolved all other disciplinary issues with the applicable board of accountancy. However, if resolution of any disciplinary action by a board of accountancy is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Florence E. Harmon
Acting Secretary

A handwritten signature in cursive script, appearing to read "J. Lynn Taylor".

By: J. Lynn Taylor
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-8962; 34-58657; File No. 4-567]

Roundtable on Modernizing the SEC's Disclosure System

AGENCY: Securities and Exchange Commission.

ACTION: Notice of roundtable discussion; request for comment.

SUMMARY: On October 8, 2008 from 9:00 am to 1:00 pm, the Securities and Exchange Commission will hold a roundtable to discuss ways in which its current disclosure system can be modernized to provide investors more useful and timely information to help them make investment choices. The roundtable will be organized as two panels. The panels will be moderated by Commission staff and will include investor representatives, company officials, information intermediaries, practitioners, and academics. The roundtable is part of the Commission's 21st Century Disclosure Initiative.

The roundtable will be held in the auditorium of SEC headquarters at 100 F Street, NE, Washington, DC, from 9 am until approximately 1 pm. The roundtable will be open to the public with seating on a first-come, first-served basis. The roundtable discussions will be webcast on the Commission's Web site at <http://www.sec.gov>. The roundtable agenda and other related materials, including a list of participants and moderators, will be accessible at <http://www.sec.gov/disclosureinitiative>. The Commission welcomes comments regarding any of the topics to be addressed at the roundtable and is particularly interested in comments responding to the questions that are set forth below.

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DATES: We must receive comments on or before October 22, 2008.

ADDRESSES: You may submit your comments by any of the following methods:

Electronic Comments

- Use the Commission's Internet submission form (<http://www.sec.gov/rules/other.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number 4-567 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

Your submission must refer to File No. 4-567. You should include this file number on the subject line if you send your comment by e-mail. Please use only one method of submission. The Commission will post all comments on its Web site at <http://www.sec.gov/rules/other.shtml>. Comments will also be available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. All comments received will be posted without change. Because we do not edit personal identifying information from submissions, you should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Matthew Reed at (202) 551-4144, 21st Century Disclosure Initiative, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-3561.

SUPPLEMENTARY INFORMATION: The federal securities acts require certain operating and investment companies, and certain investors, to submit transactional, financial, governance-related, and other information to the Commission. Much of this information is made available to the public and investors. The Commission's existing disclosure system depends primarily on forms that collect, organize, and convey the required information. Companies and other filers prepare the forms and file them with the Commission, which stores them and makes them available to the public using its EDGAR database. The Commission recently announced that it is developing a new platform, known as IDEA (Interactive Data, Electronic Applications), to succeed EDGAR. IDEA's architecture will allow disclosure information to be submitted, stored, accessed, and disseminated more efficiently.

In June 2008, Chairman Christopher Cox launched the 21st Century Disclosure Initiative and called for a fundamental rethinking of our current disclosure system, which could result in transitioning away from a forms-based approach. The principal objective of the Initiative is to enhance the usefulness of disclosure to investors. Improved efficiency for preparers of disclosure also will be important. The Initiative will include a careful review of existing disclosure, the objectives of disclosure, and whether and how disclosure may be improved through the application of modern technology and practices. Based on its internal efforts and other information, including the views expressed at the October 8, 2008, roundtable and comments received regarding the roundtable, Initiative staff will prepare a report that describes a modernized disclosure system and recommends future action for a transition to the new system. The proposed new system will use modern information technology to collect, manage, and provide structured data or

information that is accessible, and easier to use, while providing the Commission with tools to better fulfill its mission of protecting investors, maintaining orderly markets, and facilitating the formation of capital.

This system could take the form of a "company file system" that would collect core information about a company or fund in a centrally and logically organized structured data file. Companies would supplement that information with the current, periodic, and transactional information that is currently required by the Commission's disclosure regulations. Structured data, including data tagging, and IDEA's versatile architecture should make disclosure information dynamic, accessible, and easier to use. Initiative staff will analyze whether a company file system would provide investors with improved presentation and access to information; reduce redundancy and complexity for filers, harness the ability of technology to drive down costs and reduce errors; and aid the Commission's development of more powerful electronic regulatory and enforcement tools. A company file system would also allow for the Commission to consider ways to further integrate disclosure.

The Roundtable on Modernizing the Securities and Exchange Commission's Disclosure System will be organized into two panels. The first panel will explore the data, technology, and processes that companies and other filers use in satisfying their Commission disclosure obligations. It will also consider the data and technology that investors use in making their investment decisions. The second panel will consider how the Commission could better organize and operate its disclosure system so that companies enjoy efficiencies and investors have better access to high-quality information.

The Commission welcomes feedback regarding any of the topics to be addressed at the roundtable and would be particularly interested in comments on the specific questions set forth below.

I. General Issues

- a. Should the Commission make changes to its current forms-based disclosure system? Please explain why or why not.
- b. What are the key issues to be considered in the review of the Commission's disclosure system? Are particular aspects of the system and process especially useful and well executed, and are particular aspects especially in need of improvement?
- c. What are the purposes of issuer disclosure from the perspective of investors, filers, and regulators?

II. Specific Issues

a. The Market's Use of Disclosure Information

- i. How do operating and investment companies collect, summarize, analyze, file, and disseminate the information that is submitted to the Commission?
- ii. How do operating and investment companies submit disclosure and reporting information to the Commission? How have these methods changed during the last 15 years, particularly after filing via EDGAR was fully implemented? How could the Commission's system be changed to reduce burdens and create efficiencies, consistent with investor protection?

- iii. How do investors retrieve and use the disclosure information that companies submit to the Commission? How could this information be better presented, and more easily retrieved and used through technological improvements?
- iv. What disclosure information that companies submit to the Commission is used by investors to make investment decisions? Is any information that companies submit to the Commission not used? What information that is not required to be filed or furnished with the Commission do investors and others use to make investment decisions or give investment advice?

b. The Commission's Current Disclosure System

Does the Commission's current disclosure system present difficulties? What difficulties can be attributed to technological problems? Which can be attributed to regulatory or statutory problems?

c. Modernizing the Commission's Disclosure System

- i. How should the Commission's disclosure system be modernized?

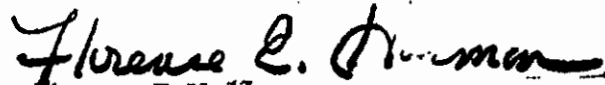
One possibility is a company file system. What alternative systems should be considered? What different or additional benefits might these alternatives provide?

- ii. How should a modern disclosure system, such as a company file system, be organized, and how could it improve the way disclosure information is submitted and used?

- iii. What features should any modernized disclosure system provide in order to serve the needs of filers, investors, regulators, and other users of information? Why?
- iv. Data tagging using XBRL, or eXtensible Business Reporting Language, is one way, but we understand there are other ways to structure data. What alternative ways could be used by companies to submit structured data to the Commission?
- v. What are the costs and benefits to investors and other market participants of structuring non-financial disclosures, including, for example, data tagging?
- vi. What time frame would be appropriate for implementing a company file system?
- vii. What benefits and costs to preparers and users of information would accompany the implementation of modernized disclosure system, such as a company file system, that requires all, or virtually all, data to be filed in a structured format? Would such a system be more useful to some investors, such as small or less sophisticated investors? Would some investors be harmed by such a system? Would larger companies benefit more than smaller companies? Would costs fall disproportionately on one group of companies?

viii. Are any changes to the Commission's disclosure regulations required for a transition to a company file system? How could these changes be identified?

By the Commission.


Florence E. Harmon
Acting Secretary

Dated: September 26, 2008

*Chairman Cox and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 26, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13242

In the Matter of

Arthur S. Redler,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
AND NOTICE OF HEARING

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Arthur S. Redler ("Respondent" or "Redler").

II.

After an investigation, the Division of Enforcement alleges that:

1. Redler, age 57, is a resident of Coral Springs, Florida. From October 2004 through September 2006, Redler was a registered representative of Newbridge Securities Corp., a registered broker-dealer headquartered in Fort Lauderdale, Florida.
2. At all relevant times, Millennium National Events, Inc. ("Millennium") was a Florida corporation purportedly headquartered in Delray Beach, Florida. Millennium's common stock was publicly traded in the Pink Sheets published by the National Quotations Bureau, Inc.
3. Redler participated in an offering of Millennium's stock, which is a penny stock.
4. On September 28, 2006, Redler pleaded guilty to one count of securities fraud in violation of Title 15 United States Code §§ 78j(b) and 78ff and 17 C.F.R. 240.10b-5, and aiding and abetting in violation of Title 18 United States Code § 2, before the United States District Court

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for the Southern District of New York, in United States v. Arthur Redler, Crim. Information No. 1:06-CR-878 (LBS).

5. The one-count criminal information to which Redler pleaded guilty alleged, inter alia, that from at least in or about October 2004 through at least in or about November 2005, Redler defrauded investors by artificially manipulating the market for Millennium's stock, and that in engaging in the foregoing conduct, Redler posted bids and conducted trades in Millennium's stock at artificially inflated prices to create the false appearance in the marketplace that there was actual market demand for Millennium's stock at those inflated prices, by the use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate in the public interest that public administrative proceedings be instituted to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations;

B. What, if any, remedial action is appropriate in the public interest against Respondent pursuant to Section 15(b) of the Exchange Act; and

C. Whether, pursuant to Section 15(b) of the Exchange Act, it is appropriate and in the public interest to bar Respondent from participating in any offering of penny stock, including: acting as a promoter, finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock; or inducing or attempting to induce the purchase or sale of any penny stock.

IV.

IT IS ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against him upon consideration of this Order, the allegations of which may be deemed to be true as

provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

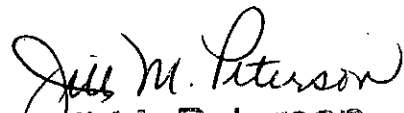
This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 210 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary


By **Jill M. Peterson**
Assistant Secretary

*Chairman Cox and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58663 / September 26, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13241

In the Matter of

Mitchell Steinberg,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Mitchell Steinberg ("Respondent" or "Steinberg").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.4 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Steinberg, age 48, a resident of Boca Raton, Florida, was the chairman and chief operating officer of Millennium National Events, Inc. ("Millennium").
2. At all relevant times, Millennium was a Florida corporation purportedly headquartered in Delray Beach, Florida. Millennium's common stock was publicly traded in the Pink Sheets published by the National Quotations Bureau, Inc.
3. Steinberg participated in an offering of Millennium's stock, which is a penny stock.
4. On September 26, 2006, Steinberg pleaded guilty to one count of conspiracy in violation of Title 18 United States Code § 371 before the United States District Court for the Southern District of New York in U.S. v. Steinberg, Crim. Information No. 1:06-CR-852 (JGK).
5. The criminal information to which Steinberg pleaded guilty alleged, *inter alia*, that from at least in or about October 2004 through in or about April 2005, Steinberg defrauded investors by artificially manipulating the market for Millennium's stock. The information alleged that in engaging in the foregoing conduct Steinberg created materially false and misleading press releases concerning Millennium and caused them to be published for the purpose of fraudulently increasing the price of Millennium's stock to defraud the investing public, and that in connection with the foregoing, Steinberg used the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Steinberg's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act, that Respondent Steinberg be, and hereby is barred from participating in any offering of a penny stock, including: acting as a promoter,

finder, consultant, agent or other person who engages in activities with a broker, dealer or issuer for purposes of the issuance or trading in any penny stock, or inducing or attempting to induce the purchase or sale of any penny stock.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

SECURITIES AND EXCHANGE COMMISSION

17 CFR PART 229

[RELEASE NOS. 33-8961; 34-58656]

TECHNICAL AMENDMENT TO ITEM 407 OF REGULATION S-K

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendment.

SUMMARY: The Securities and Exchange Commission ("Commission") is making a technical amendment to Item 407 of Regulation S-K. The technical amendment updates a reference to Independence Standards Board Standard No. 1 ("ISB No. 1"), which was previously adopted by the Public Company Accounting Oversight Board ("PCAOB") as an interim standard but has been superseded by the PCAOB's newly adopted Ethics and Independence Rule 3526, Communication with Audit Committees Concerning Independence. The reference is being updated to refer to the "applicable requirements of the Public Company Accounting Oversight Board regarding the independent accountant's communications with the audit committee concerning independence."

EFFECTIVE DATE: September 30, 2008.

FOR FURTHER INFORMATION CONTACT: Melanie Jacobsen, Special Counsel, at 202-551-5300, Office of the Chief Accountant, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-5041.

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SUPPLEMENTARY INFORMATION:

I. Background

We are amending Item 407 of Regulation S-K¹ to update a reference as a result of the adoption of a new Public Company Accounting Oversight Board (“PCAOB”) rule. Item 407 is being amended to update the following reference:

Old Reference:

“Independence Standards Board Standard No. 1 (Independence Standards Board Standard No. 1, Independence Discussions with Audit Committees), as adopted by the Public Company Accounting Oversight Board in Rule 3600T”

New Reference:

“applicable requirements of the Public Company Accounting Oversight Board regarding the independent accountant’s communications with the audit committee concerning independence”

Independence Standards Board Standard No. 1 (“ISB No. 1”) was part of the interim standards previously adopted by the PCAOB on April 16, 2003.² It required an auditor annually to discuss with the audit committee its independence and to provide written disclosures of all relationships between the auditor and the company that may reasonably be thought to bear on independence and a letter confirming the auditor’s independence.³

¹ 17 CFR 229.407.

² PCAOB Rule 3600T.

³ ISB No. 1.

Effective on September 30, 2008, PCAOB Rule 3526 supersedes ISB No. 1 regarding the annual discussion and disclosure the auditor must make to the audit committee.⁴ Rule 3526 was adopted by the PCAOB on April 22, 2008 and approved by the Commission on August 22, 2008.

Under existing Item 407 of Regulation S-K, an issuer's audit committee must state that it has received from the independent accountants the written disclosures and letter required by ISB No. 1. As revised, Item 407 requires the audit committee to state that it has received the disclosure and letter required by the applicable PCAOB requirements for independent accountant communications with audit committees concerning auditor independence because ISB No. 1 has been superseded by PCAOB Rule 3526. To avoid the need to update a specific reference in the future if subsequently changed, we are revising the reference in Item 407 Regulation S-K so that it refers to the written disclosures and the letter from the independent accountants required by "applicable requirements of the Public Company Accounting Oversight Board regarding the independent accountant's communications with the audit committee concerning independence."

We are not revising Item 407 of Regulation S-B in the same manner as we are revising Item 407 of Regulation S-K due to amendments that we made in December 2007 to expand the number of smaller reporting companies that qualify for our scaled disclosure requirements under the Securities Act and the Securities Exchange Act of 1934.⁵ To streamline and simplify regulation, the amendments moved the scaled disclosure requirements from Regulation S-B into Regulation S-K. While Regulation S-B will remain in effect for transition purposes until March 15, 2009, it will be removed from the Code of Federal Regulations in its entirety after that date.

⁴ Rule 3526 also superseded ISB Interpretation 00-1, The Applicability of ISB Standard No. 1 When "Secondary Auditors" are Involved in the Audit of a Registrant, and ISB Interpretation 00-2, The Applicability of ISB Standard No. 1 When "Secondary Auditors" Are Involved in the Audit of a Registrant, An Amendment of Interpretation 00-1.

⁵ 15 U.S.C. 78a et seq.

We therefore are not revising Regulation S-B, but we intend to interpret existing Regulation S-B Item 407 consistently with the technical changes that we are making to the comparable Regulation S-K item. Accordingly, we expect companies complying with Regulation S-B after the effective date of these amendments, but before March 15, 2009, to follow the applicable PCAOB requirements for independent accountant auditor independence.

II. Certain Findings

Under the Administrative Procedure Act, a notice of proposed rulemaking is not required when the agency, for good cause, finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.⁶ The amendment to Item 407 of Regulation S-K is a technical change to update an outdated reference. Because no one is likely to want to comment on such a non-substantive, technical amendment, the Commission finds that it is unnecessary to publish notice of this amendment.⁷

The Administrative Procedure Act also requires publication of a rule at least 30 days before its effective date unless the agency finds otherwise for good cause.⁸ Due to the need to coordinate the effectiveness of the amendment with the effective date of the PCAOB's new Rule 3526 (which is to take effect on September 30, 2008) and for the same reasons described with respect to opportunity for notice and comment, the Commission finds there is good cause for the amendments to take effect on September 30, 2008.

⁶ 5 U.S.C. 553(b).

⁷ For similar reasons, the amendment does not require analysis under the Regulatory Flexibility Act or analysis of major rule status under the Small Business Regulatory Enforcement Fairness Act. See 5 U.S.C. 601(2) (for purposes of Regulatory Flexibility Act analysis, the term "rule" means any rule for which the agency publishes a general notice of proposed rulemaking); and 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term "rule" does not include any rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties).

⁸ See 5 U.S.C. 553(d)(3).

III. Consideration of Competitive Effects of Amendment

Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to refrain from adopting a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.⁹ Because this amendment merely makes technical changes to update references to applicable PCAOB requirements, we do not anticipate any competitive advantages or disadvantages would be created.

IV. Statutory Authority and Text of Amendments

We are adopting this technical amendment under the authority set forth in Section 19(a) of the Securities Act¹⁰ and Section 23(a) of the Exchange Act.¹¹

List of Subjects

17 CFR Part 229

Reporting and recordkeeping requirements, Securities.

TEXT OF AMENDMENTS

For the reasons set out in the preamble, Title 17, Chapter II of the Code of the Federal Regulations is amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975 -- REGULATION S-K

1. The authority citation for Part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z-2, 77z-3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u-5,

⁹ 15 U.S.C. 78w(a)(2).

¹⁰ 15 U.S.C. 77s(a).

¹¹ 15 U.S.C. 78w(a).

78w, 78ll, 78mm, 80a-8, 80a-9, 80a-20, 80a-29, 80a-30, 80a-31(c), 80a-37, 80a-38(a), 80(a)-39, 80b-11, and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

2. Section 229.407 is amended by revising paragraph (d)(3)(i)(C) to read as follows:

§ 229.407 (Item 407) Corporate governance.

* * * * *

(d) * * *

(3) * * *

(i) * * *

(C) The audit committee has received the written disclosures and the letter from the independent accountant required by applicable requirements of the Public Company Accounting Oversight Board regarding the independent accountant's communications with the audit committee concerning independence, and has discussed with the independent accountant the independent accountant's independence; and

* * * * *

By the Commission.

Florence E. Harmon

Florence E. Harmon
Acting Secretary

Date: September 26, 2008

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 58652 / September 26, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13238

In the Matter of

TELOMOLECULAR CORP.,

Respondent.

**ORDER INSTITUTING PROCEEDINGS
PURSUANT TO SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND REVOKING REGISTRATION OF
SECURITIES**

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act"), against Telomolecular Corp. ("Telomolecular" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, Respondent consents to the entry of this Order Instituting Proceedings Pursuant to Section 12(j) of the Securities Exchange Act of 1934, Making Findings, and Revoking Registration of Securities ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that

A. Telomolecular, a Delaware corporation based in Rancho Cordova, California, is a biotechnology company. The common stock of Telomolecular has been registered under Section 12(g) of the Exchange Act since January 2007. Telomolecular securities have never been publicly traded.

B. Telomolecular has failed to comply with Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder, while its common stock was registered with the Commission, in that it has never filed an Annual Report on Form 10-K or Form 10-KSB or any periodic or quarterly reports on Form 10-Q or Form 10-QSB.

IV.

Section 12(j) of the Exchange Act provides as follows:

The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means of instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

In view of the foregoing, the Commission finds that it is necessary and appropriate for the protection of investors to impose the sanction specified in Respondent's Offer.

Accordingly, it is hereby ORDERED, pursuant to Section 12(j) of the Exchange Act, that registration of each class of Respondent's securities registered pursuant to Section 12 of the Exchange Act be, and hereby is, revoked.

By the Commission.

Florence E. Harmon
Acting Secretary


By: J. Lynn Taylor
Assistant Secretary

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

*Chairman Cok and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 26, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13239

In the Matter of

WENDT-BRISTOL HEALTH
SERVICES CORPORATION,

Respondent.

ORDER INSTITUTING PROCEEDINGS
PURSUANT TO SECTION 12(j) OF THE
SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act"), against Wendt-Bristol Health Services Corporation ("Wendt-Bristol" or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

A. Wendt-Bristol (CIK No. 0000728392) is a Delaware corporation headquartered in Columbus, Ohio. Wendt-Bristol purportedly acts as a managing partner of two radiation therapy centers. Wendt-Bristol's common stock is registered with the Commission pursuant to Section 12(g) of the Exchange Act. Wendt-Bristol's common stock is currently quoted on the "Pink Sheets" operated by Pink OTC Markets, Inc.

B. Wendt-Bristol has failed to comply with Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder, while its common stock was registered with the Commission in that it has not filed an Annual Report on Form 10-K since September 28, 2000 (for its year ending December 31, 1999) or quarterly reports on Form 10-Q for any fiscal period subsequent to its fiscal quarter ending March 31, 2000.

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III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that proceedings be instituted pursuant to Section 12(j) of the Exchange Act to determine:

A. Whether the allegations set forth in Section II are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and

B. Whether it is necessary and appropriate for the protection of investors to suspend for a period not exceeding 12 months or revoke the registration of each class of securities of Wendt-Bristol registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice, 17 C.F.R. § 201.110.

IT IS FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220 of the Commission's Rules of Practice, 17 C.F.R. § 201.220.

If Respondent fails to file the directed answer, or fails to appear at a hearing after being duly notified, the Respondent may be deemed in default and the proceedings may be determined against Respondent upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f) and 310 of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f) and 201.310.

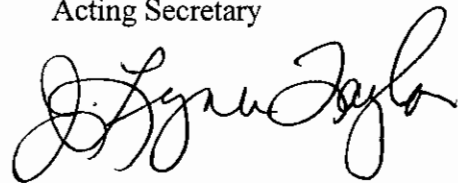
This Order shall be served forthwith upon Respondent personally or by certified mail.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice.

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action

By the Commission.

Florence E. Harmon
Acting Secretary

A handwritten signature in cursive script, appearing to read "J. Lynn Taylor".

By: J. Lynn Taylor
Assistant Secretary

*Chairman Cox and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

September 26, 2008

IN THE MATTER OF

Wendt-Bristol Health Services Corp.

File No. 500-1

ORDER OF SUSPENSION
OF TRADING

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Wendt-Bristol Health Services Corp. ("Wendt-Bristol") because it has not filed any periodic reports since the period ended March 31, 2000. Wendt-Bristol is quoted on the Pink Sheets operated by Pink OTC Markets, Inc. under the ticker symbol WMDB.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EDT on September 26, 2008, through 11:59 p.m. EDT on October 9, 2008.

By the Commission.

Florence E. Harmon
Acting Secretary

J. Lynn Taylor
By: J. Lynn Taylor
Assistant Secretary

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UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58679 / September 29, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13253

In the Matter of

REY SALOMON, JR.,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO SECTION
15(b) OF THE SECURITIES EXCHANGE
ACT OF 1934, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Rey Salomon, Jr. ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Rey Salomon, Jr., age 32, a resident of Garland, Texas, is the principal of Ellen H Development LLC ("EHD") a Texas limited liability company with its principal place of business in Dallas, Texas. Salomon acted as an unregistered broker-dealer on behalf of EHD.

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2. On September 26, 2008, a final judgment was entered by consent against Salomon, permanently enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933 ("Securities Act") and Sections 15(a) and 10(b) of the Exchange Act and Rule 10b-5 thereunder, in the civil action entitled *Securities and Exchange Commission v. Rey Salomon, Jr. and Ellen H Development LLC*, Civil Action Number 3:08-CV-1695, in the United States District Court for the Northern District of Texas.

3. The Commission's complaint alleged that, in connection with the sale of fractional interests in an oil and gas drilling program, Salomon: misappropriated investor funds; made material misrepresentations and omitted material facts regarding the use of investor funds, investors' liability for EHD's and Salomon's debts, and the costs of the drilling program; sold unregistered securities; and acted as an unregistered broker-dealer.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Salomon's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act, that Respondent Salomon be, and hereby is barred from association with any broker or dealer, with the right to reapply for association after five years to the appropriate self-regulatory organization, or if there is none, to the Commission;

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (i) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (ii) any arbitration award related to the conduct that served as the basis for the Commission order; (iii) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (iv) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.



Florence E. Harmon
Acting Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58674 / September 29, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13249

In the Matter of

DAVID WILLIAM THOMAS,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 15(b) OF THE
SECURITIES EXCHANGE ACT OF 1934,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against David William Thomas ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Thomas, 66, of Loveland, Colorado, is the managing member and registered agent for Global Marketing Consultants, LLC ("GMC"). Thomas is not registered with the Commission in any capacity.

2. GMC, a Colorado limited liability company incorporated on March 28, 2002, is owned and operated by Thomas. Until January 2007, GMC maintained three offices in residences owned by Thomas located in Loveland, Colorado. GMC has not filed a Securities Act of 1933 ("Securities Act") registration statement or made a Regulation D filing with the Commission or any state claiming an exemption from registration for its offering of securities, nor has GMC registered a class of securities under the Exchange Act.

3. On September 19, 2008, a final judgment was entered by consent against Thomas enjoining him from future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act, Sections 10(b) and 15(a) of the Exchange Act, and Exchange Act Rule 10b-5 thereunder, in the civil action entitled Securities and Exchange Commission v. David William Thomas, et al., Civil Action No. 08-CV-02026 (REB), in the United States District Court for the District of Colorado ("Civil Action").

4. The Commission's complaint alleged, among other things, that from at least 2002 through 2005, Thomas, operating through GMC, used material misrepresentations to raise approximately \$6.3 million from over 140 investors, including seniors, in two pooled investment schemes. The complaint alleged that Thomas' representations to investors regarding the use of their funds and the security of the investments were false. Further, the complaint also alleged that Thomas sent false account statements indicating that investors' funds were fully invested and made Ponzi payments to investors. The complaint also alleged that Thomas misappropriated a large portion of the funds he received to invest in undisclosed prime bank trading programs. The complaint further alleged that Thomas sold unregistered securities and acted as an unregistered broker-dealer.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Thomas' Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 15(b)(6) of the Exchange Act, that Respondent Thomas be, and hereby is barred from association with any broker or dealer;

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of

factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

*Chairman Cox and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940
Release No. 2793 / September 29, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13252

In the Matter of

ANTHONY A. JAMES,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Anthony A. James ("James" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.2 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. James, age 41, a resident of Parkland, Florida, was the founder and sole owner of James Asset Advisory, L.L.C. ("James Advisory"), an investment advisory firm based in Troy, Michigan, from 1998 until early 2008. James Advisory has never been registered with the Commission but was formerly registered as an investment adviser with the State of Michigan.

2. On September 25, 2008, a judgment was entered by consent against James, permanently enjoining him from future violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Sections 206(1) and (2) of the Advisers Act, in the civil action entitled Securities and Exchange Commission v. Anthony A. James, et al., Case No. 08-61516, in the United States District Court for the Southern District of Florida.

3. The Commission's complaint alleged that, among other things, from at least early 2000 through early 2008, James misused and misappropriated millions of dollars in James Advisory client funds to pay for personal expenses and to purchase houses and cars for himself, and to pay other clients seeking to withdraw their funds. The complaint also alleged that James falsely stated to clients that their funds would be invested in securities and managed on their behalf, and that James sent out false account statements to clients, reflecting securities holdings and returns that did not exist.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED:

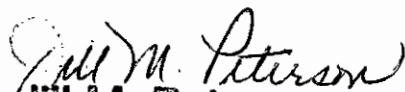
Pursuant to Section 203(f) of the Advisers Act, that Respondent James be, and hereby is barred from association with any investment adviser.

Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a

customer, whether or not related to the conduct that served as the basis for the Commission order;
and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct
that served as the basis for the Commission order.

By the Commission.

Florence E. Harmon
Acting Secretary


By: Jill M. Peterson
Assistant Secretary

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 58668 / September 29, 2008

ACCOUNTING AND AUDITING ENFORCEMENT

Release No. 2891 / September 29, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13246

In the Matter of

CAROLE D. ARGO, CPA,

Respondent.

**ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO RULE 102(e) OF THE
COMMISSION'S RULES OF
PRACTICE, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Carole D. Argo, CPA, ("Respondent" or "Argo") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.¹

¹ Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

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II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over her and the subject matter of these proceedings, and the findings contained in paragraph three of Section III below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Respondent Carole Argo, age 47, was licensed as a certified public accountant ("CPA") by the State of New York in 1987. In June 2008, Argo agreed to surrender her CPA license to the State of New York. From June 1999 through June 2004, Argo served as senior vice president and chief financial officer ("CFO") of SafeNet Inc. ("SafeNet" or the "Company"). Argo was SafeNet's president and chief operating officer from June 2004 until October 2006, when she resigned as an officer of the Company. From April 2006 until her resignation in October 2006, Argo also acted as SafeNet's interim CFO.

2. SafeNet, Inc. is a Delaware corporation, with its headquarters in Belcamp, Maryland. SafeNet produces information security software products. During the relevant period, the Company's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and listed on the NASDAQ National Market under the symbol "SFNT." In 2006, the NASDAQ National Market became an "exchange", and as a result, the Company's common stock was registered under Section 12(b), and traded on the NASDAQ National Market until April 12, 2007, when SafeNet was taken private as part of a private equity transaction.

3. On August 1, 2007, the Commission filed a complaint against Argo in SEC v. Carole Argo, Civil Case No. 07-1397 (RWR)(D.D.C). On September 24, 2008, the court entered an order permanently enjoining Argo, by consent, from future violations of: Section 17(a) of the Securities Act of 1933 ("Securities Act"), Sections 10(b), 13(b)(5), 14(a) and 16(a) of the Securities Exchange Act of 1934 ("Exchange Act") and Exchange Act Rules 10b-5, 13a-14, 13b2-1, 13b2-2, 14a-9, and 16a-3; and from aiding and abetting violations of Sections 13(a), 13(b)(2)(A), and 13(b)(2)(B) of the Exchange Act and Exchange Act Rules 12b-20, 13a-1, and 13a-13. Argo was also prohibited, for a period of ten years, from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act, and was ordered to pay a civil penalty of \$50,000 within six months from the date of entry of the judgment. The court further ordered that to the extent that, within six months from date of entry of the judgment, Argo makes any payments to satisfy all or some of the criminal fine imposed in United States v. Argo, those payments will reduce, on a dollar for dollar basis, Argo's liability for the \$50,000 civil penalty.

4. The Commission's complaint alleged that, among other things, Argo and others, from at least the fourth quarter 2000 through the fourth quarter of 2005, participated in a fraudulent scheme to backdate option grants to take advantage of low points in SafeNet's stock price, without causing SafeNet to record a compensation expense for those option grants, as required by Generally Accepted Accounting Principles. The complaint further alleged that, in furtherance of the scheme, Argo routinely looked back and selected historical dates when SafeNet's stock price had closed at or near the low for a given period to use as grant dates for SafeNet option grants. According to the complaint, by selecting these highly favorable dates and causing options to be granted on dates when she knew they would be "in-the-money"-- that is, the exercise price of the options was lower than the market price of the stock on the date the options were granted -- Argo created an opportunity for herself and others at SafeNet to reap substantial profits. The complaint also alleged that Argo then backdated documents to conceal from SafeNet's investors and outside auditors that SafeNet was issuing in-the-money option grants. In addition, the complaint alleged that, in connection with this scheme, from at least the fourth quarter of 2000 through the second quarter of 2006, Argo prepared and/or reviewed proxy statements, periodic reports, and Securities Act registration statements that she knew, or was reckless in not knowing, contained materially false and misleading statements and omissions concerning SafeNet's financial condition and options granting practices.

5. On August 1, 2007, the United States Attorney's Office for the Southern District of New York indicted Argo for her role in the options backdating scheme at SafeNet. On January 28, 2008, Argo pleaded guilty to one count of securities fraud in United States v. Argo, 1:07CR0683-01 (JSR). In connection with this conviction, Argo was sentenced to six months of incarceration and assessed a criminal fine of \$1,000,000.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent Carole Argo's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

Argo is suspended from appearing or practicing before the Commission as an accountant.

By the Commission.

Florence E. Harmon
Acting Secretary

Julia M. Peterson
By *Julia M. Peterson*
Assistant Secretary

*Chairman Cok and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58667 / September 29, 2008

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2890 / September 29, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13245

In the Matter of

STEPHANIE S. RUSKEY (CPA),

Respondent.

ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO RULE
102(e) OF THE COMMISSION'S RULES OF
PRACTICE, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Stephanie S. Ruskey ("Respondent" or "Ruskey") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.¹

¹ Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

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II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over her and the subject matter of these proceedings, and the findings contained in Section III.3. below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Ruskey, age 43, is a resident of Richmond, Missouri. Ruskey served as corporate controller of American Italian Pasta Company ("AIPC") from April 1998 to April 2004. Ruskey also served as AIPC's director of regulatory affairs and external reporting from May 2004 until April 2005, and director of accounting from May 2005 until June 2006, when she left the company. Ruskey was licensed as a Certified Public Accountant in Missouri and in Kansas, but her licenses lapsed in 1992.

2. At all relevant times, AIPC was a Delaware corporation with its principal place of business in Kansas City, Missouri. AIPC is a producer and marketer of dry pasta. At all relevant times, AIPC's common stock was registered pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act"). The company filed annual, quarterly, and current reports with the Commission on Forms 10-K, 10-Q, and 8-K, respectively. AIPC stock was traded on the New York Stock Exchange ("NYSE") until December 20, 2006, when the NYSE suspended trading based on AIPC's failure to keep current its Commission filings. The NYSE filed a Form 25 on April 23, 2007 and, as a result, AIPC's common stock was deregistered from Section 12(b) effective April 23, 2007.

3. On September 15, 2008, the Commission filed a complaint against Ruskey in United States District Court for the Western District of Missouri (Civil Action No. 4:08-CV-00676). On September 17, 2008, the court entered an order permanently enjoining Ruskey, by consent, from future violations of Rules 13b2-1 and 13b2-2 under the Exchange Act, and from aiding and abetting 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 thereunder. The court further ordered that Ruskey pay a \$25,000 civil money penalty.

4. The Commission's complaint alleged, among other things, that Ruskey and others caused AIPC to file materially false and misleading financial statements in the company's annual reports on Forms 10-K and quarterly reports on Forms 10-Q for fiscal years 2002, 2003, and 2004. The complaint alleged that to meet aggressive external targets, Ruskey knew or should

have known of numerous inappropriate accounting practices that departed from generally accepted accounting principles, including, among other things, capitalizing improperly normal operating costs; overstating improperly the company's spare parts inventory; recognizing improperly current period revenue on sales of products that were not shipped until after the end of the current periods; eliminating improperly the company's vacation and paid time off liability; and failing improperly to expense manufacturing variances.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent Ruskey's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Ruskey is suspended from appearing or practicing before the Commission as an accountant.

B. After three years from the date of this order, Respondent may request that the Commission consider her reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in her practice before the Commission will be reviewed either by the independent audit committee of the public company for which she works or in some other acceptable manner, as long as she practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

- (a) Respondent, or the public accounting firm with which she is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

- (b) Respondent, or the registered public accounting firm with which she is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the Respondent's or the firm's quality control system that would indicate that the Respondent will not receive appropriate supervision;

- (c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

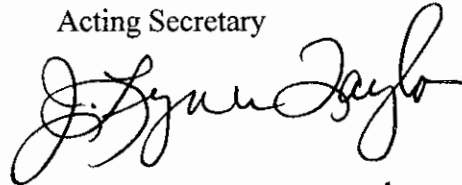
- (d) Respondent acknowledges her responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all

requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that her state CPA license is current and she has resolved all other disciplinary issues with the applicable state boards of accountancy. However, if state licensure is dependant on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Florence E. Harmon
Acting Secretary

A handwritten signature in cursive script, appearing to read "J. Lynn Taylor".

By: J. Lynn Taylor
Assistant Secretary

*Chairman Cox and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58670 / September 29, 2008

INVESTMENT ADVISERS ACT OF 1940
Release No. 2790 / September 29, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13247

In the Matter of

VICTOIRE FINANCE CAPITAL
LLC,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS PURSUANT TO
SECTION 21C OF THE SECURITIES
EXCHANGE ACT OF 1934 AND SECTION
203(e) OF THE INVESTMENT ADVISERS
ACT OF 1940, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS AND
A CEASE-AND-DESIST ORDER

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(e) of the Investment Advisers Act of 1940 ("Advisers Act") against Victoire Finance Capital LLC ("VFC" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these

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proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Section 21C of the Securities Exchange Act of 1934 and Section 203(e) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order ("Order"), as set forth below.

III.

On the basis of this Order and the Respondent's Offer, the Commission finds that:

Respondent

1. VFC is a limited liability company organized under the laws of Delaware with headquarters in New York, NY. VFC was founded in 2003 and registered with the Commission as an investment adviser on January 23, 2006. VFC is the investment adviser to Victoire Finance et Gestion, B.V. ("VFG"), a Netherlands Antilles private offshore hedge fund, and one separately-managed account. During the relevant time period, VFC had full investment discretion for its clients.

Summary

2. From February 2004 until August 2005, VFC willfully violated Rule 105 of Regulation M on eighteen occasions. On each occasion, in connection with a follow-on offering, VFC sold securities short within five business days before the pricing of the offering, and covered the short sale, in whole or in part, with shares purchased in the offering. As a result of covering the restricted period short sales with the offered securities, VFC generated profits of \$168,139.50 for its client, VFG.

Legal Framework

3. Rule 105 of Regulation M, "Short Selling in Connection with a Public Offering," at the time of the conduct described in this Order, prohibited covering a short sale with securities obtained in a public offering if the short sale occurred within the shorter of the period five business days before pricing and ending with pricing, or the period beginning with the initial filing of the registration statement or notification on Form 1-A and ending with pricing. In pertinent part, Rule 105 provides:

In connection with an offering of securities for cash pursuant to a registration statement . . . filed under the Securities Act, it shall be unlawful for any person to cover a short sale with offered securities purchased from an underwriter or broker or dealer participating in the offering, if such short sale occurred during the . . . period beginning five business days before the pricing of the offered securities and ending with such pricing.

17 C.F.R. § 242.105.

VFC's Trades

4. From February 2004 until August 2005, VFC engaged in short sales and covering transactions prohibited by Rule 105 in securities of eighteen issuers: Avaya, Inc., Arrow Electronics, Inc., The Advisory Board Co., Axis Capital Holdings, Ltd., Premcor, Inc., Weyerhaeuser Co., Intrabiotics Pharmaceuticals, Inc., Corporate Executive Board Co., SS&C Technologies, Inc. ("SS&C"), Brigham Exploration Co., Equity Inns, Inc., Wynn Resorts, Ltd., Audible, Inc., Wesco International, Inc., RR Donnelley & Sons Co., Dex Media Inc., Global Santa Fe Corp., and Hexcel Corp. As a result of the transactions VFC directed, VFC incurred a loss on five of the transactions, no loss or gain (broke even) on one transaction, and realized profits totaling \$168,139.50 on the other twelve transactions.

5. Most of the transactions followed the same general pattern. VFC sold securities short either the day of, or the day before, the pricing of the public offering. The firm then covered all or part of the short position with shares that it purchased in the offering.

6. VFC's transactions in shares of SS&C are illustrative. On June 3, 2004, VFC sold short 25,000 shares of SS&C at \$21.7777 per share. Later that day, the underwriters priced the SS&C offering at \$19.50 per share. On June 4, 2004, VFC received an allocation of 50,000 shares in the offering and used 25,000 of those shares to cover its restricted period short position. As a result of the transactions VFC directed, VFC realized a profit of \$56,942.50.

7. During the relevant period, VFC did not have procedures in place designed to prevent or detect Rule 105 violations and provided no training to its traders and employees concerning Rule 105.

Violations

8. As a result of the conduct described above, VFC willfully¹ violated Rule 105 of Regulation M.

¹ A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." *Wonsover v. SEC*, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting *Hughes v. SEC*, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." *Id.* (quoting *Gearhart & Otis, Inc. v. SEC*, 348 F.2d 798, 803 (D.C. Cir. 1965)).

Remedial Efforts

9. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by VFC and cooperation it afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent's Offer.

Accordingly, pursuant to Section 21C of the Exchange Act and Section 203(e) of the Advisers Act, it is hereby ORDERED that:

A. VFC cease and desist from committing or causing any violations and any future violations of Rule 105 of Regulation M.

B. VFC is censured.

C. IT IS FURTHER ORDERED that VFC shall, within thirty (30) days of the entry of this Order, pay disgorgement of \$168,139.50 and prejudgment interest of \$47,491.53, for a total of \$215,631.03, to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600. Payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies VFC as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Andrew M. Calamari, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, New York, NY 10281.

D. IT IS FURTHER ORDERED that VFC shall, within thirty (30) days of the entry of this Order, pay a civil money penalty in the amount of \$85,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717. Payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies VFC as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Andrew M. Calamari, Associate Regional Director, Division of Enforcement, Securities and Exchange Commission, 3 World Financial Center, New York, NY 10281.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: *Jill M. Peterson*
Assistant Secretary

*Chairman Cox and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 8967 / September 29, 2008

INVESTMENT COMPANY ACT OF 1940

Release No. 28417 / September 29, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13258

In the Matter of

S3 INVESTMENT
COMPANY, INC.,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST AND EXEMPTION SUSPENSION
PROCEEDINGS, MAKING FINDINGS,
IMPOSING A CEASE-AND-DESIST
ORDER, AND PERMANENTLY
SUSPENDING THE REGULATION E
EXEMPTION AS TO S3 INVESTMENT
COMPANY, INC., PURSUANT TO
SECTION 9(f) OF THE INVESTMENT
COMPANY ACT OF 1940 AND RULE
610(c) OF REGULATION E

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist and exemption suspension proceedings be, and hereby are, instituted pursuant to Section 9(f) of the Investment Company Act of 1940 ("Investment Company Act") and Rule 610(c) of Regulation E against S3 Investment Company, Inc. ("S3" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist and Exemption Suspension Proceedings, Making Findings, Imposing a Cease-and-Desist Order, and Permanently Suspending the Regulation E Exemption as to S3 Investment Company, Inc., Pursuant to Section 9(f) of the Investment Company Act of 1940 and Rule 610(c) of Regulation E ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. Since electing to be regulated as a business development company ("BDC") in April 2004, S3 has, among other things, issued rights to purchase its securities without expiration to non-security holders, issued stock with unequal voting rights, issued securities for services or property other than cash, and issued stock below net asset value. As a result, S3 violated Sections 18(d), 18(i), and 23(b) respectively, of the Investment Company Act. In addition, S3 failed to obtain a fidelity bond as required under Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, and it also failed to appoint a chief compliance officer as required under Investment Company Act Rule 38a-1. Finally, S3 failed to comply with Rule 609 of Regulation E because it did not file an offering status report on Form 2-E in connection with securities offerings under Regulation E commenced in April and September 2004.

Respondent

2. S3 is a California corporation with its principal offices located in Temecula, California. It elected to be regulated as a BDC on April 12, 2004, and withdrew its BDC election on April 6, 2006. Prior to its BDC election, S3 was an operating company known as Axtion Foods, Inc., which was in the business of wholesale groceries and related products sales. S3's securities were registered under Section 12(g) of the Securities Exchange Act of 1934 from June 4, 2002 until June 6, 2007.

Issuing Senior Securities and Convertible Securities with Unequal Voting Rights

3. On March 18, 2004, S3 issued 8.3 million shares of Series-A convertible preferred stock ("Series-A preferred") to two of its officers. The Series-A preferred was not entitled to receive dividends and had no voting rights, except to elect two members of the board of directors. Each Series-A preferred share was convertible into one common share at any time, or automatically upon liquidation. Under Section 61(b) of the Investment Company Act, a BDC must comply with Section 61 at the time it becomes subject to Sections 55 through 65 of the Investment Company Act ("the BDC provisions"), "as if it were issuing a security of each class which it has outstanding at such time." When S3 became subject to the BDC provisions on April 12, 2004, the Series-A preferred was outstanding.

4. Between December 1, 2003, and June 30, 2004, S3 issued \$729,000 in convertible debentures to investors. The debentures included an 8% annual interest rate, and a maturity date six months from issuance. They were convertible into common stock at a price equal to 50% of the

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

market value on the conversion date. Between April 1, 2004, and October 13, 2004, S3 issued approximately 96 million common shares to debenture holders who had elected to convert \$719,000 in convertible debentures.

5. Between April 13, 2004 and September 16, 2004, S3 issued 4.7 million Series B convertible preferred shares ("Series-B preferred") to an officer and to three other individuals. The Series-B preferred was convertible into Series-A preferred. Each Series-B preferred was entitled to vote on all matters and had voting rights equal to 100 shares of common stock

6. Section 18 of the Investment Company Act is made applicable to BDCs by Section 61(a) of the Investment Company Act, subject to certain exceptions. Section 18(d), as applicable to BDCs, generally prohibits registered management companies from issuing "any warrant or right to subscribe to or purchase a security of which such company is the issuer, except in the form of warrants or rights to subscribe expiring not later than one hundred and twenty days after their issuance and issued exclusively and ratably to a class or classes of such company's securities holders." The conversion feature of S3's Series-A and -B preferred, which constituted rights to subscribe to or purchase securities, did not provide that the conversion feature would expire within 120 days after their issuance as required under Section 18(d).

7. Section 61(a)(3) allows a BDC, notwithstanding Section 18(d), to issue warrants, options, or rights to subscribe or convert to voting securities that are accompanied by securities if, among other things, the BDC's shareholders authorize, and a majority of the BDC's disinterested directors approves, the proposal to issue such securities; the exercise or conversion price is not less than the current market value at the date of issuance.

8. S3's shareholders did not authorize the issuance of the Series-A or -B preferred. Furthermore, in light of the 50% discount, the debenture's conversion price was less than the market price of S3's common stock at the date of issuance.

9. With certain exceptions not relevant here, Section 18(i) of the Investment Company Act provides that every share of stock issued by a BDC shall be a voting stock and have equal voting rights with every other outstanding voting stock. Here, S3's preferred stock did not have voting rights equal to that of its common stock.

Issuance of Shares for Services or Below Net Asset Value

10. Section 23(b) of the Investment Company Act, which Section 63 of the Investment Company Act makes applicable to BDCs, generally prohibits any closed-end company from issuing shares below net asset value ("NAV") without the consent of the majority of stockholders. During the quarter ending March 31, 2005, S3 issued 437,250,000 shares of common stock at prices between \$.001 and \$.002 per share for cash of \$448,405 and a subscription receivable of \$73,000. At the time of these stock sales, the NAV per share was between \$.003 and \$.006. For the period ending June 30, 2005, S3 issued an additional 80,000,000 shares at prices below NAV. S3 did not receive shareholder approval to sell shares below NAV.

Failure to Appoint a Chief Compliance Officer

11. On December 17, 2003, the Commission adopted Rule 38a-1 under the Investment Company Act, which requires each registered investment company and BDC to adopt and implement written policies and procedures reasonably designed to prevent violations of federal securities laws. These policies and procedures must be approved by the BDC's board of directors (including a majority of disinterested directors) and reviewed annually. Furthermore, each BDC must appoint a chief compliance officer to administer the policies and procedures and fulfill certain reporting duties to the board. The compliance deadline for this rule was October 5, 2004. S3 did not appoint a chief compliance officer.

Failure to Provide and Maintain a Fidelity Bond

12. Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, which Section 59 makes applicable to BDCs, require each BDC to provide and maintain a bond issued by a reputable fidelity insurance company against larceny and embezzlement by officers and employees of the BDC. S3 did not provide and maintain a fidelity bond.

Violations

13. As a result of the conduct described above, S3 violated Sections 17(g), 18(d), 18(i), and 23(b) of the Investment Company Act and Rules 17g-1 and 38a-1 thereunder.

Failure to Comply with Requirements of Regulation E

14. On April 13, 2004, and September 21, 2004, S3 filed Form 1-E notification of stock issuance pursuant to the securities-registration exemption under Securities Act of 1933 Regulation E. The filings included an offering circular, which provided certain disclosures regarding the offering.

15. Rule 609 of Regulation E requires that, within 30 days after the end of each six-month period following the date of the original offering circular, or upon the termination of the offering, whichever is earlier, an issuer must file a report on Form 2-E, providing certain information regarding the status of the offering. S3 did not file the Form 2-E that was due within 30 days after October 13, 2004, for the April 13, 2004 Regulation E offering and never filed any Forms 2-E for the September 21, 2004 Regulation E offering. Therefore, S3 failed to comply with Rule 609.

16. Under Regulation E, Rule 610(c), the Commission may, at any time after notice of and opportunity for hearing, enter an order permanently suspending the Regulation E exemption, if the Commission has reason to believe, among other things, that any of the terms or conditions of Regulation E have not been complied with, including failure to include in the offering circulars the required financial information as required by Rule 605 or failure to file any report as required by Rule 609.

Respondent's Remedial Efforts

17. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent S3's Offer.

Accordingly, pursuant to Section 9(f) of the Investment Company Act and Rule 610(c) of Regulation E, it is hereby ORDERED that:

A. Respondent S3 cease and desist from committing or causing any violations and any future violations of Sections 17(g), 18(d), 18(i), and 23(b) of the Investment Company Act and Rules 17g-1 and 38a-1 thereunder.

B. The Regulation E exemption as to Respondent S3 be, and hereby is, permanently suspended.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

*Chairman Cole and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

INVESTMENT ADVISERS ACT OF 1940

Release No. 2792 / September 29, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13251

In the Matter of

CHARLES P. TRIGILIO,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE PROCEEDINGS
PURSUANT TO SECTION 203(f) OF THE
INVESTMENT ADVISERS ACT OF 1940,
MAKING FINDINGS, AND IMPOSING
REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act") against Charles P. Trigilio ("Trigilio" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 203(f) of the Investment Advisers Act of 1940, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Since at least 2004, Trigilio has held himself out as a financial adviser and options specialist, opening brokerage accounts in his clients' names and trading securities on their behalf. Trigilio was an investment adviser to his clients in that, for compensation, he engaged in the business of advising his clients as to the advisability of investing in, purchasing, or selling securities. Trigilio, age 44 years old, resides in Arcadia, California. He is not currently registered, nor was he ever registered, with the Commission.

2. On April 14, 2008, Trigilio pleaded guilty to two counts of wire fraud in violation of Title 18 United States Code Section 1343 and one count of contempt in violation of Title 18 United States Code Section 401 before the United States District Court for the Central District of California, in United States of America v. Charles Perry Trigilio, Criminal Action Number CR08-292 CAS.

3. The counts of the criminal indictment to which Trigilio pled guilty alleged, inter alia, that Trigilio defrauded investors and obtained money and property by means of materially false and misleading statements, that he used wire and radio communication to falsely promise investors extraordinary returns on their investments, to misrepresent his qualifications to provide investment advice, to misrepresent the risks involved in his securities trading, and to misappropriate his clients' assets by taking for personal use assets to which he was not entitled.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Trigilio's Offer.

Accordingly, it is hereby ORDERED:

Pursuant to Section 203(f) of the Advisers Act, that Respondent Trigilio be, and hereby is, barred from association with any investment adviser.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934

Release No. 58672 / September 29, 2008

ACCOUNTING AND AUDITING ENFORCEMENT

Release No. 2892 / September 29, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13248

In the Matter of

KEVIN MORANO (CPA),

Respondent.

ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO RULE
102(e) OF THE COMMISSION'S RULES OF
PRACTICE, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Kevin Morano ("Respondent" or "Morano") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.¹

¹ Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

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II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.3 below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Morano, age 55, is and has been a certified public accountant licensed to practice in the State of New Jersey. He served as Chief Financial Officer of Lumenis Ltd. ("Lumenis") from March 2002 until August 2004.
2. Lumenis was, at all relevant times, an Israeli corporation with corporate executive offices in New York, New York. Lumenis was engaged in the business of manufacturing laser and light based systems for aesthetic, surgical and other applications. At all relevant times, Lumenis' common stock was registered with the Commission pursuant to Section 12(g) of the Securities Exchange Act of 1934 ("Exchange Act") and traded on the NASDAQ National Market.
3. On September 9, 2008, a final consent judgment was entered against Morano, permanently enjoining him from future violations of Section 17(a) of the Securities Act of 1933 and Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13a-14, 13b2-1 and 13b2-2 thereunder, and from aiding and abetting violations of 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, 13a-11, and 13a-13 thereunder, in the civil action entitled Securities and Exchange Commission v. Lumenis, Ltd., et al., Civil Action Number 06 CV 3225 (LAK), in the United States District Court for the Southern District of New York. Morano also was ordered to pay a \$55,000 civil money penalty.
4. The Commission's complaint alleged, among other things, that Morano permitted Lumenis to recognize revenue in a number of transactions despite red flag warnings that should have prevented such recognition and, as a result, made materially false and misleading statements in periodic reports filed with the Commission in 2002 and 2003, including by certifying the accuracy of financial statements contained in those reports. Morano neither admitted nor denied the allegations of the complaint.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent Morano's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that:

A. Respondent is suspended from appearing or practicing before the Commission as an accountant.

B. After five years from the date of this Order, Respondent may request that the Commission consider his reinstatement by submitting an application (attention: Office of the Chief Accountant) to resume appearing or practicing before the Commission as:

1. a preparer or reviewer, or a person responsible for the preparation or review, of any public company's financial statements that are filed with the Commission. Such an application must satisfy the Commission that Respondent's work in his practice before the Commission will be reviewed either by the independent audit committee of the public company for which he works or in some other acceptable manner, as long as he practices before the Commission in this capacity; and/or

2. an independent accountant. Such an application must satisfy the Commission that:

(a) Respondent, or the public accounting firm with which he is associated, is registered with the Public Company Accounting Oversight Board ("Board") in accordance with the Sarbanes-Oxley Act of 2002, and such registration continues to be effective;

(b) Respondent, or the registered public accounting firm with which he is associated, has been inspected by the Board and that inspection did not identify any criticisms of or potential defects in the Respondent's or the firm's quality control system that would indicate that the Respondent will not receive appropriate supervision;

(c) Respondent has resolved all disciplinary issues with the Board, and has complied with all terms and conditions of any sanctions imposed by the Board (other than reinstatement by the Commission); and

(d) Respondent acknowledges his responsibility, as long as Respondent appears or practices before the Commission as an independent accountant, to comply with all requirements of the Commission and the Board, including, but not limited to, all requirements relating to registration, inspections, concurring partner reviews and quality control standards.

C. The Commission will consider an application by Respondent to resume appearing or practicing before the Commission provided that his state CPA license is current and he has resolved all other disciplinary issues with the applicable state boards of

accountancy. However, if state licensure is dependent on reinstatement by the Commission, the Commission will consider an application on its other merits. The Commission's review may include consideration of, in addition to the matters referenced above, any other matters relating to Respondent's character, integrity, professional conduct, or qualifications to appear or practice before the Commission.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

*Chairman Loh and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 29, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13254

In the Matter of

RUDY 45

Respondent

ORDER INSTITUTING
PUBLIC ADMINISTRATIVE AND
CEASE-AND-DESIST PROCEEDINGS
AND NOTICE OF HEARING
PURSUANT TO SECTIONS 9(b) AND
9(f) OF THE INVESTMENT COMPANY
ACT OF 1940, SECTION 12(j) OF
THE SECURITIES EXCHANGE ACT
OF 1934, AND RULE 610(c) OF
REGULATION E

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 9(b) and 9(f) of the Investment Company Act of 1940 ("Investment Company Act"), Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act"), and Rule 610(c) of Regulation E against Rudy 45 (or "Respondent").

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

1. Rudy 45 (CIK No. 1105413), a Nevada corporation with principal offices located in Santa Monica, California, elected to be regulated as a BDC on December 22, 2004. Prior to its BDC election, Rudy 45 was an operating company known as Malahat Energy Corp, which was engaged in oil-and-gas exploration. Its securities are registered under Section 12(g) of the Exchange Act.

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B. INVESTMENT COMPANY ACT VIOLATIONS

Issuing Convertible, Unequal-Voting Stock for Services

2. From August 2005 through March 16, 2006, Rudy 45 issued 1,531 shares of common stock and 10 million shares of Series-A preferred stock to two individuals in exchange for consulting services. Each Series-A preferred share had ten votes whereas Rudy 45's common stock had one vote per share. The Series-A preferred stock, which had no dividend or distribution preference, was convertible to common stock on a one-to-one basis at a price of \$0.01.

3. Under Section 61(b) of the Investment Company Act, a BDC must comply with Section 61 at the time it becomes subject to Sections 55 through 65 of the Investment Company Act ("the BDC provisions"), "as if it were issuing a security of each class which it has outstanding at such time." Rudy 45 became subject to the BDC provisions on December 22, 2004. Section 18 of the Investment Company Act is made applicable to BDCs by Section 61(a) of the Investment Company Act, subject to certain exceptions. With certain exceptions not relevant here, Section 18(i) provides that every share of stock issued by a BDC shall be a voting stock and have equal voting rights with every other outstanding voting stock. Here, Rudy 45's Series-A preferred stock did not have voting rights equal to those of its common stock.

4. Section 18(d) prohibits registered management companies from issuing "any warrant or right to subscribe to or purchase a security of which such company is the issuer, except in the form of warrants or rights to subscribe expiring not later than one hundred and twenty days after their issuance and issued exclusively and ratably to a class or classes of such company's securities holders." Rudy 45's convertible Series-A preferred stock, which constituted rights to subscribe to or purchase securities, did not provide that the conversion feature would expire within 120 days after their issuance and were not issued only to persons who already held Rudy 45 securities as required under Section 18(d).

5. Section 61(a)(3) allows a BDC, notwithstanding Section 18(d), to issue warrants, options, or rights to subscribe or convert to voting securities that are accompanied by securities if, among other things, the BDC's shareholders authorize, and a majority of the BDC's disinterested directors approve, the proposal to issue such securities; and the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance does not exceed 25% of the BDC's outstanding voting securities.

6. Rudy 45's shareholders did not authorize the issuance of the conversion feature on the Series-A preferred stock. On December 22, 2004, the preferred-stock conversion price equaled 50% of the market price of Rudy 45's common stock, which was \$0.02 that day. Moreover, on December 22, 2004, Rudy 45 had approximately 87 million shares of common stock outstanding. Assuming the outstanding Series-A preferred stock had converted on that date, Rudy 45 would have issued approximately 50 million additional shares, which would have equaled approximately 57% of Rudy 45's outstanding voting securities, exceeding the 25% limit of Section 61(a)(3).

7. Section 23(a) of the Investment Company Act, which Section 63 makes applicable to BDCs, prohibits any closed-end company from issuing securities for services. In addition to the

Series-A preferred stock, between August 2005 and October 2005, Rudy 45 issued 1,531 shares of common stock to individuals in exchange for consulting services.

Failure to Provide and Maintain a Fidelity Bond

8. Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, which Section 59 makes applicable to BDCs, requires each BDC to provide and maintain a bond issued by a reputable fidelity insurance company against larceny and embezzlement by officers and employees of the BDC. Rudy 45 did not provide and maintain a fidelity bond.

Failure to Establish a Majority of Disinterested Directors

9. Section 56(a) of the Investment Company Act provides that a majority of a BDC's directors shall be persons who are not interested persons, as that term is defined in Section 2(a)(19) of the Investment Company Act. Since Rudy 45 became a BDC on December 22, 2004, most of its directors have also been officers, who were interested persons under Section 2(a)(19) of the Investment Company Act.

10. As a result of the conduct described above, Rudy 45 willfully violated Sections 17(g), 18(d), 18(i), 23(a), and 56(a) of the Investment Company Act and Rule 17g-1 thereunder.

C. FAILURE TO COMPLY WITH REGULATION E

11. On December 23, 2004, and April 12, 2006, Rudy 45 filed Form 1-E notifications of stock issuance pursuant to the securities-registration exemption under Securities Act of 1933 Regulation E. The filings included a required offering circular, which provided certain disclosures regarding the offering. Rule 609 of Regulation E requires that, within 30 days after the end of each six-month period following the date of the original offering circular, or upon the termination of the offering, whichever is earlier, an issuer must file a report on Form 2-E providing certain information regarding the status of the offering. Rudy 45 did not file the Form 2-E for December 23, 2004, that was due on or before July 23, 2005, nor has it ever filed a Form 2-E for the April 12, 2006, Form 1-E offering. Therefore, Rudy 45 failed to comply with Rule 609.

12. Under Regulation E, Rule 610(c), the Commission may, at any time after notice of and opportunity for hearing, enter an order permanently suspending the Regulation E exemption, if the Commission has reason to believe, among other things, that any of the terms or conditions of Regulation E have not been complied with, including failure to file any report as required by Rule 609.

D. DELINQUENT PERIODIC FILINGS

13. On June 26, 2006, the Commission suspended trading in Rudy 45's securities based upon a lack of current and accurate information concerning its securities, stemming from, among other things, the company's failure to file required periodic reports with the Commission. Since then, the company has remained delinquent in its Commission reports, and its securities have not been quoted publicly. Rudy 45 is delinquent in its periodic Commission reports, having not filed any

periodic reports since it filed a Form 10-Q report for the quarterly period ended April 30, 2006, and a Form 10-K report for the annual period ending July 31, 2005.

14. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports, even if the registration is voluntary under Section 12(g). Specifically, Rule 13a-1 requires issuers to file annual reports (Forms 10-K or 10-KSB), and Rule 13a-13 requires issuers to file quarterly reports (Forms 10-Q or 10-QSB).

15. As a result of the foregoing, Rudy 45 failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that administrative and cease-and-desist proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford the Rudy 45 an opportunity to establish any defenses to such allegations;

B. Whether it is necessary and appropriate to issue a cease-and-desist order pursuant to Section 9(f) against Rudy 45 from committing or causing any violations and any future violations of Sections 17(g), 18(i), 18(d), 23(a), and 56(a) of the Investment Company Act and Rule 17g-1 thereunder;

C. Whether it is necessary and appropriate and in the public interest to obtain penalties and disgorgement against Respondent pursuant to Sections 9(b), 9(d), and 9(e) of the Investment Company Act;

D. Whether it is necessary and appropriate to issue an order that permanently suspends Rudy 45's Regulation E exemption; and

E. Whether it is necessary and appropriate for the protection of investors to suspend, for a period not exceeding twelve months, or to revoke the registration of each class of Rudy 45's securities pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened not earlier than 30 days and not later than 60 days from service of this Order at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Rudy 45 shall file an Answer to the allegations contained in this Order within twenty (20) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Rudy 45 fails to file the directed Answer, or fails to appear at a hearing after being duly notified, Rudy 45 may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Rudy 45 personally or by certified, registered, or Express Mail, or by other means of verifiable delivery.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 300 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

*Chairman Cox and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 8964 / September 29, 2008

INVESTMENT COMPANY ACT OF 1940

Release No. 28414 / September 29, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13255

In the Matter of

STARINVEST GROUP, INC.

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST AND EXEMPTION SUSPENSION
PROCEEDINGS, MAKING FINDINGS,
IMPOSING A CEASE-AND-DESIST
ORDER, AND PERMANENTLY
SUSPENDING THE REGULATION E
EXEMPTION AS TO STARINVEST
GROUP, INC. PURSUANT TO SECTION
9(f) OF THE INVESTMENT COMPANY
ACT OF 1940 AND RULE 610(c) OF
REGULATION E**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist and exemption suspension proceedings be, and hereby are, instituted pursuant to Section 9(f) of the Investment Company Act of 1940 ("Investment Company Act") and Rule 610(c) of Regulation E against StarInvest Group, Inc. ("StarInvest" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist and Exemption Suspension Proceedings, Making Findings, Imposing a Cease-and-Desist Order, and Permanently Suspending the Regulation E Exemption as to StarInvest Group, Inc., Pursuant to Section 9(f) of the Investment Company Act of 1940 and Rule 610(c) of Regulation E ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. Since electing to be regulated as a business development company ("BDC") on March 9, 2004, StarInvest has, among other things, issued rights to purchase securities without expiration to non-security holders, issued shares for services or property other than cash, and failed to establish a majority of disinterested directors on its board. As a result, StarInvest violated Sections 18(d), 23(a), and 56(a), respectively, of the Investment Company Act. In addition, StarInvest failed to obtain a fidelity bond as required under Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, and failed to implement a compliance program as required under Investment Company Act Rule 38a-1. Finally, StarInvest failed to comply with Rule 609 of Regulation E because it did not file certain offering-status reports on Form 2-E in connection with securities offerings under Regulation E commenced in March 2004, May 2005, and January 2007.

Respondent

2. StarInvest is a Nevada corporation with its principal offices located in Midland, Texas. It elected to be regulated as a BDC on March 9, 2004, and has filed a proxy to withdraw its election. Prior to its BDC election, StarInvest was an operating company known as Exus Global, which was purportedly in the business of providing satellite education courses to emerging-market countries. StarInvest's securities are registered under Section 12(g) of the Securities Exchange Act of 1934 and are quoted on the OTC Bulletin Board under the symbol STIV.

Issuing Convertible Securities

3. On December 3, 2003, StarInvest entered into a contract with a private consulting firm to assist StarInvest in becoming a BDC and in issuing stock pursuant to the securities-registration exemption under Regulation E of the Securities Act of 1933. Among other things, the contract obligated the consulting firm to prepare corporate-governance and other internal documents necessary for StarInvest to operate as a BDC. It likewise called for the consulting firm to prepare the Commission filings necessary for StarInvest to elect to be regulated as a BDC and to issue stock in an exempt offering under Regulation E. StarInvest agreed to pay the consulting firm, among other things, \$25,000 in cash, plus \$25,000 in convertible debentures for these services.

4. On January 15, 2004, StarInvest issued 2 million shares of Series-B preferred stock to individuals and 8 million shares of Series-B preferred stock to a company controlled by StarInvest's sole officer. The Series-B preferred stock had no voting rights, except that its owners

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

were entitled to elect a majority of StarInvest's board. These shares were convertible on a one-to-one basis into common stock at any time and would convert automatically upon liquidation. From January 1, 2004 to March 31, 2004, StarInvest issued \$325,000 in 8% to 12% convertible debentures, with varying terms from six to twelve months, convertible at a discount of 25%-50% of the closing bid price.

5. On March 9, 2004, StarInvest filed a Form-54-A election with the Commission to become a BDC. As of this date, 8 million shares of the Series-B preferred stock was outstanding and \$275,000 in convertible debentures. Under Section 61(b) of the Investment Company Act, a BDC must comply with Section 61 at the time it becomes subject to Sections 55 through 65 of the Investment Company Act ("the BDC provisions"), "as if it were issuing a security of each class which it has outstanding at such time." StarInvest became subject to the BDC provisions on March 9, 2004.

6. Section 18 of the Investment Company Act is made applicable to BDCs by Section 61(a) of the Investment Company Act, subject to certain exceptions. Section 18(d), as applicable to BDCs, generally prohibits them from issuing "any warrant or right to subscribe to or purchase a security of which such company is the issuer, except in the form of warrants or rights to subscribe expiring not later than one hundred and twenty days after their issuance and issued exclusively and ratably to a class or classes of such company's securities holders." The conversion feature on StarInvest's preferred stock and convertible debentures, which constituted rights to subscribe to or purchase securities, did not provide that the conversion feature would expire not later than 120 days after their issuance as required under Section 18(d).

7. Section 61(a)(3) allows a BDC, notwithstanding Section 18(d), to issue warrants, options, or rights to subscribe or convert to voting securities that are accompanied by securities if, among other things, the BDC's shareholders authorized, and a majority of the BDC's disinterested directors approve, the proposal to issue such securities the issuance. StarInvest's shareholders did not authorize the issuance of the preferred stock or convertible debentures.

Issuing Securities for Services

8. Section 23(a) of the Investment Company Act, which Section 63 of the Investment Company Act makes applicable to BDCs, prohibits any closed-end company from issuing securities for services or for property other than cash or securities. On July 28, 2005, StarInvest issued 867,041 shares of stock to an entity for consulting services.

Failure to Establish a Majority of Disinterested Directors

9. Section 56(a) of the Investment Company Act provides that a majority of a BDC's directors shall be persons who are not interested persons, as that term is defined in Section 2(a)(19) of the Investment Company Act. Between May 2006 and August 2007, StarInvest failed to have a board composed of a majority of persons who were not interested persons.

Failure to Adopt and Implement Compliance Policies and Procedures

10. On December 17, 2003, the Commission adopted Rule 38a-1 under the Investment Company Act, which requires each registered investment company and BDC to adopt and implement written policies and procedures reasonably designed to prevent violations of federal securities laws. These policies and procedures must be approved by the BDC's board of directors (including a majority of disinterested directors) and reviewed annually. Furthermore, each BDC must appoint a chief compliance officer to administer the policies and procedures and fulfill certain reporting duties to the board. The compliance deadline for this new rule was October 5, 2004. StarInvest did not adopt and implement written policies and procedures reasonably designed to prevent violations of federal securities laws and did not appoint a chief compliance officer.

Failure to Provide and Maintain a Fidelity Bond

11. Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, which Section 59 makes applicable to BDCs, require each BDC to provide and maintain a bond issued by a reputable fidelity insurance company against larceny and embezzlement by officers and employees of the BDC. From March 2004 to April 2005, StarInvest did not provide and maintain a fidelity bond.

Violations

12. As a result of the conduct described above, StarInvest violated Sections 17(g), 18(d), 23(a), and 56(a) of the Investment Company Act and Rules 17g-1 and 38a-1 thereunder.

Failure to Comply with Rule 609 of Regulation E

13. On March 15, 2004, May 13, 2005, and January 16, 2007, StarInvest filed Form 1-E notifications of stock issuance pursuant to the securities-registration exemption under Securities Act of 1933 Regulation E. The filings included a required offering circular, which provided certain disclosures regarding the offering. Rule 609 of Regulation E requires that, within 30 days after the end of each six-month period following the date of the original offering circular, or upon the termination of the offering, whichever is earlier, an issuer must file a report on Form 2-E, providing certain information regarding the status of the offering. StarInvest filed Form 2-Es for the March 15, 2004 Regulation E offering on January 3, 2005 and May 5, 2005. StarInvest filed a Form 2-E for the May 5, 2005 Regulation E offering on December 16, 2005. StarInvest failed to file a Form 2-E for the March 15, 2004 Regulation E offering within 30 days after September 15, 2004, failed to file any subsequent Forms 2-E for the May 13, 2005 Regulation E offering after December 29, 2005, and failed to file any Forms 2-E for the January 16, 2007 Regulation E offering. Therefore, StarInvest failed to comply with Rule 609.

14. Under Regulation E, Rule 610(c), the Commission may, at any time after notice of and opportunity for hearing, enter an order permanently suspending the Regulation E exemption, if the Commission has reason to believe, among other things, that any of the terms or conditions of

Regulation E have not been complied with, including failure to file any report as required by Rule 609.

Respondent's Remedial Efforts

15. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent StarInvest's Offer.

Accordingly, pursuant to Section 9(f) of the Investment Company Act and Rule 610(c) of Regulation E, it is hereby ORDERED that:

A. Respondent StarInvest cease and desist from committing or causing any violations and any future violations of Sections 17(g), 18(d), 23(a), and 56(a) of the Investment Company Act and Rules 17g-1 and 38a-1 thereunder.

B. The Regulation E exemption as to Respondent StarInvest be, and hereby is, permanently suspended.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

*Chairman Cox and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 8965 / September 29, 2008

INVESTMENT COMPANY ACT OF 1940

Release No. 28415 / September 29, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13256

In the Matter of

GREEN GLOBE
INTERNATIONAL, INC.

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST AND EXEMPTION SUSPENSION
PROCEEDINGS, MAKING FINDINGS,
IMPOSING A CEASE-AND-DESIST
ORDER, AND PERMANENTLY
SUSPENDING THE REGULATION E
EXEMPTION AS TO GREEN GLOBE
INTERNATIONAL, INC., PURSUANT TO
SECTION 9(f) OF THE INVESTMENT
COMPANY ACT OF 1940 AND RULE
610(c) OF REGULATION E

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist and exemption suspension proceedings be, and hereby are, instituted pursuant to Section 9(f) of the Investment Company Act of 1940 ("Investment Company Act") and Rule 610(c) of Regulation E against Green Globe International, Inc. ("GGI" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist and Exemption Suspension Proceedings, Making Findings, Imposing a Cease-and-Desist Order, and Permanently Suspending the Regulation E Exemption as to Green Globe International, Inc., Pursuant to Section 9(f) of the Investment Company Act of 1940 and Rule 610(c) of Regulation E ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. Since electing to be regulated as a business development company ("BDC") in January 2005, GGI has, among other things, issued rights to purchase securities without expiration to its non-security holders, issued prohibited non-voting stock, and improperly repurchased its own shares. As a result, GGI violated Sections 18(d), 18(i), and 23(c), respectively, of the Investment Company Act. In addition, from January 25, 2005, through August 9, 2006, GGI did not obtain a fidelity bond as required under Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder. Finally, GGI failed to comply with Rule 609 of Regulation E because it did not file offering status reports on Form 2-E in connection with a securities offering under Regulation E commenced in January 2005.

Respondent

2. GGI is a Delaware corporation with its principal offices located in Aliso Viejo, California. It elected to be regulated as a BDC on January 25, 2005, and withdrew its election on November 15, 2006. Prior to its BDC election, GGI was an operating company known as Apollo Holdings, Inc., which provided direct access to certain travel industry reservations systems. GGI's securities are registered under Section 12(g) of the Securities Exchange Act of 1934 and are quoted on the OTC Bulletin Board under the symbol GGLB.

Issuing Convertible Senior Securities and Convertible Securities with Unequal Voting Rights

3. On February 10, 2005, GGI issued 10 million shares of Series A-preferred stock to a GGI officer in return for 5 million shares of common stock. The Series-A preferred stock was non-interest bearing and was not entitled to receive a dividend. Each share of Series-A preferred stock was convertible into one share of common stock at any time 12 months after issuance and would convert automatically upon liquidation. Finally, the Series-A preferred stock had no voting rights, except that its owners were entitled to elect a majority of GGI's board.

4. On July 1, 2005, GGI issued 100,000 shares of Series-B preferred stock to the holder of the Series-A preferred stock in return for 100,000 shares of the Series-A preferred stock. GGI also issued 4,450,000 shares of restricted common stock for the remaining shares of the Series-A preferred shares. Each Series-B preferred share was convertible into one share of common stock at any time and would convert automatically upon liquidation. The Series-B preferred stock was entitled to dividends in parity with GGI's common stock. Finally, the Series-B preferred stock had

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

no voting rights, except that its owners were entitled to elect a majority of GGI's board. On February 9, 2006, GGI converted the Series-B preferred stock to 100,000 shares of common stock.

5. Between January 31, 2005 and June 30, 2005, GGI issued \$245,000 in convertible debentures to private investors. The debentures had an 8% interest rate, matured within 180 days of their issuance, and converted at a price equal to 50% of GGI common stock's closing bid price on conversion date. Between January 25, 2005, and December 31, 2005, these debenture holders converted debentures with a face amount of \$416,000 into 86,200,000 shares of common stock.

6. Section 18 of the Investment Company Act is made applicable to BDCs by Section 61(a) of the Investment Company Act, subject to certain exceptions. Section 18(d), as applicable to BDCs, generally prohibits them from issuing "any warrant or right to subscribe to or purchase a security of which such company is the issuer, except in the form of warrants or rights to subscribe expiring not later than one hundred and twenty days after their issuance, and issued exclusively and ratably to a class or classes of such company's security holders." The conversion features of GGI's Series-A and Series-B preferred stock and convertible debentures, which constituted rights to subscribe to or purchase securities, did not provide that the conversion feature would expire not later than 120 days after their issuance as required under Section 18(d).

7. Section 61(a)(3) allows a BDC, notwithstanding Section 18(d), to issue warrants, options, or rights to subscribe or convert to voting securities that are accompanied by securities if, among other things, the BDC's shareholders authorize, and a majority of the BDC's disinterested directors approves, the proposal to issue such securities.

8. GGI's shareholders did not authorize the issuance of the conversion feature on the Series-A and -B preferred shares and convertible debentures.

9. With certain exceptions not relevant here, Section 18(i) of the Investment Company Act provides that every share of stock issued by a BDC shall be a voting stock and have equal voting rights with every other outstanding voting stock. GGI's Series-A and Series-B preferred stock did not have voting rights equal to that of its common stock.

Repurchase of Securities

10. With certain exceptions not relevant here, Section 23(c) of the Investment Company Act generally prohibits a closed-end company from purchasing its own shares. GGI's February 10, 2005 issuance of 10 million shares of Series-A preferred stock to an officer in return for 5 million shares of common stock constituted a purchase of its own shares.

Failure to Provide and Maintain a Fidelity Bond

11. Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, which Section 59 makes applicable to BDCs, require each BDC to provide and maintain a bond issued by a reputable fidelity insurance company against larceny and embezzlement by officers and employees of the BDC. From January 25, 2005, through August 9, 2006, GGI did not provide and maintain a fidelity bond.

Violations

12. As a result of the conduct described above, GGI violated Sections 17(g), 18(d), 18(i), and 23(c) of the Investment Company Act and Rule 17g-1 thereunder.

Failure to Comply with Rule 609 of Regulation E

13. On January 26, 2005, GGI filed a Form 1-E notification of stock issuance pursuant to the securities registration exemption under Securities Act of 1933 Regulation E. The filing included a required offering circular, which provided certain disclosures regarding the offering. Rule 609 of Regulation E requires that, within 30 days after the end of each six-month period following the date of the original offering circular, or upon the termination of the offering, whichever is earlier, an issuer must file a report on Form 2-E, providing certain information regarding the status of the offering. GGI did not file the Form 2-E that was due within 30 days after July 26, 2005 until September 30, 2005. Therefore, GGI failed to comply with Rule 609.

14. Under Regulation E, Rule 610(c), the Commission may, at any time after notice of and opportunity for hearing, enter an order permanently suspending an issuer's Regulation E exemption, if the Commission has reason to believe, among other things, that any of the terms or conditions of Regulation E have not been complied with, including failure to file any report as required by Rule 609.

Respondent's Remedial Efforts

15. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent GGI's Offer.

Accordingly, pursuant to Section 9(f) of the Investment Company Act and Rule 610(c) of Regulation E, it is hereby ORDERED that:

A. Respondent GGI cease and desist from committing or causing any violations and any future violations of Sections 17(g), 18(d), 18(i), and 23(c) of the Investment Company Act and Rule 17g-1 thereunder.

B. The Regulation E exemption as to Respondent GGI be, and hereby is, permanently suspended.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

*Chairman Cox and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 8968 / September 29, 2008

INVESTMENT COMPANY ACT OF 1940

Release No. 28418 / September 29, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13259

In the Matter of

**AERO PERFORMANCE
PRODUCTS, INC.,**

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST AND EXEMPTION SUSPENSION
PROCEEDINGS, MAKING FINDINGS,
IMPOSING A CEASE-AND-DESIST
ORDER, AND PERMANENTLY
SUSPENDING THE REGULATION E
EXEMPTION AS TO AERO
PERFORMANCE PRODUCTS, INC.,
PURSUANT TO SECTION 9(f) OF THE
INVESTMENT COMPANY ACT OF 1940,
AND RULE 610(c) OF REGULATION E**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist and exemption suspension proceedings be, and hereby are, instituted pursuant to Section 9(f) of the Investment Company Act of 1940 ("Investment Company Act") and Rule 610(c) of Regulation E against AERO Performance Products, Inc. ("AERO" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist and Exemption Suspension Proceedings, Making Findings, Imposing a Cease-and-Desist Order, and Permanently Suspending the Regulation E Exemption as to AERO Performance Products, Inc., Pursuant to Section 9(f) of the Investment Company Act of 1940, and Rule 610(c) of Regulation E ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. Since electing to be regulated as a business development company ("BDC") in December 2004, AERO has, among other things, issued debt securities without adequate asset coverage, issued rights to purchase securities without expiration to non-security holders without the authorization of its shareholders and a majority of its disinterested directors, and issued prohibited non-voting stock. As a result, AERO violated Sections 18(a), 18(d), and 18(i), respectively, of the Investment Company Act. In addition, AERO failed to obtain a fidelity bond as required under Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder. Finally, AERO failed to comply with Rule 609 of Regulation E because it did not file an offering status report on Form 2-E in connection with a securities offering under Regulation E commenced in December 2004.

Respondent

2. AERO, formerly known as Franchise Capital Corporation, is a Nevada corporation with its principal offices located in South Jordan, Utah. It elected to be regulated as a BDC on December 23, 2004, and withdrew its election on March 13, 2007. Prior to its BDC election, AERO was an operating company known as BGR Corp., which sought to develop and franchise casual-dining restaurants. AERO's securities are registered under Section 12(g) of the Securities Exchange Act of 1934 and are quoted on the OTC Bulletin Board under the symbol AERP.

Issuing Convertible Senior Securities

3. On October 13, 2004, AERO entered into a contract with a private consulting firm to assist AERO in becoming a BDC and in issuing stock pursuant to the securities-registration exemption under Regulation E of the Securities Act of 1933 ("Securities Act"). Among other things, the contract obligated the consulting firm to prepare corporate-governance and other internal documents necessary for AERO to operate as a BDC. It likewise called for the consulting firm to prepare the Commission filings necessary for AERO to elect to be regulated as a BDC and to issue stock in an exempt offering under Regulation E. AERO agreed to pay the consulting firm, among other things, \$30,000 in cash, plus a \$30,000 convertible debenture for these services.

4. On December 19, 2004, AERO issued the consulting firm the convertible debenture and, on December 23, 2004, filed a Form N-54A election with the Commission to become a BDC. As of December 23, 2004, AERO had seven convertible debentures outstanding, including six issued earlier in 2004 in exchange for total financing of \$377,438. All seven debentures were convertible

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

into AERO common stock at the option of the debenture holder. They provided for conversion at discounts ranging from 20% to 50% of the stock's market price on the date of conversion. Under Section 61(b) of the Investment Company Act, a BDC must comply with Section 61 at the time it becomes subject to Sections 55 through 65 of the Investment Company Act ("the BDC provisions"), "as if it were issuing a security of each class which it has outstanding at such time." AERO became subject to the BDC provisions on December 23, 2004.

5. Section 18 of the Investment Company Act is made applicable to BDCs by Section 61(a) of the Investment Company Act, subject to certain exceptions. Section 18(a), as modified by Section 61(a) for application to BDCs, permits a BDC to issue any class of senior security representing indebtedness, if the BDC has asset coverage of at least 200% immediately after such issuance. Section 18(g) defines "senior security" to include debentures. Under Section 18(h), the asset coverage for senior securities representing indebtedness is determined by the ratio of the issuer's total asset value (less all liabilities and indebtedness not represented by senior securities) to the aggregate amount of the senior securities representing indebtedness. As of December 23, 2004, AERO's balance sheet reflected total assets of \$619,344 and total liabilities of \$654,246, which included convertible debentures totaling \$377,438. The asset coverage for the convertible debentures, therefore, was approximately 91%, below the required 200% coverage.

6. With one exception not relevant here, Section 18(d), as applicable to BDCs, generally prohibits BDCs from issuing "any warrant or right to subscribe to or purchase a security of which such company is the issuer, except in the form of warrants or rights to subscribe expiring not later than one hundred and twenty days after their issuance and issued exclusively and ratably to a class or classes of such company's securities holders." AERO's convertible debentures, which constituted rights to subscribe to or purchase securities, did not provide that the conversion feature would expire within 120 days after their issuance and were not issued to persons who already held AERO securities as required under Section 18(d).

7. Section 61(a)(3) allows a BDC, notwithstanding Section 18(d), to issue warrants, options, or rights to subscribe or convert to voting securities that are accompanied by securities if, among other things, the BDC's shareholders authorize, and a majority of the BDC's disinterested directors approves, the proposal to issue such securities; the exercise or conversion price is not less than the current market value at the date of issuance, and the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance shall not exceed 25% of the BDC's outstanding voting securities.

8. AERO's shareholders did not authorize, and a majority of its disinterested directors did not approve, the issuance of the convertible debentures issued and outstanding as of December 23, 2004. In light of the discounts to the market price of AERO's common stock, which was \$0.01 on December 23, 2004, the debentures' conversion price was less than the current market value of AERO's common stock at the date of issuance. Moreover, on December 23, 2004, AERO had approximately 48.5 million shares of common stock outstanding. Assuming the six debentures issued earlier in 2004 had converted on that date (five had a 50% conversion ratio and the sixth had an 80% ratio), AERO would have issued approximately 62 million additional shares, which would have equaled approximately 56% of AERO's voting securities, exceeding 25% of the BDC's outstanding voting securities.

Issuing Unequal-Voting Stock

9. On December 17, 2004, AERO issued 13.5 million shares of "Series C" preferred stock. This stock had no voting rights, except to elect three members of the board of directors. With certain exceptions not relevant here, Section 18(i) of the Investment Company Act provides that every share of stock issued by a BDC shall be a voting stock and have equal voting rights with every other outstanding voting stock. Here, AERO's preferred stock did not have voting rights equal to that of its common stock.

Failure to Provide and Maintain a Fidelity Bond

10. From December 23, 2004, through at least March 2005, AERO did not file, provide or maintain a fidelity bond. Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, which Section 59 makes applicable to BDCs, require each BDC to provide and maintain a bond issued by a reputable fidelity insurance company against larceny and embezzlement by officers and employees of the BDC.

Violations

11. As a result of the conduct described above, AERO violated Sections 17(g), 18(a), 18(d), and 18(i), of the Investment Company Act and Rule 17g-1 thereunder.

Failure to Comply with Rule 609 of Regulation E

12. On December 27, 2004, AERO filed a Form 1-E notification of stock issuance pursuant to the securities-registration exemption under Securities Act Regulation E. The filing included a required offering circular, which provided certain disclosures regarding the offering. Rule 609 of Regulation E requires that, within 30 days after the end of each six-month period following the date of the original offering circular, or upon the termination of the offering, whichever is earlier, an issuer must file a report on Form 2-E, providing certain information regarding the status of the offering. AERO did not file until September 30, 2005 the Form 2-E that was due within 30 days after June 27, 2005. Therefore, AERO failed to comply with Rule 609.

13. Under Regulation E, Rule 610(c), the Commission may, at any time after notice of and opportunity for hearing, enter an order permanently suspending the Regulation E exemption, if the Commission has reason to believe, among other things, that any of the terms or conditions of Regulation E have not been complied with, including failure to file any report as required by Rule 609.

Respondent's Remedial Efforts

14. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent AERO's Offer.

Accordingly, pursuant to Section 9(f) of the Investment Company Act and Rule 610(c) of Regulation E, it is hereby ORDERED that:

A. Respondent AERO cease and desist from committing or causing any violations and any future violations of Sections 17(g), 18(a), 18(d), and 18(i) of the Investment Company Act and Rule 17g-1 thereunder.

B. The Regulation E exemption as to Respondent AERO be, and hereby is, permanently suspended.

By the Commission.

Florence E. Harmon
Acting Secretary


By: Jill M. Peterson
Assistant Secretary

*Chairman Cox and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933
Release No. 8966 / September 29, 2008

INVESTMENT COMPANY ACT OF 1940
Release No. 28416 / September 29, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13257

In the Matter of

CLX MEDICAL, INC.

Respondent.

**ORDER INSTITUTING CEASE-AND-
DESIST AND EXEMPTION SUSPENSION
PROCEEDINGS, MAKING FINDINGS,
IMPOSING A CEASE-AND-DESIST
ORDER, AND PERMANENTLY
SUSPENDING THE REGULATION E
EXEMPTION AS TO CLX MEDICAL,
INC., PURSUANT TO SECTION 9(f) OF
THE INVESTMENT COMPANY ACT OF
1940 AND RULE 610(c) OF REGULATION
E**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist and exemption suspension proceedings be, and hereby are, instituted pursuant to Section 9(f) of the Investment Company Act of 1940 ("Investment Company Act") and Rule 610(c) of Regulation E against CLX Medical, Inc. ("CLX" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist and Exemption Suspension Proceedings, Making Findings, Imposing a Cease-and-Desist Order, and Permanently Suspending the Regulation E Exemption as to CLX Medical, Inc., Pursuant to Section 9(f) of the Investment Company Act of 1940 and Rule 610(c) of Regulation E ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. Since electing to be regulated as a business development company ("BDC") in September 2004, CLX has, among other things, issued senior securities without adequate asset coverage, rights to purchase securities without expiration to non-security holders, issued prohibited non-voting stock, and failed to establish a majority of disinterested directors on its board. As a result, CLX violated Sections 18(a), 18(d), 18(i), and 56(a) respectively, of the Investment Company Act. In addition, from September 13, 2004, through July 27, 2006, CLX did not obtain a fidelity bond, as required under Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, and never implemented a compliance program as required under Investment Company Act Rule 38a-1. Finally, CLX failed to comply with Rule 609 of Regulation E because it did not file offering-status reports on Form 2-E in connection with a securities offering under Regulation E commenced in September 2004.

Respondent

2. CLX is a Colorado corporation with its principal offices located in Murrieta, California. It elected to be regulated as a BDC on September 13, 2004, and withdrew its election on May 30, 2007. Prior to its BDC election, CLX was an operating company known as CLX Energy, Inc., which was engaged in the acquisition, exploration, development, and operation of oil-and-gas properties. CLX's securities are registered under Section 12(g) of the Securities Exchange Act of 1934 and are quoted on the OTC Bulletin Board under the symbol CLXN.

Issuing Senior Securities

3. Between September 13, 2004, and September 30, 2005, CLX issued convertible debentures to investors in a private transaction in exchange for \$696,888. The debentures included an 8% annual interest rate, matured on various dates within 120 days of their issuance, and converted to common stock at a price equal to 50% of the closing bid price on the date of conversion.

4. Section 18 of the Investment Company Act is made applicable to BDCs by Section 61(a) of the Investment Company Act, subject to certain exceptions. Section 18(a), as modified by Section 61(a) for application to BDCs, permits a BDC to issue any class of senior security representing indebtedness, if the BDC has asset coverage of at least 200% immediately after such issuance. Section 18(g) defines "senior security" to include debentures. Under Section 18(h), the asset coverage for senior securities representing indebtedness is determined by the ratio of the issuer's

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

total asset value (less all liabilities and indebtedness not represented by senior securities) to the aggregate amount of the senior securities representing indebtedness.

5. On September 1, 2005 and September 28, 2005, CLX issued debentures of \$186,488 and \$5,400. As of September 30, 2005, CLX's balance sheet reflected total assets of \$586,012 and total liabilities of \$491,698.46, which included convertible debentures totaling \$426,428. The asset coverage for the convertible security issued on September 28, 2007, was approximately 122%, significantly below the required 200% coverage.

Issuing Convertible Securities with Unequal Voting Rights

6. On February 1, 2005, CLX issued 9 million shares of Series-A preferred stock to a private investor at a price of \$0.015 per share. These shares were convertible on a one-to-one basis into common stock at any time and would convert automatically upon liquidation. The Series-A preferred stock had no voting rights, except that its owner was entitled to elect a majority of CLX's board. On August 8, 2005, CLX issued 100,000 shares of Series-B preferred stock to the holder of the Series-A preferred stock in exchange for all of the Series-A preferred stock. The Series-B preferred stock, which was not convertible, entitled its owner to elect a majority of the CLX's Board in addition to voting the preferred stock on a one-to-one basis with the common stock in all other voting matters.

7. Section 18 of the Investment Company Act is made applicable to BDCs by Section 61(a) of the Investment Company Act, subject to certain exceptions. Section 18(d), as applicable to BDCs, generally prohibits them from issuing "any warrant or right to subscribe to or purchase a security of which such company is the issuer, except in the form of warrants or rights to subscribe expiring not later than one hundred and twenty days after their issuance and issued exclusively and ratably to a class or classes of such company's security holders." The conversion feature of CLX's Series-A preferred stock, which constituted rights to subscribe to or purchase securities, did not provide that the conversion feature would expire within 120 days after their issuance as required under Section 18(d).

8. Section 61(a)(3) allows a BDC, notwithstanding Section 18(d), to issue warrants, options, or rights to subscribe or convert to voting securities that are accompanied by securities if, among other things, the BDC's shareholders authorize, and a majority of the BDC's disinterested directors approves, the proposal to issue such securities. CLX's shareholders did not authorize the issuance of the conversion feature on the Series-A preferred stock.

9. With certain exceptions not relevant here, Section 18(i) of the Investment Company Act provides that every share of stock issued by a BDC shall be a voting stock and have equal voting rights with every other outstanding voting stock. CLX's Series-A and Series-B preferred stock did not have voting rights equal to that of its common stock.

Failure to Adopt and Implement Compliance Policies and Procedures

10. On December 17, 2003, the Commission adopted Rule 38a-1 under the Investment Company Act, which requires each registered investment company and BDC to adopt and

implement written policies and procedures reasonably designed to prevent violations of federal securities laws. These policies and procedures must be approved by the BDC's board of directors (including a majority of disinterested directors) and reviewed annually. Furthermore, each BDC must appoint a chief compliance officer to administer the policies and procedures and to fulfill certain reporting duties to the board. The compliance deadline for this rule was October 5, 2004. CLX did not adopt and implement written policies and procedures reasonably designed to prevent violations of federal securities laws and did not appoint a chief compliance officer.

Failure to Establish a Majority of Disinterested Directors

11. Section 56(a) of the Investment Company Act provides that a majority of a BDC's directors shall be persons who are not interested persons, as that term is defined in Section 2(a)(19) of the Investment Company Act. From September 13, 2004 to August 8, 2005, CLX failed to have a board composed of a majority of disinterested persons.

Failure to Provide and Maintain a Fidelity Bond

12. Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, which Section 59 makes applicable to BDCs, require each BDC to provide and maintain a bond issued by a reputable fidelity insurance company against larceny and embezzlement by officers and employees of the BDC. From September 13, 2004, through July 27, 2006, CLX did not provide and maintain a fidelity bond.

Violations

13. As a result of the conduct described above, CLX violated Sections 17(g), 18(a), 18(d), 18(i), and 56(a) of the Investment Company Act and Rules 17g-1 and 38a-1 thereunder.

Failure to Comply with Rule 609 of Regulation E

14. On September 14, 2004, CLX filed a Form 1-E notification of stock issuance pursuant to the securities-registration exemption under Securities Act of 1933 Regulation E. The filing included a required offering circular, which provided certain disclosures regarding the offering. Rule 609 of Regulation E requires that, within 30 days after the end of each six-month period following the date of the original offering circular, or upon the termination of the offering, whichever is earlier, an issuer must file a report on Form 2-E, providing certain information regarding the status of the offering. CLX did not file the Forms 2-E that were due within 30 days after March 14, 2005, September 14, 2006, and March 14, 2007, nor has it filed a notification of the termination of the offering. Therefore, CLX did not comply with Rule 609.

15. Under Regulation E, Rule 610(c), the Commission may, at any time after notice of and opportunity for hearing, enter an order permanently suspending an issuer's Regulation E exemption, if the Commission has reason to believe, among other things, that any of the terms or conditions of Regulation E have not been complied with, including failure to file any report as required by Rule 609.

Respondent's Remedial Efforts

16. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent CLX's Offer.

Accordingly, pursuant to Section 9(f) of the Investment Company Act and Rule 610(c) of Regulation E, it is hereby ORDERED that:

A. Respondent CLX cease and desist from committing or causing any violations and any future violations of Sections 17(g), 18(a), 18(i), 18(d), and 56(a) of the Investment Company Act and Rules 17g-1 and 38a-1 thereunder.

B. The Regulation E exemption as to Respondent CLX be, and hereby is, permanently suspended.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

*Commissioner Watter
not participating*

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-58673; File Nos. SR-Amex-2008-62 and SR-NYSE-2008-60)

September 29, 2008

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Amendment No. 4 and Order Granting Accelerated Approval to a Proposed Rule Change, as Modified by Amendments No. 1 and 4 Thereto, Relating to the Acquisition of the Amex by NYSE Euronext

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval to a Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Acquisition of the Amex by NYSE Euronext

I. Introduction

On July 23, 2008, American Stock Exchange LLC, a Delaware limited liability company ("Amex"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change in connection with the acquisition of Amex by NYSE Euronext, a Delaware Corporation ("NYSE Euronext"). On July 30, 2008, Amex filed Amendment No. 1 to the proposed rule change. On August 7, 2008, the proposed rule change, as amended, was published for comment in the Federal Register.³ Amex filed Amendment No. 2 to the proposed rule change on September 3, 2008, and withdrew Amendment No. 2 on September 4, 2008. Amex filed Amendment No. 3 on September 4, 2008, and withdrew Amendment No. 3 on September 5, 2008. Amex filed Amendment No. 4 on September 5, 2008.⁴ The Commission

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 58284 (August 1, 2008), 73 FR 46086 ("Amex Notice").

⁴ In Amendment No. 4, Amex: (1) made several technical, non-substantive clarifying changes to the proposed NYSE Alternext US LLC rules; (2) amended the proposed NYSE Alternext US LLC rules to provide for other Amex proposed rule changes that have been approved since this proposal was filed; (3) modified the description of Arca

received no comments on the proposed rule change. This order provides notice of filing of Amendment No. 4 to the proposed rule change, and grants accelerated approval to the proposed rule change, as modified by Amendments No. 1 and 4.

On July 23, 2008, the New York Stock Exchange LLC ("NYSE"), a New York limited liability company, filed with the Commission, pursuant to Section 19(b)(1) of the Act⁵ and Rule 19b-4 thereunder,⁶ a proposed rule change in connection with the acquisition of Amex by NYSE Euronext. On July 30, 2008, the NYSE filed Amendment No. 1 to the proposed rule change. On August 7, 2008, the proposed rule change, as amended, was published for comment

Securities, L.L.C. ("Arca Securities) to include, among other things, a representation that, with respect to its oversight of Arca Securities, which will be an affiliated member of NYSE Alternext US LLC after the Mergers and Related Transactions (as described herein), NYSE Regulation, Inc. ("NYSE Regulation") has agreed with Amex that it will provide a report to NYSE Alternext US LLC's Chief Regulatory Officer on a quarterly basis that: (a) quantifies all open alerts (of which NYSE Regulation is aware) that identify Arca Securities as a participant that has potentially violated NYSE Alternext US LLC or Commission rules and (b) quantifies the number of all open investigations that identify Arca Securities as a participant that has potentially violated NYSE Alternext US LLC or Commission rules; (4) revised the rule filing to reflect that the parties to a multi-party regulatory services agreement (as described herein) have been modified to include NYSE Alternext US LLC, NYSE Group, Inc., NYSE Regulation, and Financial Industry Regulatory Authority ("FINRA"); (5) revised the rule filing to reflect a change to the Mergers and Related Transactions, which will not affect the final outcome of the Mergers and Related Transactions (as described herein) through which NYSE Alternext US LLC will become a subsidiary of NYSE Euronext; and (6) clarified that Arca Securities will not provide "outbound" routing services for NYSE Alternext US LLC until the relocation of the NYSE Alternext US LLC equities and options trading facilities to the NYSE trading floor or the electronic trading platform of NYSE or NYSE Arca, Inc., as applicable, and that, at a later time, NYSE Alternext US LLC will submit a separate rule filing to the Commission seeking approval to provide such outbound routing services to NYSE Alternext US LLC.

⁵ 15 U.S.C. 78s(b)(1).

⁶ 17 CFR 240.19b-4.

in the Federal Register.⁷ The Commission received no comments on the proposed rule change.

This order grants approval to the proposed rule change, as modified by Amendment No. 1.

II. Background

On January 17, 2008, NYSE Euronext, Amex, Amex's parent companies (The Amex Membership Corporation ("MC") and its direct wholly-owned subsidiary, AMC Acquisition Sub, Inc.), and several other entities created by NYSE Euronext and Amex in connection with the Mergers entered into an agreement ("Merger Agreement") to effect a series of mergers ("Mergers") as a result of which the successor to Amex, to be renamed "NYSE Alternext US LLC" ("NYSE Alternext US"), will become a U.S. Regulated Subsidiary⁸ of NYSE Euronext. The Board of Governors of Amex ("Amex Board") approved the proposed rule change on May 21, 2008. In addition, the Mergers were approved by the requisite vote of MC members at the special meeting of MC members held on June 17, 2008. Immediately following the Mergers, NYSE Euronext plans to effectuate certain related transactions, as a result of which NYSE Alternext US will become a direct wholly-owned subsidiary of NYSE Group, Inc. ("NYSE Group"), the wholly-owned subsidiary of NYSE Euronext ("Related Transactions").⁹

Upon completion of the Mergers and the Related Transactions, NYSE Alternext US will continue operating as a national securities exchange registered under Section 6 of the Act.¹⁰ Following the Mergers and the Related Transactions, NYSE Euronext (and NYSE Group) will be

⁷ See Securities Exchange Act Release No. 58285 (August 1, 2008), 73 FR 46117 (SR-NYSE-2008-60) ("NYSE Notice").

⁸ The term "U.S. Regulated Subsidiary" is defined in Article VII, Section 7.3(G) of the NYSE Euronext Bylaws.

⁹ See Amex Notice, *supra* note 3, and Amendment No. 4 to the Amex Notice, *supra* note 4, for a more detailed description of the Mergers and the Related Transactions.

¹⁰ 15 U.S.C. 78f.

the owner of three self-regulatory organizations (“SROs”): the NYSE; NYSE Arca, Inc. (“NYSE Arca”); and NYSE Alternext US.

Currently, all Regular Members and Options Principal Members¹¹ of Amex also have a membership interest in MC, a New York not-for-profit members-owned corporation which owns directly or indirectly 100% of Amex. The Mergers will have the effect of separating the right to trade on NYSE Alternext US from ownership in MC. Pursuant to the terms of the Merger Agreement, persons owning MC memberships prior to the Mergers will receive shares of the common stock of NYSE Euronext and cash in lieu of fractional shares, if applicable.¹² As described more fully below, following the Mergers, all trading rights on Amex appurtenant to MC memberships existing prior to the Mergers will be cancelled and physical and electronic access to NYSE Alternext US trading facilities will be made available to individuals and organizations through temporary trading permits (“86 Trinity Permits”) offered by NYSE Alternext US.¹³

Amex filed a proposed rule change to permit the Mergers and the Related Transactions and to accommodate the transformation of Amex from a wholly-owned subsidiary of MC¹⁴ into an

¹¹ Amex allied members and associate members are not members of MC and therefore have trading rights on Amex but not voting rights in MC.

¹² See Amex Notice, supra note 3, for a more detailed description of the consideration that persons owning MC memberships will receive in connection with the Mergers.

¹³ See infra Section III.C.2. for discussion of these temporary trading permits. At a later time, NYSE Alternext US anticipates replacing 86 Trinity Permits with equity trading licenses and options trading permits. NYSE Alternext US would have to file a proposed rule change to replace the 86 Trinity Permits with equity trading licenses and options trading permits.

¹⁴ For a discussion of the current governance structure of MC and Amex, see Securities Exchange Act Release Nos. 50057 (July 22, 2004), 69 FR 45091 (July 28, 2004) (SR-Amex-2004-50) (notice of filing of proposed rule change relating to the NASD’s sale of its interest in Amex to MC) and 50927 (December 23, 2004), 69 FR 78486 (December 30, 2004) (SR-Amex-2004-50) (order approving proposed rule change relating to the NASD’s sale of its interest in Amex to MC) (“Amex Order”).

indirect wholly-owned subsidiary of NYSE Euronext and a direct wholly-owned subsidiary of NYSE Group. Amex proposes to adopt the NYSE Alternext US Operating Agreement, to eliminate the Amex Constitution,¹⁵ and to amend the Amex Rules, which would become the NYSE Alternext US Rules, as described more fully below.¹⁶ In general, the proposed changes are designed to facilitate the Mergers and Related Transactions and to conform the governance of NYSE Alternext US to that of the NYSE. Amex also is using this opportunity to make several other changes to its governing documents and rules to update language and make other minor changes that are not directly related to the proposed Mergers or Related Transactions.¹⁷ The proposed rule change will become operative upon completion of the Mergers and the Related Transactions.

In addition, the NYSE filed a proposed rule change to amend certain organizational documents of NYSE Euronext, NYSE Group, and NYSE Regulation; the Trust Agreement of the NYSE Group Trust I ("Trust Agreement")¹⁸; the Independence Policy of NYSE Euronext ("NYSE Euronext Independence Policy"); and the NYSE Rules. The proposed changes, among other things, will make applicable to NYSE Alternext US certain provisions of the organizational

¹⁵ Amex proposes to include relevant provisions of the Amex Constitution in the NYSE Alternext US Operating Agreement or the NYSE Alternext US Rules, as applicable.

¹⁶ Amex also proposes, in connection with the Mergers, to eliminate the undertakings made by Amex to the Commission in connection with a proposed rule change in 2004. See Amex Order, supra note 14.

¹⁷ For example, certain obsolete rules, including the rules relating the Intermarket Trading System Plan and certain rules which have been replaced by Auction and Electronic Market Integration Rules are proposed to be deleted. See Amex Notice, supra note 3, 73 FR at 46095.

¹⁸ See Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR-NYSE-2006-120) (order approving combination between NYSE Group, Inc. and Euronext N.V.) ("NYSE/Euronext Order") for a description of the Trust Agreement.

documents, the Trust Agreement, and the NYSE Euronext Independence Policy that are designed to maintain the independence of each NYSE Euronext SRO subsidiary's self-regulatory function, enable each such SRO to operate in a manner that complies with the federal securities laws, and facilitate each such SRO's ability and the ability of the Commission to fulfill their regulatory and oversight obligations under the Act.¹⁹

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.²⁰ In particular, the Commission finds that the proposed rule changes are consistent with: (1) Section 6(b)(1) of the Act,²¹ which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act; (2) Section 6(b)(3) of the Act,²² which requires that the rules of a national securities exchange assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer (the "fair representation requirement"); and (3) Section 6(b)(5) of the Act,²³ in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices; to promote just

¹⁹ See NYSE Notice, *supra* note 7. In addition, the NYSE also is making certain other changes to the NYSE Euronext Independence Policy, as discussed below in Section III.G.

²⁰ In approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²¹ 15 U.S.C. 78f(b)(1).

²² 15 U.S.C. 78f(b)(3).

²³ 15 U.S.C. 78f(b)(5).

and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

As noted above, the Mergers and the Related Transactions will result in NYSE Euronext (and NYSE Group) owning another SRO, NYSE Alternext US. The Commission believes that the ownership of NYSE Alternext US by the same public holding company that owns the NYSE and NYSE Arca would not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.²⁴ Further, the Commission does not believe that the ownership by one holding company of three U.S. exchanges presents any adverse competitive implications in the current marketplace. The Commission notes that it has previously approved proposals in which a holding company owns multiple SROs.²⁵ The Commission's experience to date with the issues raised by the ownership by a holding company of one or more SROs has not presented any concerns that have not been addressed, for example, by Commission approved measures at the holding company level that are designed to protect the independence of each SRO.

The Commission believes that the current market for cash equity and standardized options trading venues is highly competitive. Existing exchanges face significant competition

²⁴ 15 U.S.C. 78f(b)(8).

²⁵ See, e.g., Securities Exchange Act Release No. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR-NYSE-2005-77) (approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.) ("NYSE/Arca Order"). See also Securities Exchange Act Release Nos. 58324 (August 7, 2008) (SR-BSE-2008-02; SR-BSE-2008-23; SR-BSE-2008-25; SR-BSECC-2008-01) (approving the acquisition of Boston Stock Exchange, Inc. by The NASDAQ OMX Group, Inc.) ("BSE Order"), and 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR-Phlx-2008-31) (approving the acquisition of Philadelphia Stock Exchange, Inc. by The NASDAQ OMX Group, Inc.) ("Phlx Order").

from other exchanges and non-exchange entities, such as alternative trading systems, that trade the same or similar financial instruments.²⁶ In addition, there have been new entrants to the market. In this regard, the Nasdaq Options Market recently commenced the trading of standardized options contracts, the Commission in 2004 approved proposed rule changes to establish the Boston Options Exchange Facility of the Boston Stock Exchange, Inc, and the Commission in 2000 approved the registration of the International Securities Exchange, LLC (“ISE”) to trade standardized options contracts.²⁷ Further, the Chicago Board Options Exchange, Incorporated and ISE a few years ago commenced trading of cash equity securities.²⁸ In addition, another entity has recently applied and received approval for exchange registration, which provides evidence that such entity determined there are benefits in starting a new exchange to

²⁶ See, e.g., Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144, 40144 (July 11, 2008) (where the Commission recognized that “[n]ational securities exchanges registered under Section 6(a) of the Act face increased competitive pressures from entities that trade the same or similar financial instruments....”).

²⁷ See Securities Exchange Act Release Nos. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR-NASDAQ-2007-004 and SR-NASDAQ-2007-080) (order approving a proposed rule change relating to, among other things, the establishment and operation of the NADAQ Options Market) (“NOM Approval Order”); 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR-BSE-2002-15) (order approving trading rules for BOX); 49067 (January 13, 2004), 69 FR 2761 (January 20, 2004) (SR-BSE-2003-19) (order approving the Operating Agreement for BOX); and 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (File No. 10-127) (order approving the International Securities Exchange LLC’s application for registration as a national securities exchange) (“ISE Exchange Registration Order”).

²⁸ See Securities Exchange Act Release Nos. 55389 (March 2, 2007), 72 FR 10575 (March 8, 2007) (order approving the establishment of CBOE Stock Exchange, LLC); 55392 (March 2, 2007), 72 FR 10572 (March 8, 2007) (order approving trading rules for non-option securities trading on CBOE Stock Exchange, LLC); 54528 (September 28, 2006), 71 FR 58650 (October 4, 2006) (order approving rules governing ISE’s electronic trading system for equities).

compete in the marketplace.²⁹ Accordingly, the Commission finds that Amex's and NYSE's proposed rule changes are consistent with Section 6(b)(8), which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission will continue to monitor holding companies' ownership of multiple SROs for compliance with the Act, the rules and regulations thereunder, as well as the SROs' own rules.

A. Changes in Control of NYSE Alternext US; Ownership and Voting Limits

The NYSE Alternext US Operating Agreement will provide that NYSE Group, which will be the sole member of NYSE Alternext US, may not transfer or assign its limited liability company interest in NYSE Alternext US in whole or in part, to any person or entity, unless such transfer or assignment shall be filed with and approved by the Commission under Section 19 of the Act and the rules promulgated thereunder.³⁰ In addition, the Second Amended and Restated Certificate of Incorporation of NYSE Group ("NYSE Group Charter") provides that NYSE

²⁹ See Securities Exchange Act Release Nos. 57322 (February 13, 2008), 73 FR 9370 (February 20, 2008) (File No. 10-182) (notice of filing of application and Amendment No. 1 thereto by BATS Exchange, Inc. for registration as a national securities exchange) and 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (Findings, Opinion, and Order of the Commission approving BATS Exchange, Inc.'s application for registration as a national securities exchange) ("BATS Order").

³⁰ See Section 3.03 of the proposed NYSE Alternext US Operating Agreement. Under current Amex rules, any sale, issuance, transfer or other disposition of any equity security of Amex, including any LLC interest, is subject to prior approval by the Commission pursuant to the rule filing procedure under Section 19 of the Act and the rules promulgated thereunder. See Section 9.3 of the Amended and Restated Amex Limited Liability Company Agreement and Amex Order, supra note 14. In addition, any sale, issuance, transfer or other disposition of any equity interest in MC or AMC Acquisition Sub, Inc. other than the sale or transfer of seats or membership interests in MC, is subject to prior approval by the Commission pursuant to the rule filing procedure under Section 19 of the Act and the rules promulgated thereunder. See Section 7(c) of the Second Restated Certificate of Incorporation of MC and Amex Order, supra note 14.

Euronext, as the owner of all the issued and outstanding shares of stock of NYSE Group, may not transfer or assign its ownership interest in NYSE Group, in whole or in part, to any person or entity, unless such transfer or assignment shall be filed with and approved by the Commission under Section 19 of the Exchange Act and the rules promulgated thereunder.³¹

The Amended and Restated Certificate of Incorporation of NYSE Euronext ("NYSE Euronext Charter"), in turn, imposes limits on direct and indirect changes in control, which are designed to prevent any shareholder from exercising undue control over the operation of its SRO subsidiaries and to ensure that its SRO subsidiaries and the Commission are able to carry out their regulatory responsibilities under the Act.³² Specifically, no person (either alone or together with its related persons) is entitled to vote or cause the voting of shares of stock of NYSE Euronext beneficially owned by such person or its related persons, in person or by proxy or through any voting agreement or other arrangement, to the extent that such shares represent in the aggregate more than 10% of the then outstanding votes entitled to be cast on such matter. No person (either alone or together with its related persons) may acquire the ability to vote more than 10% of the then outstanding votes entitled to be cast on any such matter by virtue of agreements or arrangements entered into with other persons not to vote shares of NYSE Euronext's

³¹ See Article IV, Section 4 of the proposed NYSE Group Charter.

³² See Article V of the NYSE Euronext Charter and NYSE/Euronext Order, *supra* note 18. The Commission notes that the NYSE Group Charter also includes similar ownership and voting limits. However, such limitations are not applicable so long as NYSE Euronext and NYSE Group Trust I collectively own all of the capital stock of NYSE Group. Instead, for so long as NYSE Group is a wholly owned subsidiary of NYSE Euronext, or as provided for in the Trust Agreement, there will be no transfer of the shares of NYSE Group held by NYSE Euronext without the approval of the Commission. If NYSE Group ceases to be wholly owned by NYSE Euronext or the Trust, the voting and ownership limitations in the NYSE Group Charter will apply. *Id.*

outstanding capital stock.³³ In addition, no person (either alone or together with its related persons) may at any time beneficially own shares of stock of NYSE Euronext representing in the aggregate more than 20% of the then outstanding votes entitled to be cast on any matter.³⁴ These limits will flow through to NYSE Alternext US by virtue of the fact that NYSE Alternext US will be a wholly-owned subsidiary of NYSE Group, which in turn is wholly-owned by NYSE Euronext.³⁵

Further, the current NYSE Euronext Charter provides that for so long as NYSE Euronext directly or indirectly controls the NYSE, NYSE Market Inc. ("NYSE Market"), NYSE Arca, NYSE Arca Equities, Inc. ("NYSE Arca Equities") or any facility of NYSE Arca, the NYSE Euronext board of directors cannot waive the voting and ownership limits above the 20% threshold for any person if such person or its related persons is a member or member organization of the NYSE, an ETP Holder of NYSE Arca Equities, or an OTP Holder or an OTP

³³ See NYSE/Euronext Order, *supra* note 18 and NYSE Euronext Charter, Article V, Section 1(A). Pursuant to the NYSE Euronext Charter, NYSE Euronext shall disregard any such votes purported to be cast in excess of these limitations.

³⁴ See NYSE/Euronext Order, *supra* note 18, and NYSE Euronext Charter, Article V, Section 2(A). In the event that a person, either alone or together with its related persons, beneficially owns shares of stock of NYSE Euronext in excess of the 20% threshold, such person and its related persons will be obligated to sell promptly, and NYSE Euronext will be obligated to purchase promptly, to the extent that funds are legally available for such purchase, that number of shares necessary to reduce the ownership level of such person and its related persons to below the permitted threshold, after taking into account that such repurchased shares will become treasury shares and will no longer be deemed to be outstanding. See NYSE Euronext Charter, Article V, Section 2(D).

³⁵ Further, solely for the purposes of the definition of "related person" in the NYSE Euronext Charter, which incorporates in certain respects the definition of "member" and "member organization" as defined in the rules of the NYSE, the NYSE is amending (1) the definition of "member" in its rules to include any "member" (as defined in Section 3(a)(3)(A)(i) of the Act) of NYSE Alternext US, and (2) the definition of "Member Organization" in its rules to include any "member" (as defined in Section 3(a)(3)(A)(ii),

Firm of NYSE Arca.³⁶ These ownership and voting limits as they apply to members of the NYSE and NYSE Arca will be extended to include members of NYSE Alternext US through changes to the Amended and Restated Bylaws of NYSE Euronext ("NYSE Euronext Bylaws").³⁷ Specifically, the NYSE Euronext Bylaws will provide that, subject to its fiduciary obligations under applicable law, for so long as NYSE Euronext directly or indirectly controls NYSE Alternext US, the board of directors of NYSE Euronext shall not adopt any resolution to: (1) approve the exercise of voting rights in excess of 20% of the then outstanding votes entitled to be cast on such matter unless the Board of Directors of NYSE Euronext determines that neither such person nor any of its related persons (as defined in the NYSE Euronext Charter) is a member (as defined in Section 3(a)(3)(A) of the Exchange Act)³⁸ of NYSE Alternext US (a "NYSE Alternext US Member");³⁹ and (2) approve the entering into of an agreement, plan or other arrangement under circumstances that would result in shares of stock of NYSE Euronext that would be subject to such agreement, plan or other arrangement not being voted on any matter, or the withholding of any proxy relating thereto, where the effect of such agreement, plan or other arrangement would be to enable any person, either alone or together with its related persons, to vote, possess the right to vote or cause the voting of shares of stock of NYSE Euronext that would exceed 20%

3(a)(3)(A)(iii) and 3(a)(3)(A)(iv) of the Act) of NYSE Alternext US. See NYSE Notice, supra note 7.

³⁶ See NYSE Euronext Charter, Article V, Sections 1(C)(3) and 2(C)(4).

³⁷ Similar changes are being made to the NYSE Group Charter. See NYSE Notice, supra note 7.

³⁸ 15 U.S.C. 78c(a)(3)(A).

³⁹ Any such person that is a "related person" (as defined in the NYSE Euronext Charter) of such NYSE Alternext Member will also be deemed to be a "NYSE Alternext Member" for the purposes of the NYSE Euronext Bylaws, as the context may require. See NYSE Euronext Bylaws, Section 10.12(A)(1).

of the then outstanding votes entitled to be cast on such matter (assuming that all shares of stock of NYSE Euronext that are subject to such agreement, plan or other arrangement are not outstanding votes entitled to be cast on such matter), unless the Board of Directors of NYSE Euronext determines that neither such person nor any of its related persons is an NYSE Alternext US Member. Further, the NYSE Euronext Bylaws will provide that, for so long as NYSE Euronext directly or indirectly controls NYSE Alternext US, the board of directors of NYSE Euronext will not approve ownership of NYSE Euronext capital stock in excess of 20%, unless the board of directors of NYSE Euronext determines that neither such person, nor any of its related persons, is a NYSE Alternext US Member.

The Commission finds that the proposed changes to NYSE Euronext Bylaws and the proposed restrictions on transfer and assignment of NYSE Group's limited liability company interest in NYSE Alternext US, together with the existing restrictions on transfer and assignment of NYSE Euronext's ownership interest in NYSE Group and the existing ownership and voting limitations in NYSE Euronext's Certificate, are designed to prevent any person or entity from exercising undue control over the operation of NYSE Alternext US. These proposed changes are also designed to ensure that NYSE Alternext US and the Commission are able to carry out their regulatory obligations under the Act and thereby minimize the potential that a person or entity could improperly interfere with or restrict the ability of the Commission or NYSE Alternext US to effectively carry out their respective regulatory oversight responsibilities under the Act.

B. Management of NYSE Alternext US

1. Relationship Between NYSE Alternext US, NYSE Euronext and NYSE Group; Jurisdiction Over NYSE Euronext and NYSE Group

After the Mergers and the Related Transactions, NYSE Alternext US will become an indirect wholly-owned subsidiary of NYSE Euronext and a direct wholly-owned subsidiary of

NYSE Group. Although these entities are not SROs and, therefore, will not themselves carry out regulatory functions, their activities with respect to the operation of NYSE Alternext US must be consistent with, and not interfere with, NYSE Alternext US's self-regulatory obligations. Proposed changes to the NYSE Euronext Bylaws, the NYSE Group Charter, the Second Amended and Restated Bylaws of NYSE Group ("NYSE Group Bylaws"), and the Trust Agreement will make applicable to NYSE Alternext US⁴⁰ certain provisions of NYSE Euronext and NYSE Group organizational documents, and provisions of the Trust Agreement, that are designed to maintain the independence of NYSE Alternext US's self-regulatory function, enable NYSE Alternext US to operate in a manner that complies with the federal securities laws, and facilitate NYSE Alternext US's ability and the ability of the Commission to fulfill their regulatory and oversight obligations under the Act.⁴¹

In particular, the NYSE Euronext Bylaws and NYSE Group Charter will specify, as applicable, that NYSE Euronext and NYSE Group and their respective officers, directors and employees whose principal place of business and residence is outside of the United States shall be deemed to irrevocably submit to the jurisdiction of the United States federal courts and the Commission for the purposes of any suit, action, or proceeding pursuant to the United States

⁴⁰ The definitions of U.S. Regulated Subsidiaries in the NYSE Euronext Bylaws and Regulated Subsidiaries in the NYSE Group Charter will be amended to include NYSE Alternext US.

⁴¹ Provisions of the organizational documents of NYSE Euronext, NYSE Group, and NYSE Regulation, the Trust Agreement, and the NYSE Euronext Independence Policy will be rules of NYSE Alternext US because they are stated policies, practice, or interpretations of NYSE Alternext US, as defined in Rule 19b-4 under the Act. Accordingly, Amex filed with the Commission the NYSE Euronext Charter, the NYSE Euronext Bylaws, the NYSE Group Charter, the NYSE Group Bylaws, the NYSE Euronext Independence Policy, the Third Amended and Restated Bylaws of NYSE Regulation ("NYSE Regulation Bylaws"), and the Trust Agreement and Amendment No. 1 to the Trust Agreement.

federal securities laws and the rules and regulations thereunder, commenced or initiated by the Commission arising out of, or relating to, the activities of the NYSE Alternext US.⁴² Further, NYSE Euronext and NYSE Group have agreed to provide the Commission with access to their books and records.⁴³ NYSE Euronext and NYSE Group also agreed to keep confidential non-public information relating to the self-regulatory function⁴⁴ of NYSE Alternext US and not to use such information for any commercial purposes.⁴⁵ In addition, the NYSE Euronext and NYSE Group Boards, as well as their officers and employees are required to give due regard to the preservation of the independence of NYSE Alternext US's self-regulatory function.⁴⁶ Similarly,

⁴² See Section 7.1 of proposed NYSE Euronext Bylaws and Article IX of proposed NYSE Group Charter. See also Section 5.4 of the Trust Agreement.

⁴³ See Sections 8.3 and 8.4 of proposed NYSE Euronext Bylaws and Article X of proposed NYSE Group Charter. For so long as the NYSE Euronext (or NYSE Group, as applicable) directly or indirectly control NYSE Alternext US, their books, records, premises, officers, directors and employees shall be deemed to be those of NYSE Alternext US for purposes of and subject to oversight pursuant to the Act. See Section 8.4 of proposed NYSE Euronext Bylaws and Article X of proposed NYSE Group Charter. See also Section 6.2(a) of the Trust Agreement.

⁴⁴ This requirement to keep confidential non-public information relating to the self-regulatory function shall not limit the Commission's ability to access and examine such information or limit the ability of directors, officers, or employees of NYSE Euronext and NYSE Group from disclosing such information to the Commission. See Section 8.1(A) of proposed NYSE Euronext Bylaws and Article X of the proposed NYSE Group Charter. Holding companies with SRO subsidiaries have undertaken similar commitments. See, e.g., Securities Exchange Act Release No. 56955 (December 13, 2007), 72 FR 71979, 71983 (December 19, 2007) (SR-ISE-2007-101) (order approving the acquisition of International Securities Exchange, LLC's parent, International Securities Exchange Holdings, Inc., by Eurex Frankfurt AG) and Phlx Order, *supra* note 24 at 73 FR 42878. See also Section 6.1(a) of the Trust Agreement and Amendment No. 1 to the Trust Agreement.

⁴⁵ See Section 8.1 of the proposed NYSE Euronext Bylaws and Article X of the proposed NYSE Group Charter. See also Section 6.1(a) of the Trust Agreement and Amendment No. 1 to the Trust Agreement.

⁴⁶ See Section 9.4 of the proposed NYSE Euronext Bylaws and Article XI of the proposed NYSE Group Charter. See also Section 5.1(b) of the Trust Agreement.

the NYSE Euronext and NYSE Group Boards would be required to take into consideration the ability of NYSE Alternext US to carry out its responsibilities under the Act.⁴⁷ Finally, the NYSE Euronext Bylaws, NYSE Group Charter, and NYSE Group Bylaws require that for so long as NYSE Euronext (and NYSE Group, as applicable) controls NYSE Alternext US, any amendment to or repeal of the NYSE Euronext Charter or NYSE Euronext Bylaws (and NYSE Group Charter or NYSE Group Bylaws, as applicable) must either be (i) filed with or filed with and approved by the Commission under Section 19 of the Act⁴⁸ and the rules promulgated thereunder, or (ii) submitted to the boards of directors of the NYSE, NYSE Market, NYSE Regulation, NYSE Arca, NYSE Arca Equities and NYSE Alternext US or the boards of directors of their successors, and if any or all of such boards of directors shall determine that such amendment or repeal must be filed with or filed with and approved by the Commission under Section 19 of the Act⁴⁹ and the rules promulgated thereunder before such amendment or repeal may be effectuated, then such amendment or repeal shall not be effectuated until filed with or filed with and approved by the Commission, as the case may be.⁵⁰

The Commission believes that the NYSE Euronext Bylaws, the NYSE Group Charter, the NYSE Group Bylaws, and the Trust Agreement as amended to accommodate the Mergers and Related Transactions, are designed to facilitate NYSE Alternext US's ability to fulfill its self-regulatory obligations and are, therefore, consistent with the Act. In particular, the Commission

⁴⁷ See Section 3.15 of the proposed NYSE Euronext Bylaws and Article V of the proposed NYSE Group Charter. See also Section 5.1(a)(i) of the Trust Agreement.

⁴⁸ 15 U.S.C. 78s.

⁴⁹ Id.

⁵⁰ See Sections 10.10 and 10.13 of the proposed NYSE Euronext Bylaws, Article XII of the proposed NYSE Group Charter, and Section 7.9 of the proposed NYSE Group Bylaws.

believes these changes are consistent with Section 6(b)(1) of the Act,⁵¹ which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

Under Section 20(a) of the Act⁵² any person with a controlling interest in NYSE Alternext US would be jointly and severally liable with and to the same extent that NYSE Alternext US is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, Section 20(e) of the Act⁵³ creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder. Further, Section 21C of the Act⁵⁴ authorizes the Commission to enter a cease-and-desist order against any person who has been “a cause of” a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation.

2. Governance of NYSE Alternext US

Following the Mergers and the Related Transactions, the governance structure of NYSE Alternext US will be substantially similar to that of the NYSE. The Board of Directors of NYSE

See also Section 8.2 of the Trust Agreement and Amendment No. 1 to the Trust Agreement.

⁵¹ 15 U.S.C. 78f(b)(1).

⁵² 15 U.S.C. 78t(a).

⁵³ 15 U.S.C. 78t(e).

⁵⁴ 15 U.S.C. 78u-3.

Alternext US ("NYSE Alternext US Board") will be composed of a number of directors as determined by NYSE Group from time to time, as sole owner of NYSE Alternext US. In addition, the NYSE Alternext US Board will be composed as follows: (i) a majority of the directors of the NYSE Alternext US Board will be U.S. Persons⁵⁵ who are members of the NYSE Euronext board and who are independent under the NYSE Euronext Independence Policy⁵⁶ (each a "NYSE Euronext Independent Director"); and (ii) at least twenty percent of the directors will be persons who are not members of the board of directors of NYSE Euronext and who do not need to be independent under the NYSE Euronext Independence Policy ("Non-Affiliated Directors").⁵⁷

⁵⁵ A "U.S. Person" shall mean, as of the date of his or her most recent election or appointment as a director any person whose domicile as of such date is and for the immediately preceding 24 months shall have been the United States. See Section 2.03 of the proposed NYSE Alternext US Operating Agreement.

⁵⁶ See the proposed NYSE Euronext Independence Policy. See also Section 3.4 of the proposed NYSE Euronext Bylaws for the independence requirements of the board of directors of NYSE Euronext. Generally, a director will not be independent if the director has a relationship with or an interest in NYSE Euronext or its subsidiaries; a member of the NYSE or NYSE Arca; or an issuer listed on the NYSE or NYSE Arca. These independence policy provisions are being expanded to equally apply to NYSE Alternext US and its members and issuers. See NYSE Notice, supra note 7.

⁵⁷ For purposes of calculation of the minimum number of Non-Affiliated Directors, if twenty percent of the directors is not a whole number, such number of directors to be nominated and selected by NYSE Alternext US members will be rounded up to the next whole number. See Section 2.03 of the proposed NYSE Alternext US Operating Agreement.

Directors of NYSE Alternext US will serve for one-year terms and will hold office until their successors are elected. There will be no limit on the number of terms a director may serve on the NYSE Alternext US Board. The Commission finds one-year terms consistent with the Act and notes that establishing one-year terms for directors is consistent with other proposals previously approved by the Commission. See Phlx Order supra note 25. Further, the Commission notes that the Commission approved one-year terms for both NYSE Euronext and NYSE Group boards. See NYSE/Euronext Order, supra note 18, and NYSE/Arca Order, supra note 25.

NYSE Group will appoint or elect as Non-Affiliated Directors the candidates nominated by the nominating and governance committee of NYSE Euronext ("NYSE Euronext NGC") (such candidates the "Non-Affiliated Director candidates").⁵⁸ The NYSE Euronext NGC will be obligated to designate as Non-Affiliated Director candidates the persons recommended by the newly established Director Candidate Recommendation Committee of NYSE Alternext US ("NYSE Alternext US DCRC");⁵⁹ provided, however, if there are candidates who have received a plurality of the votes cast by the NYSE Alternext US members pursuant to the petition process described below in this section, the NYSE Euronext NGC will be obligated to designate such candidates as Non-Affiliated Director candidates.⁶⁰

The Non-Affiliated Director candidates that the NYSE Alternext US DCRC recommends to the NYSE Euronext NGC will be announced to NYSE Alternext US member organizations. Within two weeks after the announcement, NYSE Alternext US members may nominate candidates for Non-Affiliated Director by written petition filed with NYSE Alternext US. A

⁵⁸ See Section 2.03(a)(iii) of the proposed NYSE Alternext US Operating Agreement.

⁵⁹ Id. On an annual basis, the NYSE Alternext US Board will appoint the NYSE Alternext US DCRC composed of individuals who are: (i) associated with a member organization that engages in a business involving substantial direct contact with securities customers, (ii) associated with a member organization and registered as a specialist and spend a substantial part of their time on the NYSE Alternext US trading floor, (iii) associated with a member organization and spend a majority of their time on the NYSE Alternext US trading floor and have as a substantial part of their business the execution of transactions on the NYSE Alternext US trading floor for other than their own account or the account of their member organization, but are not registered as a specialist, or (iv) associated with a member organization and spend a majority of their time on the NYSE Alternext US trading floor and have as a substantial part of their business the execution of transactions on the NYSE Alternext US trading floor for their own account or the account of their member organization, but are not registered as a specialist. The NYSE Alternext US Board will appoint such individuals after appropriate consultation with representatives of member organizations. See Section 2.03 of the proposed NYSE Alternext US Operating Agreement.

valid petition must be, among other things, endorsed by at least 10 percent of the signatures eligible to endorse a candidate.⁶¹ The eligibility of any Non-Affiliated Director candidate nominated in any such petition will be determined by the NYSE Euronext NGC, in its sole discretion.

If no petitions are submitted within two weeks after the dissemination of the report of the NYSE Euronext NGC, the NYSE Euronext NGC will nominate the candidates for Non-Affiliated Directors that the NYSE Alternext US DCRC initially recommended. If one or more valid petitions are submitted, NYSE Alternext US members will be allowed to vote on the entire group of potential candidates. Each member organization will have one vote per trading license or permit held by it.⁶² The persons with the highest number of votes will be the candidates recommended to the NYSE Euronext NGC.

Amex has represented that immediately following the Mergers and the Related Transactions, the NYSE Alternext US Board will have five directors, one of which will be a Non-Affiliated Director selected by NYSE Group from among the six Industry Governors

⁶⁰ See Sections 2.03(a)(iii)-(v) of the proposed NYSE Alternext US Operating Agreement.

⁶¹ Each member organization in good standing shall be entitled to one signature for each trading license or permit held by it. No trading license or permit holder, either alone or together with its affiliates may account for more than 50 percent of the signatures endorsing a particular candidate, and any signatures of such trading license or permit holder, either alone or together with its affiliates, in excess of such 50 percent limitation shall be disregarded. See Section 2.03 of the proposed NYSE Alternext US Operating Agreement.

⁶² No trading license or permit holder, either alone or together with its affiliates, may account for more than 20 percent of the votes cast for a particular candidate, and any votes cast by such trading license or permit holder, either alone or together with its affiliates, in excess of such 20 percent limitation will be disregarded. See Section 2.03(a)(5) of the NYSE Alternext US Operating Agreement. See Section 2.03(a)(V) of the proposed NYSE Alternext US Operating Agreement.

serving on the Amex Board immediately prior to the Mergers.⁶³ The initial directors on the NYSE Alternext US Board will serve one-year terms until their successors are duly elected.⁶⁴

The NYSE Alternext US Board may create one or more committees composed of NYSE Alternext US directors.⁶⁵ As with the NYSE and NYSE Arca (as well as other NYSE Euronext subsidiaries except NYSE Regulation), Amex expects that the committees of the NYSE Euronext board of directors will perform for NYSE Alternext US the board committee functions relating to audit, governance, and compensation.⁶⁶ The NYSE Alternext US Board also may create committees composed in whole or part of individuals who are not directors.⁶⁷ Amex proposes that the day-to-day business of NYSE Alternext US be managed by the officers of NYSE Alternext US, appointed by, and subject to the direction of, the NYSE Alternext US Board.⁶⁸ NYSE Alternext US will have such officers as its Board may deem advisable.⁶⁹ For so long as NYSE Euronext directly or indirectly owns all of the equity interest of NYSE Group and

⁶³ See Amex Notice, supra note 3, 73 FR at 46090.

⁶⁴ See Amex Notice, supra note 3, 73 FR at 46080.

⁶⁵ See Section 2.03(h) of the proposed NYSE Alternext US Operating Agreement.

⁶⁶ Each of these NYSE Euronext committees is composed solely of directors meeting the independence requirements of NYSE Euronext. See NYSE/Euronext Order, supra note 32.

⁶⁷ For example, Amex notes that it currently anticipates that NYSE Alternext US will retain the Committee on Securities, but will not retain the Committee for Appointment and Approval of Supplemental Registered Options Traders and Remote Registered Options Traders, each a non-board committee of Amex. The Exchange, along with NYSE Euronext, is currently evaluating whether other non-board committees of Amex should be retained by NYSE Alternext US and what changes to the NYSE Alternext US rules such decision may require. See Amex Notice, supra note 3, 73 FR at 46091.

⁶⁸ See Amex Notice, supra note 3, 73 FR 46091.

⁶⁹ Id.

NYSE Group holds 100 percent of the limited liability company interest of NYSE Alternext US, the Chief Executive Officer ("CEO") of NYSE Alternext US will be a U.S. Person.⁷⁰

The Commission finds that the proposed governance structure of NYSE Alternext US is consistent with the Act, and in particular that the proposed composition of the NYSE Alternext US Board is consistent with Section 6(b)(1) of the Act, which requires, among other things, that a national securities exchange be organized to carry out the purposes of the Act and comply with the requirements of the Act. The Commission previously has stated its belief that the inclusion of public, non-industry representatives on exchange oversight bodies is critical to an exchange's ability to protect the public interest.⁷¹ Further, public representatives help to ensure that no single group of market participants has the ability to systematically disadvantage other market participants through the exchange governance process. The Commission believes that public directors can provide unique, unbiased perspectives, which should enhance the ability of the NYSE Alternext US Board to address issues in a non-discriminatory fashion and foster the integrity of NYSE Alternext US. The Commission also finds that the composition of the NYSE Alternext US Board will satisfy Section 6(b)(3) of the Act,⁷² which requires that one or more directors be representative of issuers and investors and not be associated with a member of the exchange or with a broker or dealer.

⁷⁰ See Section 2.04 of the proposed NYSE Alternext US Operating Agreement.

⁷¹ See Regulation of Exchanges and Alternative Trading Systems, Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998). See also BATS Order, supra note 28, 73 FR at 49498; NYSE/Arca Order, supra note 25, 71 FR at 11261, n.121 and accompanying text; Securities Exchange Act Release Nos. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (File No. 10-131) ("Nasdaq Exchange Registration Order") at 3553, n.54 and accompanying text; and 44442 (June 18, 2001), 66 FR 33733, n.13 and accompanying text (June 25, 2001) (SR-PCX-01-03).

⁷² 15 U.S.C. 78f(b)(3).

The fair representation requirement in Section 6(b)(3) of the Act is intended to give members a voice in the selection of the exchange's directors and the administration of its affairs. The Commission finds that the requirement that at least twenty percent of the NYSE Alternext US Directors be Non-Affiliated Directors, and the process for selecting such Non-Affiliated Directors, are designed to ensure the fair representation of NYSE Alternext US members on the NYSE Alternext US Board. The Commission believes that the method for selecting the Non-Affiliated Directors allows members to have a voice in NYSE Alternext US's use of its self-regulatory authority. As detailed above, the NYSE Alternext US DCRC is composed solely of persons associated with NYSE Alternext US members and is selected after appropriate consultation with NYSE Alternext US members. In addition, the proposed NYSE Alternext US Operating Agreement includes a process by which members can directly petition and vote for representation on the NYSE Alternext US Board. The Commission therefore finds that the process for selecting the Non-Affiliated Directors to the NYSE Alternext US Board is consistent with Section 6(b)(3) of the Act.⁷³ The Commission notes that this approach is also consistent with the NYSE's processes for nomination and election of directors on the NYSE board.⁷⁴

C. NYSE Alternext US Rules

1. Floor Officials, Senior Floor Officials, Exchange Officials and Senior Supervisory Officer

The Floor Officials, Senior Floor Officials, and Exchange Officials in place at Amex

⁷³ Id.

⁷⁴ See Sec. 2.03 of the Second Amended and Restated Agreement of New York Stock Exchange LLC ("NYSE Operating Agreement"). See also NYSE/Arca Order, supra note 25, and NYSE/Euronext Order, supra note 18.

immediately prior to the Mergers⁷⁵ will continue in such capacity for the period prior to the planned relocation of the NYSE Alternext US equities and options trading facilities to the NYSE trading floor or the electronic trading platform of the NYSE or NYSE Arca, as applicable.⁷⁶ Currently, Rule 21 provides that each governor of Amex that spends a substantial part of his time on the floor of Amex shall serve as a Senior Floor Official, and that additional Senior Floor Officials may be appointed⁷⁷ from among the Exchange Officials that spend a substantial part of their time on the floor.⁷⁸ In addition, the Vice Chairman of the Board currently serves as the Senior Supervisory Officer on the floor of Amex (if the Vice Chairman does not spend a substantial part of his time on the floor, one of the governors serving as a Senior Floor Official shall be designated as the Senior Supervisory Officer by the Chairman of the Board, subject to the approval of the Board). Rule 21 also provides that Exchange Officials that spend a

⁷⁵ Amex Rule 22 describes the authority and responsibilities of Floor Officials, Senior Floor Officials, and the Senior Supervisory Officer, which responsibilities are to generally promote fair and orderly operations on the floor of Amex.

⁷⁶ NYSE Alternext US intends to relocate the NYSE Alternext US cash equities and options trading facilities to the NYSE trading floor or the electronic trading platform of NYSE or NYSE Arca, as applicable. The Exchange has filed a proposed rule change to implement the relocation of the trading of cash equities to the facilities of the NYSE. See Securities Exchange Act Release No. 58265 (July 30, 2008), 73 FR 46075 (August 7, 2008) (SR-Amex-2008-63). NYSE Alternext US will file a separate proposed rule change with the Commission relating to the relocation of the trading of standardized options.

⁷⁷ Such appointment is made by the Chairman of the Board (or the CEO, if delegated by the Chairman), subject to the approval of the Board, and in consultation with the Senior Supervisory Officer.

⁷⁸ Exchange Officials are members of Amex, and individuals employed by or associated with a member organization in a senior capacity, that are appointed by the Chairman of Amex (or the CEO, if delegated by the Chairman), subject to the approval of the Board and after seeking the advice of members. See Section 3 of Article II of the Amex Constitution. This provision is proposed to be added to Rule 21, except that the CEO (or his designee), or the Chief Regulatory Officer (or his designee), will appoint the Exchange Officials, subject to the approval of the Board and after consultation with members. See proposed NYSE Alternext US Rule 21(d).

substantial part of their time on the floor shall be appointed as Floor Officials; further, such other persons that are familiar with the floor may be appointed as Floor Officials.⁷⁹

Amex proposes to amend Rule 21 to reflect the fact that the NYSE Alternext US Board will not have a category of directors who are required to spend a substantial portion of their time on the trading floor. Any director that spends a substantial part of his time on the floor shall still serve as a Senior Floor Official, and one of these directors will be appointed as the Senior Supervisory Officer (rather than the Vice-Chairman of Amex). However, if there is no director that spends a substantial part of his time on the floor, one of the Senior Floor Officials will be appointed as the Senior Supervisory Officer (thus, an Exchange Official that spends a substantial part of his time on the floor will be appointed as the Senior Supervisory Officer). Rule 21, as amended, also will allow qualified NYSE Alternext US employees who spend a substantial portion of their time on the trading floor to be appointed to serve as Floor Officials. Further, the CEO or Chief Regulatory Officer ("CRO") (or their respective designee), rather than the Chairman of Amex, will be responsible for appointing such officials and making other appointments under the rule (subject to the other requirements of the rule).

Amex also is proposing to amend Rule 21 and other rules referencing Floor Governors to reflect the elimination of that category of member on the Amex Board. Amex proposes that Senior Floor Officials replace the Floor Governors in most cases when the reference to Floor Governor relates to the approval or review of activities on the trading floor and the chairing of certain committees (e.g., the Performance and Allocation committees). In situations where a rule calls upon the Floor Governors to advise the CEO of Amex in connection with floor facilities

⁷⁹ Such appointments are made by the Chairman (or the CEO, if delegated by the Chairman), subject to the approval of the Board.

and administration, Amex proposes that the Senior Supervisory Officer replace the Floor Governors.

The Commission finds that these changes are consistent with the Act, including Section 6(b)(1) of the Act,⁸⁰ which requires, among other things, that a national securities exchange be organized to carry out the purposes of the Act and comply with the requirements of the Act. Amex stated that a Senior Floor Official has the same authority and responsibilities as a Floor Governor with respect to matters that arise on the Floor and require review or action by a Floor Governor or Senior Floor Official,⁸¹ and that therefore, these changes do not expand the authority or responsibilities of Senior Floor Officials. Moreover, allowing qualified NYSE Alternext US employees to serve as Floor Officials would broaden the pool of experienced individuals who can participate in and supervise unusual trading situations on the floor. The Commission notes that recently the NYSE has filed an immediately effective rule change permitting the appointment of qualified NYSE employees to act as Floor Governors.⁸²

2. 86 Trinity Permits; Access to NYSE Alternext US

Following the Mergers, all trading rights appurtenant to either Regular Memberships or Options Principal Members existing immediately prior to the Mergers will be cancelled.⁸³ Physical and electronic access to NYSE Alternext US's trading facilities will be made available

⁸⁰ 15 U.S.C. 78f(b)(1).

⁸¹ See current Amex Rule 21(a).

⁸² See Securities Exchange Act Release No. 57627 (April 4, 2008), 73 FR 19919 (April 11, 2008) (SR-NYSE-2008-19). Under the NYSE rules, Floor Governors are more senior than Floor Officials, and are authorized to take any action that a Floor Official can take. See *id.* and NYSE Rule 46.

⁸³ See Amex Notice, *supra* note 3, 73 FR at 46088 and 46094. In addition, the lessees will cease to have any trading rights under any applicable leases. *Id.*

to individuals and organizations that obtain an 86 Trinity Permit.⁸⁴ 86 Trinity Permits will be made available by NYSE Alternext US to persons and entities that apply and meet certain specified requirements.⁸⁵ 86 Trinity Permits will allow the holders to trade products currently traded on Amex, including cash equities and options.⁸⁶

To ensure continuity of trading following the Mergers, persons and entities who were authorized to trade on Amex prior to the Mergers, including (i) owners, lessees or nominees of Regular Memberships or OPMs, (ii) limited trading permit holders, and (iii) associate members, will be deemed to have satisfied applicable requirements necessary to receive an 86 Trinity Permit. 86 Trinity Permits will authorize owners, lessees or nominees of Regular Memberships or OPMs, limited trading permit holders and associate members who were authorized to trade on Amex prior to the Mergers, to trade the products which they were previously authorized to trade

⁸⁴ NYSE Alternext US anticipates replacing 86 Trinity Permits with equity trading licenses and options trading permits at a later date following a proposed rule change filed with the Commission. See Amex Notice, supra note 3, 73 FR at 46088, and proposed NYSE Alternext US Rules 350 and 353.

⁸⁵ The requirements for 86 Trinity Permits will be the same as the current requirements for memberships in the Amex Rules and such requirements may be satisfied by persons or entities that were not previously authorized to trade on Amex immediately prior to the Mergers. See Amex Notice, supra note 3, 73 FR 46088, and proposed NYSE Alternext US Rule 353.

⁸⁶ Id. At a later time, NYSE Alternext US anticipates replacing 86 Trinity Permits with equity trading licenses and options trading permits. See Amex Notice, supra note 3, 73 FR 46088. NYSE Alternext US intends to relocate the NYSE Alternext US equities and options trading facilities to the NYSE trading floor or the electronic trading platform of NYSE or NYSE Arca, as applicable. Id. Amex has filed a proposed rule change to implement the relocation of the trading of equities to the facilities of the NYSE. See Securities Exchange Act Release No. 58265 (July 30, 2008), 73 FR 46075 (August 7, 2008) (SR-Amex-2008-63). NYSE Alternext US will file a separate proposed rule change with the Commission relating to the relocation of the trading of standardized options. See Amex Notice, supra note 3, 73 FR at 46088.

and, subject to meeting the qualifications currently in place for trading products which they previously were not authorized to trade, to trade such other products.

Because 86 Trinity Permits will be made available to all persons authorized to trade on Amex prior to the Mergers (such persons will be deemed to have satisfied the applicable requirements), as well as to other persons that meet such requirements, and because such requirements will be the same as the current requirements for membership in the Amex rules, the Commission finds that proposed procedures for NYSE Alternext US making available 86 Trinity Permits will provide fair access to NYSE Alternext US and are consistent with the Act and in particular with Sections 6(b)(2) and 6(b)(5) of the Act.⁸⁷

3. Disciplinary Proceedings

Amex is proposing to replace current Rule 345, the Rules of Procedures in Disciplinary Matters, and the disciplinary provisions in the Amex Constitution with proposed NYSE Alternext US Rules 475, 476 and 477.⁸⁸ These new rules are substantially identical to the disciplinary rules of the NYSE with certain changes necessary to apply such rules to NYSE Alternext US and to reflect the application of the current American Stock Exchange Sanctions Guidelines.

Under proposed NYSE Alternext US Rules 476 and 477, initial disciplinary hearings will be held before a Hearing Panel that will be composed of at least three persons: a Hearing

⁸⁷ 15 U.S.C. 78f(b)(2) and 15 U.S.C. 78f(b)(5).

⁸⁸ Amex Rule 345, the Rules of Procedure in Disciplinary Matters and the disciplinary rules in the current Amex Constitution ("Legacy Disciplinary Procedural Rules") will continue to apply to pending disciplinary cases which have been formally commenced at or prior to the time of the consummation of the Mergers and Related Transactions. See Securities Exchange Act Release No. 58286 (August 1, 2008), 73 FR 46097 (August 7, 2008) (notice of SR-Amex-2008-64), which proposed rule change the Commission is approving today. See Securities Exchange Release No. 58678.

Officer,⁸⁹ and at least two members of the Hearing Board, at least one of whom shall be engaged in securities activities differing from that of the respondent or, if retired, was so engaged in differing activities at the time of retirement. In any disciplinary proceeding involving activities on the floor, no more than one of the persons serving on the Hearing Panel shall be or, if retired, shall have been, active on the floor. A Hearing Panel can include only one retired person.⁹⁰

Any review of a disciplinary decision shall be conducted by the NYSE Alternext US Board or the NYSE Regulation Committee, in the sole discretion of the NYSE Alternext US Board. Upon review, and with the advice of the NYSE Regulation Committee, the NYSE Alternext US Board, by the affirmative vote of a majority of the NYSE Alternext US Board then in office, may sustain any determination or penalty imposed, or both, may modify or reverse any such determination, and may increase, decrease, or eliminate any such penalty, or impose any penalty permitted under the provisions of proposed NYSE Alternext US Rule 476. Unless the

⁸⁹ The Chairman of NYSE Alternext US, subject to the approval of the NYSE Alternext US Board, shall designate a Chief Hearing Officer and one or more other Hearing Officers who shall have no duties or functions relating to the investigation or preparation of disciplinary matters and who shall be appointed annually and shall serve as Hearing Officers at the pleasure of the NYSE Alternext US Board. An individual cannot be a Hearing Officer (including the Chief Hearing Officer) if he or she is, or within the last three years was, a member, allied member, or registered or non-registered employee of a member or member organization. See Amex Notice, *supra* note 3, and proposed NYSE Alternext US Rule 475(b).

⁹⁰ The members of the Hearing Board will be appointed by the Chairman of NYSE Alternext US subject to the approval of the NYSE Alternext US Board. The Hearing Board will be composed of such number of members and allied members of NYSE Alternext US who are not members of the NYSE Alternext US Board, and registered employees and non-registered employees of members and member organizations, and such other persons as set forth in the rules as the Chairman shall deem necessary. Former members, allied members, or registered and non-registered employees of members and member organizations who have retired from the securities industry can be appointed to the Hearing Board within five years of their retirement. The members of the Hearing Board shall be appointed annually and shall serve at the pleasure of the NYSE Alternext US Board. *Id.*

NYSE Alternext US Board otherwise specifically directs, the determination and penalty, if any, of the NYSE Alternext US Board after review shall be final and conclusive subject to the provisions for review of the Act.

The NYSE Regulation Committee referenced in the proposed NYSE Alternext US rules is the NYSE Regulation Committee for Review. The NYSE Regulation Bylaws currently provide for the creation of a Committee for Review that is charged with performing certain functions with respect to the NYSE, including hearing appeals for disciplinary decisions.⁹¹ Following the Mergers and Related Transactions, the Committee for Review will also hear disciplinary appeals for NYSE Alternext US.⁹² In connection therewith, the NYSE Regulation Bylaws are being amended to provide that the Committee for Review will be expanded to include at least four individuals who are associated with member organizations of NYSE Alternext US. These new members of the Committee for Review must include at least one of each of the following:

⁹¹ The Committee for Review is currently composed of (i) directors of NYSE Regulation and (ii) at least three non-director committee members associated with member organizations of the NYSE, at least one of whom is associated with a member organization of the NYSE that engages in a business involving substantial direct contact with securities customers, at least one of whom is associated with a member organization of the NYSE and registered as a specialist and spends a substantial part of his or her time on the trading floor of NYSE Market and at least one of whom is associated with a member organization of the NYSE and spends a majority of his time on the trading floor of NYSE Market and has as a substantial part of his business the execution of transactions on the trading floor of NYSE Market for other than his own account or the account of his member organization, but is not registered as a specialist.

⁹² Reviews of delisting determinations will be heard by the same NYSE Alternext US committee as has been reviewing such matters prior to the Mergers. See NYSE Notice, supra note 7.

- An individual associated with a member organization of NYSE Alternext US that engages in a business involving substantial direct contact with securities customers;
- An individual associated with a member organization of NYSE Alternext US that is registered as a specialist and spends a substantial part of his or her time on the trading floor of NYSE Alternext US;
- An individual associated with a member organization of NYSE Alternext US not registered as a specialist that spends a majority of his or her time on the trading floor of NYSE Alternext US and has as a substantial part of his business the execution of transactions on the trading floor of NYSE Alternext US for other than his or her own account or the account of his NYSE Alternext US member organization; and
- An individual associated with a NYSE Alternext US Member Organization not registered as a specialist that spends a majority of his or her time on the trading floor of NYSE Alternext US and has as a substantial part of his or her business the execution of transactions on the trading floor of NYSE Alternext US for his own account or the account of his or her NYSE Alternext US Member Organization.

The Commission finds that the changes proposed to the disciplinary procedures are consistent with the Act, in particular Sections 6(b)(6) and 6(b)(7) of the Act.⁹³ The Commission believes that NYSE Alternext US rules will provide due process for members and member

⁹³ 15 U.S.C. 78f(b)(6) and 15 U.S.C. 78f(b)(7).

organizations involved in any disciplinary proceeding, including notice of alleged wrongdoing, an opportunity for a hearing, and avenues for appeal to the NYSE Alternext Board in appropriate circumstances. The Commission therefore believes that the proposed rules will provide fair procedures for the disciplining of members and persons associated with members, and will provide NYSE Alternext US with the ability to comply, and with the authority to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of NYSE Alternext US.⁹⁴ The Commission also finds that NYSE Alternext US's disciplinary rules are consistent with the fair representation requirements of Section 6(b)(3) of the Act⁹⁵ because NYSE Alternext US members will be represented on the disciplinary panels and the Committee for Review.

D. Affiliations Between NYSE Alternext US and its Members

1. Limitations on Affiliation

Amex proposes to adopt proposed NYSE Alternext US General and Floor Rule 1(a), which provides that, without prior Commission approval, NYSE Alternext US or any entity with which it is affiliated shall not, directly or indirectly, acquire or maintain an ownership interest in a member organization. In addition, a member organization shall not be or become an affiliate of NYSE Alternext US, or an affiliate of any affiliate of NYSE Alternext US.⁹⁶ This rule is substantially similar to current NYSE Rule 2B, which was initially approved by the Commission

⁹⁴ See Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

⁹⁵ 15 U.S.C. 78f(b)(3).

⁹⁶ Proposed NYSE Alternext US General and Floor Rule 1(a) also provides that it does not prohibit a member organization from acquiring or holding an equity interest in NYSE Euronext that is permitted by the ownership limitations contained in the NYSE Euronext Charter.

in connection with the reorganization of the NYSE to be a wholly-owned subsidiary of NYSE Group.⁹⁷

The Commission is concerned about potential for unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interests that could exist if an exchange were to otherwise become affiliated with one of its members, as well as the potential for unfair competitive advantage that the affiliated member could have by virtue of informational or operational advantages, or the ability to receive preferential treatment.⁹⁸ The Commission believes that proposed NYSE Alternext US General and Floor Rule 1(a) is designed to mitigate these concerns and is consistent with the Act, particularly with Section 6(b)(1),⁹⁹ which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act.

2. Exception to Limitation on Affiliation Between NYSE Alternext US and its Members

NYSE Euronext currently owns a broker-dealer, Arca Securities that is also a member organization of Amex. After the closing of the Mergers and Related Transactions, NYSE Euronext's ownership of NYSE Alternext US and Arca Securities would cause Arca Securities to be an affiliate of NYSE Alternext US, and, absent prior Commission approval, would violate the provisions in proposed NYSE Alternext US General and Floor Rule 1(a) that prohibit: (i) NYSE

⁹⁷ See NYSE/Arca Order, supra note 25. NYSE Rule 2B was later amended to reflect that NYSE Group became a wholly-owned subsidiary of NYSE Euronext. See also NYSE/Euronext Order, supra note 18, and Amendment No. 4 to the Amex Notice, supra note 4.

⁹⁸ See, e.g., Securities Exchange Act Release No. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR-NASDAQ-2006-006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members) ("Nasdaq/Member Affiliation Rule") and NYSE/Arca Order, supra note 25.

Alternext US or any entity with which it is affiliated from maintaining an ownership interest in a member organization; and (ii) a NYSE Alternext US member organization from being affiliated with NYSE Alternext US.

Arca Securities operates as a facility of each of NYSE and NYSE Arca that provides outbound routing from each exchange to other market centers, including Amex, subject to certain conditions.¹⁰⁰ Consequently, the operation of Arca Securities in this capacity is subject, respectively, to NYSE and NYSE Arca oversight, as well as Commission oversight. NYSE and NYSE Arca are each responsible for ensuring that Arca Securities is operated consistent with Section 6 of the Act and their respective rules. In addition, NYSE and NYSE Arca, respectively, must file with the Commission rule changes and fees relating to Arca Securities. Use of Arca Securities outbound routing function is available to NYSE and NYSE Arca members, respectively. Use of Arca Securities' routing function by such members is optional. Arca Securities is a member of an SRO unaffiliated with NYSE or NYSE Arca, respectively, which serves as its primary regulator.¹⁰¹

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders,¹⁰² Amex requests that the Commission approve NYSE Alternext US's affiliation with Arca Securities following the Mergers and Related Transactions, subject to the following conditions and limitations:

⁹⁹ 15 U.S.C. 78f(b)(1).

¹⁰⁰ See Amex Notice, supra note 3, at notes 53-58 and accompanying text, and Amendment No. 4 to the Amex Notice, supra note 4.

¹⁰¹ Id.

- First, Amex states that NYSE, FINRA, and NYSE Alternext US will enter into an agreement pursuant to Rule 17d-2 under the Act.¹⁰³ If approved, pursuant to this agreement, FINRA will be allocated regulatory responsibilities to review Arca Securities' compliance with certain NYSE Alternext US Rules.¹⁰⁴ Alternatively, if this agreement has not become effective as of the time of the Mergers and Related Transactions, FINRA will nevertheless review Arca Securities' compliance with certain NYSE Alternext US Rules pursuant to the New Multi-Party FINRA Regulatory Services Agreement.¹⁰⁵ NYSE Alternext US, however, would retain ultimate responsibility for enforcing its rules with respect to Arca Securities.
- Second, NYSE Regulation will monitor Arca Securities for compliance with NYSE Alternext US's trading rules, and will collect and maintain certain related information.¹⁰⁶

¹⁰² See Amex Notice, supra note 3, at notes 59 and 61 and accompanying text, and Amendment No. 4 to the Amex Notice, supra note 4.

¹⁰³ The Commission notes that this 17d-2 agreement is subject to public notice and comment and prior Commission approval before it can become effective.

¹⁰⁴ Amex also states that Arca Securities is subject to independent oversight by FINRA, its Designated Examining Authority, for compliance with financial responsibility requirements.

¹⁰⁵ See infra text accompanying note 117.

¹⁰⁶ Specifically, NYSE Regulation "will collect and maintain the following information of which NYSE Regulation staff becomes aware – namely, all alerts, complaints, investigations and enforcement actions where Arca Securities (in its capacity as a facility of NYSE Arca or the NYSE, routing orders to NYSE Alternext US) is identified as a participant that has potentially violated NYSE Alternext US or applicable Commission rules – in an easily accessible manner so as to facilitate any review conducted by the Commission's Office of Compliance Inspections and Examination." See Amex Notice, supra note 3, at 46094.

- Third, Amex states that NYSE Regulation has agreed with Amex that it will provide a report to NYSE Alternext US's CRO, on a quarterly basis, that: (i) quantifies all alerts (of which NYSE Regulation is aware) that identify Arca Securities as a participant that has potentially violated NYSE Alternext US or Commission rules, and (ii) quantifies the number of all investigations that identify Arca Securities as a participant that has potentially violated NYSE Alternext US or Commission rules.¹⁰⁷
- Fourth, Amex proposes a rule that will require NYSE Euronext, as the holding company owning both NYSE Alternext US and Arca Securities, to establish and maintain procedures and internal controls reasonably designed to ensure that Arca Securities does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the NYSE Alternext US systems as a result of its affiliation with NYSE Alternext US, until such information is available generally to similarly situated members of NYSE Alternext US in connection with the provision of inbound order routing to NYSE Alternext US.¹⁰⁸
- Fifth, Amex proposes that routing from Arca Securities to NYSE Alternext US, in Arca Securities' capacity as a facility of NYSE and NYSE Arca, be authorized for a pilot period of twelve months.¹⁰⁹

¹⁰⁷ See Amendment No. 4 to the Amex Notice, supra note 4.

¹⁰⁸ See proposed NYSE Alternext US General and Floor Rule 1(b).

¹⁰⁹ See Amex Notice, supra note 3.

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.¹¹⁰ Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit NYSE Euronext, which will be an affiliate of NYSE Alternext US upon the closing of the Mergers, to continue to own Arca Securities, subject to the conditions proposed by Amex. As described above, the Commission also believes that it is consistent with the Act for Arca Securities to become an affiliate of NYSE Alternext US following the closing of the Mergers and Related Transactions, for the limited purpose of providing routing to NYSE Alternext US from the NYSE and NYSE Arca, subject to the conditions described above.¹¹¹

Amex has proposed five conditions applicable to Arca Securities routing activities, which are enumerated above. The Commission believes that these conditions mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of Arca Securities,¹¹² combined with NYSE Regulation's monitoring of Arca Securities' compliance with NYSE Alternext US's trading rules and quarterly reporting to NYSE Alternext US's CRO, will help to protect the independence of NYSE Alternext US's regulatory responsibilities with respect to Arca Securities. The

¹¹⁰ See, e.g., Nasdaq/Member Affiliation Rule, supra note 98 and NYSE/Arca Order, supra note 25.

¹¹¹ See supra notes 100 to 109 and accompanying text.

Commission also believes that proposed NYSE Alternext US General and Floor Rule 1(b)¹¹³ is designed to ensure that Arca Securities cannot use any information advantage it may have because of its affiliation with NYSE Alternext US. Furthermore, the Commission believes that Amex's proposal to use Arca Securities for inbound routing from NYSE and NYSE Arca, on a pilot basis, will provide NYSE Alternext US and the Commission an opportunity to assess the impact of any conflicts of interest from allowing an affiliated member of NYSE Alternext US to route orders inbound to NYSE Alternext US and whether such affiliation provides an unfair competitive advantage.¹¹⁴

E. Regulation of NYSE Alternext US

Under the Act, an exchange must be organized and have the capacity to carry out the purposes of the Act.¹¹⁵ Specifically, an exchange must be able to enforce compliance by its members and persons associated with its members with federal securities laws and the rules of the exchange.¹¹⁶

Amex has proposed several measures designed to ensure that NYSE Alternext US can meet its obligations under the Act and that its regulatory functions are independent of its market operations and other commercial interests. First, NYSE Alternext US will enter into a regulatory

¹¹² This oversight will be accomplished either through the 17d-2 agreement among NYSE, FINRA and NYSE Alternext, see supra note 103, or through New Multi-Party FINRA RSA, see infra text accompanying note 117.

¹¹³ See supra note 108 and accompanying text.

¹¹⁴ This approval is only for Arca Securities to route orders to NYSE Alternext US in its capacity as a facility of the NYSE or NYSE Arca, subject to the conditions discussed herein. See supra note 100 and accompanying text. This approval does not include Arca Securities providing outbound routing functions from NYSE Alternext US to other markets.

¹¹⁵ See Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

¹¹⁶ Id.

contract with NYSE Regulation ("NYSE Regulation RSA"), under which NYSE Alternext US will contract with NYSE Regulation to perform all of NYSE Alternext US's regulatory functions on NYSE Alternext US's behalf. However, FINRA may perform some of the regulatory functions contracted out to NYSE Regulation pursuant to a separate multi-party regulatory services agreement by and among NYSE Regulation, NYSE Group, FINRA, and NYSE Alternext US ("New Multi-Party FINRA RSA").¹¹⁷ Notwithstanding these regulatory contracts, NYSE Alternext US will retain ultimate legal responsibility for the regulation of its members and its market. NYSE Alternext US also will retain the authority to direct NYSE Regulation, FINRA, or any other SRO that provides regulatory services to take any action necessary to fulfill NYSE Alternext US's statutory and self-regulatory obligations.¹¹⁸ In addition, the NYSE Alternext US Board will appoint a CRO, who will be an officer of NYSE Alternext US and will report directly to the NYSE Alternext US Board.¹¹⁹

Finally, NYSE Euronext has agreed to provide adequate funding to NYSE Regulation to conduct its regulatory activities with respect to NYSE, NYSE Arca and, from and after closing of the transaction, NYSE Alternext US.¹²⁰ In addition, NYSE Alternext US will not use any regulatory fees, fines or penalties collected by NYSE Regulation for commercial purposes.¹²¹

¹¹⁷ See proposed NYSE Alternext US Rule 1(b) and Amendment No. 4 to the Amex Notice, supra note 4. In effect, FINRA will be a "sub-contractor" for some of the regulatory functions that would otherwise be performed by NYSE Regulation. Pursuant to the applicable provisions of the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations thereunder, 17 CFR 200.83, Amex has requested confidential treatment for the NYSE Regulation RSA and the New Multi-Party FINRA RSA.

¹¹⁸ See proposed NYSE Alternext US Rule 1B.

¹¹⁹ See Amex Notice, supra note 3.

¹²⁰ Id., 73 FR at 46095.

¹²¹ See Section 4.05 of the proposed NYSE Alternext US Operating Agreement.

The Commission finds that Amex's proposed regulatory structure is consistent with the Act, including Section 6(b)(1) of the Act,¹²² which requires, among other things, that a national securities exchange be organized to carry out the purposes of the Act and comply with the requirements of the Act. The Commission believes that it is consistent with the Act to allow NYSE Alternext US to contract with NYSE Regulation and FINRA to perform its regulatory functions, including its examination, enforcement, and disciplinary functions.¹²³ These functions are fundamental elements to a regulatory program, and constitute core self-regulatory functions. It is essential to the public interest and the protection of investors that these functions are carried out in an exemplary manner, and the Commission believes that NYSE Regulation and FINRA have the expertise and experience to perform these functions on behalf of NYSE Alternext US.¹²⁴

At the same time, NYSE Alternext US, unless relieved by the Commission of its responsibility,¹²⁵ is obligated as an SRO to enforce compliance with the securities laws and its rules and has primary liability for self-regulatory failures. The Commission believes that Amex's proposal to appoint a CRO reporting to the NYSE Alternext US Board will further NYSE Alternext US's ability to satisfy these self-regulatory obligations consistent with Section 6(b)(1)

¹²² 15 U.S.C. 78f(b)(1).

¹²³ See, e.g., Regulation of Exchanges and Alternative Trading Systems, Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) ("Regulation ATS Release"). See also Securities Exchange Act Release 50122 (July 29, 2004), 69 FR 47962 (August 6, 2004) (SR-Amex-2004-32) (order approving rule that allowed Amex to contract with another SRO for regulatory services) ("Amex Regulatory Services Approval Order"); NOM Approval Order, supra note 27; and Nasdaq Exchange Registration Order, supra note 71.

¹²⁴ See Amex Regulatory Services Approval Order, supra note 123; NOM Approval Order, supra note 27 and Nasdaq Exchange Registration Order, supra note 71. The Commission notes that the NYSE Regulation RSA and the New Multi-Party FINRA RSA are not before the Commission and, therefore, the Commission is not acting on them.

of the Act.¹²⁶ NYSE Regulation and FINRA will be performing regulatory functions on NYSE Alternext US's behalf pursuant to a contract. In performing these functions, NYSE Regulation and FINRA may bear liability for causing or aiding and abetting the failure of NYSE Alternext US to satisfy its regulatory obligations.¹²⁷

The Commission notes that upon the consummation of the Mergers and the Related Transactions, NYSE Alternext US will no longer have a Regulatory Oversight Committee ("ROC"). Instead, NYSE Alternext US will contract with NYSE Regulation to perform all of its regulatory functions. The Commission believes that it is consistent with the Act for NYSE Alternext US to eliminate its ROC and instead contract with NYSE Regulation to perform its regulatory functions because the governance of NYSE Regulation will provide a comparable level of independence that a ROC would provide. In particular, all directors on the board of NYSE Regulation (other than its CEO) are, and will be, required to be independent of management of NYSE Euronext and its subsidiaries, as well as of NYSE, NYSE Arca, and NYSE Alternext US members and listed companies. In addition, a majority of the members of the NYSE Regulation board must be directors that are not also directors of NYSE Euronext.¹²⁸

¹²⁵ See Section 17(d)(1) of the Act and Rule 17d-2 thereunder, 15 U.S.C. 78q(d)(1) and 17 CFR 240.17d-2.

¹²⁶ 15 U.S.C. 78f(b)(1).

¹²⁷ For example, if failings by FINRA or NYSE Regulation have the effect of leaving NYSE Alternext US in violation of any aspect of NYSE Alternext US's self-regulatory obligations, NYSE Alternext US would bear direct liability for the violation, while FINRA or NYSE Regulation may bear liability for causing or aiding and abetting the violation. See, e.g., Nasdaq Exchange Registration Order, *supra* note 71, and ISE Exchange Registration Order, *supra* note 26.

¹²⁸ See Article III, Section 1 of the proposed Third Amended and Restated Bylaws of NYSE Regulation.

Finally, the Commission believes that NYSE Euronext's commitment to provide adequate funding to NYSE Regulation to conduct its regulatory activities is designed to ensure that NYSE Alternext US can perform its obligations under the Act.

F. Undertakings

Amex requests to be relieved from the undertakings adopted by the Amex Board on December 4, 2004 and approved by the Commission as part of an Amex proposed rule change filed under Section 19 of the Act ("Undertakings").¹²⁹ Section 1 of the Undertakings, among other things, prohibits Amex from terminating its current regulatory services agreement with FINRA ("FINRA RSA")¹³⁰ unless on or prior to the date of such termination, Amex has entered into an alternative arrangement relating to the provision of regulatory services that has been approved by the Commission. Section 2 of the Undertakings requires Amex and its CRO to use reasonable efforts to cause the staff of FINRA responsible for providing services under the FINRA RSA, to periodically confer with staff of the Division of Trading and Markets and the Office of Compliance Inspections and Examinations of the Commission regarding the status of Amex's regulatory program.¹³¹ Finally, Section 3 of the Undertakings mandates Amex to provide to the Director of the Division of Trading and Markets certain financial statements certified by Amex's chief financial officer and reviewed by Amex's independent accountants, together with evidence of such review at specified intervals. Section 3 of the Undertaking also requires the provision of other financial information, including schedules reflecting the available

¹²⁹ See Amex Order, *supra* note 14.

¹³⁰ Amex is currently a party to a regulatory services agreement with FINRA under which FINRA performs market and trade practice surveillance and analysis, financial and operational regulation, options sales practice regulation, enforcement investigations and disciplinary processes and dispute resolution services for Amex.

borrowings under each of Amex's credit facilities and computations of compliance with all financial covenants contained therein, projected cash and working capital trends, and material off-balance sheet liabilities.¹³²

The Commission believes it is consistent with the Act for Amex to be relieved from its Undertakings. With respect to Sections 1 and 2 of the Undertakings, the Commission believes that NYSE Alternext US arrangements for contracting out regulatory services through the NYSE Regulation RSA and the New Multi-Party FINRA RSA¹³³ is comparable to the FINRA RSA and is designed to ensure that NYSE Alternext US regulatory program is conducted in a manner that is consistent with the Act. Further, the Commission finds that it is no longer necessary at this time for Amex to provide certain financial information on a regular basis to the Director of the Division of Trading and Markets.

G. NYSE Euronext Independence Policy

In its proposed rule change, the NYSE proposes to amend the definitions of "member" and "member organization" in the NYSE Euronext Independence Policy to refer to relevant sections of the Act¹³⁴ instead of the different rules of the NYSE, NYSE Arca, and NYSE Alternext US. The NYSE also proposes to reduce the "look-back" period with respect to directors' relationships with members of the NYSE and NYSE Arca (which following the Mergers will apply equally to NYSE Alternext US) from three years to one year. In addition, the NYSE is proposing to delete a restriction stating that a director is not independent if such director

¹³¹ For more detail on Sections 1 and 2 of the Undertakings, see Amex Order, supra note 14.

¹³² For more detail on Section 3 of the Undertakings, see Amex Order, supra note 14.

¹³³ See supra note 117 and accompanying text, and Amendment No. 4 to the Amex Notice, supra note 4.

is employed by or affiliated with a non-member broker-dealer, thus allowing independent directors of NYSE, NYSE Arca, and NYSE Alternext US to be employed by or affiliated with non-member broker dealers.¹³⁵

The Commission finds that these changes are consistent with the Act. The proposed changes to the definition of “member” and “member organization” will harmonize the use of those terms across all three SROs owned by NYSE Euronext for purposes of determining the independence of NYSE Euronext directors (and the directors of its subsidiary SROs). The Commission believes that a one year “look-back” period, together with the other criteria for determining the independence of NYSE Euronext directors will continue to provide for director independence consistent with the Act.¹³⁶ Further, the Commission believes that allowing directors to be affiliated with non-member broker-dealers is consistent with the Act because NYSE Alternext US will not have regulatory oversight over such broker-dealers and thus the member conflicts that the independence requirements are designed to address are not raised.¹³⁷

¹³⁴ Member is defined as set forth in Sections 3(a)(3)(A)(i), 3(a)(3)(A)(ii), 3(a)(3)(A)(iii) and 3(a)(3)(A)(iv) of the Act, 15 U.S.C. 78c(a)(3)(A).

¹³⁵ NYSE Euronext also proposes some technical changes to the independence policy: (i) the deletion of a provision relating to a transition period for non-US board directors of NYSE Euronext because it is obsolete; and (ii) all references to NYSE, NYSE Arca, and NYSE Alternext US shall mean each of those entities or its successor.

¹³⁶ See Independence Policy of the NYSE Euronext Board of Directors, Exhibit 5B to the NYSE Notice, *supra* note 7

¹³⁷ See *e.g.*, Article II, Sections 2(b) and 3(a) of the bylaws and Paragraph 505 of the certificate of incorporation of the Chicago Stock Exchange, Inc; Sections 1.1 of the bylaws of the National Stock Exchange, Inc.

IV. Accelerated Approval of SR-Amex-2008-62

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹³⁸ for approving the proposal, as modified by Amendment Nos. 1 and 4, prior to the thirtieth day after the date of publication of notice of filing of Amendment No. 4 in the Federal Register.¹³⁹

In Amendment No. 4, Amex proposes to reflect those changes to the Amex Rules that had occurred since the filing of the proposed rule change that are necessary to accurately describe the current Amex Rules and show the proposed changes, as applicable. Amex also proposes to make certain clarifying, technical and non-substantive changes to the text of the proposed rule change. Amendment No. 4 also includes a revised description of the parties to the New Multi-Party FINRA RSA, and a revised description of the merger between the current parent companies of Amex.¹⁴⁰ In addition, in Amendment No. 4, Amex modifies its description of Arca Securities to state, among other things, that with respect to its oversight of Arca Securities after the Mergers and Related Transactions, NYSE Regulation has agreed to provide NYSE Alternext US's CRO quarterly reports related to oversight of Arca Securities, which operates as a facility of each of NYSE and NYSE Arca that will provide outbound routing from each exchange to NYSE Alternext US, subject to certain conditions.¹⁴¹ As stated above,¹⁴² the Commission believes that such reports, along with other measures, will help to protect the independence of NYSE

¹³⁸ 15 U.S.C. 78s(b)(2).

¹³⁹ Pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), the Commission may not approve any proposed rule change, or amendment thereto, prior to the thirtieth day after the date of publication of the notice thereof, unless the Commission finds good cause for so doing.

¹⁴⁰ As noted supra in note 4, this change will not affect the final outcome of the Mergers through which NYSE Alternext US will become a subsidiary of NYSE Euronext.

¹⁴¹ See supra, notes 100 to 109 and accompanying text.

¹⁴² Id.

Alternext US's regulatory responsibilities with respect to Arca Securities from conflicts of interest that may arise as a result of NYSE Alternext US's affiliation with Arca Securities. The Commission does not believe that these changes have any substantive impact on the proposed changes.

Accordingly, the Commission finds good cause for approving the Amex's proposal, as modified by Amendment Nos. 1 and 4, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4 to File No. SR-Amex-2008-62, including whether Amendment No. 4 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-Amex-2008-62 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, and 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2008-62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the

proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Amex-2008-62 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

VI. Conclusion

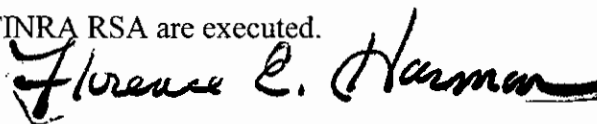
For the foregoing reasons, the Commission finds that the proposed rule changes are consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁴³ that the proposed rule change (SR-Amex-2008-62), as modified by Amendment Nos. 1 and 4 thereto, be and hereby is approved on an accelerated basis.

IT IS THEREFORE FURTHER ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁴⁴ that the proposed rule change (SR-NYSE-2008-60), as modified by Amendment No. 1 thereto, be and hereby is approved.

Although the Commission's approval of the proposed rule changes of Amex (SR-Amex-2008-62) and NYSE (SR-NYSE-2008-60) is final and the proposed rules are therefore effective, IT IS FURTHER ORDERED that the proposed rule changes will not become operative until the NYSE Regulation RSA and the New Multi-Party FINRA RSA are executed.

By the Commission.



Florence E. Harmon
Acting Secretary

¹⁴³ 15 U.S.C. 78s(b)(2).

¹⁴⁴ 15 U.S.C. 78s(b)(2).

*Chairman Cox and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 8973 / September 30, 2008

INVESTMENT COMPANY ACT OF 1940

Release No. 28424 / September 30, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13268

In the Matter of

GLOBAL BEVERAGE
SOLUTIONS, INC.

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST AND EXEMPTION SUSPENSION
PROCEEDINGS, MAKING FINDINGS,
IMPOSING A CEASE-AND-DESIST
ORDER, AND PERMANENTLY
SUSPENDING THE REGULATION E
EXEMPTION AS TO GLOBAL
BEVERAGE SOLUTIONS, INC.,
PURSUANT TO SECTION 9(f) OF THE
INVESTMENT COMPANY ACT OF 1940
AND RULE 610(c) OF REGULATION E

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist and exemption suspension proceedings be, and hereby are, instituted pursuant to Section 9(f) of the Investment Company Act of 1940 ("Investment Company Act") and Rule 610(c) of Regulation E against Global Beverage Solutions, Inc. ("Global Beverage" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist and Exemption Suspension Proceedings, Making Findings, Imposing a Cease-and-Desist Order, and Permanently Suspending the Regulation E Exemption as to Global Beverage Solutions, Inc., Pursuant to Section 9(f) of the Investment Company Act of 1940 and Rule 610(c) of Regulation E ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. Since electing to be regulated as a business development company ("BDC") in June 2003, Global Beverage Solutions, Inc. ("Global Beverage") has, among other things, issued rights to purchase its securities without expiration to non-security holders, issued prohibited non-voting stock, and issued shares for services or property other than cash or securities. As a result, Global Beverage violated Sections 18(d), 18(i), and 23(a), respectively, of the Investment Company Act. In addition, Global Beverage failed to obtain a fidelity bond as required under Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder. Finally, Global Beverage failed to comply with Rule 609 of Regulation E because it did not file an offering status report on Form 2-E in connection with securities offerings under Regulation E commenced in June 2003, June 2005, January 2006, March 2006 and January 2007.

Respondent

2. Global Beverage is a Nevada corporation with its principal offices located in Plantation, Florida. It elected to be regulated as a BDC on June 19, 2003, and withdrew its election on January 8, 2008. Prior to its BDC election, Global Beverage was an operating company known as Aussie Apparel Group LTD. Global Beverage's securities are registered under Section 12(g) of the Securities Exchange Act of 1934 and are quoted on the OTC Bulletin Board under the symbol GBVS.

Issuing Convertible Securities with Unequal Voting Rights

3. From November 2004, through March 2005, Global Beverage issued convertible debentures to investors in a private transaction in exchange for \$425,000. These debentures converted at the holder's option at prices between \$0.0035 and \$0.001 per share.

4. Between June 2006 and September 2006, Global Beverage issued promissory notes to investors in a private transaction in exchange for \$1.8 million. The promissory notes, which were convertible into Global Beverage restricted common stock at a rate of \$.50 per share, had an 8% interest rate per year and matured within one year of their issuance.

5. As of December 31, 2004, Global Beverage issued 190,000 shares of Series-B convertible preferred stock. This preferred stock had a 6% annual dividend in cash or stock and converted to common shares at 80% of the market price. The conversion rate was based on the ten-day average

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

of the lowest closing bid price for Global Beverage's stock prior to the date of conversion. The Series-B preferred stock owners were entitled to elect one director of Global Beverage's board.

6. As of December 31, 2004, Global Beverage also issued 10 million shares of Series-C convertible preferred stock. The Series C-preferred stock, which was not entitled to receive dividends, converted to common stock on a one-to-one basis. The Series C-preferred stock had no voting rights, except that its owners were entitled to elect two directors to Global Beverage's board.

7. Section 18 of the Investment Company Act is made applicable to BDCs by Section 61(a) of the Investment Company Act, subject to certain exceptions. Section 18(i) of the Company Act provides that every share of stock issued by a BDC shall be a voting stock and have equal voting rights with every other outstanding voting stock. Here, Global Beverage's preferred stock did not have voting rights equal to that of its common stock.

8. Section 18(d), as applicable to BDCs, generally prohibits them from issuing "any warrant or right to subscribe to or purchase a security of which such company is the issuer, except in the form of warrants or rights to subscribe expiring not later than one hundred and twenty days after their issuance and issued exclusively and ratably to a class or classes of such company's securities holders." The conversion feature on Global Beverage's convertible debentures, promissory notes, and preferred stock, which constituted rights to subscribe to or purchase securities, did not provide that the conversion feature would expire not later than 120 days after their issuance.

9. Section 61(a)(3) allows a BDC, notwithstanding Section 18(d), to issue warrants, options, or rights to subscribe or convert to voting securities that are accompanied by securities if, among other things, the BDC's shareholders authorize, and a majority of the BDC's disinterested directors approves, the proposal to issue such securities. Global Beverage's shareholders did not authorize the issuance of the debentures, promissory notes, or preferred stock.

Issuance of Shares for Services

10. Section 23(a) of the Investment Company Act, which Section 63 makes applicable to BDCs, generally prohibits any closed-end company from issuing securities for services or for property other than cash or securities. Between the date of its election as a BDC and December 31, 2003, Global Beverage issued 239,250 shares of stock to individuals for services.

Failure to Provide and Maintain a Fidelity Bond

11. Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, which Section 59 makes applicable to BDCs, require each BDC to provide and maintain a bond issued by a reputable fidelity insurance company against larceny and embezzlement by officers and employees of the BDC. Global Beverage did not provide and maintain a fidelity bond.

Violations

12. As a result of the conduct described above, Global Beverage violated Sections 17(g), 18(d), 18(i), and 23(a) of the Investment Company Act and Rule 17g-1 thereunder.

Failure to Comply with Rule 609 of Regulation E

13. On June 20, 2003, June 22, 2005, January 3, 2006, March 14, 2006, and January 3, 2007, Global Beverage filed a Form 1-E notification of stock issuance pursuant to the securities-registration exemption under Securities Act of 1933 Regulation E. The filings included a required offering circular, which provided certain disclosures regarding the offering. Rule 609 of Regulation E requires that, within 30 days after the end of each six-month period following the date of the original offering circular, or upon the termination of the offering, whichever is earlier, an issuer must file a report on Form 2-E, providing certain information regarding the status of the offering. Global Beverage did not file the Form 2-E for the June 20, 2003 and the January 3, 2007 Regulation E offerings that were due within 30 days after December 20, 2003 and July 3, 2007, within the required statutory period, nor has it ever filed Forms 2-E for the January 3, 2006 or March 14, 2006 Regulation E offering. Therefore, Global Beverage failed to comply with Rule 609.

14. Under Regulation E, Rule 610(c), the Commission may, at any time after notice of and opportunity for hearing, enter an order permanently suspending the Regulation E exemption, if the Commission has reason to believe, among other things, that any of the terms or conditions of Regulation E have not been complied with, including failure to file any report as required by Rule 609.

Respondent's Remedial Efforts

15. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Global Beverage's Offer.

Accordingly, pursuant to Section 9(f) of the Investment Company Act and Rule 610(c) of Regulation E it is hereby ORDERED that:

A. Respondent Global Beverage cease and desist from committing or causing any violations and any future violations of Sections 17(g), 18(d), 18(i), and 23(a) of the Investment Company Act and Rule 17g-1 thereunder.

B. The Regulation E exemption as to Respondent Global Beverage be, and hereby is, permanently suspended.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

*Chairman Cox and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 8972 / September 30, 2008

INVESTMENT COMPANY ACT OF 1940

Release No. 28423 / September 30, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13267

In the Matter of

AMERICAN ENERGY
PRODUCTION, INC.

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST AND EXEMPTION SUSPENSION
PROCEEDINGS, MAKING FINDINGS,
IMPOSING A CEASE-AND-DESIST
ORDER, AND PERMANENTLY
SUSPENDING THE REGULATION E
EXEMPTION AS TO AMERICAN
ENERGY PRODUCTION, INC.,
PURSUANT TO SECTION 9(f) OF THE
INVESTMENT COMPANY ACT OF 1940,
AND RULE 610(c) OF REGULATION E

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist and exemption suspension proceedings be, and hereby are, instituted pursuant to Section 9(f) of the Investment Company Act of 1940 ("Investment Company Act") and Rule 610(c) of Regulation E against American Energy Production, Inc. ("American Energy" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist and Exemption Suspension Proceedings, Making Findings, Imposing a Cease-and-Desist Order, and Permanently Suspending the Regulation E Exemption as to American Energy Production, Inc., Pursuant to Section 9(f) of the Investment Company Act of 1940 and Rule 610(c) of Regulation E ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. Since electing to be regulated as a business development company ("BDC") in January 2004, American Energy has, among other things, issued senior securities without the required asset coverage, issued rights to purchase securities without expiration to non-security holders, issued prohibited non-voting stock, issued securities for services, failed to make and keep required records; and failed to establish a majority of disinterested directors on its board. As a result, American Energy violated Sections 18(a), 18(d), 18(i), 23(a), 31(a)(1), and 56(a) respectively, of the Investment Company Act and Investment Company Act Rule 31a-1. In addition, American Energy failed to obtain a fidelity bond as required under Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, and failed to implement a compliance program as required under Investment Company Act Rule 38a-1. Finally, American Energy failed to comply with Rule 609 of Regulation E because it did not file offering status reports on Form 2-E in connection with a securities offering under Regulation E commenced in January 2004.

Respondent

2. American Energy is a Delaware corporation with its principal offices located in Mineral Wells, Texas. It elected to be regulated as a BDC on January 12, 2004, and withdrew its election on April 3, 2007. American Energy's securities are registered under Section 12(g) of the Securities Exchange Act of 1934 and are quoted on the OTC Bulletin Board under the symbol AENP.

Issuing Convertible Debentures and Unequal-Voting Convertible Preferred Stock

3. In October 2003, American Energy entered into a contract with a private consulting firm to assist American Energy in electing to be regulated as a BDC and in issuing stock pursuant to the securities-registration exemption under Regulation E of the Securities Act of 1933. Among other things, the contract obligated the consulting firm to prepare corporate-governance and other internal documents necessary for American Energy to operate as a BDC. It likewise called for the consulting firm to prepare the Commission filings necessary for American Energy to elect to be regulated as a BDC and to issue stock in an exempt offering under Regulation E. American Energy agreed to pay the consulting firm, among other things, \$30,000 in cash, plus a \$30,000 convertible debenture for these services.

4. On January 13, 2004, American Energy issued to the consulting firm the convertible debenture and, on January 12, 2004, filed a Form N-54A election with the Commission to elect to

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

be regulated as a BDC. As of January 12, 2004, American Energy had one convertible debenture valued at \$2 million outstanding to a third party. The debenture had an interest rate of 8% and could be converted at any time at either party's option at a price equal to 50% of the closing bid price of American Energy's common stock on the date of a conversion notice.

5. From January 13, 2004, through August 31, 2004, American Energy issued 6 additional convertible debentures to private investors, a service provider, and an affiliated entity in exchange for approximately \$2.3 million in total financing. These debentures had interest rates ranging from 6% to 8% and could be converted at any time at either party's option at a price equal to 50% of the closing bid price of American Energy's common stock on the date of a conversion notice.

6. On January 5, 2004, American Energy issued 3.5 million shares of Series-A convertible preferred stock to its chief executive officer. Each Series-A share was convertible into three common shares at the owner's election or upon liquidation. It had no voting rights, except that its owner was entitled to elect two directors to American Energy's board.

7. Under Section 61(b) of the Investment Company Act, a BDC must comply with Section 61 at the time it becomes subject to Sections 55 through 65 of the Investment Company Act ("the BDC provisions"), "as if it were issuing a security of each class which it has outstanding at such time." American Energy became subject to the BDC provisions on January 12, 2004.

8. Section 18 of the Investment Company Act is made applicable to BDCs by Section 61(a) of the Investment Company Act, subject to certain exceptions. Section 18(a), as modified by Section 61(a) for application to BDCs, permits a BDC to issue any class of senior security representing indebtedness, if the BDC has asset coverage of at least 200% immediately after such issuance. Section 18(g) defines "senior security" to include debentures. Under Section 18(h), the asset coverage for senior securities representing indebtedness is determined by the ratio of the issuer's total asset value (less all liabilities and indebtedness not represented by senior securities) to the aggregate amount of the senior securities representing indebtedness. As of January 12, 2004, American Energy's asset coverage was below the required 200%. Moreover, American Energy did not have asset coverage of at least 200% immediately after any of the debentures issued from January 13, 2004, through August 17, 2004.

9. Section 18(d), as applicable to BDCs, generally prohibits them from issuing "any warrant or right to subscribe to or purchase a security of which such company is the issuer, except in the form of warrants or rights to subscribe expiring not later than one hundred and twenty days after their issuance and issued exclusively and ratably to a class or classes of such company's security holders." American Energy's convertible debentures which constituted rights to subscribe to or purchase securities did not provide that the conversion feature would expire within 120 days after their issuance as required under Section 18(d) as applicable to BDCs.

10. Section 61(a)(3) allows a BDC, notwithstanding Section 18(d), to issue warrants, options, or rights to subscribe or convert to voting securities that are accompanied by securities if, among other things, the BDC's shareholders authorize, and a majority of the BDC's disinterested directors approves, the proposal to issue such securities. American Energy's shareholders did not authorize the issuance of the convertible debentures.

11. With certain exceptions not relevant here, Section 18(i) of the Investment Company Act provides that every share of stock issued by a BDC shall be a voting stock and have equal voting rights with every other outstanding voting stock. American Energy's Series-A convertible preferred stock did not have voting rights equal to that of its common stock.

Issuance of Shares for Services

12. Section 23(a), which Section 63 makes applicable to BDCs, generally prohibits any closed-end company from issuing securities for services or property other than cash or securities. Between May 2004 and August 2005, American Energy issued 10.2 million shares of stock to individuals and entities in exchange for services.

Failure to Make and Keep Required Records

13. Section 31 of the Investment Company Act, made applicable to BDCs by Section 64 of the Investment Company Act, requires a BDC to make and keep certain books and records as the Commission may require pursuant to rule and regulation. Rule 31a-1 under the Investment Company Act sets forth the records a BDC must keep. From at least January 12, 2004, through September 2006, American Energy did not make and keep certain required records including: (a) daily journals of all debits and credits; (b) ledgers of all assets, liabilities, reserve capital, income and expense accounts reflecting account balances on each day (including details of monies borrowed and monies loaned); and (c) journals or other records containing an itemized daily record reflecting sales and redemptions/repurchases of its own securities.

Failure to Adopt and Implement Compliance Policies and Procedures

14. On December 17, 2003, the Commission adopted Rule 38a-1 under the Investment Company Act, which requires each registered investment company and BDC to adopt and implement written policies and procedures reasonably designed to prevent violations of federal securities laws. These policies and procedures must be approved by the BDC's board of directors (including a majority of disinterested directors) and reviewed annually. Furthermore, each BDC must appoint a chief compliance officer to administer the policies and procedures and fulfill certain reporting duties to the board. The compliance deadline for this rule was October 5, 2004. American Energy did not adopt and implement written policies and procedures reasonably designed to prevent violations of federal securities laws and did not appoint a chief compliance officer.

Failure to Establish a Majority of Disinterested Directors

15. Section 56(a) of the Investment Company Act provides that a majority of a BDC's directors shall be persons who are not interested persons, as that term is defined in Section 2(a)(19) of the Investment Company Act. From October 25, 2004, through November 19, 2005, American Energy failed to have a board composed of a majority of persons who were not interested persons.

Failure to Provide and Maintain a Fidelity Bond

16. Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, which Section 59 makes applicable to BDCs, require each BDC to provide and maintain a bond issued by a reputable fidelity insurance company against larceny and embezzlement by officers and employees of the BDC. American Energy did not provide and maintain a fidelity bond.

Violations

17. As a result of the conduct described above, American Energy violated Sections 17(g), 18(a), 18(d), 18(i), 23(a), 31(a)(1), and 56(a) of the Investment Company Act and Rules 17g-1, 31a-1, and 38a-1 thereunder.

Failure to Comply with Rule 609 of Regulation E

18. On January 14, 2004, American Energy filed a Form 1-E notification of stock issuance pursuant to the securities-registration exemption under Securities Act of 1933 Regulation E. The filing included a required offering circular, which provided certain disclosures regarding the offering. Rule 609 of Regulation E requires that, within 30 days after the end of each six-month period following the date of the original offering circular, or upon the termination of the offering, whichever is earlier, an issuer must file a report on Form 2-E, providing certain information regarding the status of the offering. American Energy did not file the Forms 2-E that were due within 30 days after July 14, 2004, January 14, 2005, July 14, 2005, and January 14, 2006. Therefore, American Energy did not comply with Rule 609.

19. Under Regulation E, Rule 610(c), the Commission may, at any time after notice of and opportunity for hearing, enter an order permanently suspending an issuer's Regulation E exemption, if the Commission has reason to believe, among other things, that any of the terms or conditions of Regulation E have not been complied with, including failure to file any report as required by Rule 609.

Respondent's Remedial Efforts

20. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent American Energy's Offer.

Accordingly, pursuant to Section 9(f) of the Investment Company Act and Rule 610(c) of Regulation E, it is hereby ORDERED that:

A. Respondent American Energy cease and desist from committing or causing any violations and any future violations of Sections 17(g), 18(a), 18(d), 18(i), 23(a), 31(a)(1) and 56(a) of the Investment Company Act and Rules 17g-1, 31a-1, and Rule 38a-1 thereunder.

B. The Regulation E exemption as to Respondent American Energy be, and hereby is, permanently suspended.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: Jill M. Peterson
Assistant Secretary

*Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58690 / September 30, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13264

In the Matter of

INSPIRE PHARMACEUTICALS, INC.,
CHRISTY L. SHAFFER, and
MARY B. BENNETT,

Respondents.

ORDER INSTITUTING CEASE-AND-
DESIST PROCEEDINGS, MAKING
FINDINGS, AND IMPOSING A
CEASE-AND-DESIST ORDER
PURSUANT TO SECTION 21C OF
THE SECURITIES EXCHANGE ACT
OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Inspire Pharmaceuticals, Inc. ("Inspire"), Christy L. Shaffer ("Shaffer"), and Mary B. Bennett ("Bennett") (collectively, "Respondents").

II.

In anticipation of the institution of these proceedings, Respondents have submitted Offers of Settlement (the "Offers") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over each of them and the subject matter of these proceedings, which are admitted, Respondents consent to the entry of this Order Instituting Cease-and-Desist Proceedings, Making Findings, and Imposing a Cease-and-Desist Order Pursuant to Section 21C of the Securities Exchange Act of 1934 ("Order"), as set forth below.

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III.

On the basis of this Order and Respondents' Offers, the Commission finds¹ that:

Respondents

1. Inspire is a biopharmaceutical company incorporated in Delaware and headquartered in Durham, North Carolina. At all relevant times, Inspire's common stock was registered with the Commission pursuant to Section 12(g) of the Exchange Act and was quoted on the Nasdaq National Market under the symbol "ISPH."

2. Shaffer, 50, is a legal resident of North Carolina, and was, at all times relevant, Inspire's Chief Executive Officer and a member of the company's board of directors.

3. Bennett, 51, is a legal resident of North Carolina, and was, at all times relevant, Inspire's Senior Vice President, Communications.

Summary

4. Inspire's Forms 10-Q for the first three quarters of its fiscal year 2004 described a clinical trial for Inspire's drug, diquafosol tetrasodium ("diquafosol"), as "confirmatory" and stated that diquafosol had to "replicate" the efficacy demonstrated in an earlier clinical trial. In the context of other public statements made by Inspire and Shaffer concerning diquafosol, these statements created the impression that the particular standard by which diquafosol had to demonstrate efficacy in the new clinical trial (the "primary endpoint") was the same as a primary endpoint that diquafosol had successfully achieved in a previous clinical trial. In fact, the primary endpoint was different from the primary endpoints of previous clinical trials for diquafosol. On February 9, 2005, Inspire announced that diquafosol had failed to achieve the trial's primary endpoint, which the company specifically identified for the first time. Inspire's stock closed at \$8.88 per share, representing a drop of more than 44 percent from the previous day's close of \$16 per share.

FDA Approval Process

5. Before a drug may be marketed in the United States, it must be approved by the United States Food and Drug Administration ("FDA"). Among other requirements, a drug candidate must demonstrate efficacy in "Phase III" trials, which are generally conducted to determine its efficacy in a patient population by comparing the results of patients taking the drug with the results of patients taking a placebo. A Phase III clinical trial is conducted pursuant to a written protocol, which the trial sponsor typically submits to the FDA for review and approval and then provides to clinicians administering the trial. The protocol typically sets forth, among other things, procedures for the trial and the manner of data analysis. One key component of a Phase III protocol is the "primary endpoint," which is a predefined criterion by which the drug's

¹ The findings herein are made pursuant to Respondents' Offers of Settlement and are not binding on any other person or entity in this or any other proceeding.

efficacy is generally measured. A Phase III trial's success is usually determined by whether the data establish the primary endpoint with "statistical significance" with a "p-value less than 0.05." This means that there must be a greater-than-95 percent chance that the effect seen is due to the drug rather than due to mere chance.

6. After successfully completing Phase III clinical trials, a company files a New Drug Application ("NDA") with the FDA. The FDA can approve or reject a drug based upon an NDA submission, or can send an "approvable letter" when a drug can be approved based on specific additional information to be submitted by the sponsor.

**Relevant Endpoints to Measure Efficacy of Dry Eye Drugs:
"Corneal Staining" vs. "Corneal Clearing"**

7. A common test for measuring the impact of a drug on dry eye disease is to use corneal staining. Clinicians (also called "investigators"), who are typically ophthalmologists with experience in treating dry eye disease, periodically administer a fluorescein dye to the corneas of study patients. The dye stains the damaged areas of the cornea caused by dry eye disease. The investigators wait for a period of time after administering the dye and then assess the amount of stain in the patient's corneas. Investigators assign patients a numerical "staining score" corresponding to the residual level of staining (as perceived by the investigators) in the cornea, with a greater score theoretically indicating a greater level of corneal irritation.

8. A primary endpoint based on the corneal staining test that Inspire has used in certain clinical trials has been to measure "a reduction in mean corneal staining." Inspire has, at times, referred to primary endpoints seeking a reduction in mean corneal staining as "corneal staining" as shorthand. For diquafosol to achieve the endpoint of reduction in mean corneal staining, patients receiving diquafosol have to show a higher reduction in the level of corneal staining as compared to patients receiving placebo at specific points in time.

9. Another endpoint based on the corneal staining test is the statistically significant achievement of "corneal clearing." A clinical trial with a "corneal clearing" endpoint is conducted in substantially the same fashion as a trial measuring reduction in mean corneal staining. However, in the former, the investigators determine whether, over a period of time, there is a complete elimination, i.e., "clearing" of residual staining or, in other words, reduction of the staining score to zero. For diquafosol to achieve a corneal clearing endpoint, there must be a statistically significant higher rate of patients receiving diquafosol that achieve corneal clearing versus patients receiving placebo at specific points in time.

10. At the time Inspire filed its May, August, and November 2004 Forms 10-Q, certain clinicians, analysts, and Inspire investors understood that the terms "corneal staining" and "corneal clearing" referred to different endpoints, and believed that "corneal staining" was generally easier to achieve than "corneal clearing."

Inspire Seeks FDA Approval of Diquafosol

11. In 2002, Inspire reported the results from a Phase III clinical trial of diquafosol designated Study 3-105. Study 3-105 had co-primary endpoints: 1) statistically significant improvement in mean corneal staining scores, and 2) clearing of the symptom of foreign body sensation, both at six weeks. In Study 3-105, diquafosol achieved improvement in mean corneal staining, but failed to meet the subjective endpoint of clearing of foreign body sensation at the same six-week time period.

12. In Study 3-105, diquafosol also achieved statistically significant results in corneal clearing. Corneal clearing was not, however, designated as a predefined endpoint or efficacy measurement in that Study.

13. Although Inspire never specifically mentioned the clearing results from the 3-105 trial in any press release or Commission filing, Inspire did present the clearing results, along with the other results from the Study 3-105, in a presentation at an eye conference in May 2003. That presentation did not describe corneal clearing as an endpoint (either primary or secondary), an "efficacy variable" or an "efficacy measurement" for the 3-105 Study. Inspire also issued a press release in May, noting, among other things, that this paper could be downloaded from Inspire's website.

14. The corneal clearing results from the 3-105 Study were mentioned in certain reports published in May 2003 by one of the analysts that covered Inspire. However, none of these reports contained any substantive discussion of the clearing results or described corneal clearing as a measure by which Inspire or the FDA evaluated efficacy for diquafosol. Moreover, analysts that covered Inspire between May 2003 and February 2005 published reports in which they surmised that the primary endpoint for the new Phase III clinical trial was the same as in Study 3-105, i.e., a reduction in mean corneal staining.

15. In June 2003, Inspire submitted an NDA to the FDA for diquafosol. The NDA was based in part on the Study 3-105 results, and although Study 3-105 had not achieved both its co-primary endpoints, the FDA accepted the NDA and granted it priority review status.

16. On December 19, 2003, the FDA issued an approvable letter to Inspire which provided two options to gain approval of diquafosol: "[A]n additional adequate and well controlled study demonstrating efficacy in the clearance of corneal staining is needed to support the efficacy of the drug product. Alternatively, additional adequate and well controlled studies demonstrating both subjective and objective improvements in ocular surface health could be submitted."

17. Inspire elected to conduct an additional clinical trial based on the clearance of corneal staining, and it designed a new Phase III clinical trial, designated as Study 3-109, in which the primary endpoint was the clearance of corneal staining. Inspire designed Study 3-109 to replicate the corneal clearing results achieved in Study 3-105. The initial protocol for Study 3-109 described the primary endpoint as "based on corneal staining" but stated that the specific primary endpoint would not be disclosed for proprietary reasons. In May 2004, the FDA

informed Inspire that the protocol (which is a non-public document) had to specify the primary endpoint as corneal clearing.

Related Disclosures

18. Before Study 3-109, Inspire on occasion had publicly used the term “corneal staining” to refer to the endpoint of a reduction in mean corneal staining. In a press release issued on June 18, 2002, Inspire disclosed that, in Study 3-105, diquafosol had “demonstrated a highly statistically significant improvement . . . over placebo for the primary objective endpoint, corneal staining.”

19. During a January 30, 2004 conference call with analysts and investors, Shaffer stated that Inspire would not be disclosing the details of the 3-109 Study, including its primary endpoint. However, beginning in February 2004, in oral communications with analysts and investors, Shaffer generally described the endpoint of the 3-109 Study as a “measure of corneal staining.”

20. In a May 10, 2004 conference call with analysts, moderated by Bennett, Shaffer was asked by an analyst to “elaborate on the protocol” of Study 3-109. Shaffer replied: “The protocol is very similar in fact to a study that was already run which is our flagship Phase III study, study 105. It’s going to enroll a similar number of patients and generally I would say the eye, the inclusion-exclusion criteria are similar, not quite identical but very close to what we’ve seen before.” The analyst then replied: “Oh, great. Now what’s the, as a reminder, what’s the primary endpoint in 105?” Shaffer then replied: “It’s corneal staining.”

21. Inspire’s Forms 10-Q for the first three quarters of 2004 (filed on May 10, August 9, and November 9, 2004) each described the 3-109 trial as “confirmatory,” and stated that in Study 3-109 diquafosol had to “replicate” the efficacy of an earlier trial.

22. During a conference call on November 4, 2004, in which Study 3-109 was discussed, an analyst asked Shaffer: “Okay, a question on diquafosol . . . just confirm is the primary endpoint corneal staining and will the data be six weeks as opposed to a previous study which was twelve weeks?” Shaffer replied: “The primary endpoint is six weeks and it is a corneal staining endpoint.”

23. In a February 9, 2005 press release, Inspire announced that diquafosol had failed to demonstrate efficacy in Study 3-109, and identified the trial’s endpoint as “corneal clearing.” Some analysts expressed surprise at the revelation of the endpoint, and Inspire’s stock closed at \$8.88 per share, representing a drop of more than 44 percent from the previous day’s close of \$16 per share.

Violations of the Federal Securities Laws

24. Section 13(a) of the Exchange Act and Rule 13a-13 thereunder require issuers of registered securities to file with the Commission quarterly reports prepared in conformity with the requirements of the Commission’s rules and regulations. Courts have held that an implicit

requirement of these provisions is that the information provided in the reports filed with the Commission be accurate and contain no material misrepresentations or omissions. See, e.g., SEC v. IMC International, Inc., 384 F.Supp. 889, 893 aff'd mem., 505 F.2d 733 (5th Cir. 1974), cert. denied sub nom. In addition, Exchange Act Rule 12b-20 requires that these periodic reports contain such further material information necessary to ensure that the required statements made in them are not misleading. In determining whether particular statements violate these provisions of the federal securities laws, the focus is not on the technical accuracy of such statements, but instead on whether the statements, taken together and in context, would have misled a reasonable investor. See, e.g., McMahan & Company v. Warehouse Entertainment, Inc., 900 F.2d 576, 579 (2d Cir. 1990); SEC v. First American Bank and Trust Co., 481 F.2d 673, 678 (8th Cir. 1973). No showing of scienter is necessary to establish a violation of Section 13(a) or Rules 12b-20 and 13a-13, Tenex Corp., et al., Exchange Act Rel. No. 41312 (April 20, 1999), 69 SEC Docket 1814, 1834 n. 11, and no finding of scienter has been made.

25. Inspire violated Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder by filing Forms 10-Q on May 10, August 9, and November 9, 2004. Those filings described Study 3-109 as "confirmatory" and "replicating" the efficacy of an earlier trial. Given the context in which those statements were made, and the public understanding of the terms "corneal staining" and "corneal clearing," this created the impression that the primary endpoint for Study 3-109 was the same as the primary objective endpoint for Study 3-105, i.e. a reduction in mean corneal staining. Moreover, although diquafosol had achieved corneal clearing in Study 3-105, corneal clearing was not designated as a predefined endpoint or efficacy standard in that Study.

26. Under Section 21C of the Exchange Act, a person is "a cause" of a company's violation if the person "knew or should have known" that his or her act or omission would contribute to the company's violation. Negligence is sufficient to establish liability for "causing" a primary violation that does not require scienter. KPMG Peat Marwick LLP, 54 S.E.C. 1135, 1175 (2001), recon. denied, 55 S.E.C. 1, 4 & n.8 (2001), pet. denied, 289 F.3d 109 (D.C. Cir. 2002).

27. Shaffer and Bennett caused Inspire's violation of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder. Shaffer and Bennett were members of Inspire's "Disclosure Committee," which was charged with drafting and approving the company's public disclosures, including Commission filings. As such, Shaffer and Bennett were responsible for the disclosure decisions concerning the details of the diquafosol program. Moreover, Shaffer signed Inspire's Forms 10-Q that contained the statements at issue.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondents' Offers.

Accordingly, it is hereby ORDERED that, pursuant to Section 21C of the Exchange Act:

- A. Respondent Inspire cease and desist from committing or causing any violations and any future violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder.
- B. Respondent Shaffer cease and desist from causing any violations and any future violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder.
- C. Respondent Bennett cease and desist from causing any violations and any future violations of Section 13(a) of the Exchange Act and Rules 12b-20 and 13a-13 thereunder.

By the Commission.

Florence E. Harmon
Acting Secretary



By: J. Lynn Taylor
Assistant Secretary

*Chairman Cok and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 8971 / September 30, 2008

INVESTMENT COMPANY ACT OF 1940

Release No. 28422 / September 30, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13266

In the Matter of

ATLANTIS TECHNOLOGY
GROUP,

Respondent.

ORDER INSTITUTING CEASE-AND-
DESIST AND EXEMPTION SUSPENSION
PROCEEDINGS, MAKING FINDINGS,
IMPOSING A CEASE-AND-DESIST
ORDER, AND PERMANENTLY
SUSPENDING THE REGULATION E
EXEMPTION AS TO ATLANTIS
TECHNOLOGY GROUP, PURSUANT TO
SECTION 9(f) OF THE INVESTMENT
COMPANY ACT OF 1940 AND RULE
610(c) OF REGULATION E

I.

The Securities and Exchange Commission ("Commission") deems it appropriate that cease-and-desist and exemption suspension proceedings be, and hereby are, instituted pursuant to Section 9(f) of the Investment Company Act of 1940 ("Investment Company Act") and Rule 610(c) of Regulation E against Atlantis Technology Group ("Atlantis" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist and Exemption Suspension Proceedings, Making Findings, Imposing a Cease-and-Desist Order, and Permanently Suspending the Regulation E Exemption as to Atlantis Technology Group, Pursuant to Section 9(f) of the Investment Company Act of 1940 and Rule 610(c) of Regulation E ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Summary

1. Since electing to be regulated as a business development company ("BDC") in April 2003, Atlantis has, among other things, issued rights to purchase securities without expiration to non-security holders, issued shares for services or property other than cash, and failed to establish a majority of disinterested directors on its board. As a result, Atlantis violated Sections 18(d), 23(a), and 56(a), respectively, of the Investment Company Act. In addition, Atlantis failed to obtain a fidelity bond as required under Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, and failed to implement a compliance program as required under Investment Company Act Rule 38a-1. Finally, Atlantis failed to comply with Rule 609 of Regulation E because it did not file offering-status reports on Form 2-E in connection with securities offerings under Regulation E commenced in June 2003, October 2003, December 2003, and July 2004.

Respondent

2. Atlantis, formerly known as Atlantis Business Development Corporation, is a Nevada corporation with its principal offices located in Colorado Springs, Colorado. It elected to be regulated as a BDC on April 30, 2003, and withdrew its election on September 19, 2007. Prior to its BDC election, Atlantis was an operating company known as Medplus Corp., which was primarily in the business of medical-patient financing. Atlantis's securities are registered under Section 12(g) of the Securities Exchange Act of 1934 and are quoted on the OTC Bulletin Board under the symbol ATNO.

Issuing Convertible Securities for Services

3. On April 1, 2003, Atlantis issued 2 million shares of preferred stock split equally among two of its officers in compensation for, among other things, their services as officers. Each preferred share was convertible into 10 common shares. Under Section 61(b) of the Investment Company Act, a BDC must comply with Section 61 at the time it becomes subject to Sections 55 through 65 of the Investment Company Act ("the BDC provisions"), "as if it were issuing a security of each class which it has outstanding at such time." Atlantis became subject to the BDC provisions on April 30, 2003.

4. Section 18 of the Investment Company Act is made applicable to BDCs by Section 61(a) of the Investment Company Act, subject to certain exceptions. Section 18(d), as applicable to BDCs, generally prohibits them from issuing "any warrant or right to subscribe to or purchase a security

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

of which such company is the issuer, except in the form of warrants or rights to subscribe expiring not later than one hundred and twenty days after their issuance and issued exclusively and ratably to a class or classes of such company's securities holders." The conversion feature on Atlantis's preferred stock, which constituted rights to subscribe to or purchase securities, did not provide that the conversion feature would expire not later than 120 days after their issuance as required under Section 18(d).

5. Section 61(a)(3) allows a BDC, notwithstanding Section 18(d), to issue warrants, options, or rights to subscribe or convert to voting securities that are accompanied by securities if, among other things, the BDC's shareholders authorized, and a majority of the BDC's disinterested directors approves, the proposal to issue such securities. Atlantis' shareholders did not authorize the issuance of the preferred stock.

6. Section 23(a) of the Investment Company Act, which Section 63 makes applicable to BDCs, generally prohibits any closed-end company from issuing shares for services or for property other than cash or securities. In addition to the preferred stock described above, from June 2004 through December 2004, Atlantis issued approximately 8 million shares to officers and directors in compensation for services and property other than cash.

Failure to Establish a Majority of Disinterested Directors

7. Section 56(a) of the Investment Company Act provides that a majority of a BDC's directors shall be persons who are not interested persons, as that term is defined in Section 2(a)(19) of the Investment Company Act. Between November 2003 and December 2004, Atlantis failed to have a board composed of a majority of persons who were not interested persons.

Failure to Adopt and Implement Compliance Policies and Procedures

8. On December 17, 2003, the Commission adopted Rule 38a-1 under the Investment Company Act, which requires each registered investment company and BDC to adopt and implement written policies and procedures reasonably designed to prevent violations of federal securities laws. These policies and procedures must be approved by the BDC's board of directors (including a majority of disinterested directors) and reviewed annually. Furthermore, each BDC must appoint a chief compliance officer to administer the policies and procedures and fulfill certain reporting duties to the board. The compliance deadline for this new rule was October 5, 2004. Atlantis did not adopt and implement written policies and procedures reasonably designed to prevent violations of federal securities laws and did not appoint a chief compliance officer.

Failure to Provide and Maintain a Fidelity Bond

9. Section 17(g) of the Investment Company Act and Rule 17g-1 thereunder, which Section 59 makes applicable to BDCs, require each BDC to provide and maintain a bond issued by a reputable fidelity insurance company against larceny and embezzlement by officers and employees of the BDC. Atlantis did not provide and maintain a fidelity bond.

Violations

10. As a result of the conduct described above, Atlantis violated Sections 17(g), 18(d), 23(a), and 56(a) of the Investment Company Act and Rules 17g-1 and 38a-1 thereunder.

Failure to Comply with Rule 609 of Regulation E

11. On June 5, 2003, October 27, 2003, December 19, 2003, and July 29, 2004, Atlantis filed Form 1-E notifications of stock issuance pursuant to the securities-registration exemption under Securities Act Regulation E. The filings included a required offering circular, which provided certain disclosures regarding the offering. Rule 609 of Regulation E requires that, within 30 days after the end of each six-month period following the date of the original offering circular, or upon the termination of the offering, whichever is earlier, an issuer must file a report on Form 2-E, providing certain information regarding the status of the offering. Atlantis filed a Form 2-E for the December 19, 2003 Regulation E offering on July 13, 2004, but did not file any Forms 2-E for the June 5, 2003, October 27, 2003, or July 29, 2004 Regulation E offerings and failed to file any subsequent Forms 2-E for the December 19, 2003 Regulation E offering after July 23, 2004. Therefore, Atlantis failed to comply with Rule 609.

12. Under Regulation E, Rule 610(c), the Commission may, at any time after notice of and opportunity for hearing, enter an order permanently suspending the Regulation E exemption, if the Commission has reason to believe, among other things, that any of the terms or conditions of Regulation E have not been complied with, including failure to file any report as required by Rule 609.

Respondent's Remedial Efforts

13. In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff.

IV.

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent Atlantis' Offer.

Accordingly, pursuant to Section 9(f) of the Investment Company Act and Rule 610(c) of Regulation E, it is hereby ORDERED that:

A. Respondent Atlantis cease and desist from committing or causing any violations and any future violations of Sections 17(g), 18(d), 23(a), and 56(a) of the Investment Company Act and Rules 17g-1 and 38a-1 thereunder.

B. The Regulation E exemption as to Respondent Atlantis be, and hereby is, permanently suspended.

By the Commission.

Florence E. Harmon
Acting Secretary

Jill M. Peterson
By: *Jill M. Peterson*
Assistant Secretary

*Chairman; Cox and
Commissioner Walter
not participating*

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58693 / September 30, 2008

ACCOUNTING AND AUDITING ENFORCEMENT
Release No. 2893 / September 30, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13269

In the Matter of

TIMOTHY S. WEBSTER (CPA),

Respondent.

ORDER INSTITUTING ADMINISTRATIVE
PROCEEDINGS PURSUANT TO RULE
102(e) OF THE COMMISSION'S RULES OF
PRACTICE, MAKING FINDINGS, AND
IMPOSING REMEDIAL SANCTIONS

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted against Timothy S. Webster ("Respondent" or "Webster") pursuant to Rule 102(e)(3)(i) of the Commission's Rules of Practice.¹

¹ Rule 102(e)(3)(i) provides, in relevant part, that:

The Commission, with due regard to the public interest and without preliminary hearing, may, by order, . . . suspend from appearing or practicing before it any . . . accountant . . . who has been by name . . . permanently enjoined by any court of competent jurisdiction, by reason of his or her misconduct in an action brought by the Commission, from violating or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, and the findings contained in Section III.3. below, which are admitted, Respondent consents to the entry of this Order Instituting Administrative Proceedings Pursuant to Rule 102(e) of the Commission's Rules of Practice, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

III.

On the basis of this Order and Respondent's Offer, the Commission finds that:

1. Webster, age 46, is a resident of Mission Hills, Kansas. Webster served as president and chief executive officer of American Italian Pasta Company ("AIPC") from May 1992 until December 2005, when he left the company. Webster also served as chief financial officer and chief operating officer of AIPC between 1989 and 1992. Webster was licensed as a Certified Public Accountant in Missouri, but his license lapsed in 1991.

2. At all relevant times, AIPC was a Delaware corporation with its principal place of business in Kansas City, Missouri. AIPC is a producer and marketer of dry pasta. At all relevant times, AIPC's common stock was registered pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act"). The company filed annual, quarterly, and current reports with the Commission on Forms 10-K, 10-Q, and 8-K, respectively. AIPC stock was traded on the New York Stock Exchange ("NYSE") until December 20, 2006, when the NYSE suspended trading based on AIPC's failure to keep current its Commission filings. The NYSE filed a Form 25 on April 23, 2007 and, as a result, AIPC's common stock was deregistered from Section 12(b) of the Exchange Act effective April 23, 2007.

3. On September 15, 2008, the Commission filed a complaint against Webster in United States District Court for the Western District of Missouri (Civil Action No. 4:08-CV-00674). On September 23, 2008, the court entered an order permanently enjoining Webster, by consent, from future violations of Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5, 13a-14, 13b2-1, and 13b2-2 thereunder, and from aiding and abetting violations of Sections 13(a) and 13(b)(2) of the Exchange Act and Rules 12b-20, 13a-1, 13a-11 and 13a-13 thereunder. The court further ordered that Webster pay \$751,978 in disgorgement; \$32,610 in prejudgment interest; and a \$250,000 civil money penalty. The court further ordered that Webster be barred from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act or that is required to file reports pursuant to Section 15(d) of the Exchange Act.

4. The Commission's complaint alleged, among other things, that Webster and others at AIPC engaged in a fraudulent scheme that hid from the investing public the true financial state of the company by filing materially false and misleading statements in the company's annual reports on Forms 10-K, quarterly reports on Forms 10-Q, and current reports on Forms 8-K, for AIPC's fiscal years 2002, 2003, and 2004. The complaint alleged that to meet aggressive external targets, Webster and others engaged in numerous accounting practices that departed from generally accepted accounting principles ("GAAP"), including, among other things, capitalizing improperly millions of dollars of normal operating costs; understating improperly millions of dollars of trade promotion expenses; overstating improperly by millions of dollars the company's spare parts inventory; recognizing improperly millions of dollars of current period revenue on sales of products that were not shipped until after the end of the current periods; structuring round-trip cash transactions; and eliminating improperly the company's vacation and paid time off liability.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanction agreed to in Respondent Webster's Offer.

Accordingly, it is hereby ORDERED, effective immediately, that Webster is suspended from appearing or practicing before the Commission as an accountant.

By the Commission.



Florence E. Harmon
Acting Secretary

*Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 58689 / September 30, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13263

In the Matter of

STEPHEN R. MOYNAHAN,

Respondent.

ORDER INSTITUTING
ADMINISTRATIVE AND CEASE-AND-
DESIST PROCEEDINGS, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS PURSUANT TO SECTIONS
15(b), 15B(c)(4), AND 21C OF THE
SECURITIES EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b), 15B(c)(4), and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Stephen R. Moynahan ("Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of, these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions Pursuant to Sections 15(b), 15B(c)(4), and 21C of the Securities Exchange Act of 1934 ("Order"), as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Respondent

1. Stephen R. Moynahan, age 61, resides in Villanova, Pennsylvania. From 1994 through 2004, Moynahan was president and chief executive officer of Dolphin & Bradbury, Incorporated. During the years Moynahan served as president, his ownership interest in the firm ranged from 33% to 50%. He held Series 7, 24, 52, 53 and 63 licenses. During the fall of 2004, after Bradbury's conduct described below came to light, Moynahan resigned from the firm.

Other Relevant Entity and Individual

2. Dolphin & Bradbury, Incorporated ("Dolphin & Bradbury") was a registered broker-dealer based in Philadelphia that specialized in the underwriting of municipal securities. Originally founded in 1940 as a partnership, Dolphin & Bradbury ceased doing business in 2006.

3. Robert J. Bradbury ("Bradbury"), age 62, resides in Chadds Ford, Pennsylvania. During the relevant time period, Bradbury was chairman, treasurer, and chief operating officer of Dolphin & Bradbury, and acted as an investment banker for the firm. From 1994 through 2004, Bradbury's ownership interest in the firm ranged from 33% to 50%, and was always equal to Moynahan's ownership interest. He held a Series 53 (municipal securities principal) license. Bradbury has approximately 40 years of experience in the underwriting of municipal bonds and related broker-dealer activities.²

Summary

4. This matter involves Moynahan's failure reasonably to supervise Bradbury, who engaged in a fraudulent scheme in which Bradbury offered and sold primarily to various Pennsylvania school districts a series of risky, short-term, tax-exempt notes underwritten by Dolphin & Bradbury to finance a speculative golf course project. Moynahan had no knowledge of Bradbury's fraudulent scheme. However, as president of Dolphin & Bradbury, Moynahan was generally responsible for firm supervision, and the firm's procedures expressly assigned certain supervisory duties to him. Moynahan failed to review the firm's written supervisory procedures, failed to establish, or delegate to anyone else responsibility for establishing, reasonable

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

² In August 2006, the Commission filed a civil injunctive action against Bradbury and others in the U.S. District Court for the Eastern District of Pennsylvania with respect to his conduct in this matter. United States Securities and Exchange Commission v. Robert J. Bradbury, Dolphin & Bradbury, Incorporated, and Margaret B. Bradbury, relief defendant, Civil Action No. 06-CV-3435 (JF) (August 3, 2006).

supervisory procedures with respect to the firm's underwriting business, failed to adequately comply with many of the provisions of the written supervisory procedures that were in place, and failed to affirmatively delegate to anyone else responsibility for supervising Bradbury. Moreover, Moynahan failed to supervise the conduct of the municipal securities activities of Dolphin & Bradbury and Bradbury, in violation of Municipal Securities Rulemaking Board ("MSRB") Rule G-27.

Bradbury's Violations

5. From February 1998 through August 2001, Bradbury through Dolphin & Bradbury underwrote a series of risky, short-term, tax-exempt notes issued to finance a speculative golf course project known as Whitetail located in central Pennsylvania (the "Whitetail Notes"). Unable to find sufficient suitable investors, from March 1999 through at least June 2004, Bradbury through Dolphin & Bradbury repeatedly sold the Whitetail Notes almost exclusively to four Pennsylvania school districts.

6. Under Pennsylvania law, the school districts were restricted to investing public funds solely in categories of conservative investments that did not include the Whitetail Notes. Each of the school district's account opening documents at Dolphin & Bradbury indicated that its investment goals fell within the most conservative category. Thus, the Whitetail Notes were both an impermissible and unsuitable investment for the school districts.

7. At no point did Bradbury or Dolphin & Bradbury ever disclose to the school districts the material risks associated with the Whitetail Notes, or obtain or review any official statement or other disclosure document with respect to the Whitetail Notes, as mandated by Exchange Act Rule 15c2-12.

8. Each of the relevant school district accounts was labeled non-discretionary, such that Bradbury needed to get explicit authorization from a school district representative before executing a trade. In fact, it was Dolphin & Bradbury's policy not to accept discretionary accounts. Nevertheless, Bradbury developed a practice of buying and selling securities on behalf of the school districts without first discussing the transactions with any school district representatives.

9. Hummelstown General Authority ("HGA"), as the issuer of the Whitetail Notes since December 1999, required Bradbury and Dolphin & Bradbury to sell the Whitetail Notes only to sophisticated investors that possessed such knowledge and experience in financial and business matters that they were capable of evaluating the merits and risks of the prospective investment. In August 2001, HGA tightened these restrictions further, obligating Bradbury and Dolphin & Bradbury to sell \$14.165 million of 2001 Whitetail Notes only to accredited investors. To conceal his fraudulent scheme, Bradbury repeatedly executed and delivered false and misleading documents to HGA and others claiming that the purchasers of the Whitetail Notes were

sophisticated and/or accredited investors, such that the offer and sale of the Whitetail Notes purportedly complied with the "limited placement" exemption to the general requirement for a disclosure document, as set forth in subsection (d)(1)(i) of the Exchange Act Rule 15c2-12.

10. In December 2002, as part of a larger effort to terminate the manager of the golf course, Bradbury executed a false and misleading letter addressed to the trustee for the Whitetail Notes to the effect that Dolphin & Bradbury was the registered owner of at least twenty-five percent of the 2001 Whitetail Notes. This letter directed the trustee to declare a technical default of the 2001 Whitetail Notes, which the trustee dutifully did by January 2003. From March 2003 through May 2004, Bradbury repeatedly provided the trustee with false and misleading documents to the effect that Dolphin & Bradbury either owned, or was the owner's representative of, precisely \$12.045 million of the 2001 Whitetail Notes. These false and misleading documents were sent to the Trustee from Dolphin & Bradbury by Bradbury via various facsimile and electronic mail messages.

11. In late August 2003 Bradbury, through Dolphin & Bradbury, underwrote \$850,000 of subordinated notes issued by HGA so that HGA could make interest payments on the Whitetail Notes due on September 1, 2003 and March 1, 2004. These 2003 subordinated notes were held in Dolphin & Bradbury's inventory.

12. In September 2004, the \$14.165 million of 2001 Whitetail Notes became due, together with \$424,950 of interest. The Whitetail Notes defaulted, generating net losses of over \$10 million.

13. Bradbury's conduct, as described above, violated Section 17(a) of the Securities Act of 1933 (the "Securities Act"), Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and MSRB Rule G-17, and aided and abetted violations by Dolphin & Bradbury of Sections 15(c)(2), 15B(c)(1) and 17(a) of the Exchange Act and Rules 15c2-12, 17a-3, and 17a-4 thereunder.

Moynahan's Failure to Supervise Bradbury

14. In 1997, Dolphin & Bradbury's written supervisory procedures designated Moynahan as the principal responsible for the supervision of the municipal securities activities of the firm. This designation was, in part, intended to satisfy the requirements of Rule G-27 ("Supervision") adopted by the MSRB. According to those written supervisory procedures, although others had certain supervisory duties, Moynahan was responsible for, among other matters: (a) reviewing the procedures on an annual basis to ensure they were adequate; (b) periodically reviewing customer accounts to detect and prevent irregularities and abuses; (c) assigning for review and supervising the due diligence investigation conducted by the firm with respect to each underwriting; (d) reviewing and endorsing customer transactions and correspondence by initialing the daily trade blotter and copies of correspondence; and (e) monitoring for unauthorized trading by reviewing the daily trade blotter and new issue underwritings. These

procedures were in part designed to detect unsuitable trades. Moynahan did not effectively fulfill these supervisory duties nor did he affirmatively delegate any of these supervisory duties to other individuals at the firm.

15. Moynahan never reviewed Dolphin & Bradbury's written supervisory procedures for the purpose of determining whether they were adequate. Moreover, Moynahan failed to supervise Bradbury or assign anyone else to supervise him.

16. Notwithstanding the written supervisory procedures, Moynahan failed to periodically review customer accounts to detect and prevent irregularities and abuses, and no such reviews of the school districts' accounts ever occurred. Given that the Whitetail Notes would have been unexpected in the school districts' accounts, such review could reasonably have been expected to detect Bradbury's fraud.

17. Moynahan did routinely review the daily trade blotter (which was part of a larger printout from Dolphin & Bradbury's clearing firm known as the "morning run") to see what kind of business was being done and at what profit levels. However, the daily trade blotter portion of the morning run contained insufficient information to determine whether the transactions were either authorized or suitable. Another portion of the morning run contained an investment objective exception report that explicitly flagged the purchase of the Whitetail Notes as potentially unsuitable investments for the school districts. Although Moynahan was responsible for reviewing exception reports, he did not routinely read the investment objective exception report, and therefore did not notice these repeated indications of a potential problem with the Whitetail Notes.

18. Moynahan failed to establish any system for implementing any policies or procedures with respect to conducting due diligence investigations. He also failed to establish any policies or procedures to establish that securities offerings underwritten by the firm purporting to comply with the "private placement" exemption set forth in Rule 15c2-12(d)(1)(i) were sold only to purchasers that the firm reasonably believed had such knowledge and experience in financial and business matters that they were capable of evaluating the merits and risks of the prospective investment without a disclosure document. To the contrary, Moynahan believed that it was appropriate for each investment banker at Dolphin & Bradbury, including Bradbury, to operate independently and without supervision. Consequently, neither Moynahan nor any other individual at Dolphin & Bradbury reviewed Bradbury's due diligence investigations in connection with the underwritings of the Whitetail Notes, including any of the written representations made by Bradbury concerning the purchasers or any of Bradbury's correspondence which clearly flagged the technical default of the 2001 Whitetail Notes.

19. Moynahan failed to enforce Dolphin & Bradbury's written supervisory procedures requiring the retention of all correspondence. Consequently, some critical communications concerning the Whitetail Notes were neither retained nor available for review.

20. Moynahan failed to establish any supervisory procedures to monitor for compliance with the firm's policy of rejecting discretionary accounts. This supervisory deficiency facilitated Bradbury's scheme to conceal the discretionary nature of the school district accounts by, among other matters, falsifying the relevant order tickets. Dolphin & Bradbury's order tickets for the school district trades, prepared by Bradbury, did not accurately reflect the fact that Bradbury exercised discretion with respect to the purchase and sale of the Whitetail Notes.

Legal Discussion

21. The president of a corporate broker-dealer is responsible for compliance with all of the requirements imposed on his firm unless and until he reasonably delegates particular functions to another person in that firm, and neither knows nor has reason to know that such person's performance is deficient. Donald Sheldon v. Securities and Exchange Commission, 45 F.3d 1515, 1517 (11th Cir. 1995) (internal citations omitted). Supervisors who fail to supervise the conduct of a broker-dealer's municipal securities business and the municipal securities business of its associated persons to ensure compliance with the applicable rules violate MSRB Rule G-27. Legg Mason Wood Walker Inc., Exchange Act Release No. 44407, A.P. File 3-10068, 2001 SEC LEXIS 1120 (June 11, 2001)(settled matter).

22. As a result of the conduct described above, Moynahan failed reasonably to supervise Bradbury with a view to detecting and preventing him from violating Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and MSRB Rule G-17, within the meaning of Section 15(b)(4)(E) of the Exchange Act. Moreover, as a result of the conduct described above, Moynahan also failed reasonably to supervise Bradbury with a view to detecting and preventing him from aiding and abetting Dolphin & Bradbury's violations of Sections 15(c)(2), 15B(c)(1), and 17(a) of the Exchange Act, and Rules 15c2-12, 17a-3, and 17a-4 thereunder.

23. As a result of the conduct described above, Moynahan's supervisory lapses also constituted a willful violation of MSRB Rule G-27 in that he failed to supervise the conduct of Dolphin & Bradbury's and Bradbury's municipal securities activities to ensure compliance with Section 17(a) of the Securities Act, Sections 10(b), 15(c)(2), 15B(c)(1) and 17(a) of the Exchange Act and Rules 10b-5, 15c2-12, 17a-3, and 17a-4 thereunder, and MSRB Rule G-17.³

24. In determining to accept the Offer, the Commission considered the cooperation that Moynahan afforded the Commission staff.

³ A willful violation of the securities laws means merely "that the person charged with the duty knows what he is doing." Wonsover v. SEC, 205 F.3d 408, 414 (D.C. Cir. 2000) (quoting Hughes v. SEC, 174 F.2d 969, 977 (D.C. Cir. 1949)). There is no requirement that the actor "also be aware that he is violating one of the Rules or Acts." Id. (quoting Gearhart & Otis, Inc. v. SEC, 348 F.2d 798, 803 (D.C. Cir. 1965)).

Undertaking

25. Moynahan shall undertake to provide to the Commission, within ten (10) days after the end of the six month suspension period described in Section IV. below, an affidavit that he has complied fully with the sanctions described therein. Such affidavit shall be submitted under cover letter that identifies Stephen R. Moynahan as a Respondent in these proceedings, and the file number of these proceedings, and is hand-delivered or mailed to Elaine C. Greenberg, Associate Regional Director, Philadelphia Regional Office, Securities and Exchange Commission, 701 Market Street, Suite 2000, Philadelphia, PA 19106.

IV.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondent Moynahan's Offer.

Accordingly, pursuant to Sections 15(b), 15B(c)(4), and 21C of the Exchange Act, it is hereby ORDERED that:

A. Moynahan shall cease and desist from committing or causing any violations and any future violations of MSRB Rule G-27.

B. Moynahan be, and hereby is barred from association in a supervisory or proprietary capacity with any broker, dealer or municipal securities dealer.

C. Any reapplication for association by Moynahan will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against Moynahan, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. Moynahan be, and hereby is, suspended from association with any broker, dealer or municipal securities dealer for a period of six months, effective on the second Monday following the entry of this Order.

E. Moynahan shall, within ten (10) days of the entry of this Order, pay disgorgement in the amount of \$1.00 and a civil money penalty in the amount of \$140,000 to the Securities and Exchange Commission. If timely payment is not made, additional interest shall accrue pursuant to SEC Rule of Practice 600 and 31 U.S.C. 3717. Payment shall be: (A) made by United States

postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (D) submitted under cover letter that identifies Moynahan as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Elaine C. Greenberg, Associate Regional Director, Philadelphia Regional Office, Securities and Exchange Commission, 701 Market Street, Suite 2000, Philadelphia, PA 19106.

F. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement, interest and penalties referenced in paragraph E above. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Moynahan agrees that he shall not, after offset or reduction in any Related Investor Action based on Moynahan's payment of disgorgement in this action, argue that he is entitled to, nor shall he further benefit by offset or reduction of any part of Moynahan's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Moynahan agrees that he shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Moynahan by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

G. Moynahan shall comply with the undertaking enumerated in Section III.25 above.

By the Commission.

Florence E. Harmon,
Acting Secretary

Jill M. Peterson
By: **Jill M. Peterson**
Assistant Secretary

*Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 8970 / September 30, 2008

SECURITIES EXCHANGE ACT OF 1934

Release No. 58688 / September 30, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13262

In the Matter of

MATT J. CUNNINGHAM,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933 AND SECTIONS
15(b) AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Matt J. Cunningham ("Cunningham" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over him and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order, as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Respondent

1. Respondent Matt J. Cunningham, age 44, is a resident of Denver, Colorado. Respondent is not and never has been associated with a broker-dealer registered with the Commission.

Facts

2. In or about February 2007, through an Internet website and telephone solicitations, an operation called American Investors Network ("AIN") began soliciting investors to finance advertising for a variety of products it purportedly sold. In or about September 2007, AIN purportedly ceased soliciting investors, but Fairweather Management ("Fairweather") began soliciting investors' funds to continue the purported advertising program.

3. In July 2007, AIN hired Cunningham to join its sales staff and solicit prospective investors for its advertising program. Cunningham continued to solicit investments after the operation changed its name to Fairweather. Cunningham received transaction-based compensation in the form of a 10% commission based on the funds he raised for AIN and Fairweather. He received commissions totaling approximately \$8,600.00 for his sales of AIN and Fairweather interests.

4. Cunningham solicited prospective investors through telephone calls, emails, and postings on Internet message boards. Consistent with AIN's and Fairweather's other sales efforts, Cunningham told prospective investors that AIN and Fairweather sold a variety of products to consumers. He further represented that AIN and Fairweather would use investor funds to purchase advertising for these products, and then split the profits derived from resulting sales with investors. He told investors they would receive profits of approximately \$10,000 to \$20,000 per month based on a \$2,000 initial investment.

5. In September 2007, Cunningham set up bank accounts to process investment funds and related payments to investors. In exchange, Cunningham received a fee from AIN or Fairweather. From September to at least early November 2007, Cunningham assured AIN investors that Fairweather would operate in the same manner as the AIN program, and he instructed current and prospective investors to send funds to bank accounts, some of which he personally controlled. Although Cunningham knew that AIN and Fairweather investors had not received anticipated profit payments, he continued to tell investors that they would receive payments.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

6. Cunningham received into bank accounts he controlled \$750,000.00 in investor funds and approximately \$17,000.00 in cash and checks from AIN and Fairweather. From these funds, he took approximately \$34,500.00 for his services in maintaining the accounts. The remainder of the funds he remitted to other investors at the discretion of AIN and Fairweather.

7. Contrary to Cunningham's representations, AIN and Fairweather did not use investor funds to pay for advertising expenses, did not have sales profits to distribute to investors, and misappropriated investor funds by using them to make payments to other investors, their principals, and salespersons. Cunningham knew or was reckless in not knowing that the representations he made about AIN and Fairweather's business, profits, and use of investor funds were false.

8. The interests Cunningham offered and sold in the AIN and Fairweather advertising programs were securities in the form of investment contracts. The offers and sales of these securities were not registered with the Commission, nor were they exempt from registration.

9. As a result of the conduct described above, Cunningham willfully violated Sections 5(a), 5(c), and 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder.

10. Respondent has submitted a sworn Statement of Financial Condition dated April 30, 2008 and other evidence and has asserted his inability to pay disgorgement plus prejudgment interest and a civil penalty.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest and for the protection of investors, to impose the sanctions agreed to in Respondent Cunningham's Offer.

Accordingly, pursuant to Section 8A of the Securities Act and Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Cunningham cease and desist from committing or causing any violations and any future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder;

B. Respondent Cunningham be, and hereby is barred from association with any broker or dealer, with the right to reapply for association after five (5) years to the appropriate self-regulatory organization, or if there is none, to the Commission;

C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the

following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

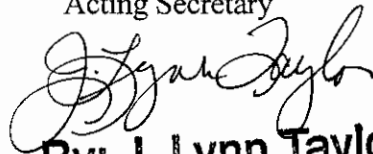
D. IT IS FURTHER ORDERED THAT Respondent shall pay disgorgement of \$43,100.00 and prejudgment interest of \$2,227.75, but that payment of such amount is waived based upon Respondent's sworn representations in his Statement of Financial Condition dated April 30, 2008 and other documents submitted to the Commission. Also, based upon Respondent's sworn representations in his Statement of Financial Condition dated April 30, 2008 and other documents submitted to the Commission, the Commission is not imposing a penalty against Respondent.

E. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; (2) seek an order directing payment of disgorgement and pre-judgment interest; and (3) seek an order directing payment of the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement and interest or a penalty should not be ordered; (3) contest the amount of disgorgement and interest to be ordered; (4) contest the imposition of the maximum penalty allowable under the law; or (5) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Florence E. Harmon

Acting Secretary



By: J. Lynn Taylor
Assistant Secretary

*Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES ACT OF 1933

Release No. 8969 / September 30, 2008

SECURITIES EXCHANGE ACT OF 1934

Release No. 58686 / September 30, 2008

ADMINISTRATIVE PROCEEDING

File No. 3-13261

In the Matter of

CASSIE E. MORRIS,

Respondent.

**ORDER INSTITUTING ADMINISTRATIVE
AND CEASE-AND-DESIST PROCEEDINGS,
PURSUANT TO SECTION 8A OF THE
SECURITIES ACT OF 1933 AND SECTIONS
15(b) AND 21C OF THE SECURITIES
EXCHANGE ACT OF 1934, MAKING
FINDINGS, AND IMPOSING REMEDIAL
SANCTIONS AND A CEASE-AND-DESIST
ORDER**

I.

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 8A of the Securities Act of 1933 ("Securities Act") and Sections 15(b) and 21C of the Securities Exchange Act of 1934 ("Exchange Act") against Cassie E. Morris ("Morris" or "Respondent").

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the "Offer") which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission's jurisdiction over her and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Section 8A of the Securities Act of 1933 and Sections 15(b) and 21C of the Securities Exchange Act of 1934, as set forth below.

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III.

On the basis of this Order and Respondent's Offer, the Commission finds¹ that:

Respondent

1. Respondent Cassie E. Morris, age 26, is a resident of Denver, Colorado. Respondent is not and never has been associated with a broker-dealer registered with the Commission.

Facts

2. In or about February 2007, through an Internet website and telephone solicitations, an operation called American Investors Network ("AIN") began soliciting investors to finance advertising for a variety of products it purportedly sold. In or about September 2007, AIN purportedly ceased soliciting investors, but Fairweather Management ("Fairweather") began soliciting investors' funds to continue the purported advertising program.

3. In June 2007, AIN hired Morris to join its sales staff and solicit prospective investors for its advertising program. Morris continued to solicit investments after the operation changed its name to Fairweather. Morris received transaction-based compensation in the form of a 10% commission based on the funds she raised for AIN and Fairweather. She received commissions totaling approximately \$29,800 for her sales of AIN and Fairweather interests.

4. Morris solicited prospective investors through telephone calls, emails, and postings on Internet message boards. Consistent with AIN's and Fairweather's other sales efforts, Morris told prospective investors that AIN and Fairweather sold a variety of products to consumers. She further represented that AIN and Fairweather would use investor funds to purchase advertising for these products, and then split the profits derived from resulting sales with investors. She told investors they would receive profits of approximately \$10,000 to \$20,000 per month based on a \$2,000 initial investment. Although Morris was aware that AIN and Fairweather investors had not received anticipated profit payments, she continued to tell investors that they would receive payments through at least November 2007.

5. Contrary to Morris's representations, AIN and Fairweather did not use investor funds to pay for advertising expenses, did not have sales profits to distribute to investors, and misappropriated investor funds by using them to make payments to other investors, their principals, and salespersons. Morris knew or was reckless in not knowing that the representations she made about AIN and Fairweather's business, profits, and use of investor funds were false.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

8. The interests Morris offered and sold in the AIN and Fairweather advertising programs were securities in the form of investment contracts. The offers and sales of these securities were not registered with the Commission, nor were they exempt from registration.

9. As a result of the conduct described above, Morris willfully violated Sections 5(a), 5(c), and 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder.

10. Respondent has submitted a sworn Statement of Financial Condition dated April 11, 2008 and other evidence and has asserted her inability to pay disgorgement plus prejudgment interest and a civil penalty.

IV.

In view of the foregoing, the Commission deems it appropriate, in the public interest and for the protection of investors, to impose the sanctions agreed to in Respondent Morris' Offer.

Accordingly, pursuant to Section 8A of the Securities Act and Sections 15(b) and 21C of the Exchange Act, it is hereby ORDERED that:

A. Respondent Morris cease and desist from committing or causing any violations and any future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act and Sections 10(b) and 15(a) of the Exchange Act and Rule 10b-5 thereunder;

B. Respondent Morris be, and hereby is barred from association with any broker or dealer, with the right to reapply for association after three (3) years to the appropriate self-regulatory organization, or if there is none, to the Commission;

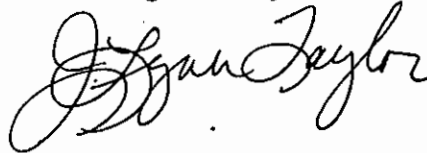
C. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

D. IT IS FURTHER ORDERED THAT Respondent shall pay disgorgement of \$29,800 and prejudgment interest of \$1,565.63, but that payment of such amount is waived based upon Respondent's sworn representations in her Statement of Financial Condition dated April 11, 2008 and other documents submitted to the Commission. Also, based upon Respondent's sworn representations in her Statement of Financial Condition dated April 11, 2008 and other documents submitted to the Commission, the Commission is not imposing a penalty against Respondent.

E. The Division of Enforcement ("Division") may, at any time following the entry of this Order, petition the Commission to: (1) reopen this matter to consider whether Respondent provided accurate and complete financial information at the time such representations were made; (2) seek an order directing payment of disgorgement and pre-judgment interest; and (3) seek an order directing payment of the maximum civil penalty allowable under the law. No other issue shall be considered in connection with this petition other than whether the financial information provided by Respondent was fraudulent, misleading, inaccurate, or incomplete in any material respect. Respondent may not, by way of defense to any such petition: (1) contest the findings in this Order; (2) assert that payment of disgorgement and interest or a penalty should not be ordered; (3) contest the amount of disgorgement and interest to be ordered; (4) assert the payment of a penalty should not be ordered; (5) contest the imposition of the maximum penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

By the Commission.

Florence E. Harmon
Acting Secretary

A handwritten signature in cursive script, appearing to read "J. Lynn Taylor".

By: J. Lynn Taylor
Assistant Secretary

*Commissioner Walter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
September 30, 2008

ADMINISTRATIVE PROCEEDING
File No. 3-13260

In the Matter of

MB Tech, Inc.,

Respondent.

ORDER INSTITUTING
PROCEEDINGS AND NOTICE OF
HEARING PURSUANT TO SECTION
12(j) OF THE SECURITIES
EXCHANGE ACT OF 1934

I.

The Securities and Exchange Commission ("Commission") deems it necessary and appropriate for the protection of investors that public administrative proceedings be, and hereby are, instituted pursuant to Section 12(j) of the Securities Exchange Act of 1934 ("Exchange Act") against MB Tech, Inc.

II.

After an investigation, the Division of Enforcement alleges that:

A. RESPONDENT

MB Tech, Inc. ("MBTT")¹ (CIK number 1085819) is a Nevada corporation located in Seoul, Korea with a class of equity securities registered with the Commission pursuant to Exchange Act Section 12(g). MBTT is delinquent in its periodic filings with the Commission, having not filed any periodic reports since it filed a Form 10-QSB for the period ended March 31, 2006 in which it reported a net loss of \$230,487 in that quarter. As of August 18, 2008, the common stock of MBTT was quoted on the Pink Sheets, had ten market makers, was eligible for the piggyback exception of Exchange Act Rule 15c2-11(f)(3), and had an average daily trading volume of 462,000 shares for the six months ended August 18, 2008.

B. DELINQUENT PERIODIC FILINGS

1. MBTT is delinquent in its periodic filings with the Commission, has repeatedly failed to meet its obligations to file timely periodic reports, and failed to heed the delinquency letter sent to it by the Commission's Division of Corporation Finance requesting compliance with its periodic filing obligations or, through its failure to

¹The short form of the issuer's name is also its stock symbol.

maintain a valid address on file with the Commission as required by Commission rules, did not receive such letter.

2. Exchange Act Section 13(a) and the rules promulgated thereunder require issuers of securities registered pursuant to Exchange Act Section 12 to file with the Commission current and accurate information in periodic reports. Specifically, Rule 13a-1 requires issuers to file annual reports, and Rule 13a-13 requires domestic issuers to file quarterly reports.

3. As a result of the foregoing, Respondent failed to comply with Exchange Act Section 13(a) and Rules 13a-1 and 13a-13 thereunder.

III.

In view of the allegations made by the Division of Enforcement, the Commission deems it necessary and appropriate for the protection of investors that public administrative proceedings be instituted to determine:

A. Whether the allegations contained in Section II are true and, in connection therewith, to afford Respondent an opportunity to establish any defenses to such allegations; and,

B. Whether to suspend (for a period not to exceed twelve months) or revoke the registration of each class of securities of Respondent registered pursuant to Section 12 of the Exchange Act.

IV.

IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence on the questions set forth in Section III hereof shall be convened at a time and place to be fixed, and before an Administrative Law Judge to be designated by further order as provided by Rule 110 of the Commission's Rules of Practice [17 C.F.R. § 201.110].

IT IS HEREBY FURTHER ORDERED that Respondent shall file an Answer to the allegations contained in this Order within ten (10) days after service of this Order, as provided by Rule 220(b) of the Commission's Rules of Practice [17 C.F.R. § 201.220(b)].

If Respondent fails to file the directed Answer, or fails to appear at a hearing after being duly notified, Respondent may be deemed in default and the proceedings may be determined against it upon consideration of this Order, the allegations of which may be deemed to be true as provided by Rules 155(a), 220(f), 221(f), and 310 of the Commission's Rules of Practice [17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310].

This Order shall be served forthwith upon Respondent personally or by certified, registered, or Express Mail, or by other means permitted by the Commission Rules of Practice.

IT IS FURTHER ORDERED that the Administrative Law Judge shall issue an initial decision no later than 120 days from the date of service of this Order, pursuant to Rule 360(a)(2) of the Commission's Rules of Practice [17 C.F.R. § 201.360(a)(2)].

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of investigative or prosecuting functions in this or any factually related proceeding will be permitted to participate or advise in the decision of this matter, except as witness or counsel in proceedings held pursuant to notice. Since this proceeding is not "rule making" within the meaning of Section 551 of the Administrative Procedure Act, it is not deemed subject to the provisions of Section 553 delaying the effective date of any final Commission action.

By the Commission.

A handwritten signature in cursive script, reading "Florence E. Harmon".

Florence E. Harmon
Acting Secretary

*Commissioner Watter
not participating*

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

September 30, 2008

In the Matter of

MB Tech, Inc.,

File No. 500-1

ORDER OF SUSPENSION OF
TRADING

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MB Tech, Inc. because it has not filed any periodic reports since the period ended June 30, 2006.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of MB Tech, Inc.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of MB Tech, Inc. is suspended for the period from 9:30 a.m. EDT on September 30, 2008, through 11:59 p.m. EDT on October 13, 2008.

By the Commission.

Florence E. Harmon

Florence E. Harmon
Acting Secretary

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