The Outstanding

Success of the

U.S. Securities and Exchange Commission

Compiled and Edited by

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About the Editor

Michael Erbschloe has worked for over 30 years performing analysis of the economics of information technology, public policy relating to technology, and utilizing technology in reengineering organization processes. He has authored several books on social and management issues of information technology that were published by McGraw Hill and other major publishers. He has also taught at several universities and developed technology-related curriculum. His career has focused on several interrelated areas:

- Technology strategy, analysis, and forecasting
- Teaching and curriculum development
- Writing books and articles
- Publishing and editing
- Public policy analysis and program evaluation

Books by Michael Erbschloe

Threat Level Red: Cybersecurity Research Programs of the
U.S. Government (CRC Press)
Social Media Warfare: Equal Weapons for All (Auerbach Publications)
Walling Out the Insiders: Controlling Access to Improve Organizational
Security (Auerbach Publications)
Physical Security for IT (Elsevier Science)
Trojans, Worms, and Spyware (Butterworth-Heinemann)
Implementing Homeland Security in Enterprise IT (Digital Press)
Guide to Disaster Recovery (Course Technology)
Socially Responsible IT Management (Digital Press)
Information Warfare: How to Survive Cyber Attacks (McGraw Hill)
The Executive's Guide to Privacy Management (McGraw Hill)
Net Privacy: A Guide to Developing & Implementing an e-business
Privacy Plan (McGraw Hill)

Introduction

The world of investing is fascinating and complex, and it can be very fruitful. But unlike the banking world, where deposits are guaranteed by the federal government, stocks, bonds and other securities can lose value. There are no guarantees. That's why investing is not a spectator sport. By far the best way for investors to protect the money they put into the securities markets is to do research and ask questions. This volume explains the creation an organization of the U.S. Securities and Exchange Commission as well as some of the major cases the Commission has had before it in the past.

The mission of the U.S. Securities and Exchange Commission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

- As more and more first-time investors turn to the markets to help secure their futures, pay for homes, and send children to college, our investor protection mission is more compelling than ever.
- As our nation's securities exchanges mature into global for-profit competitors, there is even greater need for sound market regulation.
- And the common interest of all Americans in a growing economy that produces jobs, improves our standard of living, and protects the value of our savings means that all of the SEC's actions must be taken with an eye toward promoting the capital formation that is necessary to sustain economic growth.

The laws and rules that govern the securities industry in the United States derive from a simple and straightforward concept: all investors, whether large institutions or private individuals, should have access to certain basic facts about an investment prior to buying it, and so long as they hold it. To achieve this, the SEC requires public companies to disclose meaningful financial and other information to the public. This provides a common pool of knowledge for all investors to use to judge for themselves whether to buy, sell, or hold a particular security. Only through the steady flow of timely, comprehensive, and accurate information can people make sound investment decisions.

The result of this information flow is a far more active, efficient, and transparent capital market that facilitates the capital formation so important to our nation's economy. To insure that this objective is always being met, the SEC continually works with all major market participants, including especially the investors in our securities markets, to listen to their concerns and to learn from their experience.

The SEC oversees the key participants in the securities world, including securities exchanges, securities brokers and dealers, investment advisors, and mutual funds. Here the SEC is concerned

primarily with promoting the disclosure of important market-related information, maintaining fair dealing, and protecting against fraud.

Crucial to the SEC's effectiveness in each of these areas is its enforcement authority. Each year the SEC brings hundreds of civil enforcement actions against individuals and companies for violation of the securities laws. Typical infractions include insider trading, accounting fraud, and providing false or misleading information about securities and the companies that issue them.

One of the major sources of information on which the SEC relies to bring enforcement action is investors themselves — another reason that educated and careful investors are so critical to the functioning of efficient markets. To help support investor education, the SEC offers the public a wealth of educational information on this Internet website, which also includes the EDGAR database of disclosure documents that public companies are required to file with the Commission.

Though it is the primary overseer and regulator of the U.S. securities markets, the SEC works closely with many other institutions, including Congress, other federal departments and agencies, the self-regulatory organizations (e.g. the stock exchanges), state securities regulators, and various private sector organizations. In addition, the Chairman of the SEC represents the agency as a member of the Financial Stability Oversight Council (FSOC).

The SEC's foundation was laid in an era that was ripe for reform. Before the Great Crash of 1929, there was little support for federal regulation of the securities markets. This was particularly true during the post-World War I surge of securities activity. Proposals that the federal government require financial disclosure and prevent the fraudulent sale of stock were never seriously pursued.

Tempted by promises of "rags to riches" transformations and easy credit, most investors gave little thought to the systemic risk that arose from widespread abuse of margin financing and unreliable information about the securities in which they were investing. During the 1920s, approximately 20 million large and small shareholders took advantage of post-war prosperity and set out to make their fortunes in the stock market. It is estimated that of the $50 billion in new securities offered during this period, half became worthless.

When the stock market crashed in October 1929, public confidence in the markets plummeted. Investors large and small, as well as the banks who had loaned to them, lost great sums of money in the ensuing Great Depression. There was a consensus that for the economy to recover, the public's faith in the capital markets needed to be restored. Congress held hearings to identify the problems and search for solutions.

Based on the findings in these hearings, Congress — during the peak year of the Depression — passed the Securities Act of 1933. This law, together with the Securities Exchange Act of 1934, which created the SEC, was designed to restore investor confidence in our capital markets by

providing investors and the markets with more reliable information and clear rules of honest dealing. The main purposes of these laws can be reduced to two common-sense notions:

Companies publicly offering securities for investment dollars must tell the public the truth about their businesses, the securities they are selling, and the risks involved in investing.

People who sell and trade securities – brokers, dealers, and exchanges – must treat investors fairly and honestly, putting investors' interests first.

Monitoring the securities industry requires a highly coordinated effort. Congress established the Securities and Exchange Commission in 1934 to enforce the newly-passed securities laws, to promote stability in the markets and, most importantly, to protect investors. President Franklin Delano Roosevelt appointed Joseph P. Kennedy, President John F. Kennedy's father, to serve as the first Chairman of the SEC.

Organization of the SEC

The SEC consists of five presidentially-appointed Commissioners, with staggered five-year terms (see SEC Organization Chart; text version also available). One of them is designated by the President as Chairman of the Commission — the agency's chief executive. By law, no more than three of the Commissioners may belong to the same political party, ensuring non-partisanship. The agency's functional responsibilities are organized into five Divisions and 23 Offices, each of which is headquartered in Washington, DC. The Commission's approximately 4,600 staff are located in Washington and in 11 Regional Offices throughout the country.

It is the responsibility of the Commission to:

- interpret and enforce federal securities laws;
- issue new rules and amend existing rules;
- oversee the inspection of securities firms, brokers, investment advisers, and ratings agencies;
- oversee private regulatory organizations in the securities, accounting, and auditing fields; and
- coordinate U.S. securities regulation with federal, state, and foreign authorities.

The Commission convenes regularly at meetings that are open to the public and the news media unless the discussion pertains to confidential subjects, such as whether to bring an enforcement action.

Divisions

Division of Corporation Finance

The Division of Corporation Finance assists the Commission in executing its responsibility to oversee corporate disclosure of important information to the investing public. Corporations are required to comply with regulations pertaining to disclosure that must be made when stock is initially sold and then on a continuing and periodic basis. The Division's staff routinely reviews the disclosure documents filed by companies. The staff also provides companies with assistance interpreting the Commission's rules and recommends to the Commission new rules for adoption.

The Division of Corporation Finance reviews documents that publicly-held companies are required to file with the Commission. The documents include:

- registration statements for newly-offered securities;

annual and quarterly filings (Forms 10-K and 10-Q);

proxy materials sent to shareholders before an annual meeting;

annual reports to shareholders;

documents concerning tender offers (a tender offer is an offer to buy a large number of shares of a corporation, usually at a premium above the current market price); and

filings related to mergers and acquisitions.

These documents disclose information about the companies' financial condition and business practices to help investors make informed investment decisions. Through the Division's review process, the staff monitors compliance with disclosure requirements and seeks to improve the quality of the disclosure. To meet the SEC's requirements for disclosure, a company issuing securities or whose securities are publicly traded must make available all information, whether it is positive or negative, that might be relevant to an investor's decision to buy, sell, or hold the security.

Corporation Finance provides administrative interpretations of the Securities Act of 1933, the Securities Exchange Act of 1934, and the Trust Indenture Act of 1939, and recommends regulations to implement these statutes. Working closely with the Office of the Chief Accountant, the Division monitors the activities of the accounting profession, particularly the Financial Accounting Standards Board (FASB), that result in the formulation of generally accepted accounting principles (GAAP). Increasingly, the Division also monitors the use by U.S. registrants of International Financial Reporting Standards (IFRS), promulgated by the International Accounting Standards Board.

The Division's staff provides guidance and counseling to registrants, prospective registrants, and the public to help them comply with the law. For example, a company might ask whether the offering of a particular security requires registration with the SEC. Corporation Finance would share its interpretation of the relevant securities regulations with the company and give it advice on compliance with the appropriate disclosure requirement.

The Division uses no-action letters to issue guidance in a more formal manner. A company seeks a no-action letter from the staff of the SEC when it plans to enter uncharted legal territory in the securities industry. For example, if a company wants to try a new marketing or financial

technique, it can ask the staff to write a letter indicating whether it would or would not recommend that the Commission take action against the company for engaging in its new practice.

How the SEC Rulemaking Process Works

Rulemaking is the process by which federal agencies implement legislation passed by Congress and signed into law by the President. Major pieces of legislation, such as the Securities Act of 1933, the Securities Exchange Act of 1934, and the Investment Company and Investment Adviser Acts of 1940 provide the framework for the SEC's oversight of the securities markets. These statutes generally are broadly drafted, establishing basic principles and objectives. To ensure that the intent of Congress is carried out in specific circumstances — and as the securities markets evolve technologically, expand in size, and offer new products and services — the SEC engages in rulemaking. Rulemaking can involve several steps: concept release, rule proposal, and rule adoption.

Concept Release: The rulemaking process usually begins with a rule proposal, but sometimes an issue is so unique and/or complicated that the Commission seeks out public input on which, if any, regulatory approach is appropriate. A concept release is issued describing the area of interest and the Commission's concerns and usually identifying different approaches to addressing the problem, followed by a series of questions that seek the views of the public on the issue. The public's feedback is taken into consideration as the Commission decides which approach, if any, is appropriate.

Rule Proposal: The Commission publishes a detailed formal rule proposal for public comment. Unlike a concept release, a rule proposal advances specific objectives and methods for achieving them. Typically the Commission provides between 30 and 90 days for review and comment. Just as with a concept release, the public comment is considered vital to the formulation of a final rule.

Rule Adoption: Finally, the Commissioners consider what they have learned from the public exposure of the proposed rule, and seek to agree on the specifics of a final rule. If a final measure is then adopted by the Commission, it becomes part of the official rules that govern the securities industry.

Division of Trading and Markets

The Division of Trading and Markets assists the Commission in executing its responsibility for maintaining fair, orderly, and efficient markets. The staff of the Division provide day-to-day oversight of the major securities market participants: the securities exchanges; securities firms; self-regulatory organizations (SROs) including the Financial Industry Regulatory Authority (FInRA), the Municipal Securities Rulemaking Board (MSRB), clearing agencies that help facilitate trade settlement; transfer agents (parties that maintain records of securities owners); securities information processors; and credit rating agencies.

The Division also oversees the Securities Investor Protection Corporation (SIPC), which is a private, non-profit corporation that insures the securities and cash in the customer accounts of member brokerage firms against the failure of those firms. It is important to remember that SIPC insurance does not cover investor losses arising from market declines or fraud.

The Division's additional responsibilities include:

- carrying out the Commission's financial integrity program for broker-dealers;
- reviewing (and in some cases approving, under authority delegated from the Commission) proposed new rules and proposed changes to existing rules filed by the SROs;
- assisting the Commission in establishing rules and issuing interpretations on matters affecting the operation of the securities markets; and
- surveilling the markets.

Division of Investment Management

The Division of Investment Management assists the Commission in executing its responsibility for investor protection and for promoting capital formation through oversight and regulation of America's $66.8 trillion investment management industry. This important part of the U.S. capital markets includes mutual funds and the professional fund managers who advise them; analysts who research individual assets and asset classes; and investment advisers to individual customers. Because of the high concentration of individual investors in the mutual funds, exchange-traded funds, and other investments that fall within the Division's purview, the Division of Investment Management is focused on ensuring that disclosures about these investments are useful to retail customers, and that the regulatory costs which consumers must bear are not excessive.

The Division's additional responsibilities include:

- assisting the Commission in interpreting laws and regulations for the public and SEC inspection and enforcement staff;
- responding to no-action requests and requests for exemptive relief;
- reviewing investment company and investment adviser filings;
- assisting the Commission in enforcement matters involving investment companies and advisers; and
- advising the Commission on adapting SEC rules to new circumstances.

Division of Enforcement

The Division of Enforcement assists the Commission in executing its law enforcement function by recommending the commencement of investigations of securities law violations, by recommending that the Commission bring civil actions in federal court or as administrative proceedings before an administrative law judge, and by prosecuting these cases on behalf of the Commission. As an adjunct to the SEC's civil enforcement authority, the Division works closely with law enforcement agencies in the U.S. and around the world to bring criminal cases when appropriate.

The Division obtains evidence of possible violations of the securities laws from many sources, including market surveillance activities, investor tips and complaints, other Divisions and Offices of the SEC, the self-regulatory organizations and other securities industry sources, and media reports.

All SEC investigations are conducted privately. Facts are developed to the fullest extent possible through informal inquiry, interviewing witnesses, examining brokerage records, reviewing trading data, and other methods. With a formal order of investigation, the Division's staff may compel witnesses by subpoena to testify and produce books, records, and other relevant documents. Following an investigation, SEC staff present their findings to the Commission for its review. The Commission can authorize the staff to file a case in federal court or bring an administrative action. In many cases, the Commission and the party charged decide to settle a matter without trial.

Common conduct that may lead to SEC investigations include:

misrepresentation or omission of important information about securities;

manipulating the market prices of securities;

stealing customers' funds or securities;

violating broker-dealers' responsibility to treat customers fairly;

insider trading (violating a trust relationship by trading while in possession of material, non-public information about a security); and

selling unregistered securities.

Whether the Commission decides to bring a case in federal court or within the SEC before an administrative law judge may depend upon the type of sanction or relief that is being sought. For example, the Commission may bar someone from the brokerage industry in an administrative proceeding, but an order barring someone from acting as a corporate officer or director must be obtained in federal court. Often, when the misconduct warrants it, the Commission will bring both proceedings.

Civil action: The Commission files a complaint with a U.S. District Court and asks the court for a sanction or remedy. Often the Commission asks for a court order, called an injunction, that prohibits any further acts or practices that violate the law or Commission rules. An injunction can also require audits, accounting for frauds, or special supervisory arrangements. In addition, the SEC can seek civil monetary penalties, or the return of illegal profits (called disgorgement). The court may also bar or suspend an individual from serving as a corporate officer or director. A person who violates the court's order may be found in contempt and be subject to additional fines or imprisonment.

Administrative action: The Commission can seek a variety of sanctions through the administrative proceeding process. Administrative proceedings differ from civil court actions in that they are heard by an administrative law judge (ALJ), who is independent of the Commission. The administrative law judge presides over a hearing and considers the evidence presented by the Division staff, as well as any evidence submitted by the subject of the proceeding. Following the hearing the ALJ issues an initial decision that includes findings of fact and legal conclusions. The initial decision also contains a recommended sanction. Both the Division staff and the defendant may appeal all or any portion of the initial decision to the Commission. The Commission may affirm the decision of the ALJ, reverse the decision, or remand it for additional hearings. Administrative sanctions include cease and desist orders,

suspension or revocation of broker-dealer and investment advisor registrations, censures, bars from association with the securities industry, civil monetary penalties, and disgorgement.

Division of Economic and Risk Analysis

The Division of Economic and Risk Analysis assists the Commission in executing its mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation by integrating robust economic analysis and rigorous data analytics into the work of the SEC. The Division has a broad role in Commission activities, interacting with nearly every Division and Office, providing sophisticated and data-driven economic and risk analyses to help inform the agency's policymaking, rulemaking, enforcement, and examinations.

There are two main functions for the Division. First, DERA staff provide vital support in the form of economic analyses in support of Commission rulemaking and policy development. Second, the Division also provides economic analysis and research, risk assessment, and data analytics to critically support the agency's resources on matters presenting the greatest perceived risks in litigation, examinations, and registrant reviews, as well as providing economic support for enforcement matters.

Among the functions performed by the Division are:

Analyzing the potential economic effects of Commission rulemakings or other Commission actions. In this role, offices within DERA works closely with the other Divisions and Offices to help examine the need for regulatory action, analyze the potential economic effects of rules and other Commission actions, develop data-driven analyses of market activity, and assist in evaluating public comments and studies.

Providing quantitative and qualitative research and support related to risk assessment. DERA staff help the Commission to anticipate, identify, and manage risks, focusing on early identification of potential fraud and illegal or questionable activities. Staff collects, analyzes, and disseminates information to the Commission and its Staff about regulated entities and market activity.

Assisting the Division of Enforcement by, for example, providing economic and quantitative analysis and support in enforcement proceedings and settlement negotiations.

Offices

Office of the General Counsel

The General Counsel is appointed by the Chairman as the chief legal officer of the Commission, with overall responsibility for the establishment of agency policy on legal matters. The General Counsel serves as the chief legal advisor to the Chairman regarding all legal matters and services performed within, or involving, the agency, and provides legal advice to the Commissioners, the Divisions, the Offices, and other SEC components as appropriate.

The General Counsel represents the SEC in civil, private, or appellate proceedings as appropriate, including appeals from the decisions of the federal district courts or the Commission in enforcement matters, and appeals from the denial of requests under the Freedom of Information Act. Through its amicus curiae program, the General Counsel often intervenes in private appellate litigation involving novel or important interpretations of the securities laws, and the Office is responsible for coordinating with the Department of Justice in the preparation of briefs on behalf of the United States involving matters in which the SEC has an interest.

The General Counsel is also responsible for determining the adherence by attorneys in the SEC to appropriate professional standards, as well as for providing advice on standards of conduct to Commissioners and staff, as appropriate. It is responsible for the final drafting of all proposed legislation that the Chairman or the Commission choose to submit for consideration to the Congress or the states, and for coordinating the SEC staff positions on such legislation.

Office of the Chief Accountant

The Chief Accountant is appointed by the Chairman to be the principal adviser to the Commission on accounting and auditing matters. The Office of the Chief Accountant assists the Commission in executing its responsibility under the securities laws to establish accounting principles, and for overseeing the private sector standards-setting process. The Office works closely with the Financial Accounting Standards Board, whose accounting standards the Commission has recognized as generally accepted for purposes of the federal securities laws, as well as the International Accounting Standards Board and the American Institute of Certified Public Accountants.

In addition to its responsibility for accounting standards, the Commission is responsible for the approval or disapproval of auditing rules put forward by the Public Company Accounting Oversight Board, a private-sector regulator established by the Sarbanes-Oxley Act to oversee the

auditing profession. The Commission also has thorough-going oversight responsibility for all of the activities of the PCAOB, including approval of its annual budget. To assist the Commission in the execution of these responsibilities, the Office of the Chief Accountant is the principal liaison with the PCAOB. The Office also consults with registrants and auditors on a regular basis regarding the application of accounting and auditing standards and financial disclosure requirements.

Because of its expertise and ongoing involvement with questions concerning the financial books and records of public companies registered with the SEC, the Office of the Chief Accountant is often called upon to assist in addressing issues that arise in the context of Commission enforcement actions.

Office of Compliance Inspections and Examinations

The Office of Compliance Inspections and Examinations administers the SEC's nationwide examination and inspection program for registered self-regulatory organizations, broker-dealers, transfer agents, clearing agencies, investment companies, and investment advisers. The Office conducts inspections to foster compliance with the securities laws, to detect violations of the law, and to keep the Commission informed of developments in the regulated community. Among the more important goals of the examination program is the quick and informal correction of compliance problems. When the Office finds deficiencies, it issues a "deficiency letter" identifying the problems that need to be rectified and monitor the situation until compliance is achieved. Violations that appear too serious for informal correction are referred to the Division of Enforcement.

Office of Credit Ratings

In July 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), which amended Section 15E of the Securities Exchange Act of 1934 to enhance the regulation, accountability, and transparency of nationally recognized statistical rating organizations or "NRSROs."

The Dodd-Frank Act mandated the creation of the Office of Credit Ratings (“OCR”) in support of the Commission’s mission to protect investors, facilitate capital formation, and maintain fair, orderly and efficient markets. OCR was established in June 2012 with the appointment of its Director, Thomas J. Butler.

The Office is charged with administering the rules of the Commission with respect to the practices of NRSROs in determining credit ratings for the protection of users of credit ratings and in the public interest; promoting accuracy in credit ratings issued by NRSROs; and working to ensure that credit ratings are not unduly influenced by conflicts of interest and that NRSROs provide greater transparency and disclosure to investors.

In support of this mission, OCR conducts examinations of NRSROs to assess and promote compliance with statutory and Commission requirements; monitors the activities of NRSROs, conducts outreach with investors, issuers, and other industry participants; develops and administers rules affecting NRSROs; and provides guidance generally with respect to the Commission's regulatory initiatives related to NRSROs. OCR also liaises with domestic and foreign regulators on credit rating agency initiatives to facilitate regulatory cohesion and enhance the Commission's role in the global regulatory environment.

The Office is located in New York and Washington, D.C. and is staffed with individuals including examiners, attorneys and accountants with expertise in, among other areas, structured finance, corporate finance, municipal finance, financial institutions, insurance companies, and credit rating agencies.

Office of International Affairs

The SEC works extensively in the international arena to promote cooperation among national securities regulatory agencies, and to encourage the maintenance of high regulatory standards worldwide. The Office of International Affairs assists the Chairman and the Commission in the development and implementation of the SEC's international regulatory and enforcement initiatives. The Office negotiates bilateral and multilateral agreements for Commission approval on such subjects as regulatory cooperation and enforcement assistance, and oversees the implementation of such arrangements. It is also responsible for advancing the Commission's agenda in international meetings and organizations. The Office also conducts a technical assistance program for countries with emerging securities markets, which includes training both in the United States and in the requesting country. Over 100 countries currently participate in this program.

Office of Investor Education and Advocacy

The Office of Investor Education and Advocacy has three main functional areas:

The Office of Investor Assistance responds to questions, complaints, and suggestions from the members of the public. Tens of thousands of investors contact the SEC each year using the agency's online forms or our (800) SEC-0330 hotline (toll-free in U.S.) to ask questions on a

wide range of securities-related topics, to complain about problems with their investments or their financial professionals, or to suggest improvements to the agency's regulations and procedures.

The Office of Investor Education carries out the SEC's investor education program, which includes producing and distributing educational materials, participating in educational seminars and investor-oriented events, and partnering with federal agencies, state regulators, and others on investor literacy initiatives.

The Office of the Chief Counsel creates public-facing content on securities-related topics (including for Investor.gov, the SEC's website designed for individual investors) and provides advice to OIEA on securities and administrative law issues.

Office of Municipal Securities

The Office of Municipal Securities coordinates the SEC's municipal securities activities, administers SEC rules relating to the municipal securities market, advises the Commission on policy matters relating to the municipal bond market, and provides technical assistance in the development and implementation of major SEC initiatives in the municipal securities area.

Office of Ethics Counsel

The Office of the Ethics Counsel is responsible for advising and counseling all Commission employees and members on such issues as personal and financial conflicts of interest, securities holdings and transactions of Commission employees and their immediate families, gifts, seeking and negotiating other employment, outside activities, financial disclosure, and post-employment restrictions.

Office of the Investor Advocate

The Office of Investor Advocate has four core functions, to provide a voice for investors to ensure their needs are considered in SEC decision-making, to assist retail investors, to study investor behavior and to support the SEC’s Investor Advisory Committee.

Office of Women and Minority Inclusion

The Office of Minority and Women Inclusion (OMWI) is responsible for all matters related to diversity in management, employment and business activities at the SEC. OMWI is committed to

ensuring that diversity and inclusion are leveraged throughout the agency to advance the SEC's mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

Office of the Chief Operating Officer

The Office of the Chief Operating Officer assists the Chairman in developing and executing the management policies of the SEC. The Office formulates budget and authorization strategies, supervises the allocation and use of SEC resources, promotes management controls and financial integrity, manages the administrative support offices, and oversees the development and implementation of the SEC's automated information systems. The Office has six main functional areas:

The Office of Acquisitions develops and executes programs for the SEC's acquisitions policy, procurement and contract administration, acquisitions workforce training and certification, and government purchase card.

The Office of Financial Management administers the financial management and budget functions of the SEC. The Office assists the Chairman and the Executive Director in formulating budget and authorization requests, monitors the utilization of agency resources, and develops, oversees, and maintains SEC financial systems. These activities include cash management, accounting, fee collections, travel policy development, and oversight and budget justification and execution.

The Office of Support Operations assists the Chairman and the Executive Director in managing the agency's facilities and assets, and provides a wide range of support services to the SEC staff. The Office serves the Headquarters Office and all Regional Office locations on matters including property management, office lease acquisition and administration, space renovation, supplies and office equipment management, transportation, mail distribution, publications, printing, and desktop publishing. Also, OSO is responsible for the processing of requests under the Freedom of Information and Privacy Acts, the management of all agency records in accordance with the Federal Records Act, and maintaining the security and safety of all SEC facilities.

The Office of Human Resources assists the Chairman in recruiting and retaining the best and the brightest professional staff in the federal workforce, and in ensuring that the SEC remains the employer of choice within the federal government. The Office has overall responsibility for the strategic management of the SEC's human capital. In addition, it is responsible for ensuring compliance with all federal regulations for the following areas: recruitment, staffing, retention, and separation; position management and classification; compensation and benefits counseling and processing; leadership and employee development; performance management and awards; employee relations; labor relations; the SEC's disability, work/life, and telework programs; employee records processing and maintenance; and employee financial disclosure. The Office

also represents the Commission as the liaison to the U.S. Office of Personnel Management and other Federal Government agencies, various public and private-sector professional human resources organizations, and educational institutions in matters relating to human capital management.

The Office of Strategic Initiatives provides direct executive-level oversight for the ongoing transformation of specific functions and programs, including information services, and the EDGAR redesign program.

The Office of Information Technology supports the Commission and staff of the SEC in all aspects of information technology. The Office has overall management responsibility for the Commission's IT program including application development, infrastructure operations and engineering, user support, IT program management, capital planning, security, and enterprise architecture. The Office operates the Electronic Data Gathering Analysis and Retrieval (EDGAR) system, which electronically receives, processes, and disseminates more than 500,000 financial statements every year. The Office also maintains a very active website that contains a wealth of information about the Commission and the securities industry, and also hosts the EDGAR database for free public access.

Office of Legislative and Intergovernmental Affairs

The Office of Legislative Affairs and Intergovernmental Affairs serves as the agency's formal liaison with the Congress, other Executive Branch agencies, and state and local governments. The staff carefully monitor ongoing legislative activities and initiatives on Capitol Hill that affect the Commission and its mission. Through regular communication and consultation with House and Senate members and staff, the Office communicates legislators' goals to the agency, and communicates the agency's own regulatory and management initiatives to the Congress.

The Office is responsible for responding to congressional requests for testimony of SEC officials, as well as requests for documents, technical assistance, and other information. In addition, the Office monitors legislative and oversight hearings that pertain to the securities markets and the protection of investors, even when an SEC witness is not present.

Office of Public Affairs

The Office of Public Affairs (OPA) assists the Commission in making the work of the SEC open to the public, understandable to investors and accountable to taxpayers. The Office helps every other SEC division and office accomplish the agency's mission – to protect investors, maintain

fair, orderly, and efficient markets, and facilitate capital formation. OPA's principal activity is to communicate the agency's work and deliver the agency's data and other digital information to the public, market participants and other stakeholders on SEC.gov. In addition to managing SEC.gov and other digital media platforms, the Office administers internal and external communications programs.

Office of the Secretary

The Secretary of the Commission is appointed by the Chairman, and is responsible for the procedural administration of Commission meetings, rulemaking, practice, and procedure. Among the responsibilities of the Office are the scheduling and recording of public and non-public meetings of the Commission; the administration of the process by which the Commission takes action without a meeting (called the seriatim process); the administration of the duty-officer process (by which a single Commissioner is designated to authorize emergency action); the maintenance of records of Commission actions; and the maintenance of records of financial judgments in enforcement proceedings. The Office also provides advice to the Commission and the staff on questions of practice and procedure.

The Office reviews all SEC documents submitted by the staff to the Commission. These include rulemaking releases, SEC enforcement orders and litigation releases, SRO rulemaking notices and orders, and actions taken by SEC staff pursuant to delegated authority. In addition, it receives and tracks documents filed in administrative proceedings, requests for confidential treatment, and comment letters on rule proposals. The Office is responsible for publishing official documents and releases of Commission actions in the Federal Register and the SEC Docket, and it posts them on the SEC Internet website, www.sec.gov. The Office also monitors compliance with the Government in the Sunshine Act.

Office of Equal Employment Opportunity

Because the SEC's employees are its most important resource, the Office of Equal Employment Opportunity works to ensure that the agency's professional staff come from diverse backgrounds that reflect the diversity of the investing public. Equal employment opportunity at the SEC is a continuing commitment. To maintain neutrality in resolving disputes, the EEO Office is independent of any other SEC office. The EEO Director reports to the Chairman. The primary mission of the EEO Office is to prevent employment discrimination, including discriminatory harassment, so that all SEC employees have the working environment to support them in their efforts to protect investors, maintain healthy markets, and promote capital formation.

Office of the Inspector General

The Office of the Inspector General conducts internal audits and investigations of SEC programs and operations. Through these audits and investigations, the Inspector General seeks to identify and mitigate operational risks, enhance government integrity, and improve the efficiency and effectiveness of SEC programs.

Office of Administrative Law Judges

The Commission's Office of Administrative Law Judges consists of independent judicial officers who conduct hearings and rule on allegations of securities law violations in cases initiated by the Commission. When the Commission initiates a public administrative proceeding, it refers the cases to the Office, where it is assigned to an individual Administrative Law Judge (ALJ). The ALJ then conducts a public hearing that is similar to a non-jury trial in the federal courts. Just as a federal judge can do, an ALJ issues subpoenas, rules on motions, and rules on the admissibility of evidence. At the conclusion of the hearing, the parties submit proposed findings of fact and conclusions of law. The ALJ prepares an initial decision that includes factual findings and legal conclusions that are matters of public record. Parties may appeal an initial decision to the Commission, which can affirm, reverse, modify, set aside or remand for further proceedings. Appeals from Commission action are to a United States Court of Appeals.

The Laws That Govern the Securities Industry

Securities Act of 1933

Often referred to as the "truth in securities" law, the Securities Act of 1933 has two basic objectives:

- require that investors receive financial and other significant information concerning securities being offered for public sale; and
- prohibit deceit, misrepresentations, and other fraud in the sale of securities.

The full text of this Act is available at: http://www.sec.gov/about/laws/sa33.pdf.

Purpose of Registration

A primary means of accomplishing these goals is the disclosure of important financial information through the registration of securities. This information enables investors, not the government, to make informed judgments about whether to purchase a company's securities. While the SEC requires that the information provided be accurate, it does not guarantee it. Investors who purchase securities and suffer losses have important recovery rights if they can prove that there was incomplete or inaccurate disclosure of important information.

The Registration Process - reviewing corporate disclosure

In general, securities sold in the U.S. must be registered. The registration forms companies file provide essential facts while minimizing the burden and expense of complying with the law. In general, registration forms call for:

- a description of the company's properties and business;
- a description of the security to be offered for sale;
- information about the management of the company; and
- financial statements certified by independent accountants.

All companies, both domestic and foreign, must file their registration statements electronically. These statements and the accompanying prospectuses become public shortly after filing, and investors can access them using EDGAR. Registration statements are subject to examination for compliance with disclosure requirements.

Not all offerings of securities must be registered with the Commission. Some exemptions from the registration requirement include:

- private offerings to a limited number of persons or institutions;
- offerings of limited size;
- intrastate offerings; and
- securities of municipal, state, and federal governments.

By exempting many small offerings from the registration process, the SEC seeks to foster capital formation by lowering the cost of offering these types of securities to the public.

Securities Exchange Act of 1934

With this Act, Congress created the Securities and Exchange Commission. The Act empowers the SEC with broad authority over all aspects of the securities industry. This includes the power to register, regulate, and oversee brokerage firms, transfer agents, and clearing agencies as well as the nation's securities self regulatory organizations (SROs). The various stock exchanges, such as the New York Stock Exchange, and The Nasdaq Stock Market are SROs. The Financial Industry Regulatory Authority (FINRA) is also an SRO.

The Act also identifies and prohibits certain types of conduct in the markets and provides the Commission with disciplinary powers over regulated entities and persons associated with them.

The Act also empowers the SEC to require periodic reporting of information by companies with publicly traded securities.

Corporate Reporting

Companies with more than $10 million in assets whose equity securities are held by more than a specified number of holders must file annual and other periodic reports. These reports are available to the public through the SEC's EDGAR database.

Proxy Solicitations

The Securities Exchange Act also governs the disclosure in materials used to solicit shareholders' votes in annual or special meetings held for the election of directors and the approval of other corporate action. This information, contained in proxy materials, must be filed with the Commission in advance of any solicitation to ensure compliance with the disclosure rules. Solicitations, whether by management or shareholder groups, must disclose all important facts concerning the issues on which holders are asked to vote.

Tender Offers

The Securities Exchange Act requires disclosure of important information by anyone seeking to acquire more than 5 percent of a company's securities by direct purchase or tender offer. Such an offer often is extended in an effort to gain control of the company. As with the proxy rules, this allows shareholders to make informed decisions on these critical corporate events.

Insider Trading

The securities laws broadly prohibit fraudulent activities of any kind in connection with the offer, purchase, or sale of securities. These provisions are the basis for many types of disciplinary actions, including actions against fraudulent insider trading. Insider trading is illegal when a person trades a security while in possession of material nonpublic information in violation of a duty to withhold the information or refrain from trading.

Registration of Exchanges, Associations, and Others - market research - one way to do it

The Act requires a variety of market participants to register with the Commission, including exchanges, brokers and dealers, transfer agents, and clearing agencies. Registration for these organizations involves filing disclosure documents that are updated on a regular basis.

The exchanges and the Financial Industry Regulatory Authority (FINRA) are identified as self-regulatory organizations (SRO). SROs must create rules that allow for disciplining members for improper conduct and for establishing measures to ensure market integrity and investor protection. SRO proposed rules are published for comment before final SEC review and approval.

The full text of this Act can be read at: http://www.sec.gov/about/laws/sea34.pdf.

Trust Indenture Act of 1939

This Act applies to debt securities such as bonds, debentures, and notes that are offered for public sale. Even though such securities may be registered under the Securities Act, they may not be offered for sale to the public unless a formal agreement between the issuer of bonds and the bondholder, known as the trust indenture, conforms to the standards of this Act. The full text of this Act can be read at: http://www.sec.gov/about/laws/tia39.pdf.

Investment Company Act of 1940

This Act regulates the organization of companies, including mutual funds, that engage primarily in investing, reinvesting, and trading in securities, and whose own securities are offered to the investing public. The regulation is designed to minimize conflicts of interest that arise in these complex operations. The Act requires these companies to disclose their financial condition and investment policies to investors when stock is initially sold and, subsequently, on a regular basis. The focus of this Act is on disclosure to the investing public of information about the fund and

its investment objectives, as well as on investment company structure and operations. It is important to remember that the Act does not permit the SEC to directly supervise the investment decisions or activities of these companies or judge the merits of their investments. The full text of this Act is available at: http://www.sec.gov/about/laws/ica40.pdf.

Investment Advisers Act of 1940

This law regulates investment advisers. With certain exceptions, this Act requires that firms or sole practitioners compensated for advising others about securities investments must register with the SEC and conform to regulations designed to protect investors. Since the Act was amended in 1996, generally only advisers who have at least $100 million of assets under management or advise a registered investment company must register with the Commission. The full text of this Act is available at: http://www.sec.gov/about/laws/iaa40.pdf.

Sarbanes-Oxley Act of 2002

On July 30, 2002, President George W. Bush signed into law the Sarbanes-Oxley Act of 2002, which he characterized as "the most far reaching reforms of American business practices since the time of Franklin Delano Roosevelt." The Act mandated a number of reforms to enhance corporate responsibility, enhance financial disclosures and combat corporate and accounting fraud, and created the "Public Company Accounting Oversight Board," also known as the PCAOB, to oversee the activities of the auditing profession. The full text of the Act is available at: http://uscode.house.gov/download/pls/15C98.txt. (Please check the Classification Tables maintained by the US House of Representatives Office of the Law Revision Counsel for updates to any of the laws.) You can find links to all Commission rulemaking and reports issued under the Sarbanes-Oxley Act at: http://www.sec.gov/spotlight/sarbanes-oxley.htm.

Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010

The Dodd-Frank Wall Street Reform and Consumer Protection Act was signed into law on July 21, 2010 by President Barack Obama. The legislation set out to reshape the U.S. regulatory system in a number of areas including but not limited to consumer protection, trading restrictions, credit ratings, regulation of financial products, corporate governance and disclosure, and transparency. The full text of the Act is available at: http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf. (Please check the Classification Tables maintained by the US House of Representatives Office of the Law Revision Counsel for updates to any of the laws.) You can find links to all Commission rulemaking and reports issued under the Dodd Frank Act at: http://www.sec.gov/spotlight/dodd-frank.shtml.

Jumpstart Our Business Startups (JOBS) Act

On April 5, 2012, the Jumpstart Our Business Startups (JOBS) Act was signed into law by President Barack Obama. The JOBS Act requires the SEC to write rules and issue studies on

capital formation, disclosure, and registration requirements. Cost-effective access to capital for companies of all sizes plays a critical role in our national economy, and companies seeking access to capital should not be hindered by unnecessary or overly burdensome regulations. For more information on the JOBS Act, see our Jumpstart Our Business Startups (JOBS) Act Spotlight page.

Source: https://www.sec.gov/Article/whatwedo.html

SEC Enforcement Results: Fiscal Years 2014-2016

Washington D.C., Oct. 11, 2016 — The Securities and Exchange Commission announced that, in fiscal year 2016, it filed 868 enforcement actions exposing financial reporting-related misconduct by companies and their executives and misconduct by registrants and gatekeepers, as the agency continued to enhance its use of data to detect illegal conduct and expedite investigations.

The new single year high for SEC enforcement actions for the fiscal year that ended September 30 included the most ever cases involving investment advisers or investment companies (160) and the most ever independent or standalone cases involving investment advisers or investment companies (98). The agency also reached new highs for Foreign Corrupt Practices Act-related enforcement actions (21) and money distributed to whistleblowers ($57 million) in a single year.

The agency also brought a record 548 standalone or independent enforcement actions and obtained judgments and orders totaling more than $4 billion in disgorgement and penalties.

"By every measure the enforcement program continues to be a resounding success holding executives, companies and market participants accountable for their illegal actions," said SEC Chair Mary Jo White. "Over the last three years, we have changed the way we do business on the enforcement front by using new data analytics to uncover fraud, enhancing our ability to litigate tough cases, and expanding the playbook bringing novel and significant actions to better protect investors and our markets."

The SEC's most significant enforcement actions in fiscal year 2016 include:

Insider trading and beneficial ownership reporting-related charges against Leon G. Cooperman and his firm Omega Advisors.

Insider trading charges against William "Billy" Walters and his source Thomas C. Davis, a former Dean Foods Company board member.

A $415 million enforcement action against Merrill Lynch for violating customer protection rules by misusing customer cash and putting customer securities at risk. The firm also admitted wrongdoing.

A $267 million enforcement action against J.P. Morgan wealth management subsidiaries, for failing to disclose conflicts of interest to clients. The firms also admitted wrongdoing.

FCPA cases against the Och-Ziff hedge fund and its CEO and CFO and against VimpelCom Ltd. in which the companies paid hundreds of millions of dollars to settle the charges.

"This has been a strong year for the Enforcement Division, with groundbreaking insider trading and FCPA cases and other important actions across the full spectrum of the securities laws," added Andrew J. Ceresney, Director of the SEC's Enforcement Division. "Through their hard work and steadfast dedication to our mission, the Division's committed staff have helped protect investors and made our markets fairer and more reliable."

The agency also brought impactful first-of-their-kind actions in fiscal year 2016, including charges against: a firm solely for failing to file Suspicious Activity Reports when appropriate; an audit firm for auditor independence failures predicated on close personal relationships with audit clients; municipal advisors for violating the fiduciary duty for municipal advisors created by the 2010 Dodd-Frank Act and the municipal advisor antifraud provisions of the Dodd-Frank Act; a private equity adviser for acting as an unregistered broker; and an issuer of retail structured notes for misstatements and omissions. In addition, fiscal year 2016 included a first-of-its-kind trial victory: the first federal jury trial by the SEC against a municipality and one of its officers for violations of the federal securities laws.

Overview of SEC Enforcement in Fiscal Year 2016

The SEC brought many other impactful actions in fiscal year 2016 spanning the entire spectrum of the marketplace, examples of which are discussed below.

Combating Financial Fraud and Enhancing Issuer Disclosure

The SEC continued to prioritize issuer reporting and disclosure matters in fiscal year 2016 and brought a number of significant matters, including actions against companies and executives. These actions included: Weatherford International plc and two of its employees; Monsanto Company and three of its accounting and sales executives; First Mortgage Corporation and six senior executives; Navistar International Corporation and its former CEO; Logitech International and three of its former executives and a former director of accounting; 11 former executives and board members at Superior Bank and its holding company; RPM International Inc. and its General Counsel; IEC Electronics Corp. and two former executives; Uni-Pixel, Inc. and its former CEO and CFO; Martin Shkreli; and The St. Joe Company and five of its former top executives.

Holding Gatekeepers Accountable

Held attorneys, accountants and other gatekeepers accountable for failures to comply with professional standards.

In the second non-independence case against a major audit firm since 2009, charged Grant Thornton LLP, which admitted wrongdoing, and two of its partners, with ignoring red flags and fraud risks while conducting deficient audits of two publicly traded companies that the SEC had separately charged with improper accounting and other violations.

Brought important actions against auditing firms for violating auditor independence rules, including two Grant Thornton firms and Ernst & Young LLP.

Charged a private fund administrator with missing or ignoring clear indications of fraud while it was contracted to keep records and prepare financial statements and investor account statements for two client funds that the SEC charged with fraud.

Sanctioned a consultant to a Texas-based oil company based on charges that he improperly evaluated the severity of the company's internal control deficiencies (in addition to charges against the company, senior executives, and an outside auditor).

Charged lawyers with allegedly offering EB-5 investments while not registered to act as brokers.

Ensuring Fairness Among Market Participants

Sanctioned Barclays Capital Inc. and Credit Suisse Securities (USA) LLC for violating the federal securities laws while operating alternative trading systems (ATSs); Barclays admitted wrongdoing and agreed to pay a $35 million penalty – the largest penalty ever assessed against a dark pool – and Credit Suisse agreed to pay over $54 million in monetary sanctions, representing the largest overall settlement against an ATS.

Sanctioned Merrill Lynch for violations of the Market Access Rule, which requires firms to have adequate risk controls in place before providing customers with access to the market and imposed the largest penalty ever assessed in a Market Access Rule case ($12.5 million).

Imposed a $1 million penalty on Morgan Stanley Smith Barney LLC for the firm's failure to adopt written policies and procedures reasonably designed to protect customer records and information.

Rooting Out Insider Trading Schemes Through Innovative Uses of Data and Analytics

Charged 78 parties in cases involving trading on the basis of inside information. A number of these cases involved complex insider trading rings which were cracked by Enforcement's innovative uses of data and analytics to spot suspicious trading.

For example, brought insider trading cases against: two hedge fund managers and their source, who was a former employee of the U.S. Food and Drug Administration; a former Goldman Sachs employee; and a former senior employee at Puma Biotechnology Inc.

Uncovering Misconduct by Investment Advisers and Investment Companies

Brought eight enforcement actions related to private equity advisers, including cases against: three private equity fund advisers within The Blackstone Group; Fenway Partners, LLC and four of its employees; Cherokee Investment Partners, LLC and Cherokee Advisers, LLC; JH Partners, LLC; Blackstreet Capital Management, LLC and its managing member and principal owner; WL Ross & Co. LLC; four private equity fund advisers affiliated with Apollo Global Management; and First Reserve Management, L.P. Including these actions, the SEC has now brought eleven private equity-related actions in the last two years.

Charged Aequitas Management LLC, four affiliates, and three of the firm's top executives, with allegedly hiding the rapidly deteriorating financial condition of its enterprise while raising more than $350 million from more than 1,500 investors.

Sanctioned three AIG affiliates for steering mutual fund clients toward more expensive share classes so the firms could collect more fees.

Charged Morgan Stanley Investment Management based on unlawful prearranged trades known as "parking" that favored certain clients over others made by one of its portfolio managers. Also charged the portfolio manager, SG Americas, and a trader at SG Americas who assisted the schemes.

Sanctioned 13 investment advisory firms found to have violated securities laws by repeating the false claims made by investment management firm F-Squared Investments about its flagship product without obtaining sufficient documentation supporting these claims.

Fighting Market Manipulation and Microcap Fraud

Suspended trading in the securities of 199 issuers in order to combat market manipulation and microcap fraud threats to investors, including 19 issuers arising from a microcap fraud-fighting initiative known as Operation Shell-Expel.

Obtained a court order freezing the profits of a foreign trader who allegedly manipulated the stock of a Silicon Valley technology firm through a false EDGAR filing traced to a computer in Pakistan.

Obtained an emergency court order to freeze the assets of a United Kingdom resident charged with allegedly intruding into the online brokerage accounts of U.S. investors to make unauthorized stock trades that allowed him to profit on trades in his own account.

Charged several alleged perpetrators behind a $78 million pump-and-dump scheme involving the stock of Jammin' Java, a company that operates as Marley Coffee.

Charged proprietary trading firm Briargate Trading LLP and one of its co-founders with engaging in a manipulative trading strategy known as "spoofing."

Sanctioned three traders for two fraudulent trading schemes involving the mismarking of option orders to obtain execution priority and avoid transaction fees charged by options exchanges and "spoofing" to generate liquidity rebates from an options exchange.

Halting International and Affinity-Based Investment Frauds

Charged and obtained asset freezes against the operator of a worldwide pyramid scheme that allegedly falsely promised investors would profit from a venture purportedly backed by the company's massive amber holdings.

Charged Vu H. Le a/k/a Vinh H. Le and his company, TeamVinh.com LLC, in connection with their alleged fraudulent raising of more than $3 million from over 5,600 investors throughout the United States and in various foreign countries through a multi-level marketing scheme.

Charged entities and individuals with schemes targeting seniors and the elderly, including:

Charges against a Los Angeles-based litigation marketing company and its co-founders for allegedly defrauding retirees and other investors who were told they would earn hefty investment returns from settlement proceeds.

Charges against two brothers, and a company that they founded purportedly to develop and sell real estate for allegedly engaging in a $2.7 million Ponzi scheme that targeted approximately 30, largely elderly and unsophisticated investors over a six-year period.

Policing the Public Finance Markets

Announced enforcement actions against 14 municipal underwriting firms and 71 municipal issuers and other obligated persons for violations in municipal bond offerings as part of the Municipalities Continuing Disclosure Cooperation (MCDC) Initiative.

Charged State Street Bank and Trust Company, a former State Street senior vice president, and a lobbyist with conducting a pay-to-play scheme to win contracts to service Ohio pension funds.

Charged Ramapo, N.Y., its local development corporation, and four town officials who allegedly hid a deteriorating financial situation from their municipal bond investors.

Charged California's largest agricultural water district, its general manager and former assistant general manager with misleading investors about its financial condition as it issued a $77 million bond offering.

Charged a municipal advisor, its CEO, and two employees for breaching their fiduciary duty by failing to disclose a conflict of interest to a municipal client.

Cracking Down on Misconduct Involving Complex Financial Instruments

Charged UBS AG, Merrill Lynch, and UBS Financial Services with violations related to structured notes.

Sanctioned credit rating agency DBRS Inc. for misrepresenting its surveillance methodology for ratings of certain complex instruments.

Combating Foreign Corrupt Practices

Filed significant FCPA actions against PTC Inc. and two of its Chinese subsidiaries; LAN Airlines and its CEO; Anheuser-Busch InBev; Qualcomm Incorporated; Las Vegas Sands Corp.; AstraZeneca PLC; and GlaxoSmithKline plc.

Announced non-prosecution agreements with two unrelated companies who both self-reported misconduct and cooperated extensively with the SEC.

Standing Up for Whistleblowers

The whistleblower program awarded over $57 million to 13 whistleblowers in fiscal year 2016, which is more than in all previous years combined.

Brought the first stand-alone action for retaliation against a whistleblower.

Charged Anheuser-Busch, Merrill Lynch, BlueLinx Holdings Inc., and Health Net Inc. for violating Exchange Act Rule 21F-17, which prohibits the use of confidentiality agreements or other actions to impede a whistleblower from communicating with the SEC.

Demanding Admissions in Important Cases Enhancing Public Accountability

Demanded and obtained acknowledgements of wrongdoing under the admissions policy. Cases from this fiscal year involved an audit firm that issued false and misleading unqualified audit opinions, a failure to disclose conflicts of interest to clients, violating federal securities laws while operating an ATS, an unregistered securities offering by Ethiopia's electric utility, violations of the SEC's Customer Protection Rule, a computer coding error that caused incomplete blue sheet data to be provided to the SEC, among other actions.

Successful Litigation

Won five U.S. District Court jury or bench trials in fiscal year 2016. Obtained favorable jury verdicts in the following cases:

Nan Huang was found liable for illegally insider trading on information he obtained while working as a data analyst for credit card issuer Capital One.

Former stock brokers Daryl Payton and Benjamin Durant were found liable for insider trading ahead of a $1.2 billion acquisition of SPSS Inc. by IBM Corporation.

Stephen Ferrone, the former CEO of biopharmaceutical company Immunosyn Corp., was found liable for fraudulently misleading investors about regulatory approval of the company's sole product, and for signing and filing false certifications included with Immunosyn's annual and quarterly reports.

The City of Miami and its former budget director Michael Boudreaux were found liable for multiple counts of antifraud violations of the federal securities laws in connection with the city's disclosures concerning the deteriorating financial condition of the city during 2007 and 2008 and in three separate offerings of municipal securities in 2009.

Source: https://www.sec.gov/news/pressrelease/2016-212.html

SEC Foreign Corrupt Practices Act Cases

Enforcement of the Foreign Corrupt Practices Act (FCPA) continues to be a high priority area for the SEC. In 2010, the SEC's Enforcement Division created a specialized unit to further enhance its enforcement of the FCPA, which prohibits companies issuing stock in the U.S. from bribing foreign officials for government contracts and other business. The following is a list of the SEC's FCPA enforcement actions listed by calendar year:

2017

Telia – The Sweden-based telecommunications provider agreed to pay $965 million in a global settlement to resolve violations of the FCPA to win business in Uzbekistan. (9/21/17)

Halliburton – The company agreed to pay $29.2 million and a former vice president agreed to pay a $75,000 penalty to settle charges related to payments made to a local company in Angola in the course of winning lucrative oilfield services contracts. (7/27/17)

Michael L. Cohen and Vanja Baros – The former Och-Ziff executives were charged with being the driving forces behind a far-reaching bribery scheme that paid tens of millions of dollars in bribes to high-level government officials in Africa. (1/26/17) NOTE: Och-Ziff and other executives settled charges in 2016.

Orthofix International – The Texas-based medical device company agreed to pay more than $6 million to settle charges that its subsidiary in Brazil used high discounts and improper payments to induce doctors under government employment to use Orthofix products. (1/18/17)

SQM - Chilean-based chemical and mining company Sociedad Quimica y Minera de Chile S.A. agreed to pay more than $30 million to resolve parallel civil and criminal cases finding that it violated the FCPA by making improper payments to Chilean political figures and others. (1/13/17)

Biomet - The Warsaw, Ind.-based medical device manufacturer agreed to pay more than $30 million to resolve SEC and Justice Department investigations into the company's anti-bribery violations in Brazil and Mexico. (1/12/17)

Cadbury Limited/Mondelez International - The global snacking business agreed to pay a $13 million penalty for FCPA violations occurring after Mondelez (then Kraft Foods Inc.) acquired Cadbury and its subsidiaries, including one in India that proceeded to make illicit payments to obtain government licenses and approvals for a chocolate factory in Baddi. (1/6/17)

2016

General Cable Corporation - The Kentucky-based wire and cable manufacturer agreed to pay more than $75 million to resolve SEC and Justice Department cases related to improper payments to win business in Angola, Bangladesh, China, Egypt, Indonesia, and Thailand. (12/29/16)

Teva Pharmaceutical - The global generic drug manufacturer agreed to pay $519 million to settle parallel civil and criminal charges that it paid bribes to foreign government officials in Russia, Ukraine, and Mexico. (12/22/16)

Braskem S.A. - The Brazilian-based petrochemical manufacturer agreed to pay $957 million in a global settlement for concealing millions of dollars in illicit bribes paid to Brazilian government officials to win business. (12/21/16)

JPMorgan - The firm agreed to pay $264 million to the SEC, Justice Department, and Federal Reserve to settle charges that it corruptly influenced government officials and won business in the Asia-Pacific region by giving jobs and internships to their relatives and friends. (11/17/16)

Embraer - The Brazilian-based aircraft manufacturer agreed to pay $205 million to settle charges that it violated the FCPA to win business in the Dominican Republic, Saudi Arabia, Mozambique, and India. (10/24/16)

GlaxoSmithKline – The UK-based pharmaceutical company agreed to pay a $20 million penalty to settle charges that it violated the FCPA when its China-based subsidiaries engaged in pay-to-prescribe schemes to increase sales. (9/30/16)

Och-Ziff - The hedge fund and two executives settled charges related to the use of intermediaries, agents, and business partners to pay bribes to high-level government officials in Africa. Och-Ziff agreed to pay $412 million in civil and criminal matters, and CEO Daniel Och agreed to pay $2.2 million to settle charges against him. (9/29/16)

Anheuser-Busch InBev - The Belgium-based global brewery agreed to pay $6 million to settle charges that it violated the FCPA by using third-party sales promoters to make improper payments to government officials in India and chilled a whistleblower who reported the misconduct. (9/28/16)

Nu Skin Enterprises - The Provo, Utah-based skin care products company agreed to pay more than $765,000 for an improper payment made to a charity related to a high-ranking member of China's Communist Party in order to influence the outcome of a pending provincial regulatory investigation in China. (9/20/16)

Jun Ping Zhang - The former chairman/CEO of Harris Corporation's subsidiary in China agreed to pay a $46,000 penalty for violating FCPA by facilitating a bribery scheme that provided illegal gifts to Chinese government officials in order to obtain and retain business for the company. (9/13/16)

AstraZeneca - The U.K.-based biopharmaceutical company agreed to pay more than $5 million to settle FCPA violations resulting from improper payments made by subsidiaries in China and Russia to foreign officials. (8/30/16)

Key Energy Services - The Houston-based oil field services company agreed to pay $5 million to settle charges that it violated the FCPA as a result of payments made by its Mexican subsidiary to an official responsible for negotiating contracts at Mexico's state-owned oil company. (8/11/16)

LAN Airlines - The South American-based airline agreed to pay more than $22 million to settle parallel civil and criminal cases related to improper payments authorized during a dispute between the company and union employees in Argentina. (7/25/16)

Johnson Controls - The Wisconsin-based global provider of HVAC systems agreed to pay more than $14 million to settle charges that its Chinese subsidiary used sham vendors to make improper payments to employees of Chinese government-owned shipyards and other officials to win business. (7/11/16)

Analogic Corp. and Lars Frost - The Massachusetts-based medical device manufacturer agreed to pay nearly $15 million to settle parallel SEC and DOJ actions after its Danish subsidiary acted as a conduit for distributors to funnel money to third parties in hundreds of highly suspicious transactions. Frost, the subsidiary's CFO at the time, agreed to settle SEC charges and pay a penalty. (6/21/16)

Akamai Technologies - SEC announced a non-prosecution agreement (NPA) with the Massachusetts-based internet services provider in which the company will disgorge more than $650,000 in profits connected to bribes paid to Chinese officials by a foreign subsidiary. Akamai promptly self-reported the misconduct and cooperated extensively with the SEC's investigation. (6/7/16)

Nortek - SEC announced a non-prosecution agreement (NPA) with the Rhode Island-based residential and commercial building products manufacturer in which the company will disgorge nearly $300,000 in profits connected to bribes paid to Chinese officials by a foreign subsidiary. Nortek promptly self-reported the misconduct and cooperated extensively with the SEC's investigation. (6/7/16)

Las Vegas Sands - The casino and resort company agreed to pay $9 million to settle charges that it failed to properly authorize or document millions of dollars in payments to a consultant facilitating business activities in China and Macao. (4/7/16)

Novartis AG - The Swiss-based pharmaceutical company agreed to pay $25 million to settle charges that it violated the FCPA when its China-based subsidiaries engaged in pay-to-prescribe schemes to increase sales. (3/23/16)

Nordion Inc. and employee - The Canadian-based health science company and a former employee agreed to collectively pay more than $500,000 to settle FCPA charges. Mikhail Gourevitch, an engineer, arranged bribes to Russian officials for drug approvals and received kickbacks in return. Nordion lacked sufficient internal controls to detect and prevent the scheme. (3/3/16)

Qualcomm - The San Diego-based company agreed to pay $7.5 million to settle charges that it violated the FCPA when it hired relatives of Chinese officials deciding whether to select company's products. (3/1/16)

VimpelCom - The Dutch-based telecommunications provider agreed to a $795 million global settlement to resolve its violations of the FCPA to win business in Uzbekistan. (2/18/16)

PTC - The Massachusetts-based tech company and its Chinese subsidiaries agreed to pay more than $28 million to settle FCPA cases involving bribery of Chinese government officials to win business. (2/16/16)

SciClone Pharmaceuticals - The California-based pharmaceutical firm agreed to pay $12 million to settle SEC charges that it violated the FCPA when international subsidiaries increased sales by making improper payments to health care professionals employed at state health institutions in China. (2/4/16)

Ignacio Cueto Plaza - The airline executive agreed to pay a $75,000 penalty to settle SEC charges that he violated the FCPA when he authorized improper payments to a third-party consultant who he knew could route portions of the money to union officials in the midst of a labor dispute. (2/4/16)

SAP SE - The software manufacturer agreed to give up $3.7 million in sales profits to settle SEC charges that it violated the FCPA when its deficient internal controls enabled an executive to pay bribes to procure business in Panama. (2/1/16)

2015

Bristol-Myers Squibb - SEC charged the New York-based pharmaceutical company with violating the FCPA when employees of its China-based joint venture made improper payments to obtain sales. Bristol-Myers Squibb agreed to pay more than $14 million to settle charges. (10/5/15)

Hitachi - SEC charged the Tokyo-based conglomerate with violating the FCPA by inaccurately recording improper payments to South Africa's ruling political party in connection with contracts to build power plants. Hitachi agreed to pay $19 million to settle charges. (9/28/15)

BNY Mellon - SEC charged the global investment company with violating the FCPA by providing valuable student internships to family members of foreign government officials affiliated with a Middle Eastern sovereign wealth fund. BNY Mellon agreed to pay $14.8 million to settle charges. (8/18/15)

Vicente E. Garcia - SEC charged a former SAP SE executive with violating the FCPA by bribing Panamanian government officials through an intermediary to procure software license sales and receiving more than $85,000 in kickbacks. Garcia agreed to settle the case and return the kickbacks plus interest. (8/12/15)

Mead Johnson Nutrition – SEC charged the infant formula manufacturer with violating the FCPA when its Chinese subsidiary made improper payments to health care professionals to recommend the company's product to new and expectant mothers. Mead Johnson Nutrition agreed to pay $12 million to settle the case. (7/28/15)

BHP Billiton - SEC charged global resources company BHP Billiton with violating the FCPA when it sponsored the attendance of foreign government officials at the Summer Olympics. BHP Billiton agreed to pay a $25 million penalty to settle the case. (5/20/15)

FLIR Systems - SEC charged Oregon-based FLIR Systems with violating the FCPA by financing a "world tour" of personal travel for Middle East government officials who played key roles in decisions to purchase FLIR products. FLIR, which earned more than $7 million in profits from such sales, agreed to pay $9.5 million to settle the charges. (4/8/15)

Goodyear Tire & Rubber Company - SEC charged Goodyear with violating the FCPA when its subsidiaries paid bribes to land tire sales in Kenya and Angola. The company agreed to pay $16 million to settle the charges. (2/24/15)

Walid Hatoum / PBSJ Corporation - SEC charged a former officer at a Tampa, Fla.-based engineering firm with violating the FCPA by offering and authorizing bribes and employment to foreign officials to secure Qatari government contracts. Hatoum agreed to settle the charges, and PBSJ entered into a deferred prosecution agreement and must pay $3.4 million. (1/22/15)

2014

Avon Products Inc. - SEC charged the global beauty products company with violating the FCPA by failing to put controls in place to detect and prevent payments and gifts to Chinese government officials from a subsidiary. Avon agreed to pay $135 million to settle the SEC charges and a parallel criminal case. (12/17/14)

Bruker Corporation - SEC charged the Billerica, Mass.-based global manufacturer of scientific instruments with violating the FCPA by providing non-business related travel and improper

payments to various Chinese government officials in an effort to win business. The company agreed to pay $2.4 million to settle the charges. (12/15/14)

Stephen Timms and Yasser Ramahi (FLIR) - SEC charged two former employees in the Dubai office of Oregon-based defense contractor FLIR Systems with violating the FCPA by taking government officials in Saudi Arabia on a “world tour” to help secure business for the company. The two employees later falsified records in an attempt to hide their misconduct. Both agreed to settle the charges and pay penalties. (11/17/14)

Bio-Rad Laboratories - SEC charged the California-based clinical diagnostic and life science research company with violating the FCPA when its subsidiaries made improper payments to foreign officials in Russia, Vietnam, and Thailand in order to win business. (11/3/14)

Layne Christensen Company - SEC charged the Texas-based water management, construction, and drilling company with violating the FCPA by making improper payments to foreign officials in several African countries in order to obtain beneficial treatment and reduce its tax liability. (10/27/14)

Smith & Wesson - SEC charged the Springfield, Mass.-based firearms manufacturer with violating the FCPA when employees and representatives authorized and made improper payments to foreign officials while trying to win contracts to supply products to military and law enforcement overseas. (7/28/14)

Hewlett-Packard - SEC charged the Palo Alto, Calif.-based technology company with violating the FCPA when subsidiaries in three countries made improper payments to government officials to obtain or retain lucrative public contracts. H-P agreed to pay $108 million to settle the SEC charges and a parallel criminal case. (4/9/14)

Alcoa - SEC charged the global aluminum producer with violating the FCPA when its subsidiaries repeatedly paid bribes to government officials in Bahrain to maintain a key source of business. Alcoa agreed to pay $384 million to settle the SEC charges and a parallel criminal case. (1/9/14)

2013

Archer-Daniels-Midland Co. - SEC charged the Illinois-based global food processor for failing to prevent illicit payments made by foreign subsidiaries to Ukrainian government officials in violation of the FCPA. ADM agreed to pay more than $36 million to settle the SEC's charges. (12/20/13)

Weatherford International - SEC charged the Swiss-based oilfield services company with authorizing bribes and improper travel and entertainment for foreign officials in the Middle East

and Africa to win business. Weatherford agreed to pay more than $250 million to settle cases with the SEC and other agencies. (11/26/13)

Stryker Corporation - SEC charged the Michigan-based medical technology company with violating the FCPA by bribing doctors and other government officials in five countries to obtain or retain business and make $7.5 million in illicit profits. Stryker agreed to pay more than $13.2 million to settle the SEC's charges. (10/24/13)

Diebold - SEC charged the Ohio-based manufacturer of ATMs and bank security systems with violating the FCPA by bribing officials at government-owned banks with pleasure trips to popular tourist destinations in order to illicitly win business. Diebold agreed to pay $48 million to settle SEC and Justice Department cases. (10/22/13)

Total S.A. - SEC charged the France-based oil and gas company for paying bribes to intermediaries of an Iranian government official who then exercised his influence to help the company obtain valuable contracts to develop oil and gas fields. Total agreed to pay $398 million to settle SEC and criminal charges. (5/29/13)

Ralph Lauren Corporation - SEC announced a non-prosecution agreement (NPA) with Ralph Lauren Corporation in which the company will disgorge more than $700,000 in illicit profits and interest obtained in connection with bribes paid by a subsidiary to government officials in Argentina from 2005 to 2009. (4/22/13)

Parker Drilling Company - SEC charged the worldwide drilling services and project management firm with violating the FCPA by authorizing improper payments to a third-party intermediary in order to entertain Nigerian officials involved in resolving the company's customs disputes. Parker Drilling agreed to pay $4 million to settle the SEC's charges. (4/16/13)

Koninklijke Philips Electronics - SEC charged the Netherlands-based health care company with FCPA violations related to improper payments made by employees at its Polish subsidiary to health care officials in Poland. Philips agreed to pay more than $4.5 million to settle the charges. (4/5/13)

2012

Eli Lilly and Company - SEC charged the Indianapolis-based pharmaceutical company for improper payments its subsidiaries made to foreign government officials to win business in Russia, Brazil, China, and Poland. Lilly agreed to pay more than $29 million to settle the charges. (12/20/12)

Allianz SE - SEC charged the Germany-based insurer with violating the books and records and internal controls provisions of the FCPA for improper payments to government officials in

Indonesia that resulted in $5.3 million in profits. Allianz agreed to pay more than $12.3 million to settle the SEC's charges. (12/17/12)

Tyco International - SEC charged the Swiss-based global manufacturer with violating the FCPA when subsidiaries arranged illicit payments to foreign officials in more than a dozen countries. Tyco agreed to pay $26 million to settle the SEC's charges and resolve a criminal matter with the Justice Department. (9/24/12)

Oracle - SEC charged the California-based computer technology company with violating FCPA by failing to prevent a subsidiary from secretly setting aside money off the company's books to make unauthorized payments to phony vendors in India. (8/16/12)

Pfizer - SEC charged the pharmaceutical company for illegal payments made by its subsidiaries to foreign officials in Bulgaria, China, Croatia, Czech Republic, Italy, Kazakhstan, Russia, and Serbia to obtain regulatory approvals, sales, and increased prescriptions for its products. Pfizer and recently acquired Wyeth LLC - charged with its own FCPA violations - agreed to pay a combined $45 million in their settlements. (8/7/12)

Orthofix International - SEC charged the Texas-based medical device company with violating the FCPA when a subsidiary paid routine bribes referred to as “chocolates” to Mexican officials in order to obtain lucrative sales contracts with government hospitals. (7/10/12)

Former Morgan Stanley executive - SEC charged Garth R. Peterson with secretly acquiring millions of dollars worth of real estate investments for himself and an influential Chinese official who in turn steered business to Morgan Stanley's funds. He agreed to a settlement in which he is permanently barred from the securities industry and must pay more than $250,000 in disgorgement and relinquish his approximately $3.4 million interest in Shanghai real estate acquired in his scheme. (4/25/12)

Biomet - SEC charged the Warsaw, Ind.-based medical device company with violating the FCPA when its subsidiaries and agents bribed public doctors in Argentina, Brazil, and China for nearly a decade to win business. (3/26/12)

Noble Corporation executives - SEC charged three oil services executives with bribing customs officials in Nigeria to obtain illicit permits for oil rigs in order to retain business under lucrative drilling contracts. (2/24/12)

Smith & Nephew - SEC charged the London-based medical device company with violating the FCPA when its U.S. and German subsidiaries bribed public doctors in Greece for more than a decade to win business. The company and its U.S. subsidiary agreed to pay more than $22 million to settle civil and criminal cases. (2/6/12)

2011

Magyar Telekom - SEC charged the largest telecommunications provider in Hungary and three of its former top executives with bribing government and political party officials in Macedonia and Montenegro. The firm and its parent company agreed to pay $95 million to settle civil and criminal charges. (12/29/11)

Executives Agree to Penalties and Officer-and-Director Bars (4/24/17)

Aon Corporation - SEC charged one of the world's largest insurance brokerage firms with violations of the books and records and internal controls provisions of the FCPA. Aon agreed to pay $14.5 million to settle SEC charges and a $1.7 million criminal fine to the Department of Justice. (12/20/11)

Siemens executives - SEC charged seven former Siemens executives for their involvement in the company's decade-long bribery scheme to retain a $1 billion government contract to produce national identity cards for Argentine citizens. (12/13/11)

Executive Agrees to Pay $275,000 to Settle SEC's Charges (4/15/13)

Watts Water Technologies and Leesen Chang – SEC charged the company and a former vice president of sales for improper payments disguised as sales commissions by its Chinese subsidiary to employees at state-owned design institutes in order to influence design specifications that favored their valve products for infrastructure products in China. (10/13/11)

Diageo – SEC charged one of the world's largest producers of premium alcoholic beverages for making $2.7 million in improper payments to government officials in India, Thailand, and South Korea to obtain lucrative sales and tax benefits. Diageo agreed to pay more than $16 million to settle the case. (7/27/11) [Administrative Proceeding]

Armor Holdings – SEC charged the Jacksonville, Fla.-based body armor supplier for illicit payments to United Nations officials to obtain contracts related to U.N. peacekeeping missions. Armor Holdings agreed to an SEC settlement of $5.7 million and a criminal fine of $10.29 million. (7/13/11)

Tenaris – SEC sanctioned the global manufacturer of steel pipe products for bribing Uzbekistan government officials during a bidding process to supply pipelines for transporting oil and natural gas. Tenaris agreed to pay $5.4 million under a Deferred Prosecution Agreement, and paid a $3.9 million criminal fine. (5/17/11)

Rockwell Automation – SEC charged the Milwaukee-based company for illicit payments made and leisure travel provided by a former subsidiary in China to state-owned enterprises that provided design engineering and technical integration services to influence contract awards. (5/3/11)

Johnson & Johnson – SEC charged the New Brunswick, N.J.-based pharmaceutical company for bribing public doctors in several European countries to win contracts for their products and paying kickbacks to Iraq to illegally obtain business. J&J agreed to pay $70 million to settle cases brought by the SEC and criminal authorities. (4/8/11)

Comverse Technology – SEC charged the New York-based company for its Israeli subsidiary's improper offshore payments to government officials in Greece. (4/7/11)

Ball Corporation – SEC charged the Colorado-based manufacturer of metal packaging for beverages, foods and household products for improper payments to employees of Argentina's government in order to import prohibited used machinery and export raw materials at reduced tariffs. (3/24/11) [Administrative Proceeding]

International Business Machines Corp. – SEC charged IBM for providing improper cash payments, gifts, and travel and entertainment to government officials in China and South Korea in order to secure the sale of IBM products. IBM agreed to pay $10 million to settle the SEC's charges. (3/18/11)

Tyson Foods – SEC charged the worldwide chicken manufacturer for making illicit payments to two Mexican government veterinarians responsible for certifying its Mexican subsidiary's chicken products for export sales. Tyson Foods agreed to pay $5 million to settle SEC and criminal charges. (2/10/11)

Maxwell Technologies – SEC charged the energy-related products manufacturer for making repeated bribes to Chinese government officials to obtain business from several state-owned entities. San Diego-based Maxwell agreed to an SEC settlement of more than $6.3 million as well as an $8 million criminal penalty. (1/31/11)

Paul W. Jennings (Innospec) – SEC charged the CEO of Innospec for approving bribes paid to government officials in Iraq and Indonesia. (1/24/11)

2010

Alcatel-Lucent – SEC charged the Paris-based telecommunications company for using consultants who performed little or no legitimate work to funnel bribes to government officials and win contracts in Latin America and Asia. Alcatel agreed to pay $137 million to settle SEC and Department of Justice charges. (12/27/10)

RAE Systems – SEC charged San Jose-based company for making improper payments to Chinese officials through two of its Chinese joint venture entities in order to obtain significant government contracts for sale of gas and chemical detection products. (12/10/10)

Seven Oil Services and Freight Forwarding Companies – The SEC charged Panalpina, Pride International, Tidewater, Transocean, GlobalSantaFe Corp., Noble Corporation, and Royal Dutch Shell plc with widespread bribery of customs officials in more than 10 countries to receive preferential treatment and improper benefits during the customs process. (11/4/10) [Administrative Proceeding]

ABB Ltd. – SEC charged the Swiss-based global provider of power and automation products for using a U.S. subsidiary to pay bribes to officials at Mexico's largest power company as well as to pay kickbacks to Iraq to obtain contracts under the U.N. Oil for Food Program. ABB agreed to a $39.3 million settlement. (9/29/10)

Alliance One and Universal Corporation – SEC charged two global tobacco companies for making more than $5 million in secret payments to curry favor with government officials in Thailand and around the world to illicitly obtain tobacco sales contracts. The companies paid $28.3 million to settle SEC and criminal charges. (8/6/10)

Joe Summers (Pride International) – SEC charged a former manager at one of the world's largest offshore drilling companies for authorizing bribes to government officials in Venezuela to extend drilling contracts and secure difficult-to-obtain receivables from the government following widespread strikes and civil unrest. (8/5/10)

David P. Turner and Ousama Naaman (Innospec) – SEC charged a former business director at Innospec and the company's third-party agent in Iraq for engaging in widespread bribery of Iraqi government officials to land contracts under the U.N. Oil-for-Food Program. (8/5/10)

General Electric, Ionics Inc., and Amersham plc – SEC charged GE and two subsidiaries for illegal kickback payments made in the form of cash, computer equipment, medical supplies, and services to the Iraqi government in order to obtain U.N. Oil for Food Program contracts. GE paid $23 million to settle the charges. (7/27/10)

ENI and Snamprogetti Netherlands BV – SEC charged an Italian company and its former Dutch subsidiary in a decade-long bribery scheme that included deliveries of cash-filled briefcases and vehicles to Nigerian government officials to win construction contracts. Snamprogetti and ENI jointly paid $365 million to settle SEC and criminal charges. (7/7/10)

Veraz Networks – SEC charged the California-based telecommunications company for improper gifts and payments made to foreign officials in China and Vietnam to win business shortly after the company went public. (6/29/10)

Technip SA – SEC charged the Paris-based global engineering company for bribing Nigerian government officials over a 10-year period in order to win construction contracts worth more than $6 billion. Technip agreed to pay $338 million to settle SEC and criminal charges. (6/28/10)

Elkin, Myers, Reynolds, Williams (Alliance One) – SEC charged four former executives and employees at the global tobacco company now named Alliance One International for their involvement in the payment of bribes to government officials in Kyrgyzstan and Thailand. (4/28/10)

DaimlerChrysler AG – SEC charged the Stuttgart, Germany-based automobile manufacturer for its repeated and systematic practice of paying bribes to foreign government officials to secure business in Asia, Africa, Eastern Europe, and the Middle East. Daimler paid $185 million to settle SEC and criminal charges. (4/1/10)

Innospec Inc. – SEC charged the specialty chemical company for its widespread bribery of foreign government officials in Iraq and Indonesia to obtain and retain business. Innospec agreed to a $40.2 million global settlement with the SEC and other agencies in the U.S. and U.K. (3/18/10)

NATCO Group Inc. – SEC charged the Houston-based oil field services provider for the misconduct of a subsidiary in creating and accepting false documents while paying extorted immigration fines and obtaining immigration visas in Kazakhstan. (1/11/10) [Administrative Proceeding]

Previous Years

2009

UTStarcom Inc. – 12/31/09

Bobby Benton – 12/11/09

AGCO Corp. – 9/30/09

Oscar Meza – 8/28/09

Nature's Sunshine – 7/31/09

Helmerich & Payne Inc. – 7/30/09

Avery Dennison Corp. – 7/28/09 [Administrative Proceeding]

United Industrial Corp. (UIC) – 5/29/09

Thomas Wurzel (UIC) – 5/29/09

Novo Nordisk A/S – 5/11/09

ITT Corp. – 2/11/09

KBR and Halliburton – 2/11/09

2008

Fiat – 12/22/08

Siemens AG – 12/15/08

Albert Jackson Stanley (KBR) – 9/3/08

Con-way Inc. – 8/27/08 [Administrative Proceeding]

Ali Hozhabri (ABB) – 8/6/08

Faro Technologies Inc. – 6/5/08

Willbros Group Inc. – 5/14/08

AB Volvo – 3/20/08

Flowserve – 2/21/08

Westinghouse Air Brake Technologies Corporation – 2/14/08 [Administrative Proceeding]

2007

Lucent Technologies – 12/21/07

Akzo Nobel N.V. – 12/20/07

Robert W. Philip (Schnitzer Steel) – 12/13/07

Chevron Corp. – 11/14/07

Ingersoll-Rand Company – 10/31/07

York International – 10/1/07

Monty Fu (Syncor) – 9/28/07

Gioacchino De Cherico & Immucor Inc. – 9/27/07 [Administrative Proceeding]

Bristow Group – 9/26/07

Chandramowli Srinivasan (Electronic Data Systems) – 9/25/07

Electronic Data Systems – 9/25/07

Textron Inc. – 8/23/07

Delta & Pine Land Co. and Turk Deltapine, Inc. – 7/25/07 [Administrative Proceeding]

Si Chan Wooh (Schnitzer Steel) – 6/29/07

Baker Hughes Inc. and Roy Fearnley – 4/26/07

Charles Michael Martin (Monsanto) – 3/6/07

Dow Chemical Co. – 2/13/07 [Administrative Proceeding]

El Paso Corp. – 2/7/07

2006

Schnitzer Steel – 10/16/06

Statoil – 10/13/06 [Administrative Proceeding]

Jim Bob Brown (Willbros Group) – 9/14/06

Steven J. Ott and Roger Michael Young (ITXC Corp.) – Charges (9/6/06) and Settlement (4/18/08)

David Pillor (GE InVision) – 8/15/06

Samson, Munro, Campbell, Whelan (ABB) – 7/5/06

Oil States International – 4/27/06

Tyco International – 4/17/06

2005

Yaw Osei Amoako (ITXC Corp.) – Charges (9/1/05) and Settlement (4/18/08)

Diagnostic Products Corp. – 5/20/05

Titan Corporation – 3/1/05

GE InVision Inc. – 2/14/05 [Administrative Proceeding]

Monsanto Company – 1/6/05 [Administrative Proceeding]

2004

Schering-Plough Corp. – 6/9/04 [Administrative Proceeding]

ABB Ltd. – 6/6/04

BJ Services Co. – 3/10/04

2003

Joshua C. Cantor (American Bank Note Holographics) – 4/10/03

2002

Syncor International – 12/10/02

Douglas Murphy, David Kay, Lawrence Theriot – 7/30/02

BellSouth Corporation – 1/15/02

2001

Chiquita Brands International – 10/3/01 [Administrative Proceeding]

Baker Hughes Incorporated – 9/12/01

KPMG Siddharta Siddharta & Harsono and partner Sonny Harsono – 9/11/01

Eric L. Mattson & James Harris (Baker Hughes) – 9/11/01

American Bank Note Holographics Inc. – 7/18/01

2000

IBM - 12/21/00

1997

Triton Energy Corporation, Philip Keever, and Richard McAdoo - 2/27/97 [McAdoo settlement - 6/26/97]

1996

Montedison, S.p.A. – Charges (11/21/96) and Settlement (3/30/01)

1986

Ashland Oil Inc. and Orin E. Atkins (86-cv-1904)(D.D.C. 7/8/86)

1981

Sam P. Wallace Co. Inc., Robert Buckner and Alfonso Rodriguez (81-cv-1915)(D.D.C. 8/13/81)

1980

Tesoro Petroleum Corp. (80-cv-2961) (D.D.C. 11/20/80)

1979

International Systems & Controls Corporation (79-cv-1760) (D.D.C. 7/9/79)

1978

Katy Industries, Inc., Wallace Carroll and Melvan Jacobs (78-cv-03476)(N.D. Ill. 8/30/78)

Page Airways, Inc., James Wilmot, Gerald Wilmot, Douglas Juston, Ross Chapin, James Lawler, and T. Richard Olney (78-cv-0656) (D.D.C. 4/11/78)

Source: https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml

Insider Trading Cases at the SEC

Illegal insider trading generally occurs when a security is bought or sold in breach of a fiduciary duty or other relationship of trust and confidence while in possession of material, nonpublic information. Insider trading violations can include the "tipping" of such information. Insider trading continues to be a high priority area for the SEC's enforcement program. In recent years, the SEC has filed insider trading cases against hundreds of entities and individuals, including financial professionals, hedge fund managers, corporate insiders, attorneys, and others whose illegal tipping or trading has undermined the level playing field that is fundamental to the integrity and fair functioning of the capital markets. Examples of insider trading enforcement actions taken by the SEC include:

2014

Two Traders in Chile - SEC charged two business associates in Chile with insider trading on nonpublic information that one of them learned while serving on the board of directors of a pharmaceutical company. (12/22/14)

Corporate Attorney and Wife - SEC charged a California-based attorney and his wife with insider trading on confidential information obtained from a corporate client. (12/22/14)

CEO and Close Friend - SEC charged a former CEO and a close friend he tipped with confidential details about his New Jersey-based company's nonpublic merger discussions. (11/21/14)

Financial Analyst at Pharmaceutical Company - SEC charged a Massachusetts man who allegedly tipped his friend with nonpublic information about potential acquisition targets of the company where he worked. (10/14/14)

- SEC Charges New Jersey Man Who Traded on Nonpublic Information (10/24/14)

Roommate of Hedge Fund Analyst and Friend - Two individuals were charged with insider trading ahead of an announcement that hedge fund Pershing Square Management had taken a $1 billion short position in Herbalife Ltd. (9/30/14)

Former Wells Fargo Employees - Two former Wells Fargo employees were charged with insider trading ahead of the release of research analyst reports containing market-moving ratings changes. (9/19/14)

IT Employee at Law Firm - SEC charged a senior information technology professional at Wilson Sonsini Goodrich & Rosati with insider trading ahead of several mergers and acquisitions involving firm clients for more than $300,000 in illicit profits. (9/16/14)

Investor Relations Firm Executive - SEC charged a director of market intelligence at an investor relations firm with insider trading ahead of impending news announcements by more than a dozen clients for nearly $1 million in illicit profits. (8/26/14)

Bank Executive and Friend - SEC charged a former senior vice president at Eastern Bank and his friend with insider trading in advance of the bank's acquisition of another financial institution. (8/18/14)

Accounting Firm Partner and Three Other Traders - SEC charged an accounting firm partner and three other traders with insider trading on information from a client who came to the accountant confidentially for tax advice in advance of a tender offer announcement. (8/14/14)

Partner at Investor Relations Firm - SEC charged a partner at an investor relations firm with insider trading on information he obtained while preparing press releases for clients. (7/22/14)

Amateur Golfers - SEC charged a group of golfing friends with making more than $554,000 in illicit profits by trading on inside information received from an executive who belonged to the same country club. (7/11/14)

Four California Residents - SEC filed charges against the individuals behind a $12 million insider trading scheme involving trading in Ross Stores stock options based on nonpublic information about monthly sales results leaked by one of the retailer's employees. (6/13/14)

Vitamin Company Former Board Member - SEC charged Glenn Cohen and others in his family circle with insider trading for $175,000 in illicit profits ahead of NBTY's sale to a private equity firm. They agreed to pay $500,000 to settle the charges. (5/22/14)

Two Clinical Drug Trial Doctors - SEC charged Dr. Franklin M. Chu and Dr. Daniel J. Lama with illegally trading on inside knowledge that the FDA had halted the clinical trials of a new prostate cancer drug. They made more than $45,000 in illicit profits from their alleged insider trading, and agreed to settle the SEC's charges by paying a combined total of $116,864. (5/19/14)

Three Sales Managers - SEC charged Derek Cohen, Robert Herman, and Michael Fleischli with insider trading ahead of a major acquisition based on nonpublic information they learned on the job at San Diego-based Qualcomm Inc. (5/12/14)

Three Software Company Founders - SEC charged Herbert Richard Lawson, William Lawson, and John Cerullo with insider trading ahead of the company’s sale by misusing nonpublic information to take unfair advantage of incorrect media speculation and analyst reports. They agreed to pay nearly $5.8 million to settle the charges. (5/12/14)

E-Commerce Company Executive and Five Traders - SEC charged former GSI Commerce executive Christopher Saridakis for tipping friends and relatives with confidential information in advance of eBay’s acquisition of the company where he worked. The SEC unraveled the case

with extensive cooperation by some of the tippees, resulting in settlements totaling more than $1.1 million. (4/25/14)

Biopharmaceutical Company Executive and Two Traders- SEC charged a Genta Inc. executive who tipped an emergency room physician and a patient with confidential information about the company's key developmental drug. Dr. Loretta Itri and the two traders agreed to settle the charges. (4/21/14)

Former BP Employee - SEC charged Keith A. Seilhan - one of BP's senior responders during the 2010 Deepwater Horizon oil spill - with illegally selling his family's BP securities after receiving confidential information about the severity of the spill that the public didn't know. (4/17/14)

Two Friends- SEC charged Walter D. Wagner and Alexander J. Osborn with insider trading on confidential information from an investment banker about an impending transaction between engineering and construction companies. (4/3/14)

Two Husbands - In two unrelated cases, the SEC charged Tyrone Hawk and Ching Hwa Chen with insider trading on confidential information they learned from their wives about Silicon Valley-based tech companies. They each agreed to financial sanctions to settle the charges. (3/31/14)

Stockbroker and Law Firm Clerk - SEC charged Vladimir Eydelman and Steven Metro, who were linked through a mutual friend, with insider trading for $5.6 million in illicit profits based on nonpublic information that Metro obtained by accessing confidential documents in his law firm's computer system. (3/19/14)

Brooklyn Man Charged as Middleman Between Stockbroker and Law Firm Managing Clerk (9/19/14)

Wall Street Investment Banker - SEC charged Frank "Perk" Hixon Jr. with making nearly $1 million in illicit profits by insider trading in a former girlfriend's brokerage account to pay child support. (2/21/14)

Chicago-Based Accountant - SEC charged Steven M. Dombrowski with insider trading ahead of the release of financial results by the company where he worked. He made more than a quarter-million dollars in illicit profits. (1/29/14)

2013

Microsoft Manager and Friend - SEC charged Brian D. Jorgenson and Sean T. Stokke with tipping and trading ahead of Microsoft announcements based on inside information that Jorgenson learned at work. (12/19/13)

Miami-Based Trader - SEC charged Charles Raymond Langston III with insider trading on confidential information in advance of a public announcement that significantly decreased the value of a China-based company's stock. (12/3/13)

Hedge Fund Trader - SEC charged Mark Megalli with insider trading on nonpublic information he obtained about Carter's Inc. to give the hedge fund where he worked a $3.2 million trading edge. (11/14/13)

Former Qualcomm Executive and His Financial Advisor - SEC charged Jing Wang and Gary Yin with insider trading through secret offshore accounts ahead of major Qualcomm announcements for more than a quarter-million dollars in profits. (9/23/13)

Advisory Firm Owner and Stockbroker - SEC charged Tibor Klein and Michael Shechtman with insider trading based on non-public information in advance of a merger announcement by pharmaceutical companies. (9/20/13)

Green Mountain Coffee Employee - SEC announced charges against Chad McGinnis and his friend Sergey Pugach for insider trading in advance of Green Mountain Coffee's quarterly earnings announcements and garnering $7 million in illicit profits. (8/2/13)

Spain-Based Traders - SEC charged a former high-ranking official at Banco Santander S.A. and a former judge with insider trading based on non-public information about a proposed acquisition for which the Madrid-based investment bank was acting as an advisor. (7/30/13)

Investor Relations Firm CEO - SEC charged Stephen B. Gray with insider trading in the securities of clients that his firm was confidentially assisting prior to their major public announcements. (7/26/13)

Insider Traders in Onyx Pharmaceuticals - SEC obtained an emergency court order to freeze the assets of traders using foreign accounts to reap more than $4.6 million from trading in advance of a public announcement about an acquisition offer. (7/3/13)

Thailand-Based Trader - SEC charged Badin Rungruangnavarat and obtained an emergency court order to freeze more than $3 million in profits he made from insider trading in advance of a Smithfield Foods acquisition announcement. (6/5/13)

Thailand-Based Trader Agrees to Pay $5.2 Million to Settle Case (9/5/13)

Microcap Company CEO - SEC charged Laidlaw Energy Group CEO Michael Bartoszek, who illicitly profited from selling his shares of company stock based on insider knowledge that the company was struggling financially, which was undisclosed to investors. (6/5/13)

Former Executive in Professional Group - SEC charged Mark Begelman with insider trading ahead of a merger based on nonpublic information that he learned from a fellow member of a professional organization of business leaders. (4/22/13)

Toronto-Based Investment Banker - SEC charged Richard Bruce Moore with insider trading by using information that he obtained through his job of pitching investment ideas to the Canada Pension Plan Investment Board (CPPIB). Moore agreed to pay more than $340,000 to settle the charges. (4/16/13)

Denver-Based Businessman - SEC charged Scott Reiman with insider trading based on confidential information he obtained from the CEO of an oil and gas company that was about to secure a huge investment. Reiman agreed to pay nearly $900,000 to settle the charges. (4/15/13)

KPMG Partner and Friend - SEC charged Scott London and his friend Bryan Shaw with insider trading based on nonpublic information that he learned as the partner in charge of KPMG's Pacific Southwest audit practice. (4/11/13)

Hedge Fund Analyst and Two Others - SEC charged a California-based hedge fund analyst with insider trading in advance of a merger of two technology companies based on nonpublic information he received from an executive at one of the companies. The executive and another trader also were charged in the $29 million scheme. (3/26/13)

SEC Charges CR Intrinsic Analyst With Insider Trading (3/13/14)

Sigma Capital Management - SEC charged the New York-based hedge fund advisory firm with insider trading based on nonpublic information obtained through one of its analysts about the quarterly earnings of Dell and Nvidia Corporation. The firm agreed to pay nearly $14 million to settle the charges. (3/15/13)

Sigma Capital Portfolio Manager Michael Steinberg Charged With Insider Trading (3/29/13)

Technology Company Insider Charged With Tipping Confidential Information (4/23/14)

Suspected Insider Trading in Heinz Stock - SEC obtained an emergency court order to freeze assets in a Swiss-based trading account used to reap more than $1.7 million from trading in advance of a public announcement about the acquisition of H.J. Heinz Company. (2/24/13)

Previously Unknown Traders Agree to $5 Million Settlement (10/10/13)

Florida-Based Financial Adviser - SEC charged Kevin L. Dowd with illegally tipping inside information he learned about the upcoming sale of a pharmaceutical company in exchange for $35,000 and a jet ski dock. (1/25/13)

2012

Hedge Fund Manager Trading in Chinese Bank Stocks - SEC charged the manager of two New York-based hedge funds with conducting a pair of trading schemes involving Chinese bank stocks and making $16.7 million in illicit profits. Sung Kook "Bill" Hwang and his firms Tiger Asia Management and Tiger Asia Partners agreed to pay $44 million to settle the charges. (12/12/12)

Investment Banker and Nine Others - SEC charged an investment banker and nine others in an insider trading ring that garnered more than $11 million in illicit profits trading on confidential information about impending mergers. The investment banker misused his position at Wells Fargo Securities to illegally tip friends about four impending merger transactions involving firm clients. (12/5/12)

Two Retail Brokers - SEC charged two brokers who worked at a Connecticut-based broker-dealer with insider trading on nonpublic information ahead of IBM's acquisition of SPSS Inc. One of the brokers learned confidential details from his roommate, a research analyst who obtained the information from an attorney working on the transaction who discussed it in confidence. The insider trading yielded more than $1 million in illicit profits. (11/29/12)

SEC Charges Two Additional Brokers with Insider Trading Ahead of IBM-SPSS Merger (6/25/14)

SEC Additionally Charges Research Analyst With Illegally Tipping Brokers and Trading on Inside Information (12/26/12)

Hedge Fund Firm and Two Others - SEC charged Stamford, Conn.-based hedge fund advisory firm CR Intrinsic and its former portfolio manager along with a medical consultant for an expert network firm for their roles in a $276 million insider trading scheme involving a clinical trial for an Alzheimer's drug being jointly developed by two pharmaceutical companies. (11/20/12)

CR Intrinsic Agrees to Pay More than $600 Million in Largest-Ever Settlement for Insider Trading Case (3/15/13)

SEC Charges CR Intrinsic Analyst With Insider Trading (3/13/14)

Health Care Company Employees and High School Friends - SEC charged three health care company employees and four others in a New Jersey-based insider trading ring of various high school friends generating $1.7 million in illegal profits and kickbacks by trading in advance of 11 public announcements involving mergers, a drug approval application, and quarterly earnings of pharmaceutical companies and medical technology firms. (11/19/12)

Investment Bank Analyst - SEC charged a former analyst at a Boston-based investment bank with illegally tipping a longtime college friend with confidential information he gleaned from unsuspecting co-workers about clients involved in impending mergers and acquisitions. The insider trading resulted in more than $600,000 in illegal profits. (9/27/12)

Insider Trader in Burger King Stock - SEC obtained an emergency court order to freeze the assets of a stockbroker who used nonpublic information from a customer and engaged in insider trading ahead of Burger King's announcement that it was being acquired by a New York private equity firm. (9/20/12)

Brazilian Ex-Banker to Pay $5.1 Million to Settle Insider Trading Charges in Burger King Stock (11/30/12)

Trio in North Carolina - SEC charged a former member of the board of directors at a North Carolina-based insurance company with illegally tipping inside information about an impending merger to a friend and business associate, who subsequently tipped his golfing partner. (9/20/12)

Public Relations Executive - SEC charged the CEO of a Los Angeles-based public relations firm with insider trading on nonpublic information she learned from a client that was about to acquire a bank in a deal assisted by the FDIC. (9/5/12)

Georgia-Based Insider Trading Ring - SEC charged eight individuals living in the Griffin, Ga., area for their involvement in an insider trading ring that generated more than $500,000 in illegal profits based on nonpublic information about an upcoming company merger. (8/28/12)

Former Major League Baseball Players and Company CEO - SEC announced a second round of charges involving insider trading ahead of an acquisition of Advanced Medical Optics. Newly charged are the company's Chairman and CEO James Mazzo, who was the source of the illegal tips, and Baseball Hall of Famer Eddie Murray and Utah businessman David Parker, who traded on confidential information. Murray agreed to pay $358,151 to settle the charges. (8/17/12) … See also: Doug DeCinces

Pharmaceutical Company Executive - SEC charged Bristol-Myers Squibb executive Robert Ramnarine with insider trading for more than $300,000 in illegal profits by exploiting confidential information about companies being targeted for potential acquisitions by Bristol-Myers Squibb. (8/2/12)

Insider Traders in Nexen Acquisition - The SEC obtained a court order to freeze the assets of traders using accounts in Hong Kong and Singapore to reap more than $13 million in illegal profits by trading in advance of a public announcement that China-based CNOOC Ltd. agreed to acquire Canada-based Nexen Inc. (7/27/12)

Hong Kong Firm Agrees to Pay $14 Million to Settle Charges (10/18/12)

Foreign Traders Agree to Pay $3.3 Million to Settle Charges (3/29/13)

Two Hong Kong Firms to Pay $11 Million to Settle Charges (2/11/14)

Chairman and CEO of Computer Storage Device Company - SEC charged the chairman and CEO of a California-based computer storage device company with insider trading in the

secondary offering of his stock shares at a time when he knew that a major customer's demand for one of the company's most profitable products was turning out to be less than expected. (7/19/12)

Five Physicians - SEC charged five doctors with insider trading in the stock of an East Lansing, Mich.-based company at which one of them served as chairman of the board of directors. (7/10/12)

Founder of Equity Research Firm - SEC charged the owner of the California-based equity research firm Insight Research with insider trading as part of agency's ongoing investigation of insider trading involving “expert networks” that provide specialized information to investment firms. (6/28/12)

Yahoo Executive and Ameriprise Manager - SEC charged a former executive at Yahoo! Inc. and a former mutual fund manager at a subsidiary of Ameriprise Financial Inc. with insider trading on confidential information about a search engine partnership between Yahoo and Microsoft. (5/21/12)

Movie Producer and Ring of Relatives and Associates - SEC charged a Hollywood movie producer along with his brother, cousin, and three others in his circle of friends and business partners for insider trading in the stock of a company for which he served on the board of directors. (5/8/12)

Financial Advisors and Circle of Family and Friends - SEC charged two financial advisors and three others in their circle of family and friends with insider trading on confidential information about merger negotiations between a Philadelphia company and a Japanese firm. They made more than $1.8 million in illicit profits. (3/13/12)

Expert Consulting Firm and Owner - SEC charged John Kinnucan and his Portland, Oregon-based expert consulting firm Broadband Research Corporation with tipping clients with material nonpublic information obtained from prohibited sources inside public companies. Clients then traded on the inside information. (2/17/12)

California Hedge Fund Manager - SEC charged Douglas F. Whitman and his firm Whitman Capital for their involvement in the insider trading ring connected to Raj Rajaratnam and Galleon Management. Whitman's illegal trading resulted in nearly $1 million in ill-gotten gains. (2/10/12)

Hedge Fund Managers and Analysts - SEC charged multi-billion dollar hedge fund advisory firms Diamondback Capital Management LLC and Level Global Investors LP as well as seven fund managers and analysts involved in a $78 million insider trading scheme based on nonpublic information about Dell's quarterly earnings and similar information about Nvidia Corporation. (1/18/12)

Diamondback Capital Management Settles SEC Charges (1/23/12)

California Man Charged for Illegal Tips to Hedge Fund Manager (9/4/12)

Level Global Agrees to Pay $21.5 Million to Settle Charges (4/29/13)

CR Intrinsic Analyst Charged With Insider Trading (3/13/14)

Technology Company Insider Charged With Tipping Confidential Info (4/23/14)

2011

Former Goldman Sachs and Procter & Gamble Board Member - SEC charged former McKinsey & Co. global head Rajat Gupta with illegally tipping hedge fund manager Raj Rajaratnam while serving on the boards of Goldman Sachs and Procter & Gamble. (10/26/11)

Goldman Sachs Employee - SEC charged Spencer Mindlin and his father with insider trading on confidential information about Goldman's trading strategies and intentions that he learned while working on the firm's ETF desk. (9/21/11)

Global Consulting Executive - SEC charged a former global consulting firm executive and his friend who once worked on Wall Street with insider trading on confidential information about impending takeovers of two biotechnology companies for more than $2.6 million in illicit profits. (9/15/11)

SEC Additionally Charges Independent Filmmaker (9/23/13)

Hedge Fund Manager and Company Insiders - SEC charged James Turner II and his firm Clay Capital Management with insider trading ahead of public announcements about corporate earnings and merger activity based on confidential information he obtained through his relationships with company insiders, who also were charged in the scheme that generated illicit gains of nearly $3.9 million. (8/31/11)

Corporate Board Member - SEC charged former Mariner Energy Inc. board member H. Clayton Peterson and his son with insider trading on confidential information about the impending takeover of the company. The son also tipped several close friends. The Petersons and their tippees obtained more than $5.2 million in illicit profits. (8/5/11)

Former Major League Baseball Player - SEC charged Doug DeCinces and three others with insider trading ahead of a company buyout and obtaining more than $1.7 million in illegal profits. DeCinces agreed to pay $2.5 million to settle the SEC's charges. (8/4/11)

Emergency Action Against Three Swiss-Based Entities - SEC obtained asset freezes against entities charged with insider trading around an acquisition announcement. The asset freezes were

intended to prohibit the foreign firms from transferring the proceeds of their illegal trading overseas. (7/18/11)

Former NASDAQ Managing Director - SEC charged Donald L. Johnson, a former managing director of The NASDAQ Stock Market, with insider trading on confidential information that he misappropriated while working in a market intelligence unit that communicates with executives at listed companies about impending public announcements that could affect their stocks. Johnson obtained illicit trading profits of at least $755,000 during a three-year period. (5/26/11)

Former FrontPoint Partners Hedge Fund Portfolio Manager - SEC charged Dr. Joseph F. "Chip" Skowron, a former hedge fund portfolio manager affiliated with a FrontPoint Partners LLC healthcare fund, with insider trading based on confidential information about negative details of an experimental drug that he received from Dr. Yves Benhamou, a medical researcher overseeing a clinical drug trial. (The SEC charged Benhamou on 11/2/10 for his misconduct in this matter). The material non-public information that Skowron received allowed the hedge funds that he managed to avoid losses of at least $30 million. (4/13/11)

Insider Trading Scheme Involving Corporate Attorney and Wall Street Trader - SEC charged charged corporate attorney Matthew Kluger and Wall Street trader Garrett Bauer for their involvement in a highly organized serial insider trading ring that traded in advance of merger and acquisition announcements involving clients of the law firm Wilson Sonsini Goodrich & Rosati. The ring made at least $32 million in illegal profits between April 2006 and March 2011. (4/6/11)

Kluger, Bauer, and Middleman Settle SEC Charges - Kluger, Bauer, and their mutual friend Kenneth Robinson agreed to give up their ill-gotten gains plus interest to settle the charges against them. (4/25/12)

Insider Trading by FDA Chemist - SEC charged Cheng Yi Liang, a chemist at the U.S. Food and Drug Administration, with insider trading on confidential information concerning upcoming announcements of FDA drug approval decisions, generating more than $3.6 million in illicit profits and avoided losses. (3/29/11)

Expert Networks Insider Trading Scheme - SEC charged a New York-based hedge fund and four hedge fund portfolio managers and analysts who illegally traded on confidential information obtained from technology company employees moonlighting as expert network consultants, in a scheme that netted more than $30 million in illicit profits.

SEC Charges Hedge Fund Managers and Traders in $30 Million Expert Network Insider Trading Scheme (2/8/11)

SEC Brings Expert Network Insider Trading Charges (2/3/11)

Former Board Chairman of Home Diagnostics - SEC charged George Holley, a co-founder and former Chairman of the Board of Home Diagnostics Inc., with illegally tipping friends and business associates with inside information about an impending acquisition of the company. Holley's tips resulted in combined illicit profits of at least $170,000. (1/13/11)

2010

Former Law Firm Technology Manager and Brother-in-Law - SEC charged a former information technology manager at a Delaware law firm and his brother-in-law with insider trading on confidential information about impending mergers and acquisitions by the law firm's clients. The insider trading scheme resulted in over $182,000 in illegal profits. (12/7/10)

Medical Researcher Tipping Inside Information about Clinical Trial - SEC charged Yves Benhamou, a French medical doctor and researcher, with tipping a hedge fund manager with confidential information about a clinical drug trial that he was overseeing. (The hedge fund manager was subsequently charged by the SEC on 4/13/11 for his misconduct in this matter). Benhamou tipped the hedge fund manager with non-public negative details about an experimental drug ahead of a public announcement by the company that manufactured the drug. Based on Benhamou's tips, the hedge fund manager sold his shares in the drug company, allowing the hedge funds to avoid losses of at least $30 million. (11/2/10)

Pharmaceutical Company Insider and Former Hedge Fund Manager - SEC charged James W. Self, Jr., a pharmaceutical company insider, and Stephen R. Goldfield, a former hedge fund manager, with insider trading in advance of an announcement that AstraZeneca would acquire MedImmune, Inc. The material non-public information about the acquisition allowed the former hedge fund manager to realize illicit profits of approximately $14 million. (9/1/10)

Asset Freeze for Insider Trading by Spain-based Traders - In an expedited investigation, the SEC swiftly charged two residents of Spain with insider trading and obtained an emergency asset freeze. The residents made nearly $1.1 million by trading while in the possession of material non-public information in advance of the public announcement of a tender offer by BHP Billiton Plc to acquire Potash Corp. of Saskatchewan Inc. One of the defendants was the head of a research arm at Banco Santander, S.A., a Spanish banking group advising BHP on its bid. (8/20/10)

Former Banco Santander Analyst Agrees to Settle Insider Trading Charges (4/25/11)

Former Deloitte Partner and Son - SEC charged Thomas P. Flanagan, a former Deloitte and Touche LLP partner, and his son, Patrick T. Flanagan, with insider trading in the securities of several of the firm's audit clients. The illegal trading resulted in combined profits of

approximately $490,000. The former Deloitte partner and his son agreed to pay more than $1.1 million to settle the SEC's charges. (8/4/10)

Corporate Insider Brothers - SEC charged Samuel Wyly and Charles Wyly with insider trading in the securities of a company in which they served as the Chairman and Vice Chairman of the Board. Through their positions on the company's Board, the Wyly brothers knew that the company had decided to put itself up for sale. Based on this material non-public information, the Wyly brothers made a large and bullish transaction in the company's securities that yielded over $31 million in illicit profits. (7/29/10)

Pequot Capital Management and CEO Arthur Samberg - SEC charged hedge fund manager Pequot Capital Management, Inc. and its Chairman and CEO Arthur Samberg with insider trading in Microsoft Corporation securities. The SEC separately charged a former Microsoft employee who later worked at Pequot for allegedly tipping the firm and Samberg with non-public information about Microsoft's earnings. Pequot and Samberg paid nearly $28 million to settle the SEC's charges. (5/27/10)

Wall Street Securities Professional Using Coded E-mail Messages - SEC charged Igor Poteroba, an investment banker at UBS Securities LLC, and two others in a clandestine insider trading ring that netted approximately $1 million in illicit profits by trading ahead of at least 11 mergers, acquisitions, and other corporate deals. The traders used coded e-mail messages in an attempt to conceal their unlawful trading. (3/24/10)

2009

Insider Trading by Former Employees of Global Financial Firms - SEC charged Vinayak S. Gowrish and Adnan S. Zaman, former employees at major global financial institutions, and two of their friends in a serial insider trading scheme to profit on highly confidential merger and acquisition information. (12/16/09)

Galleon Cases - The SEC has charged 35 defendants trading in the securities of 15 companies generating illicit profits of more than $96 million. A total of 34 defendants have settled the SEC's charges. The illegal conduct involved Raj Rajaratnam and his New York-based hedge fund Galleon Management making cash payments in exchange for material non-public information. The case eventually ensnared corporate executives, consultants, rating agency personnel, proprietary traders, hedge fund executives, and public relations personnel.

Rengan Rajaratnam Agrees to Settle Insider Trading Charges (10/23/14)

SEC Charges Another Tipper in Galleon Scheme (11/21/13)

SEC Charges Technology Executive for Role in Rajaratnam Scheme (9/20/13)

SEC Charges Rengan Rajaratnam With Insider Trading (3/21/13)

SEC Charges Silicon Valley Executive in Galleon Scheme (10/26/12)

SEC Obtains Record $92.8 Million Penalty Against Raj Rajaratnam (11/8/11)

SEC Files Insider Trading Charges Against Rajat Gupta (10/26/11)

SEC Brings Additional Charges in Galleon Case (11/12/10)

SEC Announces New Developments in Galleon Case (1/29/10)

SEC Charges 13 More in Galleon Insider Trading Case (11/5/09)

SEC Charges Raj Rajaratnam with Insider Trading (10/16/09)

Wall Street Lawyers and Traders - SEC charged three New York-based attorneys at the law firm Ropes & Gray LLP for tipping inside information in exchange for kickbacks and six Wall Street traders and a proprietary trading firm involved in a $20 million insider trading scheme. The SEC alleged that the three lawyers tipped material non-public information about confidential corporate acquisitions by firm clients to a network of traders and hedge fund managers in exchange for kickbacks.

SEC Charges Attorney in Insider Trading Scheme (12/10/09)

SEC Charges Wall Street Lawyers and Traders in $20 million Insider Trading Scheme (11/5/09)

Source: http://www.sec.gov/spotlight/insidertrading/cases.shtml

Testimony Concerning The Involvement of Organized Crime on Wall Street

By Richard H. Walker Director, Division of Enforcement

U.S. Securities & Exchange Commission

Before the House Subcommittee on Finance and Hazardous Materials, Committee on Commerce

September 13, 2000

Chairman Oxley, Ranking Member Towns, and Members of the Subcommittee:

I appreciate the opportunity to appear before this Subcommittee on behalf of the Securities and Exchange Commission ("SEC" or "Commission") to address the involvement of organized crime on Wall Street and the Commission's efforts to end this involvement. The Commission commends the Chairman, the Ranking Member, and the Members of the Subcommittee for holding hearings on this important topic. These hearings are particularly timely in light of the announcement this past June by the SEC, the United States Attorney's Office for the Southern District of New York, the FBI, and NASD Regulation of a major strike against organized crime on Wall Street. Over 100 individuals were indicted, including 11 members and associates of five different organized crime families.

I. Executive Summary

The government has charged affiliates of organized crime families with securities law violations in several recent cases. While any unlawful activity by organized crime on Wall Street is cause for concern, the Commission believes such activity to be limited and not a threat to the overall integrity of our nation's securities markets. The Commission's experience shows that the activities of organized crime have been confined to the "microcap" securities market1 and taint only a small fraction of that sector. Moreover, through joint prosecutions with various United States Attorney's Offices and state and local prosecutors, as well as the adoption of regulatory initiatives designed to safeguard the microcap market, the Commission has made significant strides in curtailing organized crime activity on Wall Street.

This testimony is designed to provide the Subcommittee with (i) a chronological account of enforcement actions by the SEC and other law enforcement and regulatory bodies in response to reported organized crime activity on Wall Street; and (ii) a summary of the recent regulatory initiatives designed to protect the microcap market from fraud.

II. A Chronological Account of Reported Mob Involvement on Wall Street and the Response by Regulators

Mob involvement on Wall Street is not new. As organized crime advanced into the white-collar arena, the stock market became one of its targets.[2] Indeed, there is evidence that organized crime had made inroads on Wall Street back in the 1970's.[3] Then, as now, organized crime reportedly focused its efforts on the manipulation of microcap stocks.[4]

During the last 20 years, the government has brought a number of significant cases against organized crime figures operating on Wall Street. The SEC assisted criminal prosecutors in virtually all of the investigations leading to these actions. In some of these cases, the SEC did not bring separate civil actions in order to avoid the risk of impairing a parallel criminal proceeding.[5] The risk stems from the defendant's right to discovery in the SEC's civil action, which would be unavailable in a criminal proceeding. Criminal prosecution of organized crime figures takes priority over civil prosecution because most such defendants are not going to be deterred by civil sanctions alone. Rather, the threat of jail time is the most effective deterrent in this area.[6]

The most notable case brought during the 1980's that named defendants having alleged links to organized crime was a joint action by the SEC and the U.S. Attorney's Office for the District of New Jersey on October 2, 1986. This action, against Marshall Zolp, Lorenzo Formato, and others, alleged that the defendants manipulated the stock of Laser Arms Corp, a purported maker of a self-chilling can.[7] In fact, Laser Arms was a complete fraud. The company generated fictitious financial statements and the product was non-existent. Zolp was reportedly recruited by organized crime to conduct penny-stock manipulations, including the Laser Arms manipulation.[8] Co-defendant Formato testified in Congressional hearings that during the years he promoted and sold penny stocks, he was involved in organized crime.[9] Formato also testified to rampant penny stock manipulation by organized crime.[10] The Congressional hearings at which Formato testified led to passage of the Penny Stock Reform Act of 1990.[11]

Next, on December 13, 1988, the SEC sued F.D. Roberts Securities, Inc., a New Jersey boiler room, and four associated persons for manipulating a microcap stock, Hughes Capital Corp. At least one of the four individuals sued, Dominick Fiorese, an F.D. Roberts consultant, had reported ties to organized crime.[12]

Mob activity on Wall Street reportedly increased in the 1990's. On February 10, 1997, The New York Times reported that "Mafia crime families are switching increasingly to white-collar crimes" with a focus on "small Wall Street brokerage houses."13 According to The New York Times story, the Mafia's entry into the securities markets was spurred by its reported loss of $500 million a year in profits from the dissolution of its garbage-hauling cartels, and its reported loss of $50 million a year in profits following its eviction from the Fulton Fish Market.14

Around the time of The New York Times story, Business Week also ran a cover story entitled, "The Mob on Wall Street."15 Several of the individuals and entities mentioned in the story were then the subject of SEC and criminal investigations.

A series of criminal indictments and civil prosecutions of several securities law violators with alleged connections to organized crime began in 1997.16 In May 1997, a FBI sting operation led to charges by the U.S. Attorney for the Eastern District of New York against Louis Malpeso, Jr., a reported Colombo crime family associate, for conspiring to commit securities fraud.17 The indictment alleged that Malpeso conspired with stock broker Joseph DiBella and Robert Cattogio, one of the heads of the Hanover Sterling brokerage firm, to inflate the price of a penny stock, First Colonial Ventures. The Business Week Article had reported that organized crime was manipulating First Colonial stock and warned legitimate market makers to steer clear of the stock. The indictment alleged that Malpeso offered an undercover FBI agent posing as a money manager a kickback of 25 percent in exchange for the agent purchasing $2.5 million of First Colonial stock. All three defendants pled guilty.18

A major strike against organized crime on Wall Street came on November 25, 1997 when the U.S. Attorney for the Southern District of New York indicted 19 persons, including four with alleged ties to organized crime, for racketeering. The charges stemmed from a year-long investigation by the SEC, the U.S. Attorney's Office, the FBI, and the New York Police Department with the assistance of NASD Regulation. The 25-count indictment outlined the infiltration of a brokerage firm, Meyers Pollock & Robbins, by the Bonanno and Genovese crime families for the purpose of manipulating the stock price of HealthTech International. Alleged Bonanno captain Frank Lino and alleged Genovese captain Rosario Gangi caused numerous Meyers Pollock brokers, through bribes and intimidation, to artificially drive up HealthTech's stock price. The brokers were paid excessive commissions for selling this stock, and often used high-pressure sales tactics and made misrepresentations about HealthTech. An associate of Lino

and Gangi had received thousands of shares of HealthTech stock from HealthTech's CEO Gordon Hall in exchange for their efforts to inflate its price.

The SEC suspended trading in HealthTech on November 17, 1997. On January 21, 1999, Lino, Gangi, and Eugene Lombardo, an alleged Bonanno family associate, pled guilty to securities fraud.[19] John Cerasini, an alleged Bonanno soldier, pled guilty to an extortion conspiracy charge. On May 11, 1999, a federal jury found Hall guilty of racketeering.[20] In addition, in April 2000, Michael Ploshnick, Meyers Pollock's President, and 11 brokers were indicted for their role in the fraud.

At the time, the HealthTech case was the largest law enforcement action taken against organized crime operating on Wall Street. Despite the size of the case, law enforcement officials cautioned that, based on their experience, they did not believe the problem to be widespread.[21]

Also during 1997, the Manhattan District Attorney's Office, working with the NASD, arrested 53 people in a broker licensing test-taking scandal. More than 50 stockbrokers were charged with paying two impostors to take their licensing tests. The brokers worked at several boiler rooms including some with alleged ties to organized crime.[22]

On April 23, 1998, the Commission sued Sovereign Equity Management Corp. and its president Glen T. Vittor for a scheme to manipulate the market price of two microcap companies, Technigen Corp. and TV Communications Network, Inc. Five days later, Vittor was separately charged by the SEC for his role in another microcap manipulation. The Business Week Article reported that Sovereign was controlled by organized crime.

On December 16, 1998, the U.S. Attorney for the Eastern District of New York charged seven people, including Robert Cattogio and Dominick Froncillo, who was alleged in the indictment to be an associate of the Genovese crime family, with a multi-million dollar stock manipulation and money laundering scheme. The scheme was carried out through a New Jersey brokerage firm, Capital Planning Associates, Inc. According to the charges, Capital Planning was under the secret control of convicted stock swindler Catoggio, who used the firm as a vehicle to carry out a series of stock manipulations. Catoggio was barred from the securities industry by the SEC in 1995 as a result of securities fraud at another brokerage firm under his control.

The stock that was the subject of the manipulation was Transun International Airways, Inc. ("TSUN"), which traded on the Nasdaq OTC electronic bulletin board stock market. According to the indictment, TSUN purported to be a chartered airline; however, it never owned or operated any planes, never conducted any airline business, and never generated any revenues. The defendants were charged with gaining control of the company's stock at minimal cost, artificially inflating its price by touting it aggressively at Capital Planning and issuing spurious claims about the health of the fly-by-night company, and then unloading over $8 million worth of stock on unsuspecting customers. Froncillo, as well as four other defendants, plead guilty to the charges.23

The next major strike against organized crime on June 16, 1999 when the U.S. Attorney for the Eastern District of New York indicted 89 persons for engaging in microcap "pump and dump" manipulations at eight brokerage firms that defrauded investors out of more than $100 million. The SEC assisted in the investigation, including detailing a staff member to the Eastern District.

In one 23-defendant case, the three defendants who were charged with leading the scheme reportedly had ties to organized crime: Dominick Dionisio (Colombo family), Enrico Locascio (Colombo family), and Yakov Slavin (associate of the Bor organized crime group of Russian immigrants). Each has pled guilty.24

The indictment alleges that "[t]he Colombo Organized Crime Family of La Cosa Nostra controlled boiler rooms at brokerage firms that engaged in fraudulent schemes to sell securities to the public on the basis of false and misleading statements and omissions." Specifically, the indictment charges that Dionisio, Locascio, and Slavin placed and supervised registered and unregistered brokers and cold callers at several boiler rooms. The criminal enterprise allegedly manipulated several microcap stocks.

The U.S. Attorney for the Eastern District of New York, with the assistance of the SEC, also brought criminal charges on June 16, 1999, against 55 defendants for their participation in fraud at a network of four related brokerage firms. The lead defendants, Robert Catoggio and Roy Ageloff, were alleged to be the heads of the Hanover Sterling firm, the Norfolk Securities firm, PCM Securities, and Capital Planning, which operated in New York, New Jersey and Florida, and employed hundreds of brokers.

The defendants were charged with securities fraud in connection with a vast "pump and dump" manipulation that involved at least 17 OTC Bulletin Board and Nasdaq Small Cap stocks and resulted in over $100 million in fraud losses. The charges included not just securities fraud and money laundering, but an unusual use of RICO charges in connection with Catoggio's and Ageloff's operation of this enterprise. Ageloff, who recently pled guilty to the RICO charge, was the focus of the Business Week Article, in which he and Hanover Sterling were alleged to have ties to the Genovese crime family. Catoggio was charged with running the RICO enterprise with Ageloff, and had pled guilty to conspiring with Malpeso, Jr., an alleged Colombo family associate, in connection with an FBI sting. To date, 48 of the 55 defendants charged have pled guilty, with seven awaiting trial.

The next day, June 17, 1999, in an unrelated action in federal district court in Tampa, Philip Abramo, a captain of the DeCalvacante organized crime family, Louis Consalvo, a member of the DeCalvacante family, and three others were criminally charged for their role in numerous microcap "pump and dump" frauds. The indictment alleged that the defendants, through a brokerage firm previously sued by the SEC, Sovereign Equity Management Corp., solicited corporations in need of capital to conduct initial public offerings and Regulation S offshore offerings. The defendants obtained discounted stock of the issuers. The stock was then manipulated in "pump and dump" schemes run through Sovereign. Brokers at Sovereign were paid excessive commissions to "push" the stock on investors and were instructed not to permit retail customers to sell the stock, thereby keeping its price artificially propped up.

In addition, the defendants would "short" the stocks once they instructed Sovereign brokers to cease their "pumping" efforts. This would allow the defendants to make an additional profit as the price of the stock declined. A short seller must borrow the shares that he is selling short. The indictment alleged that "[w]hen the defendants could not find stock to borrow and sell short' ... the defendants engaged in extortion of other brokers in order to obtain the stock using their stated relationship to the mafia' and also using threats to commit bodily harm."

Violence turned the public's attention to possible organized crime involvement within the securities markets on October 26, 1999. Stock promoters Maier S. Lehmann and Albert Alain Chalem were found shot to death execution style in a home in Colts Neck, New Jersey. At the time, Lehmann and Chalem ran an Internet web site, Stockinvestor.com, which touted penny stocks. The SEC had previously sued Lehmann for his role in a penny stock manipulation. Chalem had been a broker at A.S. Goldmen, a now-defunct boiler-room operation that has been the subject of both civil and criminal securities fraud charges. While no one has been charged yet in the murders, media reports have cited close ties between Chalem and organized crime.25

Another major strike against organized crime in the securities markets came on March 3, 2000 when the U.S. Attorney for the Eastern District of New York indicted 19 people, including six with alleged ties to organized crime. The indictment alleged that a broker-dealer, White Rock Partners (later renamed State Street Capital Markets), working with brokers at several notorious boiler rooms, including J.W. Barclay & Co., A.R. Baron & Co., and D.H. Blair, engaged in microcap "pump and dump" manipulations. The indictment also alleged that the defendants most frequently relied on fraudulent Regulation S offerings to obtain their inventory of stock to manipulate. The six alleged organized crime members in the criminal enterprise are as follows:

Name	Position	Organized Crime Family
Frank Coppa Sr.	Captain	Bonanno
Edward Garafola	Soldier	Gambino
Eugene Lombardo	Associate	Bonanno
Ernest Montevecchi	Soldier	Genovese
Daniel Persico	Associate	Colombo
Joseph Polito Sr.	Associate	Gambino

The indictment alleges that the organized crime defendants, among other things, (i) resolved disputes relating to the hiring and retention of brokers, (ii) halted attempts by other members of organized crime to extort members of the criminal enterprise, and (iii) halted efforts to reduce the price of securities underwritten by White Rock and State Street through such techniques as short selling.

The most recent law enforcement action against organized crime on Wall Street came on June 14, 2000. The SEC, U.S. Attorney for the Southern District of New York, FBI, and NASD Regulation jointly announced the results of a one-year undercover operation targeting microcap fraud, including organized crime operating in this market. The SEC sued 63 individuals and entities in five enforcement actions. The U.S. Attorney's Office indicted 120 defendants, including 11 members and associates of five different organized crime families, in connection with several securities fraud scams conducted through various criminal enterprises. The indictments allege fraud in connection with the publicly traded securities of 19 companies and

the private placement of securities of an additional 16 companies. The 11 alleged members and associates of organized crime are as follows:

Name	Position	Organized Crime Family
John M. Black	Associate	Luchese
James F. Chickara	Associate	Colombo
Robert P. Gallo	Associate	Genovese
Michael T. Grecco	Associate	Colombo
James S. LaBate	Associate	Gambino
Vincent G. Langella	Associate	Colombo
Robert A. Lino	Capo	Bonanno
Frank A. Persico	Associate	Colombo
Salvatore R. Piazza	Associate	Bonanno
Sebastian Rametta	Associate	Colombo
Anthony P. Stropoli	Soldier	Colombo

The indictments allege that the criminal enterprises engaged in the following illegal conduct:

The manipulation of numerous microcap stocks.

To further its manipulations, the enterprises infiltrated and gained control of certain brokerage firms, including Monitor Investment Group, Meyers Pollock & Robbins, and First Liberty Investment Group.

To control the supply of stock that it was manipulating, the enterprises bribed brokers at other firms to "put away" (i.e, ensure their clients held) certain securities. The bribed brokers included

a crew of brokers working for William Scott & Co., principals of a Meyers Pollock branch office, and a crew of brokers from Atlantic General Financial Group.

The enterprises engaged in numerous private placement frauds, including offerings involving Ranch*1 Inc., World Gourmet Soups, and Jackpot Entertainment Magazine, Inc. Here, members and associates of the enterprise dominated and controlled each of the issuers. Brokers selling the securities were paid undisclosed exorbitant sales commissions of up to 50 percent. The enterprises profited by retaining a portion of the excessive sales commissions for itself.

The enterprises engaged in a union pension fund fraud and kickback scheme. The enterprise devised two fraudulent investments that appeared to be suitable for the pension funds, but would secretly divert a portion of the investment proceeds. For example, in one corrupt offering, $2 million of every $10 million invested was to be "kicked back" to the enterprises and corrupt union officials.

The indictment also charged that the enterprise used extortion, threats and intimidation to further its securities frauds. Specifically, the enterprises instilled fear in brokers and other market participants who did business with the enterprises, in particular those brokers who agreed to "put away" stock.

Simultaneous with the filing of the criminal indictments, the SEC instituted civil administrative proceedings against several of the criminal defendants with alleged ties to organized crime, including Black, Gallo, Grecco, LaBate, and Piazza. NASD Regulation had previously filed a complaint against 18 persons and Monitor Investment Group for fraud-related activities arising out of Monitor's activities.

Organized crime often either infiltrates or otherwise employs the assistance of "boiler room" operations to commit manipulations. The SEC and other regulators have brought significant enforcement actions against a number of notorious boiler rooms in recent years. These include:26 A.R. Baron & Co.; Baron's president Andrew Bressman, seven Baron registered representatives; Stratton Oakmont; three Stratton principals - Jordan Belfort, Daniel Porush, and Kenneth Greene; nine Stratton registered representatives; several Meyers Pollock registered representatives; Sterling Foster & Co.; over 20 Sterling Foster registered representatives, including its president Adam Lieberman; A.S. Goldmen & Co.; A.S. Goldmen's president,

Anthony J. Marchiano and its financial and operations principal, Stuart E. Winkler; five A.S. Goldmen registered representatives; several D.H. Blair registered representatives; HGI Securities and 13 of its registered representatives; M. Rimson & Co. and several Rimson registered representatives including its president Moshe Rimson; Biltmore Securities and seven Biltmore registered representatives; F.N. Wolf & Co; Hibbard Brown & Co.; several registered representatives associated with J.T. Moran & Co. and its predecessor firms (First Jersey Securities, Inc. and Sherwood Capital Group); Blinder Robinson & Co. and its president Meyer Blinder; Rooney, Pace Inc. and its president Randolph K. Pace; First Jersey Securities, Inc. and its president Robert E. Brennan; Wellshire Securities and several of its registered representatives; Investors Associates, Inc. and its president Lawrence J. Penna; J.S. Securities and its president Jeffrey Szur; La Jolla Capital Corp. and several of its registered representatives; and several Barron Chase Securities Inc. registered representatives.

In addition, Hanover Sterling ceased doing business in February 1995 when it fell out of compliance with net capital requirements after a group of outside investors began aggressively short selling Hanover's house stocks. At the time, Hanover Sterling was the subject of regulatory investigation. Meyers Pollock closed down in 1997 in the face of regulatory investigation.27 In July 2000, D.H. Blair & Co., already defunct, and 15 of its officers and directors were indicted by the Manhattan District Attorney's Office on charges that the firm was run as a criminal enterprise.

III. Regulatory Initiatives Designed to Protect the Microcap Market

Existing evidence indicates that organized crime activity on Wall Street has been limited to the microcap market. The reasons for this are several. Effective market manipulations require control of the sell side of the market and keeping the truth about the company from prospective investors. The float and trading volume for securities of large-cap companies make it almost impossible to control the sell side of the market, even with strong-arm tactics. In addition, such companies tend to be more seasoned in terms of public reporting and, as a result, it is more difficult to create sudden, exciting hype about a company that would generate real buying volume from innocent investors. In addition, analysts are more likely to cover larger cap companies and regularly provide information on such companies to the marketplace.

The most prevalent fraud in the microcap market is the "pump and dump" manipulation. The scheme centers on the spreading of false information – principally through either a "boiler room"

or via the Internet – designed to artificially inflate a stock's price. Investors often receive information that is either exaggerated or completely fabricated. Those spreading the false information typically hold large amounts of stock and make substantial profits by selling after the price peaks. Upon selling their shares, the promoters cease their manipulative efforts, the stock price plummets, and innocent investors incur substantial losses.

Several rule and regulation amendments have been proposed and adopted by the SEC. An effective "pump and dump" scheme requires that those committing the fraud be able to quickly and cheaply obtain a supply of stock that can then be manipulated. The rulemakings to date have focused on creating obstacles for potential manipulators obtaining stock, while not unduly hampering legitimate capital raising efforts by small businesses. This section outlines these recent rulemakings which, we believe, have proven successful in abating microcap fraud.[28]

Regulation S – Regulation S provides a safe harbor from SEC registration for certain offshore offerings. Following the adoption of Regulation S, the SEC found that some issuers were using Regulation S as a means of indirectly distributing securities into the United States markets without registration. SEC investigations suggested that organized crime was using Regulation S offerings to obtain a cheap supply of stock to manipulate. In light of these problems, on February 10, 1998, the SEC adopted amendments to Regulation S. The amendments require, among other things, that: (i) equity securities placed offshore pursuant to Regulation S be classified as "restricted" securities, so that resales without registration are subject to holding periods and quantity limitations; and (ii) Regulation S securities cannot be resold into the United States for a period of one year, as opposed to the prior 40-day period. Based on our experience in recent investigations, our initial impression is that these amendments have been effective in reducing Regulation S abuses.

Rule 504 – This rule, known as the "seed capital" exemption, allows non-reporting (generally start-up) companies to sell up to $1 million in securities without registration or restriction. To curb microcap abuses, in February 1999, the SEC modified Rule 504 to limit the circumstances where general solicitation is permitted and unrestricted "freely tradable" securities could be issued.[29]

Form S-8 – Form S-8 is a short form available to register the offer and sale of securities to an issuer's employees as part of their compensation. These registration statements become effective automatically without SEC review. The staff has seen Form S-8 used improperly to raise capital,

either by using the shares to pay broker-dealers or other consultants that assist in capital raising or by using employees or "consultants" as intermediaries to raise capital indirectly. The amendments adopted in February 1999 clarify that consultants and advisors can be treated as employees only if (i) they are natural persons, (ii) they provide bona fide services to the issuer, and (iii) their services are not related to capital-raising or the promotion of the issuer's securities.30

Rule 701 – This rule allows private companies to sell securities to their employees without the need to file a registration statement. Amendments to the rule adopted in February 1999, among other things, harmonize the definition of consultant and advisor to that contained in Form S-8 and require specific disclosure from issuers that sell more than $5 million in 701 securities in a 12-month period.31

Rule 15c2-11 – This rule is intended to deter the publication of stock quotations in the OTC Bulletin Board, the Pink Sheets and similar media that may be used in manipulative schemes. The current rule requires the first broker-dealer that publishes a quotation for a particular stock to review certain issuer information, including its most recent balance sheet, profit and loss, and retained earnings statements. Subsequent broker-dealers publishing quotations in that stock do not have to review this information; rather they are subject to a "piggyback" exception. To deter microcap manipulations, the SEC has proposed certain amendments to Rule 15c2-11 that would place greater information review requirements, and thus accountability, on broker-dealers publishing quotations and would provide greater investor access to information about those securities.

In addition, the Commission has recently approved two NASD rule proposals that are aimed at combating microcap fraud. NASD OTC Bulletin Board Eligibility Rule – The Business Week Article reported, "[t]he Mob's activities seem confined almost exclusively to stocks traded in the over-the-counter Bulletin Board' and NASDAQ small-cap markets."32 Bulletin board securities have traditionally been easier to manipulate than exchange traded securities because less public information was made available. NASD rule amendments, approved by the Commission on January 4, 1999, provide for enhanced disclosure of issuer information in this market. Specifically, the Commission approved the NASD's proposed amendments to NASD Rules 6530 and 6540. The amendment to Rule 6530 limits quotations on the OTC Bulletin Board to the securities of issuers that file reports with the Commission or banking or insurance regulators and are current in those reports. The amendment to Rule 6540 prohibits brokers from quoting a security on the Bulletin Board unless the issuer has made current filings.

NASD Taping Rule – On April 17, 1998, the Commission approved the NASD's proposed new rule requiring brokerage firms that employ a certain percentage of brokers who were employed by an expelled brokerage firm33 within the last two years to tape record all of their brokers' telephone conversations with investors. The rule is designed to combat "boiler room" conduct. The threshold for triggering the taping requirement varies according to the size of the firm. In large firms, the rule applies if 20 percent of the firm's brokers were previously employed by disciplined firms, and in small firms the trigger is 10 percent.

Finally, a bill currently introduced in the Senate could also help combat microcap fraud. On June 9, 1999, Senator Susan Collins, Chairman of the Senate Permanent Subcommittee on Investigations, introduced the "Microcap Fraud Prevention Act of 1999" [the "1999 Bill"].34 Among other things, the 1999 Bill would: (i) allow the SEC to bar fraudulent actors from participating in any securities offering, as opposed to only penny stock offerings; (ii) allow SEC enforcement actions to be predicated on state enforcement actions;35 and (iii) allow the SEC to bar fraudulent actors from serving as officers or directors of any company, as opposed to only SEC reporting companies.

While the 1999 Bill enhances civil, and not criminal, remedies, it could still help deter organized crime involvement on Wall Street. Members of organized crime often need to recruit those in the securities industry, including brokers and promoters, to complete their schemes. The provisions of the 1999 Bill could make it harder to recruit these persons.

V. Conclusion

The Commission will continue to implement a vigilant program to safeguard the microcap securities market from involvement by organized crime or anyone else aiming to commit fraud. We will also continue to work closely with the Justice Department to make certain that every instance of organized crime on Wall Street is prosecuted criminally. As always, the Commission and its staff will be pleased to assist the Subcommittee as it goes forward.

Footnotes

1 Although "microcap" is not a term defined in the federal securities laws, microcap companies are generally thinly capitalized companies whose securities trade in the over-the-counter market, primarily on the OTC Bulletin Board or in the pink sheets.

2 James Cook, "The Invisible Enterprise," Forbes, Sept. 29, 1980 at 60 ("As its power, experience and cash flow have mounted, organized crime has advanced into increasingly sophisticated areas – into white-collar crime like ... the securities business.").

3 One of the earliest reported securities fraud cases involving organized crime came on November 18, 1970 when the U.S. Attorney for the Southern District of New York and the SEC jointly announced indictments against Michael Hellerman, John Dioguardi, Vincent Aloi and others for securities fraud. Lit. Rel. No. 4826, 1970 SEC LEXIS 959 (Nov. 18, 1970). As reported in the 1980 Forbes article, Hellerman, who entered the witness-protection program, was a corrupt stockbroker manipulating several stocks, including Imperial Investments, with assistance from Dioguardi and Aloi, who allegedly had connections to organized crime. A 1977 book details the exploits of Michael Hellerman. Wall Street Swindler, 1977 at 2 ("I had been manipulating stocks for years. Some of Wall Street's biggest swindles, frauds that had ripped off millions of dollars from brokerage houses and banks, had been my brainchild. In most of those frauds, the mob and some of its most notorious members had been my partners.").

4 Forbes, supra note 2 ("[O]rganized crime would logically move into areas where there is the least regulation – the over-the-counter market, shell companies, unregistered securities – companies with less than $1 million in assets and fewer than 500 stockholders.").

5 addition, the SEC lacks the tools that Congress has given the Justice Department to fight organized crime. For example, the Justice Department has authority to conduct wire taps and engage in undercover operations. The SEC, on the other hand, is subject to the Privacy Act of 1978, which requires SEC staff to identify themselves when seeking information from witnesses. In addition, Federal Rule of Criminal Procedure 6(e) generally prevents the Justice Department from sharing grand jury materials with the SEC, though the SEC immediately notifies the Justice Department of a matter if we suspect organized crime involvement.

6 See Bud Newman, Fraud, "Organized Crime Said Rampant in Penny Stock' Market," UPI, Sept. 8, 1999 (quoting Congressional testimony of Lorenzo Formato, an admitted penny stock manipulator with ties to organized crime: "Jail ... is one of the biggest deterrents to what is going on in the industry today.").

7 U.S. v. Zolp, Lit. Rel. No. 11236, 1986 SEC LEXIS 635 (Oct. 2, 1986).

8 "Securities Investigators Get a Handle on the Mob," The Toronto Star, Feb. 26, 1989 at F2.

9 See "Witness Tells of Mob Influence in Penny Stocks", Los Angeles Times, Sept. 8, 1989 at B2.

10 Id.

11 Congressional passage of the Penny Stock Reform Act of 1990 helped curb fraud in the penny-stock market (a sub-group of the larger microcap market, and generally defined as stocks

trading at $5 or less). Among other things, this Act requires a broker-dealer to disclose its compensation on all penny stock trades, provide a risk disclosure statement to all penny stock customers, and provide a monthly statement to clients disclosing the market value of all penny stocks in their accounts.

12 See Claire Poole, "Good-Bye, Fellas," Forbes, March 18, 1991 at 10 (stating that Fiorese had ties to the Gambino and Colombo crime families).

13 Selwyn Raab, "Officials Say Mob is Shifting Crimes to New Industries," The New York Times, Feb. 10, 1997 at A1.

14 Id.

15 Gary Weiss, "The Mob on Wall Street," Business Week, December 16, 1996 [the "Business Week Article"]. The Business Week Article reported: (i) the mob had established a network of stock promoters, securities dealers, and boiler rooms to engage in "pump and dump" manipulations; (ii) four organized crime families (as well as elements of the Russian mob) controlled approximately two dozen broker-dealers; (iii) the mob was engaging in Regulation S scams; (iv) the mob's activities were confined to the OTC Bulletin Board and Nasdaq Small-Cap markets (the article found no indication of mob exploitation on the NYSE and AMEX); (v) the Hanover Sterling brokerage firm was under the control of the Genovese crime family; and (vi) mob-linked short sellers were associated with the Stratton Oakmont brokerage firm.

16 Two notable law enforcement actions were taken in the early half of the 1990's. First, on November 15, 1993, Eric Wynn and four others were indicted in the District of New Jersey for conspiracy to commit securities fraud based on numerous penny stock manipulations. A jury found Wynn guilty and he was sentenced to 52 months imprisonment. Wynn was reportedly an associate of the Bonanno crime family.

Second, in 1994, the SEC sued a public issuer, Atratech, Inc., and several affiliated persons, including Anthony Gurino, for securities fraud. The Commission charged that: "Gurino secretly controlled Atratech to circumvent bars that were imposed on Gurino by New York City and the federal government prohibiting Gurino from bidding for municipal works contracts. In 1986, the City barred Gurino and his plumbing company, Arc Plumbing and Heating Co., because of their failure to disclose in a bid application that Gurino had been indicted for obstruction of justice in connection with an organized crime prosecution. During the hearing which led to the bar, Gurino was cited for failing to cooperate with the City and produce as a witness John Gotti, the head of the Gambino crime family and an alleged salesman' for Arc." SEC v. Atratech, Lit. Rel. No. 14201, 1994 SEC LEXIS 2631 (Aug. 22, 1994). A judgment by default has been issued against Atratech. Lit. Rel. No. 14862, 1996 SEC LEXIS 981 (April 4, 1996). Gurino settled the matter by agreeing to an injunction, $25,000 civil penalty, and a bar preventing him from serving as an

officer or director of a public reporting company. Lit. Rel. No. 15529, 1997 SEC LEXIS 2129 (Oct. 7, 1997).

17 See Helen Peterson, "Mafioso Held in Stock Fraud," N.Y. Daily News, May 3, 1997 at 12. Malpeso pled guilty on February 5, 1998.

18 Malpeso was sentenced to 18 months imprisonment.

19 Lino was sentenced to 49 months imprisonment, Gangi to 97 months imprisonment, and Lombardo to 96 months imprisonment.

20 The SEC detailed a member of its staff to the U.S. Attorney's Office to assist in the prosecution of this action. Recognizing the value of criminal prosecution of organized crime efforts on Wall Street, the SEC has detailed members of its staff to U.S. Attorney's Offices in other cases as well. For example, one of the lead prosecutors in the Hall case was detailed from the SEC's Northeast Regional Office to the U.S. Attorney's Office for the Southern District of New York.

21 See Sharon Walsh, "Mob Bust on Wall Street," International Herald Tribune, Nov. 27, 1997 at 3 (quoting Mary Jo White, U.S. Attorney for the Southern District of New York, as stating that attempts by organized crime to invade Wall Street were "relatively isolated and do not threaten the overall stability of the market"); Richard Tomkins, "Mob Linked to Pump and Dump Scheme," The Financial Post, Nov. 29, 1997 at 24 (quoting then-SEC Enforcement Director William McLucas: "I would be very cautious about coming to any conclusion to the effect that organized crime in the securities markets, including the small capitalization and micro-capitalization markets, is rampant. I do not believe that's the case.").

22 See Barbara Ross & Douglas Feiden, "Sting Nets Bad Stock," N.Y. Daily News, Jan. 9, 1997 at 6 ("The brokers worked at 17 small and medium-sized brokerage firms, including three companies that reportedly have links to the Genovese crime family. The firms include Stratton Oakmont; and Hanover Sterling & Co.").

23 Froncillo was sentenced to 21 months imprisonment.

24 Dionisio was sentenced to 97 months imprisonment, Locascio to 63 months imprisonment, and Slavin to 60 months imprionment.

25 See Diana B. Henriques, "A Brutal Turn in Stock Frauds," N.Y. Times, Nov. 2, 1999 at B1.

26 Most of these actions did not allege the involvement of organized crime.

27 In March 1997, the Commission brought an antifraud action in federal district court against Meyers Pollock and its president Michael Ploshnick for their role in a fraudulent debt offering. SEC v. Namer, Lit. Rel. No. 15307, 1997 SEC LEXIS 666 (March 26, 1997).

28 SEC staff is also working with the securities industry to develop other measures to reduce microcap fraud. For example, SEC staff is working with the NSCC/DTC, NYSE, NASD, and members of the SIA Clearing Committee on a data repository that will be used to store information that may be useful in detecting on-going fraudulent activities. The repository, located at the NASD, will receive daily information related to the clearing process from a number of different sources, including clearing firms, the NYSE, the NASD, and NSCC/DTC. The clearing firms will send information on their correspondents' cancelled and "as-of" trades, proprietary account equity, and unsecured customer debits. The NYSE and NASD will send information on Regulation T extensions, and NSCC/DTC will send exception reports when a member dominates the market in a given security or holds a substantial amount of the DTC inventory in a given security. A pilot program using the NASD's INSITE software system is currently underway.

29 Specifically, the amendments require registration under state law requiring public filing and delivery of a disclosure document to investors before sale, or reliance on an exemption under state law permitting general solicitation and general advertising so long as sales are made only to experienced (i.e. "accredited") investors. 1933 Act Rel. No. 7644 (February 26, 1999).

30 Another amendment also intended to address enforcement concerns provides that offerings registered on Form S-8 will no longer be presumed to have been filed on the proper form if the Commission does not object to the form before the effective date. 1933 Act Rel. No. 7646 (Feb. 26, 1999).

31 1933 Act Rel. No. 7645 (Feb. 26, 1999).

32 The Business Week Article, supra note 14 at 94.

33 The rule defined "expelled firm" as one that has been expelled from a self-regulatory organization in the securities industry or has had its registration revoked by the Commission for sales practice violations or telemarketing abuses.

34 The 1999 Bill is co-sponsored by Senators Daniel Akaka, Max Cleland, and Judd Gregg.

35 To date, the states have orchestrated two sweeps aimed at boiler rooms. In May 1997, 20 states accused 14 brokerage firms of violations including high pressure sales tactics. In July 1998, NASAA announced 100 enforcement actions against boiler rooms, including 64 actions involving brokers peddling microcap stocks.

Source: http://www.sec.gov/news/testmony/ts082000.htm

SEC Wins Major Hedge Fund Fraud Case Against Michael Lauer, Head of Lancer Management Group

Washington, D.C., Sept. 24, 2008—The Securities and Exchange Commission announced that a district court judge today granted its motion for summary judgment against the architect of a massive billion-dollar hedge fund fraud.

Michael Lauer of Greenwich, Conn., was found liable for violating the anti-fraud provisions of the federal securities laws. In a 67-page order, The Honorable Kenneth A. Marra, U.S. District Judge for the Southern District of Florida, found that Lauer's fraud as head of two Connecticut-based companies – Lancer Management Group and Lancer Management Group II – that managed investors' money and acted as hedge fund advisers was "egregious, pervasive, premeditated and resulted in the loss of hundreds of millions of dollars in investors' funds."

Linda Chatman Thomsen, Director of the SEC's Division of Enforcement, said, "This case highlights the SEC's ongoing efforts to combat hedge fund fraud and our dedicated work on behalf of investors to ensure that hedge fund managers are held accountable for any unlawful conduct."

David Nelson, Director of the SEC's Miami Regional Office, added, "We are particularly gratified at this decision, which resulted from several years of hard work to protect investors, starting when we successfully halted the fraud while it was still ongoing."

Lauer raised more than $1.1 billion from investors and his fraudulent actions caused investor losses of approximately $500 million. The SEC initially won emergency temporary restraining orders and asset freezes against Lauer and his companies, which were placed under the control of a Court-appointed receiver after the SEC filed its enforcement action in 2003.

During the protracted litigation, the SEC successfully stopped Lauer from diverting or hiding millions of dollars of assets from the Court's asset freeze.

The summary judgment order found that Lauer:

Materially overstated the hedge funds' valuations for the years 1999 to 2002.

Manipulated the prices of seven securities that were a material portion of the funds' portfolios from November 1999 through at least April 2003.

Failed to provide any basis to substantiate or explain the exorbitant valuations of the shell corporations that saturated the funds' portfolios.

Hid or lied to investors about the Funds' actual holdings by providing them with fake portfolio statements.

Falsely represented the funds' holdings in newsletters.

The judge's order entered a permanent injunction against Lauer against future violations of Sections 17(a)(1)-(3) of the Securities Act of 1933 (Securities Act), Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 (Exchange Act), and Sections 206(1) and (2) of the Investment Advisers Act of 1940 (Advisers Act). The order reserved ruling on the SEC's claim for disgorgement with prejudgment interest against Lauer, and on the amount of a financial penalty Lauer must pay. The SEC is seeking a financial penalty and disgorgement of the more than $50 million Lauer received in ill-gotten gains from his fraudulent scheme.

For further information, see Litigation Release No. 18226 (July 10, 2003), Litigation Release No. 18247 (July 23, 2003), Litigation Release No. 18991 (December 2, 2004), Litigation Release No. 19018 (December 30, 2004) and Litigation Release No. 19019 (December 30, 2004); Litigation Release No. 19042 (January 21, 2005), Litigation Release No. 19186 (April 15, 2005); Litigation Release No. 19590 (March 6, 2006); Litigation Release No. 19661 (April 18, 2006); and Litigation Release No. 20505 (March 21, 2008).

Source: https://www.sec.gov/news/press/2008/2008-225.htm

Bank of America Admits Disclosure Failures to Settle SEC Charges

Bank Also Resolves Separate SEC Case in $245 Million Settlement

Washington D.C., Aug. 21, 2014 — The Securities and Exchange Commission today announced a settlement in which Bank of America admits that it failed to inform investors during the financial crisis about known uncertainties to future income from its exposure to repurchase claims on mortgage loans.

Bank of America also is resolving securities fraud charges that the SEC filed last year related to a residential mortgage-backed securities (RMBS) offering.

Bank of America has agreed to settle the two cases by paying $245 million as part of a major global settlement announced today by the U.S. Department of Justice in which Bank of America will pay $16.65 billion to resolve various investigations involving violations of laws regulated by other federal agencies.

"Bank of America failed to make accurate and complete disclosure to investors and its illegal conduct kept investors in the dark," said Rhea Kemble Dignam, regional director of the SEC's Atlanta office. "Requiring an admission of wrongdoing as part of Bank of America's agreement to resolve the SEC charges filed today provides an additional level of accountability for its violation of the federal securities laws."

In new charges filed by the SEC today in a settled administrative proceeding, Bank of America admits that it failed to disclose known uncertainties regarding potential increased costs related to mortgage loan repurchase claims stemming from more than $2 trillion in residential mortgage sales from 2004 through the first half of 2008 by the bank and certain companies it acquired. In connection with these sales, Bank of America made contractual representations and warranties about the underlying quality of the mortgage loans and underwriting. In the event that a loan buyer claimed a breach of a representation or warranty, the bank could be obligated to repurchase the related mortgage loan at its outstanding unpaid principal balance.

According to the SEC's order, Regulation S-K requires public companies like Bank of America to disclose in the Management's Discussion & Analysis (MD&A) section of its periodic financial reports any known uncertainties that it reasonably expects will have a material impact on income from continuing operations. Bank of America failed to adhere to these requirements by not disclosing known uncertainties about the future costs of mortgage repurchase claims when filing its financial reports for the second and third quarters of 2009. These uncertainties included whether Fannie Mae, a mortgage loan purchaser from Bank of America, had changed its repurchase claim practices after being put into conservatorship, the future volume of repurchase claims from Fannie Mae and certain monoline insurance companies that provided credit

enhancements on certain mortgage loan sales, and the ultimate resolution of certain claims that Bank of America had reviewed and refused to repurchase but had not been rescinded by the claimants.

In the SEC's original case against Bank of America filed in August 2013, the agency alleged that the bank in its own words "shifted the risk" for losses to investors when it failed to disclose that more than 70 percent of the mortgages backing the RMBS offering called BOAMS 2008-A originated through its "wholesale" channel of mortgage brokers unaffiliated with Bank of America entities. Bank of America knew that such wholesale channel loans – described internally as "toxic waste" – presented vastly greater risks of severe delinquencies, early defaults, underwriting defects, and prepayment.

As part of the global settlement, Bank of America agreed to resolve the SEC's original case by paying disgorgement of $109.22 million, prejudgment interest of $6.62 million, and a penalty of $109.22 million while consenting to permanent injunctions against violations of Sections 5, 17(a)(2), and 17(a)(3) of the Securities Act of 1933. The settlement is subject to court approval. To settle the new case, Bank of America agreed to pay a $20 million penalty while admitting to facts set out in the SEC's order, which requires Bank of America to cease and desist from causing any violations and any future violations of Section 13(a) of the Securities Exchange Act of 1934 and Rules 12b-20 and 13a-13.

The SEC's investigation into Bank of America's MD&A-related violations was led by Mark A. Troszak, Kristin B. Wilhelm, and Peter J. Diskin in the SEC's Atlanta office. The investigation into Bank of America's RMBS-related violations was led by Mark Eric Harrison and Aaron W. Lipson, and the litigation was led by Ms. Wilhelm with assistance from Mr. Harrison. The investigations were supervised by Ms. Dignam and William P. Hicks, associate regional director for enforcement in the Atlanta office. The SEC appreciates the assistance of the Justice Department and the U.S. Attorney's Office for the Western District of North Carolina.

Source: https://www.sec.gov/news/press-release/2014-172

Waste Management Founder, Five Other Former Top Officers Sued for Massive Fraud

Defendants Inflated Profits by $1.7 Billion To Meet Earnings Targets;

Defendants Reap Millions in Ill-Gotten Gains While Defrauded Investors Lose More Than $6 Billion

Washington, D.C., March 26, 2002 — The Securities and Exchange Commission filed suit today against the founder and five other former top officers of Waste Management Inc., charging them with perpetrating a massive financial fraud lasting more than five years. The complaint, filed in U.S. District Court in Chicago, charges that defendants engaged in a systematic scheme to falsify and misrepresent Waste Management's financial results between 1992 and 1997.

The complaint names Waste Management's former most senior officers: Dean L. Buntrock, Waste Management's founder, chairman of the board of directors, and chief executive officer during most of the relevant period; Phillip B. Rooney, president and chief operating officer, director, and CEO for a portion of the relevant period; James E. Koenig, executive vice president and chief financial officer; Thomas C. Hau, vice president, corporate controller, and chief accounting officer; Herbert Getz, senior vice president, general counsel, and secretary; and Bruce D. Tobecksen, vice president of finance.

"Our complaint describes one of the most egregious accounting frauds we have seen," said Thomas C. Newkirk, associate director of the SEC's Division of Enforcement. "For years, these defendants cooked the books, enriched themselves, preserved their jobs, and duped unsuspecting shareholders."

According to the complaint, the defendants violated, and aided and abetted violations of, antifraud, reporting, and record-keeping provisions of the federal securities laws. The Commission is seeking injunctions prohibiting future violations, disgorgement of defendants' ill-gotten gains, civil money penalties, and officer and director bars against all defendants.

"Defendants' fraudulent conduct was driven by greed and a desire to retain their corporate positions and status in the business and social communities," Newkirk said. "Our goal is to take

the profit out of securities fraud and to prevent fraudsters from serving as officers or directors of public companies."

The complaint alleges that the defendants played the following roles in the scheme:

Buntrock - the driving force behind the fraud. He set earnings targets, fostered a culture of fraudulent accounting, personally directed certain of the accounting changes to make the targeted earnings, and was the spokesperson who announced the company's phony numbers. At the same time, Buntrock posed as a successful entrepreneur. With charitable contributions made with fruits of his ill-gotten gains or money taken from the company, Buntrock presented himself as a pillar of the community. For example, just 10 days before certain of the accounting irregularities first became public, he enriched himself with a tax benefit by donating inflated company stock to his college alma mater to fund a building in his name. He was the primary beneficiary of the fraud and reaped more than $16.9 million in ill-gotten gains from, among other things, performance-based bonuses, retirement benefits, charitable giving, and selling company stock while the fraud was ongoing.

Rooney - in charge of building the profitability of the company's core solid waste operations and at all times exercised overall control over the company's largest subsidiary. He ensured that required write-offs were not recorded and, in some instances, overruled accounting decisions that would have a negative impact on operations. He reaped more than $9.2 million in ill-gotten gains from, among other things, performance-based bonuses, retirement benefits, and selling company stock while the fraud was ongoing.

Koenig - primarily responsible for executing the scheme. He also ordered the destruction of damaging evidence, misled the company's audit committee and internal accountants, and withheld information from the outside auditors. He profited by more than $900,000 from his fraudulent acts.

Hau - principal technician for the fraudulent accounting. Among other things, he devised many "one-off" accounting manipulations to deliver the targeted earnings and carefully crafted the deceptive disclosures. He profited by more than $600,000 from his fraudulent acts.

Tobecksen - another accounting expert who was Koenig's right-hand man. In 1994, he was enlisted to handle Hau's overflow. He profited by more than $400,000 from his fraudulent acts

Getz - the company's general counsel. Getz blessed the company's fraudulent disclosures and profited by more than $450,000 from his fraudulent acts.

The complaint alleges that defendants fraudulently manipulated the company's financial results to meet predetermined earnings targets. The company's revenues were not growing fast enough to meet these targets, so defendants instead resorted to improperly eliminating and deferring current period expenses to inflate earnings. They employed a multitude of improper accounting practices to achieve this objective. Among other things, the complaint charges that defendants:

avoided depreciation expenses on their garbage trucks by both assigning unsupported and inflated salvage values and extending their useful lives,

assigned arbitrary salvage values to other assets that previously had no salvage value,

failed to record expenses for decreases in the value of landfills as they were filled with waste,

refused to record expenses necessary to write off the costs of unsuccessful and abandoned landfill development projects,

established inflated environmental reserves (liabilities) in connection with acquisitions so that the excess reserves could be used to avoid recording unrelated operating expenses,

improperly capitalized a variety of expenses, and

failed to establish sufficient reserves (liabilities) to pay for income taxes and other expenses.

Defendants' improper accounting practices were centralized at corporate headquarters, according to the complaint. Each year, Buntrock, Rooney, and others prepared an annual budget in which they set earnings targets for the upcoming year. During the year, they monitored the company's actual operating results and compared them to the quarterly targets set in the budget, the complaint says. To reduce expenses and inflate earnings artificially, defendants then primarily used "top-level adjustments" to conform the company's actual results to the predetermined earnings targets, according to the complaint. The inflated earnings of prior periods then became the floor for future manipulations. The consequences, however, created what Hau referred to as a "one-off" problem. To sustain the scheme, earnings fraudulently achieved in one period had to be replaced in the next.

Defendants allegedly concealed their scheme in a variety of ways. They are charged with making false and misleading statements about the company's accounting practices, financial condition, and future prospects in filings with the Commission, reports to shareholders, and press releases. They also are charged with using accounting manipulations known as "netting" and "geography" to make reported results appear better than they actually were and avoid public scrutiny.

Defendants allegedly used netting to eliminate approximately $490 million in current period operating expenses and accumulated prior period accounting misstatements by offsetting them against unrelated one-time gains on the sale or exchange of assets. They are charged with using geography entries to move tens of millions of dollars between various line items on the company's income statement to, in Koenig's words, "make the financials look the way we want to show them."

Defendants were allegedly aided in their fraud by the company's long-time auditor, Arthur Andersen LLP, which repeatedly issued unqualified audit reports on the company's materially false and misleading annual financial statements. At the outset of the fraud, management capped Andersen's audit fees and advised the Andersen engagement partner that the firm could earn additional fees through "special work." Andersen nevertheless identified the company's improper accounting practices and quantified much of the impact of those practices on the company's financial statements. Andersen annually presented company management with what it called Proposed Adjusting Journal Entries ("PAJEs") to correct errors that understated expenses and overstated earnings in the company's financial statements.

Management consistently refused to make the adjustments called for by the PAJEs, according to the complaint. Instead, defendants secretly entered into an agreement with Andersen fraudulently to write off the accumulated errors over periods of up to ten years and to change the underlying accounting practices, but to do so only in future periods, the complaint charges. The signed, four-page agreement, known as the Summary of Action Steps (attached to the Commission's complaint), identified improper accounting practices that went to the core of the company's operations and prescribed 32 "must do" steps for the company to follow to change those practices. The Action Steps thus constituted an agreement between the company and its outside auditor to cover up past frauds by committing additional frauds in the future, the complaint charges.

Defendants could not even comply with the Action Steps agreement, according to the complaint. Writing off the errors and changing the underlying accounting practices as prescribed in the agreement would have prevented the company from meeting earnings targets and defendants from enriching themselves, the complaint says.

Defendants' scheme eventually unraveled. In mid-July 1997, a new CEO ordered a review of the company's accounting practices. That review ultimately led to the restatement of the company's

financial statements for 1992 through the third quarter of 1997. When the company filed its restated financial statements in February 1998, the company acknowledged that it had misstated its pre-tax earnings by approximately $1.7 billion. At the time, the restatement was the largest in corporate history.

As news of the company's overstatement of earnings became public, Waste Management's shareholders (other than the defendants who sold company stock and thus avoided losses) lost more than $6 billion in the market value of their investments when the stock price plummeted by more than 33%.

For additional information, see Litigation Release No. 17435. Previously, the Commission instituted and simultaneously settled the following proceedings against Andersen and four of its partners in connection with Waste Management:

SEC v. Arthur Andersen LLP, et al., No. 1:01CV01348 (JR) (D.D.C.) [Release No. LR-17039] (June 19, 2001)

In the Matter of Arthur Andersen, LLP, [Release No. 34-44444] (June 19, 2001)

In the Matter of Robert E. Allgyer CPA, [Release Nos. 33-7986, 34-44445] (June 19, 2001)

In the Matter of Edward G. Maier CPA, [Release Nos. 33-7987, 34-44446] (June 19, 2001)

In the Matter of Walter Cercavschi CPA, [Release Nos. 33-7988, 34-44447] (June 19, 2001)

In the Matter of Robert G. Kutsenda, CPA, [Release No. 34-44448] (June 19, 2001).

Source: http://www.sec.gov/news/headlines/wastemgmt6.htm

The WORLDCOM Case

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. WORLDCOM, INC., Defendant.

Civ No. 02-CV-4963 (JSR)

FIRST AMENDED

COMPLAINT (SECURITIES FRAUD)

The Securities and Exchange Commission ("the Commission") alleges for its First Amended Complaint as follows:

From at least as early as 1999 through the first quarter of 2002, defendant WorldCom Inc. ("WorldCom") misled investors. Defendant WorldCom has acknowledged that during this period, as a result of undisclosed and improper accounting, it materially overstated the income it reported in its financial statements by approximately $9 billion.

In general, WorldCom manipulated its financial results in two ways. First, WorldCom reduced its operating expenses by improperly releasing certain reserves held against operating expenses. Second, WorldCom improperly reduced its operating expenses by recharacterizing certain expenses as capital assets. Neither practice was in conformity with generally accepted accounting principles ("GAAP"). Neither practice was disclosed to WorldCom's investors, despite the fact that both practices constituted changes from WorldCom's previous accounting practices. Both practices falsely reduced WorldCom's expenses and, accordingly, had the effect of artificially inflating the income WorldCom reported to the public on its financial statements from 1999 through the first quarter of 2002. As a result of, among other things, WorldCom's chronic and pervasive failures to follow GAAP standards, and to mandate and institute appropriate internal controls, the exact amount and extent of WorldCom's overstatement of its income has not yet been quantified.

Certain of the improper accounting entries were made with respect to WorldCom's so-called "line costs," which were among WorldCom's major operating expenses. From at least the third quarter of 2000 through the first quarter of 2002, in a scheme directed and approved by members of senior management, WorldCom concealed the true extent of its "line costs." By improperly reducing reserves held against "line costs" and by transferring certain "line costs" to its capital asset accounts, WorldCom falsely portrayed itself as a profitable business when it was not, and concealed large losses WorldCom suffered. WorldCom's fraudulent accounting practices with respect to "line costs" were designed to and did falsely and fraudulently inflate its income to correspond with estimates by Wall Street analysts and to support the price of WorldCom's common stock in the market.

While engaging in accounting manipulations with respect to line costs to fraudulently and falsely inflate its income, defendant WorldCom continued to offer and sell additional WorldCom securities, using fraudulent and materially false financial statements and financial information in the course of those offers and sales.

By engaging in such improper conduct, WorldCom violated the anti-fraud, reporting, record-keeping, and internal controls provisions of the federal securities laws. The Commission requests, among other things, that this Court enjoin WorldCom from committing further violations of the federal securities laws as alleged herein, and order WorldCom to pay a monetary penalty based on its violations of the federal securities laws.

JURISDICTION

The Commission brings this action pursuant to Section 20(b) and 20(d) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77(b) and 77(d)], and Section 21(d) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d)].

This Court has jurisdiction over this action pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and pursuant to Section 27 of the Exchange Act [15 U.S.C. § 78aa].

The defendant, directly and indirectly, has engaged in, and unless restrained and enjoined by this Court will continue to engage in, transactions, acts, practices, and courses of business that violate Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Sections 10(b), 13(a), 13(b)(2)(A), 13(b)(2)(B) of the Exchange Act [15 U.S.C. §§ 78m(a) and 78m(b)(A)] of the Exchange Act [15 U.S.C. §§ 78j(b), 78m(a), 78m(b)(A) and 78m(b)(B)] and Rules 10b-5, 12b-20, 13a-1, and 13a-13 thereunder [17 C.F.R. §§240.10b-5, 240.12b-20, 240.13a-1, and 240.13a-13].

THE FRAUDULENT SCHEME REGARDING WORLDCOM'S LINE COSTS

A. The Defendant

WorldCom is a Clinton, Mississippi-based company incorporated in Georgia which provides a broad range of communications services to businesses and consumers in more than 65 countries. WorldCom provides data transmission and Internet services for businesses, and, through its MCI unit, provides telecommunications services for businesses and consumers. WorldCom is a public company whose securities are registered with the Commission pursuant to Section 12(b) of the Exchange Act and it is required to file periodic reports with the Commission pursuant to Section 13 of the Act. WorldCom's common stock was, at all times relevant hereto, listed and traded on

the NASDAQ National Market System under the symbol "WCOM," and its stock was covered by Wall Street analysts who routinely issued quarterly and annual earnings estimates.

B. Relevant Accounting Principles

Public companies, such as WorldCom, typically report the financial results of their operations in financial statements that include both an income statement and a balance sheet. A company's income statement reports, among other things, revenue recognized, expenses incurred, and income earned during a stated period of time -- usually for a fiscal quarter or a fiscal year. Within an income statement, expenses are generally subtracted from revenues to calculate income. A company's balance sheet reports, among other things, the assets and liabilities of a company at a point in time, usually as of the end of the company's fiscal quarter or fiscal year.

When companies spend money or incur costs, those expenditures can be accounted for in a variety of ways depending on the nature of the transaction. Some types of expenditures, most commonly those incurred by a company in its normal operations, are treated as current period costs or "operating expenses." Examples of operating expenses include recurring costs such as salaries and wages, insurance, equipment rental, electricity, and maintenance contracts. Generally, almost all routine expenditures that a company makes are operating expenses. Other types of expenditures, most commonly those which result in the acquisition of, or improvement to, the company's assets, are treated as "capital expenditures." Examples of capital expenditures include purchases of real estate, manufacturing equipment, and computer equipment.

Operating expenses and capital expenditures generally receive different accounting treatment. Operating expenses are generally reported on a company's income statement and subtracted from revenues in the period in which the expense is incurred or paid, resulting in the company's net income for that period. Generally, capital expenditures, by contrast, are not subtracted from revenues and are not reflected on the income statement. Instead, capital expenditures are reported as capital assets on a company's balance sheet.

If a company makes entries in its accounts that effectively reclassify or transfer a given expenditure from an "operating expense" to a "capital asset," that action will have the following effects on the company's financial statements: (a) the reclassification or transfer will reduce the company's operating expenses, and the company's pre-tax net income consequently will increase by the amount reclassified or transferred; (b) the value of the company's capital assets and total assets will increase by the amount reclassified or transferred; and (c) the value of the company's net worth will increase.

One of WorldCom's major operating expenses reported on its income statements which were periodically filed with the Commission was its so-called "line costs." "Line costs" represented the various fees WorldCom paid to third-party telecommunications carriers for WorldCom's right

to access the third-party's network facilities in order to serve customers. Under GAAP, these fees must be reported as an expense on a company's income statement.

From time to time, WorldCom established liabilities or "reserves" on its balance sheet for various future payments for goods or services it had previously received or incurred. Among the reserves WorldCom established were reserves for line costs and income taxes. Line cost reserves and income tax reserves were listed on WorldCom's balance sheet as liabilities.

C. WorldCom Changes its Accounting to Fraudulently Inflate Its Income

Anticipating unabated growth in telecommunications services, WorldCom entered into a number of long-term lease agreements with various third-party telecommunication carriers to gain the right to access these networks in the late 1990s. Many of these leases required WorldCom to pay a fixed sum to the third-party carrier over the full term of the lease regardless of whether WorldCom actually made use of all or part of the capacity of the leased facilities. Before any improper entries to WorldCom's books and records were made at the corporate level, these fees were recorded by WorldCom employees on its books and records as "line costs," current expenses which would be reported as part of WorldCom's operating expenses on its income statements.

Beginning in or around July 2000, WorldCom's expenses as a percentage of its total revenue began to increase, resulting in a decline in the rate of growth of WorldCom's income. This decline in income created a substantial risk that WorldCom's publicly reported income would fail to meet the expectations of Wall Street analysts and that the market price of WorldCom's securities would therefore decline.

Starting at least as early as the third quarter of 2000, WorldCom, in a scheme directed and approved by members of senior management, engaged in a continuing series of improper and fraudulent accounting manipulations designed to inflate artificially WorldCom's publicly reported income by falsely reducing WorldCom's reported line cost expenses. As a result of this scheme, WorldCom materially understated its expenses, and materially overstated its income, thereby defrauding investors.

In or around October 2000, WorldCom officers and employees fraudulently made and caused the making of certain entries in its general ledger intended to increase WorldCom's publicly reported income and conceal the true extent of its expenses; specifically, fraudulent and false entries were made in WorldCom's general ledger reducing its line cost expense accounts, and reducing -- in amounts corresponding to the fraudulent and false line cost expense amounts -- various reserve accounts. There was no documentation supporting, nor was there any proper business rationale for, the false and fraudulent entries. These entries had the effect of reducing

the third quarter 2000 line costs by approximately $828 million, thereby increasing WorldCom's publically reported income for the third quarter of 2000.

In or around February 2001, WorldCom officers and employees fraudulently made and caused the making of certain entries in its general ledgers intended to increase its publicly reported income and conceal the true extent of its expenses; specifically, fraudulent and false entries were made in WorldCom's general ledger reducing its line cost expense accounts, and reducing -- in amounts corresponding to the fraudulent and false line cost expense amounts -- various reserve accounts. There was no documentation supporting, nor was there any proper business rationale for, the fraudulent and false entries. These entries had the effect of reducing the fourth quarter 2000 line costs by approximately $407 million, thereby increasing WorldCom's publicly reported income in the year which ended December 31, 2000.

In or around April 2001, because WorldCom could not continue to draw down its reserve accounts to hide the true extent of its line cost expenses, members of WorldCom's senior management effected a change in the method of making false accounting entries to fraudulently inflate WorldCom's income and to conceal the true extent of its expenses. Now, in addition to reducing WorldCom's line cost expenses with improper releases from reserve accounts, WorldCom officers and employees fraudulently made and caused the making of false and fictitious entries in WorldCom's general ledger which effectively "transferred" a significant portion of its line cost expenses to a variety of capital asset accounts, thereby effectively recharacterizing, without any supporting documentation, and in a manner inconsistent with GAAP, the operating expenses it had incurred for access to third party networks as "assets." In accordance with the directions and approval of members of WorldCom's senior management, WorldCom officers and employees made, and continued to make and cause the making of false and fraudulent entries in WorldCom's general ledger which were necessary to effect this scheme from the first quarter of 2001 through and including the first quarter of 2002. There was no documentation supporting, nor was there any proper business or accounting rationale for, the fraudulent and false entries.

Specifically, in or around April 2001, WorldCom officers and employees fraudulently made and caused the making of false entries in WorldCom's general ledger reducing its line cost expenses and correspondingly increasing its capital asset accounts. These manipulations resulted in the fraudulent concealment of approximately $771 million in WorldCom's line cost expenses for that quarter. In or around July 2001, WorldCom officers and employees fraudulently made and caused the making of entries in WorldCom's general ledger which effectively erased approximately $560 million from its line cost expenses for the second quarter of 2001 and correspondingly increased capital asset accounts. In or around October 2001, WorldCom officers and employees fraudulently made and caused the making of entries in WorldCom's general ledger which effectively erased approximately $743 million from its line cost expenses for the third quarter of 2001 and correspondingly increased capital asset accounts. In or around February 2002, WorldCom officers and employees fraudulently made and caused the making of entries in

WorldCom's general ledger which effectively erased approximately $941 million from its line cost expenses for the fourth quarter of 2001 and correspondingly increased capital asset accounts. And, in and around April 2002, WorldCom officers and employees fraudulently made and caused the making of entries in WorldCom's general ledger which effectively erased approximately $818 million from its line cost expenses for the first quarter of 2002 and correspondingly increased capital asset accounts.

WorldCom's fraudulent, false and improper treatment of its line cost expenses, described above, was not disclosed to its investors, nor did WorldCom disclose to its investors, or elsewhere, that it had implemented such changes in its methods of accounting for line cost expenses.

As a result of these fraudulent, false and improper accounting manipulations, WorldCom materially overstated its earnings as well as its assets and materially understated its expenses in its filings with the Commission, specifically, on its Forms 10-Q for each quarter from the third quarter of 2000 through and including the first quarter of 2002, and on its Forms 10-K for the fiscal years which ended on December 31, 2000 and December 31, 2001.

The effects of WorldCom's fraudulent accounting scheme on WorldCom's filings with the Commission, which scheme resulted in material misstatements therein, are summarized on the following table:

WorldCom's False Statements in Filings With Commission

Form Filed With the Commission	Reported Line Cost Expenses	Reported Income (before Taxes and Minority Interests)	Actual Line Cost Expenses	Actual Income (before Taxes and MinorityInterests)
10-Q, 3rd Q. 2000	$3.867 billion	$1.736 billion	$4.695 billion	$908 million
10-K, 2000	$15.462 billion	$7.568 billion	$16.697 billion	$6.333 billion
10-Q, 1st Q. 2001	$4.108 billion	$988 million	$4.879 billion	$217 million
10-Q, 2nd Q. 2001	$3.73 billion	$159 million	$4.29 billion	$401 million loss
10-Q, 3rd Q. 2001	$3.745 billion	$845 million	$4.488 billion	$102 million
10-K, 2001	$14.739 billion	$2.393 billion	$17.754 billion	$622 million loss

10-Q, 1st Q. 2002	$3.479 billion	$240 million	$4.297 billion	$578 million loss

WorldCom's disclosures in its Forms 10-K and in its Forms 10-Q failed to include material facts necessary to make the statements made in light of the circumstances in which they were made not misleading. Significantly, these filings failed to disclose the company's accounting treatment of its line cost expenses, that such treatment had changed from prior periods, and that the company's line cost expenses were actually increasing substantially as a percentage of its revenues.

While WorldCom was engaged in the fraudulent accounting scheme described above, WorldCom filed numerous registration statements for the issuance of new stock, and related amendments thereto, which statements and amendments incorporated or contained WorldCom's fraudulent financial statements and financial information.

CLAIMS FOR RELIEF

FIRST CLAIM

Violation of Exchange Act Section 10(b) and Exchange Act Rule 10b-5

Paragraphs 1 through 27 above are incorporated herein by this reference.

Defendant WorldCom, directly or indirectly, by use of the means or instruments of interstate commerce, or of the mails, or of a facility of a national securities exchange, knowingly or recklessly (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, transactions, practices, and courses of business which operated or would operate as a fraud or deceit upon the purchasers of securities and upon other persons, in connection with the purchase or sale of a security.

In connection with the above described acts and omissions, defendant WorldCom, and members of WorldCom's senior management, acted knowingly or recklessly. They knew, or were reckless in not knowing, that WorldCom's Forms 10-Q for the periods commencing the third quarter of 2000 through the first quarter of 2002, inclusive, and that its Forms 10-K for 2000 and 2001, including the financial statements contained therein, as filed with the Commission, contained material misstatements and omissions.

By reason of the foregoing, WorldCom violated Section 10(b) of the Exchange Act and Exchange Act Rule 10b-5.

SECOND CLAIM

Violation of Securities Act Section 17(a)

Paragraphs 1 through 27 above are incorporated herein by this reference.

On or about April 26, 2001, defendant WorldCom filed with the Commission a Form 425, a written communication deemed to be a prospectus under Rule 425. The Form 425, containing WorldCom's first quarter 2001 earnings, was filed in connection with a registration related to the offering of two types of tracking stock filed on a Form S-4 registration statement. Defendant stated in this Form 425 that its first quarter 2001 consolidated net income was $729 million. This reported consolidated net income figure was materially overstated as a result of WorldCom's manipulations of its accounts to fraudulently understate its line cost expenses by approximately $771 million for that quarter.

On or about May 1, 2001, defendant WorldCom filed with the Commission a Rule 424(b)(5) prospectus for a previously filed registration statement on Form S-3, wherein defendant stated that its first quarter 2001 consolidated pre-tax net income was $594 million. This reported consolidated net income figure was materially overstated as a result of WorldCom's manipulations of its accounts to fraudulently understate its line cost expenses by approximately $771 million for that quarter. Defendant WorldCom subsequently filed the following documents on or about the dates listed below which incorporated and thereby repeated this materially false overstatement of its first quarter 2001 consolidated pre-tax net income:

Form		
Form S-4	Tracking Stock Registration Statement	May 9, 2001
Form 424(b)(5)	Amendment to Prospectus for Debt Offering	May 11, 2001
Form S-4/A	Amendment to Tracking Stock Registration Statement	May 14, 2001

On or about May 15, 2001, defendant WorldCom filed its Form 10-Q with the Commission for the first quarter of 2001, wherein it reported in its Consolidated Statement of Operations that its consolidated pre-tax net income was $610 million. This reported consolidated net income

figure was materially overstated as a result of WorldCom's manipulations of its accounts to fraudulently understate its line cost expenses by approximately $771 million for that quarter. Defendant WorldCom subsequently filed the following documents on or about the dates listed below which incorporated and thereby repeated this materially false overstatement of its first quarter 2001 consolidated pre-tax net income:

Form

S-8 WorldCom 1997 Stock Option Plan June 1, 2001

S-8 MCI Group 2001 Employee Stock Purchase

Plan June 13, 2001

S-8 POS Post-Effective Amendment to Tracking

Stock S-4 July 2, 2001

S-8 POS Post-Effective Amendment to Tracking

Stock S-4 July 5, 2001

As a consequence of the foregoing, defendant WorldCom, in the offer or sale of the securities described above, among others, by the use of means or instruments of transportation or communication in interstate commerce, or by the use of the mails, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material facts or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities.

In connection with the above described acts and omissions, defendant WorldCom, and members of WorldCom's senior management, acted knowingly, recklessly, or negligently. They knew, or were reckless in not knowing, or should have known, that the above mentioned filings with the Commission contained material misstatements and omissions. By reason of the foregoing, WorldCom violated Section 17(a) of the Securities Act.

THIRD CLAIM

Violation of Exchange Act Sections

13(a), 13(b)(2)(A) and 13(b)(2)(B) and

Exchange Act Rules 13a-1, 13a-13, and 12b-20

Paragraphs 1 through 27 are incorporated herein by this reference.

Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder require issuers of registered securities to file with the Commission factually accurate annual and quarterly reports. Exchange Act Rule 12b-20 provides that in addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made, not misleading.

Section 13(b)(2)(A) of the Exchange Act requires issuers of registered securities 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. Section 13(b)(2)(B) of the Exchange Act requires such issuers to, among other things, devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that the Company's transactions were recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles.

As a result of the conduct set forth above, WorldCom violated Sections 13(a), 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act and Exchange Act Rules 13a-1, 13a-13, and 12b-20.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court:

Enter Orders:

Permanently restraining and enjoining WorldCom from violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder;

Permanently restraining and enjoining WorldCom from violating Section 17(a) of the Securities Act;

Permanently restraining and enjoining WorldCom from violating Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13 thereunder;

Permanently restraining and enjoining WorldCom from violating Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act;

Imposing civil monetary penalties on WorldCom pursuant to Section 20(d) of the Securities Act and Section 21(d) of the Exchange Act;

Prohibiting WorldCom and its affiliates, officers, directors, employees, and agents, from destroying, altering, or removing from the court's jurisdiction any documents relevant to the matters alleged herein;

Prohibiting WorldCom and its affiliates from making any extraordinary payments to any present or former affiliate, or officer, director, or employee of WorldCom, or its affiliates, including but not limited to any severance payments, bonus payments, or indemnification payments;

Appointing a corporate monitor to ensure compliance with items F and G, above; and

Granting such other and additional relief as this Court may deem just and proper.

Respectfully submitted,

Robert B. Blackburn (RB 1545)

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Source: http://www.sec.gov/litigation/complaints/comp17829.htm

SEC Charges J.P. Morgan Chase In Connection With Enron's Accounting Fraud

J.P. Morgan Chase Simultaneously Settles Charges for $135 Million
U.S. Securities and Exchange Commission
Litigation Release No. 18252 / July 28, 2003
Accounting And Auditing Enforcement Release No. 1820 / July 28, 2003
Securities and Exchange Commission v. J.P. Morgan Chase & Co., Case No. H-03-28-77 (MH) (S.D. Tx.)

The Securities and Exchange Commission ("Commission") today charged J.P. Morgan Chase & Co. with aiding and abetting Enron Corp.'s securities fraud. The Commission's complaint, filed in U.S. District Court in Houston, alleges that J.P. Morgan Chase aided and abetted Enron's manipulation of its reported financial results through a series of complex structured finance transactions, called "prepays," over a period of several years preceding Enron's bankruptcy. These transactions were used by Enron to report loans from J.P. Morgan Chase as cash from operating activities. The structural complexity of these transactions had no business purpose aside from masking the fact that, in substance, they were loans from J.P. Morgan Chase to Enron. Between December 1997 and September 2001, J.P. Morgan Chase effectively loaned Enron a total of approximately $2.6 billion in the form of seven such transactions.

Simultaneous with the filing of the complaint, J.P. Morgan Chase agreed to file a consent and final judgment settling the Commission's action against it. In the consent, J.P. Morgan Chase has agreed, without admitting or denying the allegations of the complaint, to the entry of a final judgment permanently enjoining it from future violations of Section 10(b) of the Securities Exchange Act of 1934 and Exchange Act Rule 10b-5. J.P. Morgan Chase also has agreed to pay disgorgement, penalties and interest in the amount of $135 million. The Commission intends to have these funds paid into a court account pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002 for ultimate distribution to victims of the fraud.

Specifically, the complaint alleges that between December 1997 and Enron's demise in 2001, J.P. Morgan Chase and Enron engaged in seven of these prepay transactions in order to disguise loans as commodity trades thus achieving Enron's desired accounting and reporting objectives. As the complaint alleges, the clearest indication that the J.P. Morgan Chase/Enron prepays were disguised loans was their structure. In general, in a prepay transaction (also known as a prepaid forward sale contract) the purchaser pays for a commodity upfront, in full, at the time the contract is made, and the seller agrees to deliver the subject commodity on future dates, often over the course of several years. In effect, the seller bets that the market price of the subject

commodity would be lower at the time of delivery than at the time the contract is made. The purchaser bets the opposite way: that the market price of the commodity at the time of delivery will exceed the price it paid at the time of contracting. In a typical prepay transaction, therefore, each side assumes commodity price risk.

According to the complaint, the critical difference in the J.P. Morgan Chase/Enron prepays -- and the reason that these transactions were in substance loans -- was that they employed a structure that passed the counter-party commodity price risk back to Enron, thus eliminating all commodity risk from the transaction. This was accomplished through a series of simultaneous trades whereby Enron passed the counter-party commodity price risk to a J.P. Morgan Chase-sponsored special purpose vehicle called Mahonia, which passed the risk to J.P. Morgan Chase, which, in turn, passed the risk back to Enron.

As in typical prepays, the complaint alleges, Enron received cash upfront. In contrast to typical prepays, according to the complaint, with all elements of the structure taken together, Enron's future obligations were reduced to the repayment of cash it received from J.P. Morgan Chase with negotiated interest. The interest was calculated with reference to LIBOR. Since all price risk and, in certain transactions, even the obligation to transport a commodity were eliminated, the only risk in the transactions was Chase's risk that Enron would not make its payments when due, i.e., credit risk. In short, the complaint alleges, these seven prepays were in substance loans.

According to the complaint, Mahonia was included in the structure solely to effectuate Enron's accounting and financial reporting objectives. Enron told J.P. Morgan Chase that Enron needed Mahonia in the transactions for Enron's accounting. Mahonia was controlled by Chase and was directed by Chase to participate in the transactions ostensibly as a separate, independent, commodities-trading entity. As the complaint further alleges, in order to facilitate Enron's accounting objectives, J.P. Morgan Chase took various steps to make it appear that Mahonia was an independent third party.

The Commission alleges that J.P. Morgan Chase knew that Enron engaged in prepays to match its so-called mark-to-market earnings (paper earnings based on changes in the market value of certain assets held by Enron) with cash flow from operating activities. By matching mark-to-market earnings with cash flow from operating activities, Enron is alleged to have sought to convince analysts and credit rating agencies that its reported mark-to-market earnings were real, i.e., that the value of the underlying assets would ultimately be converted into cash.

The Commission further alleges that J.P. Morgan Chase also knew that prepays yielded another substantial benefit to Enron: they allowed Enron to hide the true extent of its borrowings from investors and rating agencies because sums borrowed in prepay transactions appeared as "price risk management liabilities" rather than "debt" on Enron's balance sheet. In addition, Enron's obligation to repay those sums was not otherwise disclosed. Significantly, according to the Commission's allegations, J.P. Morgan Chase considered prepays to be unsecured loans to Enron, rather than commodity trading contracts, and based its decisions to participate in these transactions primarily on its assessment of Enron's credit.

The Commission brought this action in coordination with the New York County District Attorney's Office. The Commission also acknowledges the assistance of the Federal Reserve and the New York State Banking Department.

The Commission's investigation is continuing.

For additional information, see

SEC v. Michael J. Kopper - Litigation Release 17692 (Aug. 21, 2002)

SEC v. Andrew S. Fastow - Litigation Release 17762 (Oct. 2, 2002)

SEC v. Kevin A. Howard and Michael W. Krautz - Litigation Release 18030 (March 12, 2003)

SEC v. Merrill Lynch & Co. Inc., et al. - Litigation Release 18038 (March 17, 2003)

SEC v. Kevin A. Howard, Michael W. Krautz, Kenneth D. Rice, Joseph Hirko, Kevin P. Hannon, Rex T. Shelby, and F. Scott Yeager - Litigation Release 18122 (May 1, 2003) (Amended Complaint)

In the Matter of Citigroup, Inc. - Securities Exchange Act Of 1934 Release No. 48230; Accounting and Auditing Enforcement Release No. 1821; Administrative Proceeding File No. 11192 (July 28, 2003)

Source: http://www.sec.gov/litigation/litreleases/lr18252.htm

Xerox Settles SEC Enforcement Action Charging Company With Fraud

Xerox To Pay Largest Financial Fraud Penalty Ever Against Public Company;

Company Agrees to Restatement of Financial Results, Special Review of Accounting Controls

Washington, D.C., April 11, 2002 — The Securities and Exchange Commission today filed suit against Xerox Corporation in connection with a wide-ranging, four-year scheme to defraud investors. The SEC's complaint alleges that from at least 1997 through 2000, Xerox used a variety of what it called "accounting actions" and "accounting opportunities" to meet or exceed Wall Street expectations and disguise its true operating performance from investors. These actions, most of which violated generally accepted accounting principles (GAAP), accelerated the company's recognition of equipment revenue by over $3 billion and increased its pre-tax earnings by approximately $1.5 billion. Xerox agreed to settle the SEC's complaint by consenting to the entry of an injunction for violations of the antifraud and other provisions of the federal securities laws; restating its financials for the years 1997 to 2000; agreeing to a special review of its accounting controls; and paying an unprecedented $10 million penalty.

"Xerox used its accounting to burnish and distort operating results rather than to describe them accurately," said Stephen M. Cutler, the SEC's Director of Enforcement. "For Xerox, the accounting function was just another revenue source and profit opportunity. As a result, investors were misled and betrayed."

"Xerox's senior management orchestrated a four-year scheme to disguise the company's true operating performance," said Paul R. Berger, Associate Director of Enforcement. "Such conduct calls for stiff sanctions, including, in this case, the imposition of the largest fine ever obtained by the SEC against a public company in a financial fraud case. The penalty also reflects, in part, a sanction for the company's lack of full cooperation in the investigation."

Charles D. Niemeier, Chief Accountant for the Division of Enforcement, added: "Xerox employed a wide variety of undisclosed and often improper top-side accounting actions to manage the quality of its reported earnings. As a result, the company created the illusion that its operating results were substantially better than they really were."

The SEC's Federal Court Complaint

The SEC's complaint, filed in U.S. District Court for the Southern District of New York, alleges that Xerox used a host of undisclosed accounting actions in Xerox business units worldwide to manage its reported equipment revenues and profits. These accounting actions, which Xerox called "one-time actions," "one-offs," "accounting tricks" and "accounting opportunities," frequently were approved, implemented and tracked by senior Xerox management. The accounting actions had an enormous impact on Xerox's reported performance. For example, in the fourth quarters of both 1998 and 1999, accounting actions generated 37% of Xerox's reported pre-tax profit. The SEC's complaint further alleges that by 1998, nearly $3 of every $10 of Xerox's annual reported pre-tax earnings resulted from undisclosed accounting actions. If not for these accounting actions, Xerox would have fallen short of market expectations, often by a wide margin, in almost every reporting period from 1997 through 1999.

The allegations in the complaint center around seven different accounting actions used, in Xerox parlance, to "close the gap" between the company's operating results and the market's expectations from 1997 through 2000. (See attached chart illustrating impact of accounting actions and comparison to Wall Street estimates). Many of these actions had the purpose and effect of accelerating Xerox's recognition of revenue at the expense of future periods. According to the complaint, Xerox fraudulently disguised these actions so that investors remained unaware that the company was meeting earnings expectations only by using accounting maneuvers that could compromise future results.

Many of the accounting actions related to Xerox's leasing arrangements. Under these arrangements, the revenue stream from Xerox's customer leases typically had three components: the value of the "box," a term Xerox used to refer to the equipment; revenue that Xerox received for servicing the equipment over the life of the lease; and financing revenue that Xerox received on loans to its lessees. Under GAAP, Xerox was required to book revenue from the "box" at the beginning of the lease, but was required to book revenue from servicing and financing over the course of the entire lease. According to the complaint, Xerox relied on accounting actions to justify shifting more lease revenue to the "box," so that a greater portion of that revenue could be recognized immediately.

The complaint alleges that the two accounting actions with the largest impact on Xerox's financial statements were methodologies that Xerox called "return on equity" and "margin normalization." These two methodologies alone boosted Xerox's equipment revenues by $2.8 billion and its pre-tax earnings by $660 million from 1997 to 2000. While these methodologies were quite complex, the results were straightforward. Xerox used the return-on-equity method to shift revenue to the "box" that the company had historically allocated to financing. And margin

normalization shifted revenue to the "box" that had historically been allocated to servicing. In violation of GAAP, Xerox failed to disclose these methodologies, and the numerous changes it made to them, to investors, creating the appearance that the company was earning much more from its sales of equipment than it actually was. The complaint alleges that the failure to disclose the changes in accounting methods and estimates was fraudulent.

Xerox also used approximately $1 billion in other one-time accounting actions to artificially improve its operating results. By using these accounting actions and failing to disclose their use, Xerox violated GAAP as well as disclosure requirements. These additional one-time accounting actions included the improper use of "cushion" or "cookie jar" reserves, the improper recognition of the gain from a one-time event, and miscellaneous lease accounting related actions.

In addition, Xerox misled investors by failing to disclose the impact that approximately $400 million in sales of leases had on its 1999 operating results. The effect of these undisclosed sales was to recognize income in one period that otherwise would have been recognized in future periods. Although the company earlier had entered into similar transactions in small amounts, none compared in size or scope to the 1999 sales, which added $182 million in pre-tax profits to Xerox's 1999 results.

The Settlement

Xerox consented, without admitting or denying the allegations in the complaint, to the entry of an injunction for violations of the antifraud, reporting and recordkeeping provisions of the federal securities laws. In addition, Xerox agreed to pay a $10 million penalty and to restate its financial results for the years 1997 through 2000. Finally, Xerox agreed to have its board of directors appoint a committee composed entirely of outside directors to review the company's material accounting controls and policies.

The SEC is continuing its investigation of this matter as it relates to other parties.

The SEC's complaint can be found on the SEC's web site at:

http://www.sec.gov/litigation/complaints/complr17465.htm

Additional Materials

Litigation Release No. 17465

Complaint: SEC vs. Xerox Corporation

Exemptive Order regarding this case

Impact of One-Off accounting actions; see complaint for details

Source: http://www.sec.gov/news/headlines/xeroxsettles.htm

SEC Charges Kenneth L. Lay, Enron's Former Chairman and Chief Executive Officer, with Fraud and Insider Trading

Complaint Alleges Participation in Scheme to Defraud With Skilling, Causey and Others; Seeks Civil Penalty and Recovery of Over $90 Million in Unlawful Proceeds from Stock Sales

Washington, D.C., July 8, 2004 - The Securities and Exchange Commission today initiated civil charges against Kenneth L. Lay, former Chairman and Chief Executive Officer of Enron Corp., for his role in a wide-ranging scheme to defraud by falsifying Enron's publicly reported financial results and making false and misleading public representations about Enron's business performance and financial condition.

The Commission also alleges Lay profited from the scheme to defraud by selling large amounts of Enron stock at prices that did not reflect its true value. The sales also occurred while Lay was in possession of material non-public information concerning Enron and generated unlawful proceeds in excess of $90 million during 2001. Specifically, Lay sold over $70 million in Enron stock back to the company to repay cash advances on an unsecured Enron line of credit. In addition, while in possession of material non-public information, Lay amended two program trading plans to enable him to sell an additional $20 million in Enron stock in the open market. Lay's proceeds from the sales constitute illegal gains resulting from his scheme to defraud.

In this action, the Commission is seeking disgorgement of all ill-gotten gains, civil money penalties, a permanent bar from acting as a director or officer of a publicly held company, and an injunction against future violations of the federal securities laws.

"From the very beginning, our mandate has been to hold accountable those who contributed to the false portrayal of Enron as a viable, thriving entity. As Enron's Chairman and Chief Executive Officer, Mr. Lay was an engaged participant in the on-going fraud, and must therefore be called to account for his actions," said SEC Enforcement Division Director Stephen M. Cutler.

Added Deputy Director Linda Chatman Thomsen, "Today, the Commission and the Department of Justice have once again demonstrated our collective commitment to use every tool available under law to pursue those who violated the law in connection with Enron's collapse. It is our sincere hope that others who might someday be tempted to dissemble to the investing public and

improperly place their personal interests ahead of those of their shareholders will be deterred by the specter of a determined and multi-faceted prosecution."

The Commission today, subject to the approval of the Honorable Melinda Harman, U.S. District Court Judge, filed a Second Amended Complaint seeking to add Lay to its pending action against Jeffrey K. Skilling, Enron's former President, CEO and Chief Operating Officer, and Richard A. Causey, Enron's former Chief Accounting Officer. The proposed amended complaint charges Lay with violating, and aiding and abetting violations of, the antifraud, periodic reporting, books and records, and internal controls provisions of the federal securities laws, Section 17(a) of the Securities Act of 1933, and Section 10(b) of the Securities Exchange Act of 1934, and Exchange Act Rule 10b-5; and for aiding and abetting the violation of Sections 13(a), and 13(b)(2)(A) and (B) of the Exchange Act, and Exchange Act Rules 12b-20 and 13a-11.

Specifically, the Commission's Proposed Second Amended Complaint alleges as follows.

Lay's Early Participation in the Scheme to Defraud. Lay, along with others at Enron, engaged in a wide-ranging scheme to defraud in violation of the federal securities laws. During 2001, with specific knowledge of rapidly deteriorating performances of Enron's business units, Lay made numerous false and misleading public statements about Enron's financial condition. As Enron's Chairman and CEO, Lay had oversight of Enron's business units and supervised the senior executives and managers of these units, reviewed drafts of public filings and draft press releases, and participated in conference calls with investment analysts.

In presentations to the investing public, Lay and others heavily emphasized the performance and potential of Enron Broadband Services (EBS) and Enron Energy Services (EES). To support what Enron had already said about EES, Lay and others concealed massive losses in EES' business through fraudulently manipulating Enron's "business segment reporting." They accomplished this at the close of the first quarter of 2001 through a reorganization designed to conceal the magnitude of EES' business failure, which was known to Lay as early as January 2001. With Lay's approval, Enron hid that failure from the investing public by moving large portions of EES' business -- which Lay and others knew at the time would have to otherwise report hundreds of millions of dollars in losses -- into Enron Wholesale, which was the Enron business segment housing most of the company's wholesale energy trading operations and income. As Lay and others knew, Enron Wholesale had ample earnings to absorb the EES losses, while at the same time continuing to meet its own internal budget targets. Lay made the false and misleading statements to persuade investors that Enron's profitability would continue to grow, to maintain credit ratings, to influence investment analysts, and to prop up the share price of Enron stock.

Lay knew of Enron's use of structured transactions -- specifically prepays and the hedging arrangements called Raptors -- to misstate its financial results. Enron entered into circular transactions that were characterized as prepay forward contracts in order to disguise borrowings as cash from operations. Lay was aware of the importance and magnitude of prepay transactions to create operating cash flow and thereby maintain Enron's investment grade credit rating. Lay was aware that the credit rating agencies were not told the magnitude of Enron's prepay obligations and that this information was not disclosed in Enron's public filings. In addition, Enron created the Raptor structures to "hedge" volatile assets against any potential decline in value. The manner in which Enron structured and funded the Raptors meant that any hedging losses in the Raptors would ultimately be borne by Enron. Lay understood that Enron used the Raptors for earnings management and that decreases in the price of Enron stock threatened the viability of the Raptors.

Lay Knowledge of Additional Problems Following Skilling's Resignation. On July 13, 2001, Skilling told Lay he was resigning unexpectedly because he felt there was nothing he could do to stop the decline in Enron's stock price. On August 14, Enron issued a press release, with Lay's approval, that announced Skilling had resigned for personal reasons. In a conference call with investment analysts later that same day, Lay repeatedly asserted that, "there are absolutely no problems that had anything to do with Jeff's departure . . . there are no accounting issues, no trading issues, no reserve issues . . . unknown, previously unknown problems, issues . . . I can honestly say that the company is probably in the strongest and best shape . . . that it's probably ever been in." Regarding EES, Lay offered that "we've been doubling revenue and doubling income quarter on quarter, year on year for now about the last three years. We expect that to continue to grow very, very strong. . . ."

After Skilling resigned, Lay met repeatedly with Enron's senior management, who described for him Enron's deteriorating financial condition. Lay was advised internally of accounting improprieties regarding the Raptors and that various assets and investments were overvalued on Enron's books and records by approximately $7 billion. During this period, Lay repeatedly received internal financial reports consistent with these problems. In August and September, senior executives informed Lay that Enron was facing an increasing earnings shortfall, hundreds of millions of dollars in losses, a proposed non-recurring charge relating to certain investments, and an accounting error in excess of $1 billion. Enron's problems were so severe that a senior executive informed Lay that Enron needed to consider being acquired or selling its prized pipelines.

Lay Continued to Mislead the Public -- August and September 2001. Despite specific knowledge of Enron's deteriorating financial condition, Lay continued to make false and misleading public statements about Enron's financial performance. In meetings with research analysts and in public statements, Lay falsely and misleadingly stated there were "no accounting issues," "no reserve issues," and "no other shoes to fall" at Enron. Lay made a series of false and misleading statements during an Enron employee online forum, including that "[t]he third quarter

is looking great. We will hit our numbers. We are continuing to have strong growth in our businesses," "we have record operating and financial results," and "the balance sheet is strong." In addition, Lay misled Enron employees regarding his purchases of Enron stock when he informed them that he had purchased additional shares over the last couple of months. In making this statement, Lay concealed that he had made net sales of over $20 million in Enron stock in the preceding two months.

The Oct. 16, 2001, Third Quarter Earnings Release. In a meeting with other senior executives one month prior to Enron's third quarter earnings release, Lay learned that Enron had incorrectly accounted for the Raptors transactions, and that as a result Enron shareholders' equity would be reduced by $1.2 billion. Lay also knew that the Raptors were being terminated and combined with other pending write-downs that would result in an earnings charge of $1.01 billion. Specifically, Lay knew that these two items -- the $1.01 billion earnings charge and the $1.2 billion reduction of shareholder equity -- were unrelated, and that the reduction to shareholder equity was required whether or not the Raptors were terminated. Lay reviewed and approved Enron's earnings release that reported a "nonrecurring" earnings charge of $1.01 billion, a majority of the charge ($544 million) relating to the early termination of the Raptors. Lay knew that the characterization of the termination of the Raptors as "nonrecurring" losses was erroneous and inconsistent both with advice Enron had received from its auditor and Enron's past treatment of Raptor earnings as recurring operating earnings. Lay and others intentionally omitted any reference to the $1.2 billion equity reduction from the press release. In a conference call with analysts to discuss the earnings release, Lay falsely stated that "in connection with the early termination" of the Raptors, Enron's shareholder equity would be reduced by $1.2 billion. Lay did not disclose, as he knew, that the reduction was principally due to a significant accounting error, as opposed to the termination of the Raptors.

Lay's Last Ditch Efforts -- October and November 2001. In an effort to calm deepening public concern regarding the decline in Enron's stock price, Lay participated in conference calls with analysts and others. In these calls, Lay made false and misleading statements regarding Enron's financial health. For example, Lay stated, "[Enron is] not trying to conceal anything. We're not hiding anything," and "[w]e're really trying to make sure that the analysts and the shareholders and the debt holders really know what's going on here. So, we are not trying to hold anything back." In a telephone call with a prominent credit rating agency, Lay falsely stated that Enron and its auditors had "scrubbed" the company's books and that no additional write-downs would be forthcoming. In fact, Lay knew that Enron was carrying its international assets at billions in excess of their fair value and that Enron had failed to disclose a $700 million goodwill impairment. In an all-employee meeting to reassure Enron's employees, Lay falsely described Enron's liquidity, stating that "[o]ur liquidity is fine. As a matter of fact, it's better than fine, it's strong. . ." At the time he made the statement, Lay knew that Enron had been forced to offer its prized pipelines as collateral for a $1 billion bank loan and that the only source of liquidity was a $3 billion line of credit, which was fully utilized on Lay's authority. In addition, Lay made

misleading statements about Enron stock and its prospects. Lay misleadingly stated, "as sad as the current market price is . . . [b]ut we're going to get it back" and "that doesn't mean we can't get back up to the $80s or $90s in the no-too-distant future." At the time he made the statement, with Enron stock trading at less than $20 per share, Lay did not disclose that he had quietly sold over $65 million of Enron stock back to the company during 2001.

Lay's Sales of Enron Stock Back to Enron. From Jan. 25, 2001, to Nov. 27, 2001, Lay took advances on a non-collateralized $4 million line of credit with Enron in the total amount of $77,525,000. Thereafter, in twenty separate transactions, Lay repaid the credit line by selling $70,104,762 worth of Enron stock back to the company, at prices he knew did not accurately reflect Enron's true financial condition. For example, after learning of Enron's undisclosed plan to hide over $500 million in EES losses in ENA, Lay sold 1,086,571 shares of Enron common stock back to the company, in 11 transactions, for a total of $34,081,558. Following Skilling's resignation on August 14, 2001, at a point when Lay was learning more about Enron's deteriorating financial condition, Lay sold 918,104 shares of Enron common stock back to the company, in five transactions, totaling $26,066,474. As Lay tried to prop up Enron's stock price following Enron's third quarter earnings release on October 16, 2001, Lay sold 362,051 shares of Enron stock back to the company, in four transactions, totaling $6,050,232. Enron's shareholders and employees, much less the public, did not learn of Lay's sales of Enron stock back to the company until February 2002, over two months after Enron filed for bankruptcy protection.

Lay also made withdrawals from his line of credit totaling $7.5 million between Oct. 24 and Nov. 27, 2001, at a point when Enron's financial condition was crumbling.

Lay's Sales of Enron Stock Pursuant to Amended 10b5-1 Plans. On Nov. 1, 2000, Lay established two program sales plans under Commission Rule 10b5-1. Subsequently, Lay amended both plans. At the time Lay amended both plans, he was in possession of material nonpublic information concerning Enron's deteriorating financial condition, meaning Lay cannot use the plans as a defense to insider trading charges. Under the amended plans, Lay unlawfully sold over 350,000 Enron shares for total proceeds in excess of $20 million.

The Commission acknowledges the assistance of the Enron Task Force.

The Commission's investigation is continuing.

Source: https://www.sec.gov/news/press/2004-94.htm

SEC CHARGES TIME WARNER WITH FRAUD, AIDING AND ABETTING FRAUDS BY OTHERS, AND VIOLATING A PRIOR CEASE-AND-DESIST ORDER; CFO, CONTROLLER, AND DEPUTY CONTROLLER CHARGED WITH CAUSING REPORTING VIOLATIONS

Time Warner Agrees to $300 Million Penalty, Antifraud Injunction and Order to Comply with Prior Cease-and-Desist Order; Will Restate Its Financial Results and Engage Independent Examiner

CFO, Controller and Deputy Controller Consent to Cease-and-Desist Order

Washington, D.C., March 21, 2005 - The Securities and Exchange Commission today charged Time Warner Inc. (formerly known as AOL Time Warner) with materially overstating online advertising revenue and the number of its Internet subscribers, and with aiding and abetting three other securities frauds. The Commission also charged that the company violated a Commission cease-and-desist order issued against America Online, Inc. on May 15, 2000. In a separate administrative proceeding, the Commission charged Time Warner CFO Wayne H. Pace, Controller James W. Barge, and Deputy Controller Pascal Desroches with causing violations of the reporting provisions of the federal securities laws.

Without admitting or denying the allegations in the complaint, Time Warner consented to the entry of a judgment that, among other things, orders it to pay $300 million in civil penalties, which the Commission will request be distributed to harmed investors. The penalties cannot be used to offset any judgment or settlement in any related shareholder suit. The judgment further orders the company to comply with the Commission's May 15, 2000 cease-and-desist order against AOL; enjoins the company from violating antifraud, reporting, books-and-records, and internal control provisions of the federal securities laws; and enjoins the company from aiding and abetting securities fraud. As part of the settlement, Time Warner agreed to restate its historical financial results to reduce its reported online advertising revenues by approximately $500 million (in addition to the $190 million already restated) for the fourth quarter of 2000 through 2002 and to properly reflect the consolidation of AOL Europe in the company's 2000 and 2001 financial statements. The company also agreed to engage an independent examiner to determine whether the company's historical accounting for certain transactions was in conformity with generally accepted accounting principles (GAAP).

In the separate administrative action, Pace, Barge, and Desroches consented, without admitting or denying the allegations, to the entry of a Commission cease-and-desist order that finds that

they caused reporting violations by the company based on their roles in accounting for $400 million paid to the company by Bertelsmann AG in two sets of transactions.

Stephen M. Cutler, Director of the Commission's Division of Enforcement, said, "Our complaint against AOL Time Warner details a wide array of wrongdoing, including fraudulent round-trip transactions to inflate online advertising revenues, fraudulent inflation of AOL subscriber numbers, misapplication of accounting principles relating to AOL Europe, and participation in frauds against the shareholders of three other companies. Some of the misconduct occurred while the ink on a prior Commission cease-and-desist order was barely dry. Such an institutional failure calls for strong sanctions."

James T. Coffman, Assistant Director of the Commission's Division of Enforcement, added, "Accountants are gatekeepers to the capital markets. The actions against Pace, Barge, and Desroches demonstrate that the Commission will hold responsible executives and accountants who fail to take meaningful action when faced with significant evidence that the accounting is wrong. As our investigation continues, we will be turning our attention to those primarily responsible for the company's fraud and improper reporting."

The Commission's complaint against Time Warner, which was filed in the United States District Court for the District of Columbia, includes the following allegations:

Fraudulent Round-Trip Transactions to Inflate Online Advertising Revenue

Beginning in mid-2000, stock prices of Internet-related businesses declined precipitously as, among other things, sales of online advertising declined and the rate of growth of new online subscriptions started to flatten. Beginning at this time, and extending through 2002, the company employed fraudulent round-trip transactions that boosted its online advertising revenue to mask the fact that it also experienced a business slow-down. The round-trip transactions ranged in complexity and sophistication, but in each instance the company effectively funded its own online advertising revenue by giving the counterparties the means to pay for advertising that they would not otherwise have purchased. To conceal the true nature of the transactions, the company typically structured and documented round-trips as if they were two or more separate, bona fide transactions, conducted at arm's length and reflecting each party's independent business purpose. The company delivered mostly untargeted, less desirable, remnant online advertising to the round-trip advertisers, and the round-trip advertisers often had little or no ability to control the quantity, quality, and sometimes even the content of the online advertising they received.

Because the round-trip customers effectively were paying for the online advertising with the company's funds, the customers seldom, if ever, complained.

Aiding and Abetting Frauds

Several of the counterparties to the round-trip transactions were publicly traded companies. Three of these counterparties-Homestore, Inc., PurchasePro.com, Inc., and a California software company- improperly recognized revenue on the round-trip transactions and reported materially misstated financial results to their own investors.

As a consequence, the company aided and abetted the frauds of three public companies.

Fraudulent Use of Bulk Sales to Inflate the Number of AOL Subscribers

The company artificially inflated the number of AOL subscribers in the second, third, and fourth quarters of 2001 so it could report to the investment community that it had met its new subscriber targets, an important metric the market used to evaluate AOL (both before and after its merger with Time Warner). Specifically, the company counted members from "bulk subscription sales" to corporate customers (for distribution to their employees) when the company knew that the memberships had not, and mostly would not, be activated. In at least one instance, the company entered into round-trip arrangements to fund the corporate customers' purchases of bulk subscriptions. Additionally, in last-minute efforts to meet the quarterly targets, the company on at least four occasions shipped non-conforming bulk subscription membership kits to the customers prior to quarter-end with the understanding that it would turn around and replace them at a later date with conforming kits, but it nonetheless counted new subscribers from these sales as of the quarter-end.

Failure to Consolidate AOL Europe

From March 2000 through January 2002, the company failed to properly consolidate the financial results of AOL Europe in its financial statements. AOL Europe was originally a 50/50 joint venture between AOL and Bertelsmann. In March 2000, AOL entered into a contingent purchase agreement relating to Bertelsmann's interest in AOL Europe. The agreement gave AOL broad and direct powers enabling it to control the operations and assets of AOL Europe, a fact that the company acknowledged in a letter to the European Commission (in the context of satisfying EC merger regulations). GAAP requires consolidation when one entity has a controlling financial interest in another entity. The company's failure to properly consolidate AOL Europe resulted in material misstatements of its financial results, including overstatements

of operating income and free cash flow in 2000 and 2001, overstatements of net income in 2000, understatements of net losses in 2001, and understatements of total debt in 2000 and 2001.

Violations of the Commission's Cease-and-Desist Order

The Commission issued a cease-and-desist order against AOL on May 15, 2000 because AOL violated reporting and books-and-records provisions of the federal securities laws. Thereafter, the company violated the cease-and-desist order by artificially inflating its online advertising revenue and the number of AOL subscribers, as well as its failure to consolidate AOL Europe's financial statements.

Commission's Order Against Pace, Barge, and Desroches

The Commission's cease-and-desist order against Pace, Barge, and Desroches addresses their roles in accounting for transactions with Bertelsmann. In 2001 and 2002, the company inflated its online advertising revenue by $400 million in connection with transactions with Bertelsmann. In substance, Bertelsmann paid $400 million as consideration for amendments to the multi-billion-dollar contingent purchase agreement governing the company's purchase of Bertelsmann's interest in AOL Europe. The contract amendments had substantial value, and Bertelsmann offered to compensate the company for the amendments. Rather than accept cash in exchange for the amendments, however, the company requested that Bertelsmann purchase advertising in the aggregate amount of $400 million. The company then improperly and materially inflated its online advertising revenues by recognizing the $400 million as advertising revenue rather than as consideration received for amending the AOL Europe purchase agreement.

Pace, Barge, and Desroches were corporate-level finance and accounting executives at the company who were responsible for, among other things, reviewing and approving the accounting treatment recommended by the company's business units. In this role, they approved the company's accounting for the $400 million as advertising revenue. In doing so, they based their accounting decisions on the form of the transactions and oral and written representations, some of which were false and omitted material facts, by other company employees. They failed to pursue facts and circumstances that evidenced the true economic substance of the transactions. As a result, although others were responsible for negotiating the $400 million transactions, Pace, Barge, and Desroches each were a cause of the company's improperly accounting for the $400 million in annual and periodic reports filed with the Commission.

The Commission's investigation into these matters continues.

Source: https://www.sec.gov/news/press/2005-38.htm