

Enforcement

The SEC's enforcement program seeks to promote the public interest by protecting investors and preserving the integrity and efficiency of the securities markets.

What We Did

- Obtained orders in SEC judicial and administrative proceedings requiring securities law violators to disgorge illegal profits of approximately \$478 million. Civil penalties ordered in SEC proceedings totaled approximately \$44 million.
- Obtained emergency relief from federal courts, in the form of temporary restraining orders (TROs) to halt ongoing fraudulent conduct, in 42 actions.
- Halted trading in two securities of issuers about which there was inadequate public disclosure.

Enforcement Actions Initiated

	<u>FY97</u>	<u>FY98</u>	<u>FY99</u>	<u>FY00</u>	<u>FY01</u>
Civil Injunctive Actions	189	214	198	223	205
Administrative Proceedings	285	248	298	244	248
Contempt Proceedings	14	15	29	36	31
Reports of Investigation	1	0	0	0	0
Total	489	477	525	503	484

Significant Enforcement Actions

Most of the SEC's enforcement actions were resolved by settlement with the defendants or respondents, who generally consented to the entry of judicial or administrative orders without admitting or denying the allegations against them. The following is a sampling of the year's significant actions.

Financial Fraud and Disclosure Cases

- *SEC v. Arthur Andersen LLP, et al; In the Matter of Arthur Andersen LLP; In the Matter of Robert E. Algyer; In the Matter of Edward G. Maier; In the Matter of Walter Cercavski; In the Matter of Robert G. Kutsenda, CPA.*¹ On June 19, 2001, the Commission filed and settled antifraud injunctive actions and administrative proceedings against Arthur Andersen LLP and four of its current or former partners in connection with Andersen's audits of the annual financial statements of Waste Management, Inc. Those financial statements, on which Andersen issued unqualified or "clean" opinions, overstated Waste Management's pre-tax income by more than \$1 billion. The Commission found that Andersen's audit reports were materially false and misleading and that Andersen engaged in improper professional conduct. Andersen consented to this injunction, which is the first antifraud injunction in more than 20 years and the largest civil penalty--\$7 million--in a Commission enforcement action against a Big Five accounting firm. Andersen further agreed to be censured pursuant to rule 102(e) of the Commission's Rules of Practice. Three Andersen partners, Robert Algyer, Edward Maier, and Walter Cercavski, also settled the civil injunctive action, which charges each with violations of antifraud provisions of the federal securities laws, and agreed to payment of civil penalties in the amount of \$50,000, \$40,000 and \$30,000, respectively. In addition, these three Andersen partners settled the related administrative proceedings and each agreed to the

entry of an order barring them from appearing or practicing before the Commission as an accountant, with the right to request reinstatement after five years (Algyer) and three years (Maier and Cercavschi). A fourth Andersen partner, Robert Kutsenda, settled administrative proceedings finding that he had engaged in improper professional conduct and agreed to a bar from appearing or practicing before the Commission as an accountant, with the right to request reinstatement after one year.

- *In the Matter of Sunbeam Corporation; SEC v. Albert J. Dunlap, et. al; In the Matter of David C. Fannin.*² On May 15, 2001, the Commission instituted settled administrative proceedings against Sunbeam Corporation and filed injunctive actions against five former officers of Sunbeam Corporation and Phillip E. Harlow, the former engagement partner on the Arthur Andersen LLP audits of Sunbeam's financial statements, in connection with a massive financial fraud. The Commission's complaint alleges that the defendants engaged in a scheme to fraudulently misrepresent Sunbeam's results of operations in connection with a purported "turnaround" of the company. The creation of inappropriate accounting reserves--"cookie-jar" reserves--was used to increase Sunbeam's reported loss for 1996 and then used to overstate quarterly income as well as quarterly income growth in 1997, thus contributing to the false picture of a rapid turnaround. Then to further boost income in 1997, and to create the impression that Sunbeam was experiencing significant revenue growth, the five former officers, Albert J. Dunlap, Russell A. Kersh, Robert J. Gluck, Donald R. Uzzi and Lee B. Griffith, caused the company to recognize revenue for sales that did not meet applicable accounting rules. As a result, for fiscal year 1997, at least \$60 million of Sunbeam's reported earnings came from accounting fraud. When Sunbeam's "turnaround" was exposed as a sham, Sunbeam's stock price plummeted, causing investors billions of dollars in losses. This case was still pending at the end of the fiscal year. In addition, the Commission instituted

settled administrative proceedings against one of Sunbeam's former officers, David Fannin, for violations relating to this conduct.

- *SEC v. Michael Jerry Saylor, et al.; In the Matter of MicroStrategy, Inc.; In the Matter of Antoinette A. Parsons, et al.; In the Matter of Mark Steven Lynch, CPA.*³ On December 14, 2000, the Commission filed a settled civil injunctive action against MicroStrategy Inc.'s top three officers: Michael Saylor (co-founder and chief executive officer), Sanjeev Bansal (co-founder and chief operating officer), and Mark Lynch (former chief financial officer) for materially overstating its revenues and earnings from the sales of software and information services from the time of its initial public offering in June 1998 through March 2000. By prematurely recognizing its revenue, the company's public financial reports during this time showed positive net income when in fact MicroStrategy should have reported net losses from 1997 through the present. The defendants consented to the entry of permanent injunctions and agreed to disgorge over \$10,000,000 and to each pay a civil penalty of \$350,000. In addition, Lynch consented to the entry of an administrative proceeding barring him from practicing before the Commission as an accountant, with a right to reapply after three years. The Commission also instituted a settled order against MicroStrategy ordering the company to cease and desist from violating the federal securities laws and to engage in certain undertakings to effect future compliance with such laws. Additionally, the Commission instituted a settled order against MicroStrategy's corporate controller, Antoinette A. Parsons, and its accounting manager, Stacy L. Hamm, ordering them to cease and desist from violating the federal securities laws.
- *In the Matter of International Business Machines Corp.; SEC v. International Business Machines Corp.*⁴ On December 21, 2000, the Commission instituted settled administrative proceedings against International Business Machines Corp.

(IBM) for books and records violations resulting from payments of \$22 million to foreign officials by one of IBM's wholly-owned subsidiaries, IBM-Argentina, S.A. These improper payments were made in violation of the Foreign Corrupt Practices Act of 1977 (FCPA). IBM also consented to the entry of a judgment in U.S. District Court ordering it to pay a \$300,000 penalty.

- *In the Matter of Baker Hughes Inc.; SEC v. Eric L. Mattson, et al.; USA and SEC v. KPMG Siddharta Siddharta & Harsono, et al.*⁵ On September 12, 2001, the Commission instituted a settled administrative proceeding against Baker Hughes Incorporated for books and records violations associated with illegal payments to foreign officials. The Commission's order finds that in March 1999, Baker Hughes' CFO, Eric Mattson, and its controller, James Harris, authorized an illegal payment of \$75,000, through KPMG-Siddharta Siddharta & Harsono (KPMG-SSH), its agent in Indonesia, to a local government official in Indonesia. This improper payment was made in violation of the FCPA. In 1998 and 1995, senior managers at Baker Hughes authorized illegal payments to Baker Hughes' agents in India and Brazil, respectively. Baker Hughes failed to devise and maintain an adequate system of internal accounting controls to detect and prevent improper payments to foreign government officials and to provide reasonable assurance that transactions were recorded as necessary to permit the preparation of accurate financial statements. Baker Hughes also consented to a cease and desist order. Additionally, on September 12, 2001, the Commission filed an injunctive action against Mattson and Harris for their conduct in this matter. This action was pending at the end of the fiscal year. Finally, the Commission and the Department of Justice filed a joint civil injunctive action against KPMG-SSH and Sonny Harsono, a partner of KPMG-SSH, for their part in the payment of the \$75,000 bribe. These two defendants have consented to an injunction. This is the first joint action that the

Commission and the Department of Justice have filed under the FCPA.

Internet Cases⁶

- On March 1, 2001, the Commission announced its fifth nationwide Internet fraud sweep, as 11 enforcement actions were brought against a total of 23 companies and individuals who used the Internet to defraud investors. The sweep consisted of cases involving both publicly traded securities and privately held companies. The defendants used the Internet to “pump” the market capitalization of the stocks involved by more than \$300 million and raise \$2.5 million in proceeds from investors in the United States and abroad. The frauds were accomplished by a variety of online means including “spam” emails, electronic newsletters, websites, hyperlinks, message boards, and other Internet media. The cases include four administrative proceedings and seven civil actions. Seven of these cases are settled, three are litigated and in the last action, two of the four defendants settled, and the other two are litigating.

Broker-Dealer and Transfer Agent Cases

- *In the Matter of Rauscher Pierce Refsnes, Inc.*⁷ On September 27, 2001, the Commission filed settled administrative and cease and desist proceedings against Rauscher Pierce, now known as Dain Rauscher Inc. (Rauscher), for false and misleading statements and omissions made to investors in a municipal bond offering underwritten by Rauscher. Rauscher underwrote the City of Miami’s municipal bond offering for \$72 million in non-ad valorem revenue bonds to pay for certain of the city’s annual pension obligations. The Commission’s order alleges that Rauscher, through its investment bankers, violated the federal securities laws in connection with the offer and sale of these municipal bonds by failing to provide investors with accurate and complete disclosure of material facts regarding the

city's deteriorating financial condition. Rauscher consented to a cease and desist order and to pay a civil penalty of \$200,000. Rauscher also agreed to comply with undertakings to maintain its revised policies and procedures relating to municipal securities underwriting.

- *SEC v. The Chase Manhattan Bank; In the Matter of The Chase Manhattan Bank.*⁸ On September 24, 2001, the Commission filed an action in U.S. District Court and instituted an administrative proceeding against Chase, both of which were consented to, alleging that Chase committed recordkeeping and reporting violations while acting as a registered transfer agent for numerous corporate and municipal bond issues. Chase consented to the imposition of a \$1 million civil penalty. The Commission alleged that by March 1998, Chase, and companies with which it had merged, had identified but failed to reconcile inaccuracies in its computerized bond recordkeeping system totaling more than \$46.8 billion. Chase did not fully reconcile these records until after June 2000. Thus, Chase filed false annual reports required of transfer agents, maintained inaccurate records, and did not notify issuers or the appropriate regulatory agency in the prescribed manner of the discrepancies in its records.
- *In the Matter of JPR Capital, et al.; In the Matter of Jeffrey Ramson.*⁹ On June 13, 2001, the Commission instituted settled administrative proceedings against JPR Capital Corporation, a broker-dealer that operates as a day trading firm, and four associated persons, Paul Umansky, Charles Hampton, Jeffrey Wolf, and Jeffrey Ramson, for allowing customers of JPR to receive \$2 million in uncollateralized loans for the purpose of covering margin calls in violation of the rules and regulations governing the extension of margin loans to customers. JPR Capital consented to be censured, and to a cease and desist order. JPR Capital also agreed to pay a civil monetary penalty in the amount of \$55,000 and to comply with numerous undertakings, including hiring a full-time compliance officer,

hiring a full-time margin clerk, and revising its compliance procedures. In addition, the four individuals consented to be censured, to cease and desist orders, and to each pay a \$5,500 civil penalty.

- *In the Matter of Guy P. Wyser-Pratte, et al.*¹⁰ On May 9, 2001, the Commission instituted settled administrative proceedings against Guy P. Wyser-Pratte, and his two firms, Wyser-Pratte and Co., Inc., a broker-dealer, and Wyser-Pratte Management Co., Inc., an investment adviser. The Commission's order found that the respondents failed to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information. Respondents engaged in merger arbitrage and investment initiatives involving companies where respondents pursued changes in the companies' governance, including initiatives involving investments in companies that have rejected merger or takeover proposals from other companies. Respondents' activities involved extensive interaction with market participants who often possess material nonpublic information. Wyser-Pratte's contacts with such market participants, and his control over all trading activities at his firms, coupled with the failure of his firms to establish adequate policies and procedures relating to material nonpublic information, created an identifiable potential for the misuse of such information. Wyser-Pratte, Wyser-Pratte and Co., and Wyser-Pratte Management Co. agreed to be censured, to cease and desist from violating federal securities laws, and to pay civil monetary penalties in the amount of \$50,000, \$200,000 and \$200,000, respectively. The respondents also agreed to retain an independent consultant to conduct a comprehensive compliance review and to implement the procedures recommended by this independent consultant.

Investment Adviser and Investment Company Cases

- *In the Matter of Duff & Phelps Investment Management Co., Inc.; In the Matter of Wayne C. Stevens; In the Matter of Chris Woessner.*¹¹ On September 28, 2001, the Commission instituted settled administrative proceedings against Duff & Phelps Investment Management Co. and its former president, Wayne C. Stevens, and instituted a contested administrative proceeding against Chris Woessner, a former vice president of sales for Duff. The proceedings concern the parties' roles in a scheme to direct approximately \$715,000 of Duff's client commissions for the benefit of a broker-dealer and a pension consultant in exchange for the referral of a client, a pension fund for the International Brotherhood of Teamsters Union Local 710. Duff did not disclose to its clients its direction of brokerage in exchange for a client referral, and it affirmatively and falsely stated in its Commission filings that it did not direct commissions in exchange for client referrals. Duff consented to a cease and desist order, to be censured, to pay a civil penalty of \$100,000, to pay disgorgement, and to comply with numerous undertakings. Stevens consented to a cease and desist order, to pay a civil penalty of \$20,000, and to comply with numerous undertakings. The action against Woessner was pending at the end of the fiscal year.
- *In the Matter of Trudie D. Whitehead; In the Matter of Kyle R. Kirkland; In the Matter of Western Asset Management Co. and Legg Mason Fund Adviser, Inc.*¹² On September 28, 2001, the Commission instituted settled public administrative and cease and desist proceedings against Trudie D. Whitehead, a portfolio manager for the Legg Mason High Yield Portfolio (High Yield Fund) and the U.S. High Yield Investments, N.V., a Legg Mason offshore fund (collectively, the Funds), and Kyle Kirkland, a principal of a former broker-dealer. The Commission's orders found that from 1996 to 1998, Whitehead caused the Funds to purchase securities underwritten by Kirkland and his former broker-dealer. After the securities

began performing poorly and the issuers suffered severe financial problems, Whitehead and Kirkland defrauded the Funds by concealing the problems and inflating the value of the troubled securities, which caused the High Yield Fund to materially overstate its net asset value. Whitehead consented to the entry of an order barring her from association with any investment adviser or investment company, a cease and desist order, and agreed to pay a \$25,000 civil penalty. Kirkland consented to the entry of an order barring him from association with any broker, dealer, or investment company with the right to reapply for association after three years and a cease and desist order, and agreed to pay a \$30,000 civil penalty. In addition, the Commission instituted settled public administrative proceedings against the Funds' manager, Legg Mason Fund Adviser, Inc. (Legg Mason) and the sub-adviser, Western Asset Management (WAM), for failing to reasonably supervise Whitehead, the portfolio manager. The Commission's order found that Legg Mason failed to have adequate policies and procedures to respond adequately to indications that the portfolio manager was overstating the value of one of the fund's securities and that WAM failed to have adequate policies and procedures designed to prevent securities violations by the portfolio manager. Legg Mason and WAM were each censured, each ordered to pay a \$50,000 civil penalty, and each ordered to comply with undertakings to maintain the enhanced supervisory policies and procedures previously implemented.

- *In the Matter of ABN AMRO, Inc; In the Matter of Oechsle International Advisors, L.L.C.; In the Matter of Angelo Iannone; In the Matter of Andrew S. Parlin.*¹³ On August 10, 2001, the Commission instituted settled administrative proceedings against Angelo Iannone, former head of international equities sales trading at ABN AMRO Inc. (AAI) and Andrew Parlin, a former principal and portfolio manager at Oechsle International Advisors, L.L.C. (Oechsle) for engaging in practices known as "portfolio pumping" and "marking the

close.” The Commission also instituted settled administrative proceedings against their respective former employers, AAI and Oechsle. The Commission’s orders found that on the last trading days of the second and third quarters of 1998, Iannone and Parlin placed purchase orders in five securities heavily owned by Parlin’s advisory clients shortly before the close of the various markets for the purpose of reaching a higher price, a practice known as “marking the close.” By intentionally buying those securities in volume at or near the close of trading, Parlin sought to cause, and in some cases caused, a short-term increase in the overall value of certain securities held in the accounts under his management. However, Parlin did not sell these securities based on the short-term price increases. In addition, in some cases the higher closing price increases coincided with the fiscal period ends, a practice known in the industry as “portfolio pumping.” In these proceedings, Iannone and Parlin each agreed to a cease and desist order, to pay a \$75,000 civil penalty, and to be suspended from association with any broker or dealer for 12 months. Additionally, both AAI and Oechsle agreed to be censured because the firms failed reasonably to supervise Iannone and Parlin, respectively, and to each pay a \$200,000 civil penalty.

- *SEC v. Alan Brian Bond, et. al.*¹⁴ On August 10, 2001, the Commission filed an injunctive action alleging that Bond and his investment adviser firm, Albriond Capital Management, LLC, orchestrated a cherry-picking or trade allocation scheme that resulted in his clients losing nearly \$57 million and Bond gaining nearly \$6.6 million on an initial investment of approximately \$260,000, a 5,487% return. The Commission’s complaint alleged that from March 2000 to July 25, 2001, Bond traded for his own personal account and the accounts of three institutional clients and that during this period, Bond allocated 93% of the profitable trades to his own account and 83% of the unprofitable trades to his clients’ accounts. When the case was filed, the Commission also obtained an order

freezing the assets of Bond and Albriond. Bond was sued by the Commission in December 1999 on a different scheme in which he allegedly received millions of dollars in kickbacks. This case was pending at the end of the fiscal year.

- *SEC v. Heartland Group*.¹⁵ On March 22, 2001, the Commission filed a settled action for a TRO and preliminary and permanent injunctions against Heartland Group, a registered open-end investment company, due to its failure to send annual reports for three of its Funds to the Funds' shareholders and for its failure to file necessary reports with the Commission. These failures were due to Heartland Group's inability to obtain audited financial results for the three funds because of concerns of Heartland's independent public accountant regarding the underlying valuations of the securities held in the Funds. Heartland Group consented to this action, which shut down the Funds; froze the assets held in the Funds; and provided for the appointment of a receiver to take control of the assets of the Funds. The receiver was authorized to manage the funds, suspend redemptions in the Funds and, if appropriate, liquidate the Funds.
- *SEC v. Paul J. Silvester*.¹⁶ On October 10, 2000, the Commission filed a partially settled civil action against Paul J. Silvester, the former Treasurer of the State of Connecticut; two private equity firms (Landmark Partners, Inc. and Triumph Capital Group, Inc.); three of their officers (Stanley F. Alfeld, Frederick W. McCarthy and Charles B. Spadoni); and five others (Jerome L. Wilson, Ben F. Andrews, Jr., Christopher A. Stack, KCATS, LLC, and Lisa Thiesfield) involved in a fraudulent scheme in connection with the investment of state pension fund money. The Commission alleged that the defendants participated in a scheme where Silvester awarded contracts to manage hundreds of millions of dollars of state pension fund money in exchange for lucrative fees paid by the private equity firms to Silvester's friends and political associates. Silvester then demanded and received kickbacks of

the fees from his friends. The Commission alleged that Silvester, Triumph, Landmark, and certain of the firms' officers violated their fiduciary duties by failing to disclose the quid pro quo. Simultaneously with the filing of the injunctive action, defendants Silvester, Stack and KCATS agreed to settle the case. Silvester consented to an order enjoining him from future violations of the federal securities laws and agreed to pay disgorgement of \$10,500. Stack and KCATS also consented to an order enjoining them from future violations of the federal securities laws and agreed, jointly and severally, to pay disgorgement of \$300,667. On December 18, 2000, defendant Landmark Partners and its chairman, Stanley F. Alfeld, consented to an order enjoining them from future violations of the federal securities laws, and Landmark and Alfeld agreed to pay \$100,000 and \$50,000 in civil penalties, respectively. The case was pending against the six additional defendants at the end of the fiscal year.

Insider Trading Cases

- *SEC v. Steve Madden*.¹⁷ The Commission filed a settled injunctive action against shoe designer Steve Madden alleging that he engaged in insider trading. The complaint alleged that after Madden learned from the criminal authorities that he was the target of a criminal investigation and would be indicted or otherwise charged for securities fraud, he sold 100,000 shares of common stock in his company, Steven Madden Ltd. Madden sold this stock without disclosing to the public the information he had learned regarding the criminal investigation. After Madden was arrested, the company's stock price sank and Madden avoided losses of \$784,000. Madden consented to an order of permanent injunction and agreed to disgorge \$784,000 of illegally avoided losses, plus prejudgment interest, and to pay \$784,000 in civil penalties.
- *SEC v. Jorge Eduardo Ballesteros Franco, et al.*¹⁸ On May 8, 2001, the Commission filed a partially settled injunctive action

in the U.S. District Court for the Southern District of New York, alleging that Jose Luis Ballesteros Franco, a former Director of Nalco Chemical Company, his brother (Jorge E. Ballesteros), his four sons (Jose Luis Ballesteros Gutierrez, Alejandro Ballesteros Gutierrez, Ricardo Ballesteros Gutierrez and Juan Pablo Ballesteros Gutierrez), and two friends of the Ballesteros family (Carlos Minvielle, Eugenio Minvielle) (all Mexican nationals), participated in insider trading prior to the announcement that Nalco would be acquired by Suez Lyonnaise des Eaux, a French company. The defendants purchased 263,329 Nalco shares at a cost of over \$9.8 million and made illegal profits of more than \$3.7 million. To carry out their fraud, the Ballesteros family used multiple offshore trusts in names other than the Ballesteros family name, trustees located in the Isle of Jersey, offshore nominee companies, and four different brokerage firms, with accounts located in the U.S. and Switzerland. The Minvielle family, friends of Jose Luis, also used two foreign-based companies as the vehicles through which they purchased Nalco stock. Several of the defendants have settled and consented to pay over \$4.7 million in disgorgement and penalties. In addition, one of the settling defendants, Ricardo Ballesteros Gutierrez, who was an analyst in the Investment Banking Division at Lehman Brothers, Inc., has also agreed to be barred from the securities industry with a right to reapply in five years. This action is being litigated against all of the non-settling defendants, which include Jorge E. Ballesteros, Juan Pablo Ballesteros Gutierrez, and the entities through which they traded (Cardinal Trust, Sagitton Limited, Gianni Trust, Gianni Enterprises Limited and Casford Limited).

- *SEC v. Alejandro Duclaud Gonzalez de Castilla, et al.*¹⁹ On May 11, 2001, the U.S. District Court for the Southern District of New York entered a TRO filed by the Commission against eight Mexican nationals and four offshore entities in connection with insider trading in CompUSA, Inc. stock that produced profits of nearly \$4 million. The trading occurred before the

January 24, 2000 public announcement that CompUSA had agreed to be acquired by Grupo Sanborns, S.A. de C.V., a Mexican holding company. One of the defendants, Alejandro Duclaud, is a partner in the Mexico City law firm that represented Grupo Sanborns in the final days of the tender offer negotiations and that acts as its regular outside counsel. Most of the other defendants are members of his family or offshore entities that permit the family members to trade anonymously. This order temporarily prohibited the defendants from obtaining their assets in brokerage accounts in the U.S. or disposing of any assets, wherever held, in a manner that could impair the Commission's ability to recover ill-gotten gains and obtain civil penalties. On June 27, 2001, the Court continued the asset freeze pending trial as to five of the Mexican nationals and as to the four offshore entities (three of the original defendants were dismissed from the action). Named as defendants are Alejandro Duclaud Gonzalez de Castilla, his wife Ana Igartua Baranda de Duclaud, his brother Jose Antonio Duclaud Gonzalez de Castilla, Rodrigo Igartua Baranda, Martha Baranda de Igartua, Anushka Trust, Caribbean Legal Trust, Antares Holdings Investment Ltd., and Banrise Ltd. BVI.