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**PROGRAM MATERIALS**

**Program #1709**

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## **SEC Enforcement Highlights of 2006 and Trends for 2007**

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# *SEC Enforcement Trends*

## *Significant 2006 Actions – A Look at 2007*



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# *Introduction*

- SEC Continues Vibrant Enforcement Program
- Analysis of 2006 Suggests Trends for 2007
- Examine:
  - 1) Overview of Program
  - 2) New Enforcement Policy Initiatives
  - 3) Investigations – Key Developments
  - 4) Significant Cases in 2006
  - 5) Trends for 2007



# *An Overview*

- Statistics
  - Number of enforcement cases fell by 9 % in FY 2006
  - SEC Enforcement Chief Linda Thomsen says this is not significant
- Critics of Program
  - March 2006, U.S. Chamber of Commerce reports on enforcement criticizes the program for:
    - Recent litigation setbacks
    - Attempts to shift the standards for civil liability
    - Also criticized Enforcement Program for
      - Increasingly harsh tone
      - Misuse of penalties
      - Poor track record in court



# *An Overview*

- S.E.C. 2006 Performance and Accountability Report claims SEC “had a 10-0 record of trial court victories in fiscal 2006.”  
<http://www.sec.gov/about/secpar2006.shtml>
- Court Victories Include:
  - 1) SEC v. Yuen, (C.D. Cal. May 8, 2006)  
<http://sec.gov/litigation/litreleases/2006/lr19694.htm>.  
Former Chairman and CEO of Gemstar-TV Guide:
    - ordered to pay \$22,327,231 in disgorgement, penalties and interest
    - enjoined for inflating licensing and advertising revenues
    - officer/director bar ordered

## *An Overview (Cont.)*

- 2) SEC v. Treadway, et al., (S.D.N.Y. Oct. 26, 2006)  
<http://sec.gov/litigation/litreleases/2006/lr19888.htm>.  
Following a jury verdict finding him liable for securities fraud from an undisclosed market timing scheme, Treadway consented to:
  - injunction
  - payment of \$572,000 as disgorgement, interest and penalties.
  
- 3) SEC v. Bruce E. Snyder, Jr., (S.D.Tex. Feb. 1, 2006)  
<http://sec.gov/litigation/litreleases/lr19557.htm>  
Former CFO of Waste Management liable for insider trading and financial fraud concerning:
  - ordered to pay over \$2 million in disgorgement, prejudgment interest and penalties.



## *An Overview (Cont.)*

- There were losses, for example:
  - 1) SEC v. Todd, et al., (S.D.CA May 30, 2006)  
Summary judgment for former Gateway executive Weitzen in fraudulent earnings case.
  - 2) SEC v. Talbot, (C.D.Col., Feb. 14, 2006)  
Insider trading suit dismissed where Fidelity National director traded on information that Learning Tree (whose shares were owned by Fidelity) would be acquired because there was no duty of confidentiality.

## *An Overview (Cont.)*

- 3) In the Matter of Flynn, (Adm. Proc., Aug. 2, 2006)  
<http://sec.gov/litigation/aljdec/2006/id316rgm.pdf>.  
Dismissed aiding and abetting charges which alleged that former CIBC director Paul Flynn aided late trading and market timing scheme after NY AG Spitzer dismissed criminal charges.
  
- 4) SEC v. Tambone, et al., (D. Mass. Jan. 9, 2007),  
<http://www.sec.gov/litigation/litreleases/2007/lr19962.htm>.  
Dismissed undisclosed market timing claims against former executives of Columbia Funds.





*Enforcement Policies –  
Penalties*

# *Enforcement Policies – Penalties*

- Statement on Financial Penalties, SEC Press Rel. No. 2006-4, Jan. 4, 2006, [www.sec.gov/news/press/2006-4.htm](http://www.sec.gov/news/press/2006-4.htm)
  - Two key factors considered:
    - Presence/absence of benefit to corporation
    - Degree to which it will recompense/harm shareholders
  - Others Factors:
    - need for deterrence
    - injury to innocent parties
    - whether violation is pervasive
    - level of intent
    - difficulty of detection.
  - Application is elusive, e.g.
    - SEC v. Tyco International Ltd., (S.D.N.Y. April 17, 2006)  
<http://sec.gov/litigation/litreleases/2006/lr19657.htm>.  
Consented to \$50 million civil penalty for over \$1 billion accounting scandal.



# *Enforcement Policies - Penalties*

- SEC v. Fed. Nat. Mortg., (D.D.C. May 22, 2006)

<http://sec.gov/litigation/litreleases/2006/lr19710.htm>

Alleged \$11 billion account scandal:

- consent to \$400 million penalty
- cooperation noted

- SEC V. AIG, (S.D.N.Y. Feb. 9, 2006)

<http://sec.gov/news/press/2006-19.htm>.

Financial fraud which concealed \$700 million in losses:

- consent to fine of \$100 million
- cooperation noted.



# *Enforcement Policies - Penalties*

- Future:

- SEC releases do not describe how factors are applied
- Not clear how issuer cooperation impacts penalty
- Fines seem to be increasing
- SEC Speaks, February 2007: Fines will continue
- Commissioners split on the use of penalties.

Otis Bilodeau, “SEC's Cox Stalls Options Crackdown by Delaying Vote (Update 2),” (January 31, 2007)

<http://www.bloomberg.com/apps/news?pid=20601109&sid=a0kms6Zqh7iM&refer=home>



*Enforcement Policies –  
Reporters*



# *Enforcement Policies - Reporters*

- Standards on subpoenas to Reporters

<http://www.sec.gov/news/press/2006/2006-55.htm>

## 1) Background

- Subpoenas issued to MarketWatch, Dow Jones, News wires, others
- Chairman Cox – withdraws subpoenas

## 2) Standards

- Essentially “meet and confer”
- Approval by Enforcement Chief



# *Investigations*



# *Investigations*

- Key Issues

- 1) Parallel Proceedings - Use of Form 1662
- 2) Cooperation





*Investigations –  
Parallel Proceedings*



# *Investigations – Parallel Proceedings*

- Parallel Proceedings - Generally
  - On the rise
  - Designed to maximize resources by coordinating investigations.
  - Former SEC Chairman Harvey Pitt:

“The SEC has had, and continues to have, a close relationship with its fellow law enforcement agencies. Indeed, some of the most significant SEC actions over the last several months have been brought in tandem with criminal complaints and indictments.”

Remarks at DOJ Corporate Fraud Conf. (Sept. 26, 2002).

# *Investigations – Parallel Proceedings*

- Parallel Proceedings – New Cases
  - 1) Sufficiency of Form 1662 warnings:

U.S. v. Stringer, 408 F. Supp. 2d 1083 (D. Ore. 2006), appeal docketed, No. 06-30100 (9th Cir. Feb. 27, 2006).

    - D. Ct: dismissed criminal indictment for government misconduct USAO involvement concealed behind SEC.
    - Appeal: SEC argues Form 1662 warnings are sufficient and it has no duty to disclose parallel criminal investigation.
    - Expect a ruling later this year.



# *Investigations – Parallel Proceedings*

- Parallel Proceedings (Cont.)

- 2) Use of Evidence.

- SEC v. Reyes, et. al., (N.D. Cal. July 19, 2006).

- Parallel SEC/USAO actions re: backdated stock options
      - USAO motion to stay SEC case denied as “unfair”
      - Witnesses interviewed by USAO/SEC in proffer sessions take Fifth Amendment in depositions
      - Defense motion to compel testimony
      - Pending decision.



# *Investigations – Parallel Proceedings*

- Future
  - Continue to increase
  - Economies for government/defendants  
(see e.g., Prudential Securities and Fannie Mae settlements).
  - Key Issue: Reliance on Form 1662
  - Availability of Evidence



*Investigations –  
Cooperation*



# *Investigations - Cooperation*

- Standards Heavily Criticized
  - SEC Seaboard Report, Rel. No. 34-44969, 2001 WL 1301408 (Oct. 23, 2001)  
<http://www.sec.gov/litigation/investreport/34-44969.htm>
  - Little explicit guidance on cooperation
  - Series of questions re: charging decision
  - Suggest that privilege be waived



# *Investigations – Cooperation*

- Seaboard Report criticized – “culture of waiver ”
  - August 2006: ABA Resolutions
  - March/September: Congressional hearings
  - NACD and others survey: “Culture of waiver”
  - September: SEC Commissioner Atkins’ speech
  - December: Senator Specter introduces Attorney-Client Privilege Protection Act 2006
  - February 2007: ABA letter
  - February 2007: Commissioner Atkins – review Seaboard





# *Investigations – Cooperation*

- Future

- Standards are vague and open-ended/pressure
- Unlike the Antitrust Division's program, no established terms at present
- Establish a bright-line standard for cooperation
- Look for a revision to Seaboard later this year



# *Significant Cases*



# *Significant Cases: Overview*

- Areas
  - Backdated Options
  - Hedge Funds
  - Insider Trading
  - Financial Fund
  - FPCA
  - Market Timing
  - Fraud Trading Abuse
  - GateKeepers



*Significant Cases:  
Backdated Stock Options*



# *Significant Cases:*

## *Backdated Stock Options*

- Background
  - Grant date of the stock option is earlier than actual date
  - Variations: forward-dating, spring-loading and bullet-dodging
  - Not illegal per se
  - Over 140 companies are being investigated



# *Significant Cases: Backdated Stock Options*

## *Cases*

- Brocade Communications Systems, Inc.  
SEC v. Gregory L. Reyes, et al. (N.D. Cal. July 20, 2006)  
<http://sec.gov/litigation/litreleases/2006/lr19768.htm>

### First SEC/USAO actions

- SEC: securities fraud charges against former CEO, President, and Chairman, former VP of HR, former CFO for backdating
- USAO: single count criminal complaint against former CEO and VP/HR.



# *Significant Cases: Backdated Stock Options*

## *Cases*

- Comverse Technology, Inc.  
SEC v. Alexander, et al., (E.D.N.Y. Aug. 9, 2006)  
<http://www.sec.gov/litigation/litreleases/2006/lr19796.htm>.
  - SEC: injunctive action against former Chairman/CEO, former CFO, and former GC/director, for backdated options
  - USAO: charged the three criminally.
  - GC Sorin plead guilty and settled with the SEC on Jan. 10, 2007 <http://www.sec.gov/news/press/2007/2007-4.htm>.

# *Significant Cases: Backdated Stock Options*

## *Cases*

- Engineering Support Systems, Inc.  
SEC v. Steven J. Landmann, (E.D. Mo. Feb. 6, 2007);  
SEC v. Gary C. Gerhardt, (E.D. Mo. Feb. 6, 2007)  
<http://www.sec.gov/litigation/litreleases/2007/lr19990.htm>
  - Against former CFO and the former Controller for backdated options; some “double backdated” options
  - Former Controller consented to
    - injunction,
    - an officer/director bar
    - disgorgement of \$518,972
    - prejudgment interest of \$108,099
    - a penalty of \$259,486.





# *Significant Cases: Backdated Stock Options*

## *Cases*

- Take Two Interaction Software  
SEC v. Brant, (S.D.N.Y. Feb. 14, 2007)  
<http://www.sec.gov/litigation/litreleases/2007/lr20003.htm>
  - SEC: Former CEO and COB consented to
    - injunction
    - over \$6.2 million in disgorgement, prejudgment interest, penalties
    - an officer/director bar
  - NY State:
    - pled guilty to falsifying business records
    - agreed to pay a \$1 million fine.



# *Significant Cases: Backdated Stock Options*

## *Cases*

- Monster Worldwide

SEC v. Olesnyckyj, (S.D.N.Y. Feb. 15, 2007)

<http://www.sec.gov/litigation/litreleases/2007/lr20004.htm>

- SEC: brought case against former GC for backdating options, creating false documents, falsifying periodic filings and lying to auditors
- USAO: pled guilty



# *Significant Cases:*

## *Backdated Stock Options*

### *Guidance*

- SEC Chief Accountant Conrad Hewitt letter  
[www.sec.gov/info/accountants/staffletters.shtml](http://www.sec.gov/info/accountants/staffletters.shtml)
  - Generally APB No. 25, Accounting for Stock Issued to Employees
  - Key issue – is the measurement date: "the first date on which are known both (1) the number of shares that an individual employee is entitled to receive and (2) the option or purchase price, if any..."



# *Significant Cases:*

## *Backdated Stock Options*

- Chief Accountant Letter – Other key issues:
  - 1) Application of measurement date to awards which predate the actual award date
  - 2) Validity of prior grants when they do not comply with shareholder approved requirements
  - 3) Approval of options before the number to be granted to each employee is finalized
  - 4) Grants where the exercise price is set using a formula
  - 5) Grants prior to the commencement of employment
  - 6) Grants where the documentation is incomplete
  - 7) Grants timed to coordinate with public disclosure
  - 8) Income tax



# *Significant Cases: Backdated Stock Options*

## *Guidance*

- Division of Corporate Finance (Jan. 16, 2007)  
<http://www.sec.gov/divisions/corpfin/guidance/oilgasltr012007.htm>
  - Simplifies the corrective process
  - Permits filing one corrective filing rather than amending multiple filings
- February 2007 – IRS initiative providing relief for employees unaware that they held backdated options  
<http://www.irs.gov/newsroom/article/0,,id=167643,00.html>



# *Significant Cases: Backdated Stock Options*

## *Future*

- Stock option cases will continue and include directors, attorneys and others
- Increasing number of investigations
- Private Actions – Ryan, et al. v. Maxim Integrated Products, Inc., et al., (Del Chan. Feb 6, 2007)
  - Motion to dismiss shareholder derivative suit regarding backdated stock option practices denied.



*Significant Cases:  
Hedge Funds*



# *Significant Cases: Hedge Funds*

- Background: SEC Commissioner Atkins:  
“Hedge funds have been in the regulatory spotlight. With over \$1.2 trillion in worldwide assets, the attention is understandable.”

Remarks Before the 9th Annual Alternative Investment Roundup, January 29, 2007,

<http://www.sec.gov/news/speech/2007/spch012907psa.htm#1>



# *Significant Cases: Hedge Funds*

- Efforts to regulate.
    - Goldstein v. SEC, 451 F.3d 873 (D.C. Cir. 2006).  
Vacated the SEC's rule requiring hedge fund advisors to register.
    - SEC Chairman Cox told Congress the SEC will continue to bring enforcement actions noting “[h]edge funds are not, should not be, and will not be unregulated. “  
Testimony Concerning the Regulation of Hedge Funds, July 25, 2006  
<http://www.sec.gov/news/testimony/2006/ts072506cc.htm>
    - December 2006:
      - Proposed Rule 206(4)-8: prohibits investment advisors from making false statements to investors.
      - Proposed Rules 509 and 216: require accredited investors to have at least \$2.5 million in investments.
- [www.sec.gov/rules/proposed/2006/33-8766.pdf](http://www.sec.gov/rules/proposed/2006/33-8766.pdf)

# *Significant Cases: Hedge Funds*

- Antifraud provisions still apply.
  - SEC v. Langley Partners, L.P. et al., (D.D.C. March 14, 2006).  
<http://sec.gov/litigation/litreleases/lr19607.htm>.  
Claims of insider trading and sale of unregistered securities re 23 PIPE offerings.
    - consent to injunction
    - payment of over \$13 million in disgorgement, prejudgment interest and penalties
    - Thorp consented to payment of over \$2.3 penalty.
  - SEC v. Deephaven Capital Management, LLC, et al., (D.D.C. May 2, 2006)  
<http://sec.gov/litigation/litreleases/2006/lr19683.htm>.  
Claim of insider trading re 19 PIPE offerings
    - consent by company to injunction
    - payment of over \$5.5 million in disgorgement, prejudgment interest and penalties
    - payment by Lieberman to penalty of \$110,000



# *Significant Cases: Hedge Funds*

- SEC v. Nelson J. Obus, et al., (S.D.N.Y. Apr. 25, 2006), <http://sec.gov/litigation/litreleases/2006/lr19667.htm>.
  - Contested insider trading action against hedge fund manager and two others for trading in advance of merger announcement



# *Significant Cases: Hedge Funds*

- Future
  - Public interest in hedge funds continues
  - U.S. Fortress IPO, February 2007
    - Opened up 89 percent
    - Raised \$634 million in IPO
  - More Enforcement Actions
    - SEC and other agencies will continue to monitor
    - SEC sweep of Wall Street Brokers re: Front Running



*Significant Cases:  
Insider Trading*

# *Significant Cases: Insider Trading*

- Traditional enforcement area – aggressive Interpretation, e.g.
  - Deception: SEC v. Rocklage, (1<sup>st</sup> Cir. Nov. 14, 2006)  
Claim of insider trading by wife and brother where husband was not told of wife's deal to tip brother until after husband confided in wife.
  - Breached Duty: SEC v. Stewart, et al., (S.D.N.Y. Aug. 2006)  
<http://sec.gov/litigation/litreleases/2006/lr19794.htm>.  
Settled insider trading case alleging that the broker who tipped Ms. Stewart breached his duty brokerage firm.



# *Significant Cases: Insider Trading*

- Other noteworthy cases
  - *Business Week* case: SEC v. Sonja Anticevic et al., (S.D.N.Y. July 26, 2006).  
<http://www.sec.gov/litigation/litreleases/2006/lr19775.htm>.  
Contested insider trading case against 17 defendants for using non-public information from advance copies of *Business Week*.
  - Wall Street Sweep: SEC Office of Inspections sweeps major Wall Street firms re: tipping hedge funds

# *Significant Cases: Insider Trading*

- Clinical information cases, e.g.
  - SEC v. Thomas J. Bucknum, (D. Mass. Jan. 12, 2006).  
<http://www.sec.gov/litigation/litreleases/lr19528.htm>. Director consented to injunction and payment of over \$2 million in disgorgement and prejudgment interest and a penalty of \$969,232 where he placed order to sell stock, went to board meeting and learned negative news about company drug and then reaffirmed the sell order which was executed prior to company news announcement
  - SEC v. Sanjiv S. Agarwala, (S.D. Cal. Feb. 16, 2006).  
<http://www.sec.gov/litigation/litreleases/lr19568.htm>. Doctor/consultant consented to injunction and payment of \$14,784 in disgorgement, \$498 in prejudgment interest and a penalty of \$29,568 where complaint alleged insider trading based on advance knowledge of FDA position on drugs.
  - SEC v. Alexander J. Yaroshinsky, (S.D.N.Y. March 28, 2006).  
<http://www.sec.gov/litigation/litreleases/lr19625.htm>. Court ordered asset freeze against drug executive where complaint alleged he traded based on advance knowledge of FDA position on drug tests.
  - SEC v. Marnie L. Sharpe and Leonard P. Leclerc, (N.D. Cal. May 2, 2006)  
<http://www.sec.gov/litigation/litreleases/2006/lr19684.htm>. Action against daughter and father alleging she learned of favorable drug information prior to public announcement from friend at company and tipped father who traded. Father and daughter consented to injunction and payment of over \$120,000 in disgorgement and penalties.



# *Significant Cases: Insider Trading*

- Spring-loading/Bullet-dodging
  - SEC v. David M. Willey and Joy S. Willey, (D.D.C. July 16, 2004)  
<http://sec.gov/litigation/litreleases/2006/lr19918.htm>.  
Settled insider trading charges with consent to entry of injunction and payment of over \$1.8 million in disgorgement, prejudgment interest and penalties based on allegations that former CFO of Capital One traded in advance of a negative announcement.
  - But conflicts over theory:
    - SEC Commissioner Paul Atkins – not insider trading (July 2006)
    - Enforcement Staff – open question (November 2006)



# *Significant Cases: Insider Trading*

- Future
  - Continue expanding elements of insider trading
  - More cases against hedge funds
  - More cases in pharmaceutical area
  - Spring-loaded/bullet dodge – possible cases tied to other issues



# *Significant Cases: Financial Fraud*

# *Significant Cases: Financial Fraud*

- Traditional Enforcement Area, e.g.
  - SEC v. McAfee, Inc., (N.D. Cal. Jan. 4, 2006), <http://www.sec.gov/litigation/litreleases/lr19520.htm>.  
Settled action which alleged fraudulent scheme to overstate revenue from 1998 to 2000 by \$622 million. Consent agreed to:
    - entry of injunction
    - payment of \$50 million penalty
    - appointment of independent consultant to recommend improvements in internal controls
  - SEC v. AIG, (S.D.N.Y. Feb. 9, 2006.), <http://sec.gov/litigation/litreleases/lr19560.htm>.  
Settled action which alleged fraudulent scheme to overstate loss reserves by \$500. Consent (part of larger \$1.6 billion global settlement) agreed to:
    - entry of injunction
    - payment of \$700 million in disgorgement
    - penalty of \$100 million
    - Company cooperated after scheme discovered.
  - SEC v. Tyco International Ltd., (S.D.N.Y. April 17, 2006), <http://sec.gov/litigation/litreleases/2006/lr19657.htm>.  
Settled action which alleged scheme to overstate results by at least \$1 billion. Consent agreed to:
    - entry of an injunction
    - a \$50 million penalty.

# *Significant Cases: Financial Fraud*

- SEC v. Federal National Mortgage, ( D.D.C May 22,2006), <http://sec.gov/litigation/litreleases/2006/lr19710.htm>.  
Consented to entry of an injunction and payment of a \$400 million penalty where complaint alleged management of earnings to show steady growth and meet income targets over years. Cooperation acknowledged.
- In the Matter of City of San Diego, (Nov. 14, 2006) <http://www.sec.gov/litigation/admin/2006/33-8751.pdf>.  
Settled administrative proceeding which alleged that in bond offerings city failed to disclose financial difficulties with pension and retiree health care obligations. City consented to a C&D and the retention of a consultant to review internal controls.
- SEC v. Moran, et al., (N.D. Ill., Nov. 2, 2006) (additional cases for other defendants), <http://sec.gov/litigation/litreleases/2006/lr19897.htm>.  
Settled enforcement actions against former officers and directors of Spiegel who consented to the entry of injunctions and payment of penalties which ranged from \$100,000 to \$170,000 where complaint alleged overstatement of Spiegel's credit card receivables and withholding filing of financial reports to avoid issuance by auditor of a "going concern" opinion.

# *Significant Cases: Financial Fraud*

- Aiding and abetting
  - SEC v. Scientific-Atlanta, (S.D.N.Y. June 22, 2006)  
<http://www.sec.gov/litigation/litreleases/2006/lr19735.htm>.  
Settled action which alleged that the company aided and abetted Adelphia in inflating its earnings by \$43 million. Consent agreed to:
    - the entry of an injunction prohibiting aiding and abetting violations of the books and records provisions
    - disgorgement of \$20 million
  - SEC v. Ronald Ferguson, et al., (S.D.N.Y. Feb. 2, 2006)  
<http://www.sec.gov/litigation/litreleases/lr19552.htm>.  
Compliant charged five former senior executives of General Re. with aiding and abetting AIG in improperly inflating its loss reserves by almost \$500 million.  
The USAO filed parallel criminal charges.
  - SEC v. Gary Bell, et al., (D.D.C. Jan. 18, 2007)  
<http://www.sec.gov/litigation/litreleases/2007/lr19975.htm>.  
Action against 13 employees and agents of vendors for aiding and abetting a massive fraud at U.S. Food Services, a subsidiary of Royal Ahold, by executing false audit confirmation settlement with disputes and fines.



# *Significant Cases: Financial Fraud*

- Future
  - Financial fraud cases are a traditional program area of enforcement
  - Expand scope to include aides and abettors and, in option area, gatekeepers.



*Significant Cases:*  
*FCPA*





# *Significant Cases: FCPA*

- Background
  - SEC 1070s payments cases led to FCPA
  - FCPA prohibits payment of bribes to foreign governments
  - Books and record provisions
  - Renewed emphasis due to globalization

# *Significant Cases: FCPA*

## *Cases*

- In the Matter of Oil States International, Inc., (April 27, 2006)  
<http://www.sec.gov/litigation/admin/2006/34-53732.pdf>.  
Consented to C&D in an action which alleged violations of the FCPA by making and improperly recording payments to officials of Venezuela's state-owned oil company.
- SEC v. John Samson, et al., (D.D.C. July 5, 2006)  
<http://www.sec.gov/litigation/litreleases/2006/lr19754.htm>.  
Settled action that alleged that four employees of ABB participated in a scheme to bribe Nigerian government officials to obtain a contract to supply oil drilling equipment in Nigeria. Consents agreed statutory injunction, penalties for \$40,000 and \$50,000 and disgorgement of over \$64,000.

# *Significant Cases: FCPA*

## *Cases*

- In the matter of Schnitzer Steel Industries, Inc., (Oct. 16, 2006)  
<http://www.sec.gov/litigation/admin/2006/34-54606.pdf>.  
Consented to a C&D and to pay over \$7.7 million in disgorgement and prejudgment interest and retain a consultant to review internal controls in an action alleging the payments of kickbacks or gifts to managers of steel mills in China to get business and improperly recorded the payments.
- In the matter of Statoil, ASA, (Oct. 13, 2006)  
<http://www.sec.gov/litigation/admin/2006/34-54599.pdf>.  
Consented to a C&D and to pay disgorgement of \$10.5 million in an action alleging the payment of bribes to an Iranian official to assist in obtaining projects.



## *Significant Cases: FCPA*

- Future
  - Traditional area for enforcement where activity is increasing
  - Globalization should result in more cases in 2007.



*Significant Cases:  
Market Timing*

# *Significant Cases: Market Timing*

- Began with cases by NY AG Eliot Spitzer
- SEC conducted extensive investigations
  - In the matter of Prudential Equity Group, (Adm. Aug. 28, 2006).  
<http://sec.gov/litigation/admin/2006/34-54371.pdf>.  
Prudential consulted to pay \$600 million in a global settlement with the SEC, US Atty Dist of Mass, Mass Securities Div. NASD, NJ Bureau of Securities, NY AG's Office and NYSE to resolve illegal market timing scheme.
  - SEC v. James Tambone and Robert Hussey, (D. Mass Dec. 28 2006)  
<http://www.sec.gov/litigation/litreleases/2007/lr19962.htm>.  
Dismissed the claims brought against two former executives of Columbia Funds Distributor Inc. in connection with undisclosed market timing scheme.
- Future
  - Cases winding down



*Significant Cases:  
Trading Abuses*

# *Significant Cases: Trading Abuses*

- Trading abuses such as conflicts of interest and similar matters a staple.
- PIPES.
  - SEC v. Joseph J. Spiegel, (D.D.C. Jan. 4 2007)  
<http://www.sec.gov/litigation/litreleases/2007/lr19956.htm>.  
Settled civil injunctive action against former hedge fund portfolio manager which alleged fraud and registration violations involving short selling in connection with a PIPE. Consent to
    - injunction
    - payment of \$110,000 penalty.
  - In the Matter of Spinner Asset Management, LLC, et al., (Adm. Dec. 20, 2006)  
<http://www.sec.gov/litigation/admin/2006/33-8763.pdf>.  
Case against fund for fraud and registration violations relating to selling short in connection with PIPE  
See SEC v. Spiegel
    - C&D entered
    - payment of over \$435,000 in disgorgement
  - SEC v. Friedman, Billings, Ramsey & Co. (D.D.C. Dec. 20, 2006)  
<http://www.sec.gov/litigation/litreleases/2006/lr19950.htm>  
Settled action alleging insider trading and registration violations related to short selling in connection with PIPE offering. Consent to
    - injunction
    - payment to disgorgement, prejudgment interest and a penalty of over \$3.7 million.
    - a censure in a related administrative proceeding.
  - See also In the Matter of Scott E. Dreyer, Administrative Proceeding File No. 3-12510  
<http://www.sec.gov/litigation/admin/2006/33-8761.pdf>.



# *Significant Cases: Trading Abuses*

- Trading ahead
  - Squawk box case: In the Matter of Sanjay Singh, (Adm. March 21, 2006).  
<http://www.sec.gov/litigation/admin/33-8673.pdf>  
Settled C&D in which broker employees use information regarding institutional investor trades heard over “squawk box” to trade ahead. Consent to:
    - C&D and bar
    - payment of \$37,500 as disgorgement.

# *Significant Cases: Trading Abuses*

- Auction Rate Securities.
  - In the Matter of Bear Stearns, Citigroup, Goldman Sachs, Morgan, Lehman Brothers, Merrill Lynch, Morgan Stanley, Morgan Stanley DW, RBC Dain Rauscher, Banc of America, A.G. Edwards, Morgan Keegan, Piper Jaffray, SunTrust, and Wachovia, (Adm. May 31, 2006).  
<http://sec.gov/litigation/admin/2006/33-8684.pdf>.  
Case based on alleged fraudulent trading practices in auctions for auction rate securities. Each consented to
    - a C&D
    - payment of a penalty of either \$1.5 million, \$750,000, or \$125,000 under the two-tiered settlement structure.



# *Significant Cases: Trading Abuses*

- Future
  - Trading abuses is a traditional enforcement priority
  - In the future, more market sweeps such as current one



*Significant Cases:  
Gate Keepers*

# *Significant Cases: Gate Keepers*

- Long sought to use “gatekeepers” as “advance edge”
- Directors
  - SEC Commissioner Campos warned directors that they too have fallen under the SEC’s purview. How to be an Effective Board Member, Aug. 15, 2006.
- Cases
  - SEC v. Mark Kishel, (N.D. Ga. Jan 23, 2006).  
<http://www.sec.gov/litigation/litreleases/lr19538.htm>.  
Alleged former director of biotech company engaged in insider traded in advance of the announcement of FDA approval for a device. Consent to
    - Injunction
    - payment of disgorgement and prejudgment interest of over \$14,000
    - penalty of about \$13,600

# *Significant Cases: Gate Keepers*

- Attorneys
  - In Re: J.B. Oxford Holdings, Inc. (Sept. 25, 2006)  
<http://sec.gov/litigation/admin/2006/ic-27497.pdf>  
Former GC of broker dealer holding company charged for role in late trading scheme.
  - SEC v. Biopure Corporation, et al., (D. MA. Sept. 13, 2006)  
<http://www.sec.gov/litigation/litreleases/2006/lr19825.htm>  
Former GC charged with aiding and abetting filing violations where filings did not disclose negative FDA news.
  - SEC v. Alexander, et al. (E.D.N.Y. Aug. 9, 2006)  
<http://www.sec.gov/litigation/litreleases/2006/lr19796.htm>  
Former Comverse GC charged in fraud in options backdating case.



# *Significant Cases: Gate Keepers*

- Future
  - More “gate keeper” cases
  - Options cases will continue to expand.



# ***Trends and Conclusions: 2007***





# *Trends and Conclusions: 2007*

- Enforcement Polices -- Investigations
  - Decision by Ninth Circuit on Form 1662.
  - Pressure to Reform Seaboard.
  - Proposed Fed. R. Evid.502.
- Options
  - Expanding number of Investments.
  - Involvement of directors, attorneys and accounts.



# *Trends and Conclusions: 2007*

- Hedge Funds
  - Various agencies will study possible regulation
  - Aggressive enforcement
- Financial Fraud
  - Continue to be a key area
  - Change involving aides and affiliates
- FCPA
  - Expanding area
  - Globalization will cause more cases



# *Trends and Conclusions: 2007*

- Insider Trading
  - Expanding legal theory
- Market Timing
  - Winding down
- Trading Practices
  - Continued area of interest, e.g., PIPE offerings
  - Hedge Funds and sweeps
- Gate Keepers
  - Continue expansion of liability, e.g., options cases