

# SEC NEWS DIGEST

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## ENFORCEMENT PROCEEDINGS

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### **SEC, U.S. ATTORNEY, FBI, NY ATTORNEY GENERAL ANNOUNCE CHARGES IN BOILER-ROOM CASE WHICH INCLUDES ALLEGED ASSOCIATES OF ORGANIZED CRIME**

The Commission today charged 18 individuals in an enforcement action as part of its continuing battle against boiler-room fraud in the market for microcap securities. The Commission's administrative order instituting proceedings (Order) alleges that the respondents conducted a fraudulent scheme while associated with a Long Island broker-dealer, First United Equities Corporation, that is now defunct. The Order alleges that the respondents reaped millions of dollars in illicit profits from the scheme.

In a related criminal prosecution, the U.S. Attorney for the Eastern District of New York, the Federal Bureau of Investigation and the New York State Attorney General simultaneously announced the indictment of 20 defendants. The criminal indictments allege that two of the persons charged are associates of the Gambino organized crime family.

SEC Director of Enforcement Richard H. Walker said, "Today's charges involve a classic boiler-room operation, carried out by individuals who were willing to tell any lie – no matter how brazen – in order to get their hands on the public's hard-earned money. These cases demonstrate our continuing commitment to rooting out fraud in the microcap market. Finally, for those who would contemplate engaging in this kind of activity, including members of organized crime, the most daunting news about today's action is that it is the result of outstanding coordination among the SEC, the U.S. Attorney for the Eastern District of New York, the FBI and the New York State Attorney General."

The Commission's Order alleges as follows:

From August 1995 through at least October 1997, operating through First United, the respondents fraudulently marketed the stock of National Medical Financial Services, Inc. (NMFS) and Ashton Technology Group, Inc. (Ashton) to unsuspecting investors. After underwriting initial public offerings for both of these companies, First United and its principals maintained control over large blocks of the stock. Thereafter, registered representatives employed by First United used high-pressure sales tactics and a variety of

misrepresentations to induce investors to purchase this stock. In addition to misrepresenting the prospects for NMFS and Ashton stock, certain of the respondents falsely told investors that no customer of First United had ever lost money and that the firm would reimburse customers for any losses on NMFS or Ashton.

First United filled customers' buy orders with NMFS and Ashton stock that either was held in First United proprietary accounts, or that came from nominee accounts secretly controlled by the principals of First United. The respondents amassed unlawful profits totaling millions of dollars from this activity.

Once a customer purchased NMFS or Ashton stock through First United, the respondents employed various illicit methods to prevent that investor from selling the stock. Respondents either bullied investors into abandoning their attempts to sell the stock, or simply failed to execute sell orders. Respondents also effected unauthorized purchases of NMFS and Ashton stock in the accounts of certain First United customers, including on at least one occasion a purchase in the account of a customer who was deceased.

The respondents named in the Commission's Order are as follows:

#### Principals at First United

Hunter Adams, age 33, of Atlantic Beach, New York, a former de facto control person of First United;

Jason A. Cohen, age 48, of Albertson, New York, formerly Chairman of First United;

Steven M. Cohen, age 43, of Port Washington, New York, formerly a registered principal of First United;

David Hirsch, age 38, of Jericho, New York, a former de facto control person of First United;

Jonathan D. Winston, age 35, of Locust Valley, New York, formerly Vice Chairman of First United;

#### First United Trader

John J. Gremmo, III, age 44, of West Gilgo Beach, Babylon, New York;

#### First United Registered Representatives

James L. Bila, age 30, of Holbrook, New York;

Christian W. Blake, age 30, of Brooklyn, New York;

Louis R. Facchini, Jr., age 34, of Parkland, Florida;

Roberto A. Mangiarano, age 27, of La Jolla, California;

Joseph P. Mannino, age 27, of Lindenhurst, New York;

David M. Margules, age 44, of Hackensack, New Jersey;

James J. Pellizzi, age 33, of Melville, New York;

David M. Pessa, age 32, of Bell Harbor, New York;

Michael Pugliese, age 30, of New York, New York;

Christopher J. Russo, age 34, of Woodmere, New York;  
Howard I. Weinstein, age 51, Port Washington, New York; and  
Robert J. Winston, age 33, of New York, New York.

The respondents are all charged with violating or causing others to violate Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, and Rule 10b-5 thereunder.

The Commission acknowledges the assistance of the U.S. Attorney for the Eastern District of New York, the FBI and the New York State Attorney General in this matter. (Rel. 33-7963; 34-44051; File No. 3-10437; Press Rel. 2001-25)

### **SEC SETTLES SECURITIES FRAUD ACTION AGAINST "TOKYO JOE"; INTERNET STOCK PICKER REQUIRED TO GIVE UP ALL ILLEGAL PROFITS, PAY A PENALTY OF MORE THAN \$400,000 AND CONSENT TO THE ENTRY OF AN ANTIFRAUD INJUNCTION**

The Commission has settled the enforcement action it brought last year against Yun Soo Oh Park, the Internet stock picker known as "Tokyo Joe," and the company Park controls, Tokyo Joe's Societe Anonyme Corp. Under the terms of the settlement, which was as approved today by the District Court for the Northern District of Illinois, Park and Societe Anonyme, without admitting or denying the allegations made in the Commission's complaint, consented to entry of a federal District Court order that permanently enjoins them from violating the antifraud and other provisions of the federal securities laws, and orders Park and Societe Anonyme to pay \$324,934 in ill-gotten gains and \$429,696 in civil penalties, for a total monetary payment of \$754,630. Park and Societe Anonyme also agreed to post a hyperlink to the court order on the home page of the Tokyo Joe web site for a period of thirty days.

SEC Enforcement Director Richard H. Walker said, "This case has established groundbreaking precedent: Those who are in the business of offering investment advice on the Internet may take on the same duties and responsibilities as other investment advisers." Mr. Walker added, "Today's settlement demonstrates that we will not countenance undisclosed conflicts of interest or other fraudulent conduct from those recommending purchases or sales of securities – whether on the web or elsewhere."

SEC Midwest Regional Director Mary E. Keefe said, "In requiring Park and Societe Anonyme to pay a significant penalty and to give back all of the profits they made from their illegal trading and touting, we are sending a clear message to those in the stock-picking business: We will pursue you vigorously if you mislead your customers."

In its complaint, filed in January 2000, the Commission alleged that Park, a self-proclaimed Internet stock-picking guru, operated an Internet web site through which investors who paid a monthly membership fee received stock recommendations and other investment advice from Park. The Commission charged that Park defrauded members of his Societe Anonyme by failing to disclose that, in several instances, he had already

purchased shares of the stock that he was recommending and that he planned to sell his shares into the buying flurry and subsequent price rise that followed his recommendations, an illegal practice known as “scalping.” The Commission also charged that Park touted one company to members of Societe Anonyme and to the public without disclosing that he had received shares of stock in the company in exchange for his recommendation. Finally, the Commission charged that the past performance results posted on Park’s web site were materially false and misleading.

Before submitting his settlement offer, Park moved to dismiss the Commission’s complaint, arguing primarily that, since he dispensed his stock picks and investment advice over the Internet, he was not an “investment adviser” within the meaning of the Investment Advisers Act and that the antifraud provisions of that Act could not be constitutionally applied to him. The District Court denied Park’s motion to dismiss in its entirety and held that the Commission’s complaint sufficiently alleged that Park was an “investment adviser” under the Advisers Act and that Park was subject to that Act’s antifraud provisions (SEC v. Park a/k/a Tokyo Joe, and Tokyo Joe’s Societe Anonyme Corp., 99 F. Supp. 2d 889 (N.D. Ill. 2000).

Under the terms of the settlement, Park and Societe Anonyme consent to a permanent injunction prohibiting them from violating the antifraud provisions of the Investment Advisers Act of 1940 and the Securities Exchange Act of 1934, as well as the anti-touting provision of the Securities Act of 1933. Park and Societe Anonyme also are required to pay all of the \$279,696 in profits they made from the thirteen instances of scalping and the one instance of illegal touting alleged by the Commission, plus \$45,238 in prejudgment interest on that amount, for a total disgorgement payment of \$324,934. Park and Societe Anonyme also are required to pay a civil penalty equal to the amount of their scalping and illegal touting profits (\$279,696) plus an additional penalty of \$150,000 based on Park’s posting of false and misleading past performance results on the Tokyo Joe web site, for a total penalty payment of \$429,696. Finally, within two days of the entry of the District Court order, Park and Societe Anonyme must post a hyperlink to a copy of the Commission’s order on the home page of the Tokyo Joe web site for a period of thirty days. [SEC v. Yun Soo Oh Park and Tokyo Joe’s Societe Anonyme Corp., N.D. Ill., Civil No. 00-C-0049] (LR-16925; Press Rel. 2001-26)

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## **INVESTMENT COMPANY ACT RELEASES**

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### **BMO NESBITT BURNS CORP.**

A notice has been issued giving interested persons until April 2, 2001, to request a hearing on an application filed by BMO Nesbitt Burns Corp. for an order under Sections 6(b) and 6(e) of the Investment Company Act of 1940 (the Act) in connection with the formation of limited partnerships or limited liability companies (each a Partnership) to be offered to certain key employees of BMO Nesbitt Burns and its affiliates. Each

Partnership will be an employees' securities company within the meaning of Section 2(a)(13) of the Act. (Rel. IC-24887 - March 7)

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## SELF-REGULATORY ORGANIZATIONS

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### APPROVAL OF PROPOSED RULE CHANGE

The Commission approved a proposed rule change filed by the Chicago Board Options Exchange (SR-CBOE-00-61) to change the capitalization transfer fee applicable to Designated Primary Market Makers, under Section 19(b)(2) of the Securities Exchange Act of 1934. (Rel 34-44043)

### ACCELERATED APPROVAL OF PROPOSED RULE CHANGE

The Commission granted accelerated approval to a proposed rule change and Amendment No 1 submitted by the International Securities Exchange (SR-ISE-01-08) regarding the listing and trading of options on Exchange-Traded Fund Shares. Publication of the proposal is expected in the Federal Register during the week of March 5 (Rel 34-44037)

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## SECURITIES ACT REGISTRATIONS

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The following registration statements have been filed with the SEC under the Securities Act of 1933. The reported information appears as follows: Form, Name, Address and Phone Number (if available) of the issuer of the security; Title and the number and/or face amount of the securities being offered; Name of the managing underwriter or depositor (if applicable); File number and date filed; Assigned Branch, and a designation if the statement is a New Issue

Registration statements may be obtained in person or by writing to the Commission's Public Reference Branch at 450 Fifth Street, N.W., Washington, D.C. 20549 or at the following e-mail box address: <publicinfo@sec>. In most cases, this information is also available on the Commission's website: <www.sec.gov>.

F-6 ACAMBIS PLC /ADR/, ONE WALL STREET, NEW YORK, NY 10286 (212) 495-1727 -  
50,000,000 (\$2,500,000) DEPOSITARY RECEIPTS FOR COMMON STOCK. (FILE 333-13166 - FEB. 13) (BR. 99 - NEW ISSUE)

F-6 SADIA SA /ADR/, 111 WALL ST, NEW YORK, NY 10043 (212) 657-5100 -  
100,000,000 (\$5,000,000) DEPOSITARY RECEIPTS FOR COMMON STOCK. (FILE 333-13196 - FEB. 22) (BR. 99 - NEW ISSUE)

F-3 QSOUND LABS INC, 2748 37TH AVE, SUITE 500,  
CALGARY ALBERTA CANADA T1Y 5L3, A0 - 500,000 (\$367,500)  
FOREIGN COMMON STOCK. (FILE 333-13202 - FEB. 23) (BR. 4)

F-6 SEKISUI HOUSE LTD/ADR/, 2 RECTOR ST,  
C/O SECURITY PACIFIC NAT'L TRUST CO N Y, NEW YORK, NY 10006 (212) 978-  
5009  
- 50,000,000 (\$2,500,000) DEPOSITARY RECEIPTS FOR COMMON STOCK. (FILE  
333-13204 - FEB. 23) (BR. 99)

S-8 QSOUND LABS INC, 2748 37TH AVE, SUITE 500,  
CALGARY ALBERTA CANADA T1Y 5L3, A0 - 1,100,000 (\$1,815,000)  
FOREIGN COMMON STOCK. (FILE 333-13206 - FEB. 23) (BR. 4)

F-6 SIEMENS AG /ADR/, 111 WALL STREET, C/O CITIBANK N A, NEW YORK, NY  
10043  
(212) 657-7691 - 50,000,000 (\$2,500,000)  
DEPOSITARY RECEIPTS FOR COMMON STOCK. (FILE 333-13208 - FEB. 26) (BR.  
99)

S-8 MARCONI PLC, ONE BROTON ST, LONDON UNITED KINGDOM, W1X 8AQ, X0 00000  
(011) 442-0749 - 17,483,730 (\$82,173,531) FOREIGN COMMON STOCK. (FILE  
333-13210 - FEB. 26) (BR. 9)

SB-2 VILLAGE VI ACQUISITION CORP, 580 VILLAGE BLVD, SUITE 140,  
WEST PALM BEACH, FL 33409 (561) 689-1611 - 10,000,000 (\$1,000,000)  
COMMON STOCK. (FILE 333-56372 - MAR. 01) (BR. 9)

S-8 APPLIED FILMS CORP, 9586 I-25 FRONTAGE ROAD, LONGMONT, CO 80504  
(303) 530-1411 - 750,000 (\$9,705,000) COMMON STOCK. (FILE 333-56376 -  
MAR. 01) (BR. 5)

S-8 APPLIED FILMS CORP, 9586 I-25 FRONTAGE ROAD, LONGMONT, CO 80504  
(303) 530-1411 - 70,000 (\$770,000) COMMON STOCK. (FILE 333-56378 -  
MAR. 01) (BR. 5)

SB-2 VILLAGE XII ACQUISITION CORP, 580 VILLAGE BLVD, SUITE 140,  
WEST PALM BEACH, FL 33409 (561) 689-1611 - 10,000,000 (\$1,000,000)  
COMMON STOCK. (FILE 333-56380 - MAR. 01) (BR. 9)

SB-2 VILLAGE XIII ACQUISITION CORP, 580 VILLAGE BLVD. SUITE 140,  
WEST PALM BEACH, FL 33409 (561) 689-1611 - 10,000,000 (\$1,000,000)  
COMMON STOCK. (FILE 333-56382 - MAR. 01) (BR. 9 - NEW ISSUE)

S-8 MEDICAL TECHNOLOGY SYSTEMS INC /DE/, 12920 AUTOMOBILE BLVD,  
CLEARWATER,  
FL 34622 (727) 576-6311 - 1,500,000 (\$2,670,000) COMMON STOCK. (FILE  
333-56384 - MAR. 01) (BR. 5)

S-8 UNION FINANCIAL BANCSHARES INC, 203 WEST MAIN ST,  
C/O PROVIDENT COMMUNITY BANK, UNION, SC 29379 (864) 427-9000 - 125,000  
(\$1,127,382.90) COMMON STOCK. (FILE 333-56386 - MAR. 01) (BR. 7)

SB-2 LAM PHARMACEUTICAL CORP, 800 SHEPPARD AVENUE WEST, TORONTO, A6  
(416) 633-3004 - 5,938,453 (\$28,920,364) COMMON STOCK. (FILE 333-56390  
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MAR. 01) (BR. 9)

S-8 GLOBAL INDUSTRIAL SERVICES INC, 200-1311 HOWE ST, VANCOUVER BC  
CANADA,  
V6Z 2 (509) 891-8373 - 1,637,000 (\$654,800) COMMON STOCK. (FILE 333-  
56394  
- MAR. 01) (BR. 9)

S-1 ALLIANCE IMAGING INC /DE/, 1065 N PACIFICCENTER DR, STE 200, ANAHEIM,  
CA  
92806 (714) 688-7100 - \$150,000,000 STRAIGHT BONDS. (FILE 333-56398 -  
MAR. 01) (BR. 1)

S-8 H&R BLOCK INC, 4400 MAIN ST, KANSAS CITY, MO 64111 (816) 753-6900 -  
3,000,000 (\$135,150,000) COMMON STOCK. (FILE 333-56400 - MAR. 01) (BR.  
8)

S-3 NIKU CORP, 305 MAIN ST, REDWOOD CITY, CA 94063 (650) 298-4600 -  
569,981  
(\$3,493,984) COMMON STOCK. (FILE 333-56402 - MAR. 01) (BR. 8)

S-8 NUTEK INC, 15722 CHEMICAL LN, HUNTINGTON BEACH, CA 92649 (714) 799-  
7266  
- 950,000 (\$228,000) COMMON STOCK. (FILE 333-56404 - MAR. 01) (BR. 9)

S-3 DANAHER CORP /DE/, 1250 24TH ST NW, SUITE 800, WASHINGTON, DC 20037  
(202) 828-0850 - 829,823,000 (\$508,266,587) STRAIGHT BONDS. (FILE  
333-56406 - MAR. 01) (BR. 6)

N-2 NORTH AMERICAN SENIOR FLOATING RATE FUND INC, 286 CONGRESS ST,  
C/O CYPRESSTREE INVESTMENTS, BOSTON, MA 02110 (617) 368-3535 -  
5,000,000  
(\$48,050,000) COMMON STOCK. (FILE 333-56408 - MAR. 01) (BR. 18)

S-1 SEACHANGE INTERNATIONAL INC, 124 ACTON ST, 2ND FLOOR, MAYNARD, MA  
01754  
(978) 897-0100 - 856,144 (\$12,307,070) COMMON STOCK. (FILE 333-56410 -  
MAR. 01) (BR. 7)

S-8 INTERDIGITAL COMMUNICATIONS CORP, 781 THIRD AVE, KING OF PRUSSIA, PA  
19406 (610) 278-7800 - 2,950,000 (\$26,432,000) COMMON STOCK. (FILE  
333-56412 - MAR. 01) (BR. 4)

S-8 PREDICTIVE SYSTEMS INC, 417 FIFTH AVENUE, NEW YORK, NY 10016  
(212) 219-4400 - 793,867 (\$2,307,175.90) COMMON STOCK. (FILE 333-56414  
-  
MAR. 01) (BR. 3)