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**SEC ENFORCEMENT LITIGATION IN FY 2007**

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The Securities and Exchange Commission has authority to bring civil enforcement cases in federal district court or by commencing an administrative proceeding. By and large the SEC brings its more serious enforcement cases in federal district court, although this tendency is skewed somewhat by the availability of different remedies in the district court and the administrative forums and – because the SEC reports the filing of settled and litigated cases together -- by the desire of settling defendants to take an administrative sanction rather than a district court injunction,. In fiscal year 2007, district court actions represented a minority of the new enforcement cases filed, but accounted for a majority of the defendants sued; specifically, the SEC initiated 262 district court enforcement cases against 804 defendants, and brought 394 administrative proceedings (APs) against 645 respondents.

In the 25 enforcement cases that were decided by federal district courts during fiscal year 2007, the SEC prevailed against 37 defendants and lost to twelve. In the fourteen administrative proceedings that were decided by administrative law judges (ALJs) during FY 2007, the Division of Enforcement prevailed against sixteen respondents and lost to two. The foregoing numbers, which exclude default judgments and post-complaint settlements and do not consider reversals on appeal, are documented in the attached charts.

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## DISTRICT COURT ORDERS AND JUDGMENTS IN FY 2007

The SEC's success rate in district court cases decided in fiscal 2007 following trial or a dispositive motion was 37/49, or just over 75%. Because of the small sample size and the wide geographic dispersal of the SEC's district court enforcement docket,<sup>2</sup> it is difficult to discern any patterns by district, let alone by district judge. However, it is worthwhile to drill down on some of the 37 district court "wins" that are shown on the attached chart to ascertain whether the SEC's victory was real, or more muted. Four cases stand out in that regard. In *SEC v. Zwick*, the court issued only a five-year injunction against one defendant, and cut the penalties from the \$330,000 demanded against one defendant to \$75,000, and from the \$110,000 demanded against the other defendant to \$25,000. In *SEC v. Cohen*, the court found liability on only one of seven counts and imposed a \$5,000 penalty, compared to the SEC's prayer for an injunction, an officer and director bar, disgorgement, and a \$55,000 penalty. In *SEC v. Levine*, the court imposed a

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<sup>2</sup> The 25 decisions that were rendered in FY 2007 break down by district as follows:

<b>District</b>	<b>Number of Decisions</b>
Southern District of California	1
District of Colorado	1
District of Connecticut	1
District of the District of Columbia	1
Middle District of Florida	1
Northern District of Georgia	1
Northern District of Illinois	1
Southern District of Indiana	1
District of Massachusetts	3
Eastern District of Missouri	1
Eastern District of New York	1
Southern District of New York	5
Western District of New York	1
Northern District of Texas	2
Southern District of Texas	2
District of Utah	2

\$200,000 penalty in lieu of the \$540,000 that the SEC had sought, reduced the SEC's proposed disgorgement and prejudgment interest amounts by more than half, and issued ten-year injunctions and officer and director bars rather than the lifetime relief that the SEC had requested. Finally, in *SEC v. Freiberg* the court, ruling on the SEC's claims against defendant Harvey Carmichael, concluded that Carmichael was liable for a single count of fraud rather than the panoply of registration, reporting, and manipulation charges that the SEC had pursued against him, and denied the SEC's requests for an injunction, an officer and director bar, and a penny stock bar, leaving only disgorgement and a possible penalty. These results, coupled with the twelve outright dismissals of defendants, attest that litigating against the SEC is not the fool's errand that the Staff sometimes suggests.

#### **SEC ADMINISTRATIVE HEARINGS IN FY 2007**

Because it involves a fixed panel of four long-serving ALJs operating under a single set of scheduling rules, the SEC's administrative enforcement docket is more amenable to numerical analysis from the standpoints of both timeliness and outcomes. In fiscal year 2007 the SEC's new AP scheduling rules, enacted in 2003, fostered a dramatic reduction in the average time from institution of an AP through the initial decision (ID) by the ALJ, bringing that time down from 308 days in FY 2006 to 184 days. Two proceedings, each involving a single respondent, were dismissed altogether by the ALJs in FY 2007, consistent with the twelve-year average rate for such dismissals.

#### **Timeliness of APs at the ALJ Level**

The Commission amended its Rules of Practice, effective July 17, 2003, in an effort to deal with "unnecessary delay" in APs. The 2003 rules amendments impose a system under which the order instituting proceedings (OIP) in every contested proceeding will state whether the ALJ must issue his or her initial decision within 120, 210, or 300 days from the date of

service of the order, and also to adhere to sublimits on the length of the prehearing, transcript preparation, and decision-writing stages of the proceeding. Modifications to these time limits may only be granted by the Commission with the consent of the Chief ALJ. The Commission also amended Rule 161(b) to state that in deciding whether to extend time limits or grant other extensions, “the Commission or the hearing officer should adhere to a policy of strongly disfavoring such requests, except in circumstances where the requesting party makes a strong showing that the denial of the request or motion would substantially prejudice their case.” A more relaxed standard applies if one or more respondents offers to settle and wishes for the proceeding to be stayed while the Commission considers his or her settlement offer (see Rule 162(c)).<sup>3</sup>

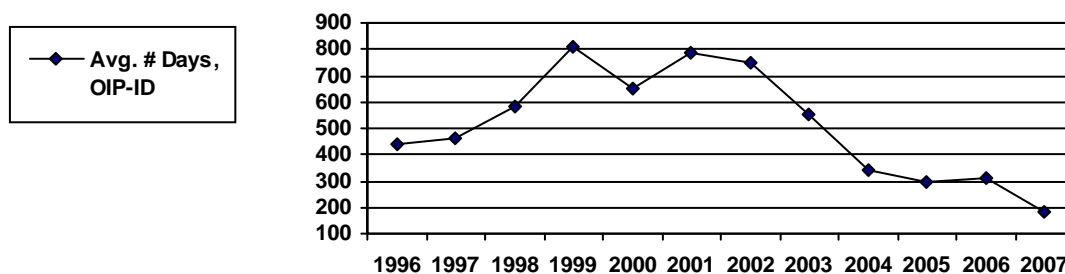
Between the effective date of the amended rules and the end of FY 2007, 76 APs authorized with time limits for completion under the new rules progressed to an initial decision by the ALJ – one in FY 2003, thirteen in FY 2004, 29 in FY 2005, nineteen in FY 2006, and fourteen in FY 2007. 24 were 300-day proceedings, 33 were 210-day proceedings, and nineteen were 120-day proceedings. Eighteen of the nineteen 120-day cases were Exchange Act Section 12(j) proceedings aimed at suspending or revoking the registration of a stock offering where the issuer had failed to file annual or periodic reports – a type of administrative action in which little serious resistance by the respondent normally would be expected (although one such case also named an individual officer of the issuer as a “cause” of the non-filing violation); the lone exception was a Rule 102(e) proceeding initiated after the respondent sought relief from a suspension. All but one of the 29 IDs in 210-day cases were issued in “follow-on” APs, in

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<sup>3</sup> For a more detailed discussion of the 2003 scheduling rules and some of their ramifications, see Christian J. Mixer, “The SEC’s New Administrative Proceedings Rules,” 17 INSIGHTS 2 (Sept. 2003).

which the respondent already has been criminally convicted or civilly enjoined for violating the law, and the only issue is whether a suspension or bar from a regulated activity is also in the public interest; the outlier was a stop order proceeding, initiated with a suspension, aimed at a registration statement. The “default” category for all other APs appears to be the 300-day schedule.<sup>4</sup>

The FY 2007 decisions suggest that the SEC’s new rules continue to have the desired effect on the average time taken to process the cases at the ALJ level. As shown by the chart below, that average has now dropped below the 210-day benchmark that accounts for the largest cohort of proceedings:



One factor that is helping to push down the length of proceedings is the ALJs’ increasing use of summary disposition procedures in lieu of a hearing. In FY 2007, fully half of the fourteen cases that resulted in initial decisions were decided without a hearing. This trend, in turn, has been fueled by a major shift in the types of administrative cases brought, toward

<sup>4</sup> To address delays at the SEC “appellate” level, the Commission also shortened from eleven to seven months the unenforceable time limit that it gives itself under Rule 900 to decide petitions for review. Amended Rule 900(a)(1)(iii) requires the Commissioners to make findings if these self-imposed limits are to be exceeded. If decision of a petition for review is to take more than seven, but less than eleven, months, the Commission apparently must find that “unusual complicating circumstances” exist. If the case is to remain pending for more than eleven months, the Commission must determine that “extraordinary facts and circumstances of the matter so require.”

“follow-on” proceedings and Section 12(j) proceedings aimed at revoking the registrations of delinquent corporate filers, and away from proceedings in which liability is seriously contested and for which summary adjudication is less suited. As an illustration, nine of the fourteen FY 2007 initial decisions were purely follow-on proceedings or 12(j) proceedings, compared to four of the twenty initial decisions rendered in FY 2002.

**The Merits: Statistical Recap of Initial Decisions by the ALJs**

The fourteen initial decisions in administrative enforcement cases that the SEC released in FY 2007 were fewer than half the number issued in FY 2005, and well below the average of twenty decisions per year for FY 1996-2007. Nine of the FY 2007 decisions were issued in original APs (in which the ALJ was called upon to decide liability as well as sanction), and five decided follow-on proceedings. The ALJs dismissed the Division of Enforcement’s case in two FY 2007 decisions, right at the average for 1996-2007.

The Division’s historical failure rate in hearings in original proceedings (defined as the number of ALJ dismissals divided by the number of original proceedings decided) now stands at 22% for fiscal 1996-2007.<sup>5</sup> For the four ALJs who were on the SEC’s roster at the end of FY 2007, the judge-by-judge dismissal data varies considerably, as follows:

<b>ALJ</b>	<b>Dismissal Rate in Original APs</b>
Chief Judge Brenda P. Murray	6 percent (2/32)
Judge James T. Kelly	8 percent (2/26)
Judge Robert G. Mahony	31 percent (9/29)
Judge Carol Fox Foelak	33 percent (10/30)

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<sup>5</sup> This figure focuses purely on dismissals by the ALJs, and does not take into account the comparatively rare circumstance in which the Commission dismisses a proceeding in which the ALJ has found liability and ordered a sanction, such as *In the Matter of James T. Patten*, Exchange Act Rel. No. 54710 (Nov. 3, 2006).

The “survival rate” on review by the Commission for all ALJ dismissals issued in the past twelve fiscal years remains at 58%, computed as follows:

6 (Dismissals Affirmed by SEC) plus 15 (Dismissals Where No Review Was Sought)

38 (Total Dismissals) minus 2 (Dismissals Where Petition for Review Is Still Pending) = 58%<sup>6</sup>

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<sup>6</sup> With the retirement of Judge Lillian McEwen on January 3, 2007, the prospects for ALJ dismissals changed. The combined dismissal rate in original proceedings for the four judges who remain was 19% (21 of 109) for FY1996-FY 2006, compared to a 25% average with Judge McEwen included. However, because Judge McEwen’s dismissals had a somewhat greater than average tendency to be reversed by the Commission, the historical FY1996-FY2006 “survival rate” for ALJ dismissals rises from 58% to 70% when Judge McEwen’s dismissals are excluded.

SEC FY 2007 Litigation Wins and Losses – District Court Cases  
(excludes defaults and settlements)

Title	Charges	Posture	Facts and Background	Result
<i>SEC v. Grotto</i> , 2006 WL 3025878 (S.D.N.Y. Oct. 24, 2006)	Securities Act: Section 17(a); Exchange Act: Rule 10b-5	SEC motion for summary judgment.	Defendants made numerous material misrepresentations and omissions in prospectuses and SEC filings relating to an IPO. Defendants were collaterally estopped from relitigating all material facts that were resolved in a prior state civil action brought by investors.	Court granted summary judgment against defendants Grotto and Leffers, imposing injunction, disgorgement, and civil money penalty.
<i>SEC v. Montana</i> , 464 F.Supp.2d 772 (S.D.Ind. 2006)	Securities Act: Sections 5(a) and (c), 17; Exchange Act: Rule 10b-5, 15(a)(1), 15(c)(1)	SEC's motion for summary judgment.	Defendants promised investors that for a minimum investment of \$1 million and without any risk, the investors could earn extraordinary rates of return. SEC sought permanent injunction, disgorgement, and civil penalties.	Motion granted as to defendants Montana, Lyttle, First National Equity LLC, and Knight. Court imposed permanent injunction and deferred argument on disgorgement.
<i>SEC v. 800america.com, Inc.</i> , 2006 WL 3422670 (S.D.N.Y. Nov. 28, 2006)	Securities Act: Sections 5(a) and (c), 17(a); Exchange Act: Rule 10b-5, Rules 13b2-1, 13b2-2; aiding and abetting violations of 14(a)	Defendant's motion to dismiss, or in the alternative, for change of venue. The SEC sought summary judgment, including \$2,731,760.27 in disgorgement.	800america.com attracted investors by issuing artificially inflated financial statements about the company. Defendant was collaterally estopped from asserting her innocence in this civil proceeding based on her previous guilty plea and her admissions in prior criminal trial.	Defense motions denied. SEC's motion for summary judgment granted as to defendant Tillie Ruth Steeples. Disgorgement granted. Permanent injunction denied for failure to demonstrate any risk of future violation. Judge declines to impose civil penalties.

Title	Charges	Posture	Facts and Background	Result
<i>SEC v. Tambone</i> , 2006 WL 4054118 (D. Mass. Dec. 28, 2006)	Securities Act: Section 17(a); Exchange Act: Rule 10b-5, aiding and abetting violations of Section 15(c); IAA: aiding and abetting violations of 206(1)-(2)	Defendant's motion to dismiss pursuant to FRCP 12(b)(6).	Defendants, senior executives of broker-dealer Columbia Funds Distributor, allowed certain preferred customers to engage in short-term or excessive trading (market-timing) in at least 16 different mutual funds.	Complaint dismissed with prejudice against defendants Tambone and Hussey for failure to plead fraud with particularity.
<i>SEC v. Morris</i> , 2007 WL 614210 (S.D. Tex Feb. 26, 2007)	Securities Law Violations	Defense motion to dismiss.	Absence of a footnote contained in the Halliburton Company's 1998 Form 10-K and in the form 10-Qs for the 2nd and 3rd quarters of 1998 and the first three quarters of 1999. SEC alleged that Gary Morris, Halliburton's CFO committed fraud and was negligent in approving the financial filings without the requested disclosure.	Motion granted, case dismissed with prejudice as to defendant Morris.
<i>SEC v. Jones</i> , 2007 WL 632730 (S.D.N.Y. Feb. 26, 2007)	IAA: Aiding and abetting violations of Section 206	Defense motion for summary judgment.	Defendants were CEO and North American head of fund administration for Citigroup Asset Management. The defendants set up a transfer agent agreement that was the subject of a \$108 million settlement between Smith Barney Fund Management and Citigroup Global Markets. The transfer agent initiative was completed and implemented in 1999. Court denied Commissions argument for fraudulent concealment	Motion for summary judgment by defendants Jones and Daidone granted in its entirety. The claim for civil penalties was dismissed as untimely. The Court found that injunction sought was punitive and thus subject to limitations period. Although the remedy of disgorgement was not time-barred the Commission was unable to assert specific evidence of any profits subject to disgorgement.

Title	Charges	Posture	Facts and Background	Result
<p><i>SEC v. Durgarian</i>, 2007 WL 765493 (D. Mass. Mar. 6, 2007)</p>	<p>Exchange Act Section 17(a) and Rule 10b-5 and aiding and abetting uncharged violations of Section 10(b); ICA Sections 34(b) and 37</p>	<p>Defense motion to dismiss.</p>	<p>Defendant Putnam employees improperly used "as of" trades and improper accounting adjustments to conceal losses stemming from Putnam's failure to timely invest assets from the retirement plans of Cardinal Health and Allegiance Health. In carrying out these acts, six defendants attended a meeting that outlined the scheme. Three of the defendants carried out the plan while the other three merely attended the meeting.</p>	<p>Motion to dismiss granted as to three defendants who only attended meeting. Motion denied as to defendants whom SEC alleged designed and carried out plan. SEC's motion to file amended complaint denied.</p>
<p><i>SEC v. Zwick</i>, 2007 WL 831812 (S.D.N.Y. Mar. 16, 2007)</p>	<p>Exchange Act: Rule 10b-5, aiding and abetting violations of Rule 10b-5; Securities Act: Section 17(a)</p>	<p>Defense motion for judgment as a matter of law or, in the alternative, for a new trial.</p>	<p>Defendants provided kickbacks and gratuities to a New York Life bond trader in the course of an excessive markup scheme. A jury found that defendant-Zwick violated all three provisions of the securities laws and that defendant-O'Donnell did not directly violate either 17(a) or 10b-5 but was liable for aiding and abetting.</p>	<p>Court entered judgment for some, but not all of the relief sought by the SEC. Court limited scope of Zwick's injunction and only granted a five year injunction as to defendant O'Donnell, not a permanent injunction. The court also reduced Zwick's disgorgement amount and asked for additional evidence of defendant O'Donnell's amount of disgorgement. Requested penalties of \$330,000 and \$110,000 reduced to \$75,000 and \$25,000 respectively.</p>

Title	Charges	Posture	Facts and Background	Result
<i>SEC v. Cohen</i> , 2007 WL 1192438 (E.D.Mo. Apr. 19, 2007)	Securities Act: Section 17(a)(1)-(3); Exchange Act: Rule 13b2-1 and 10b-5	Decree following jury trial.	Defendant held positions as CFO, VP and Executive VP of a corporation. SEC alleged that during defendant's tenure, defendant made material misrepresentations regarding the corporation's revenue for personal gain.	Court found in favor of the SEC on only one of seven counts and imposed a civil penalty of \$5,000 on defendant Craig R. Cohen for knowingly falsifying books and records in violation of Exchange Act Rule 13b2-1.
<i>SEC v. Levine</i> , 2007 WL 1378462 (D.D.C May 8, 2007)	Exchange Act Section 10(b) and Rule 10b-5, Securities Act Section 17(a)(1), (2), and (3), and Exchange Act Section 13(b)(5)	Decree following jury verdict	Defendants, owners and controllers of corporation, were found at trial to have fraudulently overstated assets, profited from illicitly selling corporation shares and knowingly falsified books and reports filed with the SEC.	Judgment entered against defendants Gerald Levine and Marie Levine. Court imposed a \$200,000 penalty, which was less than the \$540,000 the SEC sought, as well as a ten-year officer/director bar and ten-year injunction.
<i>SEC v. DiBella</i> , No. 3:04-CV-1342 (D. Conn. May 18, 2007); Lit. Rel. No. 20133 (May 30, 2007)	Exchange Act: Rule 10b-5; IAA: Section 206(2)	Jury verdict.	Defendant received a percentage of state funds invested in private equity firm even though he did no work to justify these payments.	Jury found defendant DiBella and his consulting firm North Cove Ventures, LLC, liable.
<i>SEC v. 2DoTrade, Inc.</i> , Civ. No. 03-CV-2246 (N. D. Tex. Jun. 4, 2007); Lit. Rel. No. 20248 (Aug. 21, 2007)	Exchange Act: Rules 10b-5, 12b-20, 13d-1, 13a-11, 16a-2 and 16a-3; Securities Act: Securities Act: Sections 5(a), 5(c), and 17(a)	Judgment	Defendants engaged in a "pump and dump" scheme to manipulate the stock of 2DoTrade, Inc.	Judgment entered against defendants Taylor and Roelandt. Court ordered disgorgement of \$474,000 and penalties of \$240,000. Court also enjoined defendants from further violations. On motion of the SEC, case dismissed as to defendant Walker, who was

Title	Charges	Posture	Facts and Background	Result
				previously acquitted in a related criminal proceeding involving the sale of 2DoTrade securities.
<i>SEC v. Merrill Scott &amp; Assoc., Ltd. et al.</i> , 2007 WL 1815671 (D. Utah June 21, 2007)	Securities law violations	Defendant's Motion to Vacate Order and Decision.	Court previously granted the SEC's motion for summary judgment and ordered defendant to pay more than \$16 million to disgorge his illegal gains and satisfy pre-judgment interest. Two days after the order was issued, defendant filed a Motion to Vacate that Order. He followed that with his Second Motion to Vacate Order and Decision.	Motion denied. May 27, 2007 order against defendant Brody stands.
<i>SEC v. Brightpoint, Inc.</i> , 03-cv-7045 (S.D.N.Y. July 6, 2007); Lit Rel. No. 20185 (July 9, 2007)	Exchange Act: Section 10(b) and Rule 10b-5, Section 13(b)(5) and Rule 12b2-1	Judgment following jury verdict.	SEC alleged that Harcharik, former director of risk management, devised and executed an accounting fraud scheme in order to keep escalating losses within a previously announced range. Specifically, the SEC alleged that Harcharik negotiated and executed a sham insurance policy issued by AIG for the sole purpose of allowing Brightpoint to write off these losses as covered by insurance.	5-year injunction and \$50,000 civil penalty ordered as to defendant Harcharik.
<i>SEC v. Tannenbaum</i> , 1:99-CV-06050 (E.D.N.Y. Jul. 25, 2007); Lit. Rel. No. 20231 (Aug. 8, 2007)	Exchange Act: 10b-5	Final judgment.	Defendants falsified and inflated the financial condition of their company by improperly included certain assets (accounting for 95% of the value of the company) in their company's audited financial statements.	Judgment entered against defendants Tannenbaum and Vermonty. Court issued permanent injunction, imposed civil money penalty in the total amount of \$200,000, and awarded disgorgement in the total amount of \$158,906.

Title	Charges	Posture	Facts and Background	Result
<i>SEC v. Premium Income Corp.</i> , (N.D. Tex. Aug. 1, 2007); Lit. Rel. No. 20235 (Aug. 9, 2007)	Securities law violations	SEC's motion for summary judgment.	SEC alleged that defendant was the architect of a Ponzi scheme that collected more than \$11 million from over 100 investors, many of whom were elderly or investing retirement savings.	Judgment entered against defendant Gerald Leo Rogers. Court issued permanent injunction, imposed \$120,000 civil money penalty, and awarded disgorgement of \$10,959,000.
<i>SEC v. Pietrzak</i> , 03-cv-1507 (N.D. Ill.); Lit. Rel. No. 20223 (Aug. 3, 2007)	Securities Act: Sections 20, 21	Jury Verdict.	Defendant executives engaged in protracted efforts to fraudulently increase the stock price and value of their company by filing false and misleading registration statements and other reports, and by issuing false press releases and a letter to shareholders.	Defendants Pietrzak and Furlong found liable. Court set date for hearing to determine penalty.
<i>SEC v. Platforms Wireless Int'l Corp.</i> , 1:06-CV-1260 (S.D. Cal. Aug. 6, 2007); Lit. Rel. No. 20230 (Aug. 8, 2007)	Securities Act: Section 5; Exchange Act Rule 10b-5	SEC's motions for summary judgment	The SEC alleged that the defendants issued a series of fraudulent press releases which falsely portrayed the company's business activities. During the period when these press releases were being issued, the defendant-individuals were profiting from illegal stock sales.	Judgments entered against defendants Platforms Wireless, Martin, Perry, and Draper. For Section 5 violations: Imposed civil money penalty of \$125,000, awarded disgorgement and prejudgment interest in the total amount of \$2,306,213. For 10b-5 violations: imposed civil money penalty of \$40,000 and awarded disgorgement of \$701,236 and \$296,968 in prejudgment interest.

Title	Charges	Posture	Facts and Background	Result
<i>SEC v. Coffman</i> , 2007 WL 2412808 (D. Colo. Aug. 21, 2007)	Securities law violations	Findings of Fact and Conclusions of Law.	SEC claimed that defendants violated various provisions of the federal securities laws when they failed to write down the value of two mining properties on the companies books and records and in its financial reports. Court determined that SEC failed to prove materiality, scienter or GAAP violations.	Case dismissed and defendants Coffman, Sellers, and Sellers Associates awarded costs.
<i>SEC v. Pittsford Capital Income Partners, LLC</i> , 06-CV-6353 (W.D.N.Y. Aug. 23, 2007); Lit Rel. No. 20256 (Aug. 27, 2007)	Exchange Act: Rule 10b-5; Securities Act: Section 17(a)	Motion for summary judgment.	The SEC alleged that defendants fraudulently raised over \$15 million from over 275 investors (many of whom were senior citizens) through the sales of unregistered transactions related to real estate investment companies.	Motion granted as to defendants Palazzo and Tackaberry. Court ordered disgorgement of \$11,725,294.82 plus prejudgment interest and fined the individual defendants \$75,000 each.
<i>SEC v. Rose, Civil Action No. H-04-CV-2799, Lit. Rel. No. 20286 (S.D. Tex. Sept. 5, 2007)</i>	Rules 101 and 102 of Reg. M; Exchange Act 10b-5, 13d-1 and 13d-2, aiding and abetting violations of Section 13(a); Securities Act: Sections 5(a), 5(c), and 17(a)(1), (2) and (3).	Judgment.	Three named defendants as well as ten other individuals carried out a manipulation of two stocks. One of the defendants defaulted and fled the jurisdiction. One consented to the entry of an injunction but left the issue of remedies for trial. Two other defendants contested the charges	The court found all of the defendants liable. Defendant Barnwell, who consented to the injunction, was ordered to disgorge \$31,700. Defendants Keener and Kasias, who contested liability, were ordered to disgorge \$334,097 and \$162,000 each.

Title	Charges	Posture	Facts and Background	Result
<i>SEC v. Freiberg</i> , 2007 WL 2692041 (D. Utah Sept. 12, 2007)	Exchange Act: Sections 13(d) and 16(a) and Rule 10b-5	Findings of Fact and Conclusions of Law.	SEC claims that an individual violated the securities laws by failing to file the appropriate reports as a beneficial owner of 5% and 10% of a company's securities. It also alleged that he violated antifraud provisions through a publicity campaign and manipulative trading.	Court found that defendant Harvey Carmichael did not violate registration or reporting requirements and that he did not violate antifraud provision by engaging in manipulative trading. The court found defendant liable for one count of fraud related to a publicity campaign. Court awarded disgorgement and penalty but not an injunction.
<i>SEC v. Druffner</i> , Civil Action No. 03-12154-MNG; Lit. Rel. No. 20284 (D. Mass. Sept. 14, 2007)	Exchange Act: Rule 10b-5; Securities Act: Section 17(a)	Judgment.	Former Prudential Securities registered representative Justin Ficken was part of a group that defrauded mutual fund companies by placing thousands of market timing trades worth more than \$1 billion for hedge fund customers.	Court enjoined defendant from future violations and ordered him to pay \$589,854 in disgorgement and prejudgment interest.
<i>SEC v. Kirkland</i> , 2007 WL 3119395 (M.D. Fla. Sept. 25, 2007)	Securities law violations	Cross motions for Summary Judgment.	SEC brought action alleging that real estate developer and his company sold unregistered securities in connection with the sales of triplexes to Seniors. Case centered on the Howey test concerning the definition of a security.	Court ordered permanent injunction against defendant Kirkland. Court also ordered disgorgement and prejudgment interest in an amount to be determined at a later hearing.

Title	Charges	Posture	Facts and Background	Result
<p><i>SEC v. Peter Warren and Exo-Brain, Inc., Civil Action File No. 1:04-CV-2403 (N.D. Ga. Sept. 27, 2007)</i></p>	<p>Exchange Act: Rule 10b-5; Securities Act: Sections 5(a), 5(c), and 17(a)</p>	<p>Renewed Motion for Summary Judgment.</p>	<p>Defendant raised up to \$12.4 million through a series of fraudulent, unregistered offerings.</p>	<p>Defendants Warren and Exo-Brain ordered to pay disgorgement of \$6.4 million, prejudgment interest of \$1,981,734.50 and civil penalties of \$75,000. Court also enjoined defendants from further violations.</p>

SEC FY 2007 Litigation Wins and Losses – Administrative Proceedings  
(excludes defaults and settlements)

Title	Charges	Posture	Facts and Background	Result
<i>In the Matter of Connie S. Farris</i> ; SEC Admin. Proc. File No. 3-12401, I.D. Rel. No. 321 (Nov. 7, 2006)	Securities Act: Section 17(a); Exchange Act Sections 10(b) and 15(d) and associated rules	SEC instituted action with OIP and filed a motion for summary disposition.	SEC sought broker-dealer bar. SEC based its action on a prior civil action in which Respondent was enjoined from violating the securities laws.	ALJ imposed broker-dealer bar against respondent Farris.
<i>In the Matter of Biologic, et al.</i> ; SEC Admin Proc. File No. 3-12390, I.D. Rel. No. 322 (Nov. 9, 2006)	Exchange Act: Section 13(a) and Rules 13a-1 and 13a-13	SEC instituted action with OIP.	Respondent Wastech failed to file annual and quarterly reports for periods ranging from two to five years. Respondents defaulted.	ALJ revoked registration of securities of respondent Wastech.
<i>In the Matter of James E. Franklin</i> ; SEC Admin Proc. File No. 3-12228, I.D. Rel. No. 323 (November 15, 2006)	Securities Act: Sections 5(a) and (c), 17(a)(1)-3, and 17(b); Exchange Act: Rule 10b-5	SEC instituted action with OIP.	SEC sought a penny stock bar. SEC based its action on a prior civil action in which Respondent was enjoined from violating the securities laws.	ALJ imposed penny stock bar and enjoined Respondent Franklin from violating the antifraud, anti-touting, and registration provisions of the Federal securities laws.

Title	Charges	Posture	Facts and Background	Result
<p><b><i>In the Matter of AIC International, Inc., et al.</i></b>; SEC Admin Proc. File No. 3-12408, I.D. Rel. No. 324 (December 27, 2006)</p>	<p>Exchange Act: Section 13(a) and Rules 13a-1 and 13a-13</p>	<p>SEC instituted action with OIP and subsequently filed for summary disposition.</p>	<p>Respondents <i>AIC International, Inc. and Millennium Sports Management, Inc.</i> failed to file required annual and quarterly reports</p>	<p>ALJ revoked registration of securities of respondents AIC and Millennium.</p>
<p><b><i>In the Matter of Indigenous Global Development Corp.</i></b>, Admin. Proc File No. 3-12414, I.D. Rel. No. 325 (Jan. 12, 2007)</p>	<p>Violations of Exchange Act: Section 13(a) and Rules 13a-1 and 13a-13</p>	<p>SEC instituted action with OIP and, subsequently filed for summary disposition.</p>	<p>SEC claims that Indigenous Global Development Corp. failed to file quarterly and annual reports for any period since the quarter ended Mar. 31, 2005.</p>	<p>ALJ revoked registration of all classes of securities of respondent Indigenous.</p>
<p><b><i>In the Matter of Conrad P. Seghers</i></b>, Admin Proc. File No. 3-12433, I.D. Rel. No. 326 (Feb. 5, 2007)</p>	<p>Violations of Exchange Act: Rule 10b-5; Securities Act Section 17(a) IAA: Sections 206(1) and (2)</p>	<p>SEC initiated proceeding with OIP and filed a motion for summary disposition. Respondent's motion for summary disposition and motion to dismiss.</p>	<p>Commission sought bar against respondent based on the conduct underlying a prior civil trial that resulted in responded being enjoined from violations of the securities laws and paying \$50,000 in civil penalties.</p>	<p>ALJ barred respondent Seghers from association with investment advisers.</p>

Title	Charges	Posture	Facts and Background	Result
<p><b><i>In the Matter of Warwick Capital Management, Inc., et al.</i></b> Admin. Proc. File No. 3-12357, I.D. Rel. No. 327 (Feb. 15, 2007)</p>	<p>Violations of Investment Advisers Act Sections 203(e), (f) and (k)</p>	<p>SEC instituted action with the OIP</p>	<p>OIP alleged that Warwick engaged in misleading advertising, registered as an investment advisor although ineligible to do so, made untrue statements in applications and reports, and violated books and records provisions. Lawrence, Warwick's owner, was charged as an aider/abettor and cause.</p>	<p>Warwick Capital Management Inc. and Carl Lawrence sanctioned.</p>
<p><b><i>In the Matter of David Henry Disraeli and Lifeplan Associates, Inc.</i></b> Admin. Proc. File No. 3-12288, I.D. Rel. No. 328 (March 31, 2007)</p>	<p>Securities Act: Section 17(a); Exchange Act: Section 10(b); Investment Advisers Act Sections 203, 204, 206, and 207</p>	<p>SEC instituted action with the OIP</p>	<p>Investment adviser fraud.</p>	<p>Disraeli and Lifeplan sanctioned.</p>
<p><b><i>In the Matter of Cosmetic Center, Inc., et al.</i></b> Admin. Proc. File No. 3-12519, I.D. Rel. No. 329 (Apr. 30, 2007)</p>	<p>Exchange Act: Section 13(a), Rules 13a-1 and 13a-13</p>	<p>SEC instituted action with the OIP</p>	<p>SEC claims that Impax failed to file periodic reports during 2004 and 2005.</p>	<p>ALJ sanctioned Impax and revoked registration of Impax's registered securities.</p>

Title	Charges	Posture	Facts and Background	Result
<i>In the Matter of Anthony C. Snell and Charles E. LeCroy</i> , Admin. Proc. File No. 3-12359, I.D. Rel. No. 330 (May 3, 2007)	Exchange Act: Sections 15(b)(6), 15(c)(4), 21(c)	SEC instituted action with OIP and, subsequently filed for summary disposition.	Managing director of J.P. Morgan Securities office and employee engaged in part of a large fraud where individuals were illegally paid for communications with Philadelphia officials to obtain or to retain municipal securities business on defendants' behalf.	Respondents Snell and LeCroy barred from associating with any broker, dealer or municipal securities dealer based on felony convictions, but cease-and-desist order and monetary penalty denied because ALJ dismissed charges under MSRB Rule G-38.
<i>In the Matter of Monson</i> , Admin. Proc. File No. 3-12429, I.D. Rel. No. 331 (Jun. 15, 2007)	ICA: Rule 22c-1	SEC instituted action with OIP	SEC alleged that chief general counsel of mutual fund company, JBOC, caused the company's violations of Rule 22c-1 via certain agreements in operation while he was general counsel.	Proceeding dismissed as to respondent Monson.
<i>In the Matter of Murray</i> , Admin. Proc. File No. 3-12436, I.D. Rel. No. 332 (Jul. 10, 2007)	IAA: Sections 206(1) and (2); ICA: Section 37	SEC instituted action with OIP	Defendant mutual fund-advisor submitted to the funds it advised, doctored invoices by service provider requesting payments in excess of the amounts actually due. They then instructed the Funds' administrator to pay a related entity rather than pay the providers directly. This was a misappropriation of client funds.	ALJ issued a cease and desist order, barred Murray from association with any investment adviser and from working for an investment company, imposed a \$60,000 second-tier civil money penalty, and awarded disgorgement in the amount of \$27,200.
<i>In the Matter of Sodano</i> , Admin. Proc. File No.3-12596, I.D. Rel. No. 333 (Aug. 20, 2007)	Exchange Act: Section 19(h)(4)	Motion for summary disposition	SEC sought to censure former CEO of American Stock Exchange for regulatory deficiencies that occurred while he worked there. Prior to the immediate proceedings, Sodano resigned.	Summary disposition in favor of respondent Sodano granted; OIP dismissed.

Title	Charges	Posture	Facts and Background	Result
<p><i>In the Matter of O'Donnell</i>, Admin. Proc. File No. 3-12640, I.D. Rel. No. 334 (Sept. 20, 2007)</p>	<p>Exchange Act: Rule 10b-5</p>	<p>Motion for summary disposition</p>	<p>Respondent had been previously enjoined by a federal court from violations of the federal securities laws for a period of five years. The SEC sought an associational bar.</p>	<p>Summary disposition granted; respondent O'Donnell barred from association with any broker or dealer.</p>