

(5) Interspace Enterprises, Inc. because the company has been delinquent in its periodic filing obligations under Section 13(a) of the Securities Exchange Act of 1934 since the period ending September 30, 2002;

(6) Mega Micro Technologies Group, Inc. because the company has been delinquent in its periodic filing obligations under Section 13(a) of the Securities Exchange Act of 1934 since the period ending December 31, 2000; and

(7) Vertical Computer Systems, Inc. because the company has been delinquent in its periodic filing obligations under Section 13(a) of the Securities Exchange Act of 1934 since the period ending September 30, 2003.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934 that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. e.s.t. on December 1, 2004, through 11:59 p.m. e.s.t. on December 14, 2004.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[File No. 500-1]

### Order of Suspension of Trading

In the Matter of Abacan Resources Corp., Advanced Solutions and Technologies, Inc., American Multiplexer Corp., Amitelo Communications, Inc., Comparator Systems Corp., Digi Link Technologies, Inc., DMT Energy, Inc., DrKoop.Com, Inc. Emerging Enterprise Solutions, Inc., Homeland Security Technology, Inc., First Pacific Networks, Inc., Heroes, Inc., Infotopia, Inc., JTS Corp., 1st Miracle Entertainment, Inc., Shaman Pharmaceuticals, Inc., United States Crude International, Inc., Webvan Group, Inc., and Whitehall Enterprises, Inc.;

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of:

(1) Abacan Resources Corp. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 ("Exchange Act") since the period ending September 30, 1999;

(2) Advanced Solutions and Technologies, Inc. (F/k/a Indexonly Technologies, Inc.) because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending September 30, 2000;

(3) American Multiplexer Corp. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending September 30, 2000;

(4) Amitelo Communications, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending December 31, 1995;

(5) Comparator Systems Corp. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending December 31, 1997;

(6) Digi Link Technologies, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending June 30, 2001;

(7) DMT Energy, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending November 30, 1999;

(8) DrKoop.Com, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending September 30, 2001;

(9) Emerging Enterprise Solutions, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending March 31, 2000;

(10) Homeland Security Technology, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the registration of its securities became effective on May 26, 1998;

(11) First Pacific Networks, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending September 30, 1996;

(12) Heroes, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending September 30, 2002;

(13) Infotopia, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending September 30, 2001;

(14) JTS Corp. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending November 2, 1997;

(15) 1st Miracle Entertainment, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending January 31, 2002;

(16) Shaman Pharmaceuticals, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending March 31, 2001;

(17) United States Crude International, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending December 31, 2000;

(18) Webvan Group, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending March 31, 2001; and,

(19) Whitehall Enterprises, Inc. because the company has failed to file timely periodic reports with the Commission in violation of Section 13(a) of the Securities Exchange Act of 1934 since the period ending June 30, 2002.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. e.s.t. on December 1, 2004, through 11:59 p.m. e.s.t. on December 14, 2004.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 04-26716 Filed 12-1-04; 11:48 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50713; File No. SR-NASD-98-74]

### Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change as Amended and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 5 by the National Association of Securities Dealers, Inc., Regarding NASD Rule 3110(f) Governing Predispute Arbitration Agreements With Customers

November 22, 2004.

#### I. Introduction

On October 6, 1998, the National Association of Securities Dealers ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder to amend NASD Rule 3110(f) governing predispute arbitration agreements.<sup>2</sup> Notice of the proposal, as amended by Amendment Nos. 1 and 2, was published in the **Federal Register** on November 29, 1999.<sup>3</sup> The Commission received two comment letters on the proposed rule change.<sup>4</sup> On April 30, 2002, NASD submitted a Response to Comments and Amendment No. 3 to the proposed rule change. On August 22, 2003, NASD filed Amendment No. 4 to the proposal, which replaced in its entirety the prior filings and amendments, except for the Response to Comments contained in Amendment No. 3. Notice of the proposal, as amended by Amendment Nos. 3 and 4, was published in the **Federal Register** on September 12, 2003.<sup>5</sup> The Commission received 24 comment letters on Amendment Nos. 3 and 4.<sup>6</sup> On

January 9, 2004, NASD submitted a Response to Comments and Amendment No. 5 to the proposed rule change.<sup>7</sup> This order approves the proposed rule change, grants accelerated approval to Amendment No. 5, and solicits comments from interested persons on Amendment No. 5.

#### II. Description of the Proposal

##### A. Background

##### 1. Purpose and General Description of Proposal

The proposed rule change is intended to increase the disclosure required in predispute arbitration agreements. Many broker-dealers require that customers seeking to open accounts, particularly margin and option accounts or accounts with a checking or money market feature, agree in writing to arbitrate disputes concerning the account, typically in an SRO-sponsored forum. These agreements, called "predispute arbitration agreements," are generally part of the non-negotiated customer agreement drafted by the firm.

To ensure that customers are advised about what they are agreeing to when they sign predispute arbitration agreements, NASD Rule 3110(f) requires that such agreements contain highlighted disclosure about differences between arbitration and litigation, including notice that by agreeing to arbitrate their disputes, customers may be waiving certain rights that would be available in court. NASD Rule 3110(f)

P.S., dated October 5, 2003; Daniel A. Ball, Selzer, Gurvitch, Rabin, Obecnay, dated October 3, 2003; Don K. Leufven, dated October 9, 2003; Donald G. McGrath, McGrath & Polvino, PLLC, dated October 3, 2003; H. Douglas Powell, Fishkind & Associates, Inc., dated October 6, 2003; Herb Pounds, Herbert E. Pounds, Jr., P.C., dated October 6, 2003; J. Pat Sadler, Public Investors' Arbitration Bar Association, dated October 2, 2003; Jeffrey A. Feldman, Esquire, dated October 6, 2003; John Miller, Law Office of John L. Miller, P.C., dated October 5, 2003; Jorge A. Lopez, Esquire, Jorge A. Lopez, P.A., dated October 5, 2003; Kari S. Turigliatto, Mutual Service Corporation, dated October 8, 2003; Kenneth A. Martyn, Attorney at Law, dated October 8, 2003; Laurence S. Schultz, Driggers, Schultz & Herbst, P.C., dated October 3, 2003; Lenny Steiner, dated October 4, 2003; Madelaine Eppenstein and Theodore G. Eppenstein, Eppenstein and Eppenstein, dated October 3, 2003; Ralph A. Lambiase, North American Securities Administrators Association, Inc., dated October 3, 2003; Richard M. Layne, Layne & Lewis LLP, dated October 2, 2003; Robert S. Banks, Jr., Banks Law Office, P.C., dated October 3, 2003; Rosemary J. Shockman, Shockman Law Office, P.C., dated October 2, 2003; Scott C. Igenfritz, Johnson, Pope, Bokor, Ruppel & Burns, P.A., dated October 16, 2003; Steve Buchwalter, Law Offices of Steve A. Buchwalter, P.C., dated October 3, 2003; and Tracy Pride Stoneman, Tracy Pride Stoneman, P.C., dated October 3, 2003.

<sup>7</sup> See letter from Kosha Dalal, Assistant General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated January 9, 2004 ("Amendment No. 5").

also requires that the agreement itself be highlighted, and that a copy of the agreement be given to the customer and acknowledged by the customer in writing.

Despite these precautions, investor representatives have expressed concern that many customers who sign predispute arbitration agreements still do not understand adequately what they are agreeing to. Customers' perceptions of unfairness are heightened by the fact that, in order to open an account, they are forced to agree to SRO-sponsored arbitration.

Consequently, the Arbitration Task Force, chaired by David Ruder (formerly Chairman of the SEC and a former NASD Board member), recommended in its 1996 report, *Securities Arbitration Reform: Report of the Arbitration Policy Task Force to the Board of Governors, National Association of Securities Dealers, Inc.* ("Ruder Task Force Report"), that members be required to provide more disclosure about arbitration to customers who sign predispute arbitration agreements, and that the use of certain provisions that limit rights and remedies be restricted.

Thus, NASD proposes to amend NASD Rule 3110(f) regarding predispute arbitration agreements (i) to require additional disclosure in predispute arbitration agreements about the arbitration process, including possible limits on eligibility of claims; (ii) to require member firms to provide certain information regarding arbitration and predispute arbitration agreements to customers upon request; (iii) to provide explicitly that the rules of the arbitration forum in which the claim is filed are incorporated into the predispute arbitration agreement; and (iv) to require members seeking to compel arbitration of claims initiated in court to arbitrate all of the claims contained in the complaint if the customer so requests.

##### 2. General Comments on the Proposed Rule Change

In 1999, the Commission received two comment letters on the proposal, as amended by Amendment Nos. 1 and 2.<sup>8</sup> In 2003, the Commission received 24 comment letters on the proposal, as amended by Amendment Nos. 3 and 4.<sup>9</sup> Several commenters applauded the proposed rule change as an effort to help investors understand the consequences of signing predispute arbitration agreements. The majority of commenters, however, opposed Proposed Rule 3110(f)(4)(B), relating to

<sup>8</sup> See Estell Letter and Miller Letter, *supra* note 4.

<sup>9</sup> See *supra* note 6.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Release No. 34-42160 (November 19, 1999), 64 FR 66681 (November 29, 1999).

<sup>4</sup> See letters from Barry D. Estell, dated December 15, 1999 ("Estell Letter"), and John J. Miller, dated December 27, 1999 ("Miller Letter").

<sup>5</sup> See Release No. 34-48444 (September 4, 2003), 68 FR 53762 (September 12, 2003).

<sup>6</sup> See letters from Al Van Kampen, Rohde & Van Kampen, dated October 11, 2003; Barbara Black and Jill I. Gross, Pace Investor Rights Project, Pace University School of Law, dated October 2, 2003 ("Pace Letter"); Carl J. Carlson, Carlson & Fabish,