

sec news digest

Issue 93-156

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RULES AND RELATED MATTERS

NET CAPITAL REQUIREMENTS FOR BROKERS AND DEALERS

On August 11, the Commission approved amendments to its net capital rule, Rule 15c3-1 under the Securities Exchange Act of 1934, that make the rule applicable to certain specialists that are currently exempt from the rule. The amendments also generally exempt such specialists from the rule's haircut and undue concentration deductions. FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, (202) 272-2904, Harry Melamed, (202) 272-2382, Michael P. Jamroz, (202) 272-2372 or Glen P. Barrentine, (202) 272-7339).

ADMINISTRATIVE PROCEEDINGS

COMMISSION SUSTAINS NASD ACTION AGAINST STEPHEN INVESTMENT SECURITIES, INC.

The Commission sustained an NASD disciplinary action against Stephen Investment Securities, Inc. The Commission sustained the NASD's finding that, in 1989, Stephen engaged in conduct inconsistent with the just and equitable principles of trade by accepting the transfer, without consideration, of customer accounts belonging to O.R. Securities, which had been receiving mutual fund commissions. Stephen and O.R. were under the common control of Luther Oliver, who was the president of each company and who, directly or indirectly through his family, owned all of the outstanding stock of each company. Stephen, through its president Oliver, knew that its acceptance of the accounts would deprive O.R. of assets to pay a 1986 NASD arbitration award against O.R. in favor of Professional Planning Associates Investments, Inc. (PPA). After the transfer, Stephen failed to make payment of the award.

The Commission sustained the NASD's censure of Stephen. The Commission also affirmed the NASD order that Stephen pay PPA all commissions generated by all O.R. accounts that, at the time of transfer or on November 4, 1988 (the date that O.R. booked the award as a liability), "were considered to be 'house' and 'orphan' accounts." The NASD ordered Stephen either to establish a trust account into which all such commissions must be deposited or temporarily to transfer the designated accounts to PPA.

The Commission modified the sanctions imposed to further permit Stephen either to consent to the garnishment of the commissions or to arrange with the mutual funds to assign, temporarily, commissions to PPA until the award is paid. (Rel. 34-32724)

COMMISSION SUSTAINS NASD ACTION AGAINST FIRST GUARANTOR SECURITIES, INC. AND JOSEPH PHILIP SPALLO

The Commission sustained an NASD disciplinary action against First Guarantor Securities, Inc. of Kansas City, Missouri and Joseph Philip Spallo, the president of First Guarantor. The Commission sustained the NASD's finding that Spallo engaged in conduct that was inconsistent with the just and equitable principles of trade by failing to comply with the terms of the firm's restriction agreement with the NASD and by failing to amend promptly the firm's Application for Registration as a Broker-Dealer (Form BD) when it became inaccurate. The firm failed to obtain written NASD consent, as required by its restriction agreement, prior to terminating its clearing agreement with one clearing broker and entering into a clearing agreement with another clearing broker. First Guarantor and Spallo also failed to submit an amendment to First Guarantor's Form BD reflecting the change in clearing broker until more than thirty days after this change of clearing brokers, and only after the NASD formally requested that they do so.

The Commission affirmed the NASD's censure of First Guarantor and Spallo and its fine of \$2,500, jointly and severally, for the violation of the restriction agreement. The NASD deemed its Decision to constitute a Letter of Caution to the First Guarantor and Spallo for their failure to promptly amend First Guarantor's Form BD. (Rel. 34-32725)

COMMISSION SUSTAINS NASD DISCIPLINARY ACTION AGAINST JOHN MALACH

The Commission has sustained the disciplinary action taken by the NASD against John A. Malach of Rochester, New York. Malach is a former registered representative of Community Securities, Inc. (CSI), an NASD member firm. The NASD had censured Malach, barred him from associating with any NASD member in any capacity, and fined him \$20,000, for failing to respond to two sets of information requests made during the NASD's investigation of customer allegations of serious misconduct by Malach.

The Commission rejected Malach's excuse that, on his termination from CSI, firm representatives assured him they would "handle" any NASD investigation into his conduct. The Commission stated that a registered representative is personally responsible for responding directly to NASD requests for information. The Commission also determined that Malach's alleged personal problems, which he had not substantiated, could neither excuse his extended failure, over a two-year period, to furnish the requested information, nor be considered in litigation. Further in rejecting Malach's claim that the fine was excessive, the Commission observed that Malach's delay in responding to the requests effectively prevented the NASD from pursuing complaints of serious rule violations, and was in itself a serious violation because it subverted the NASD's ability to carry out its regulatory responsibility. (Rel. 34-32743)

NASD ACTION AGAINST WILLIAM MORGAN SUSTAINED

The Commission has sustained NASD disciplinary action against William Louis Morgan of New York, New York. Morgan was a branch manager for First Affiliated Securities, Inc. (FAS), an NASD member firm. The NASD censured Morgan and barred him from association with any member in any capacity.

The Commission found that Morgan failed to give his firm prior written notice of private securities transactions. Morgan refused to comply with a request for information by FAS regarding notes Morgan had issued in an effort to finance his business and personal expenses. Morgan subsequently issued additional notes without informing the firm. Investors eventually lost over \$350,000.

The Commission rejected Morgan's claim that the notes involved were not securities. It further found that Morgan's economic benefit from the loans constituted "selling compensation," an element which required him to give his firm written notice prior to each transaction. In affirming the NASD's sanctions, the Commission stated that Morgan's conduct demonstrated "a disturbing laxity regarding serious matters" and was indicative of a salesman who was insensitive to "principles of honesty and fair dealing." (Rel. 34-32744)

CIVIL PROCEEDINGS

PHILLIPS ORDERED TO PAY DISGORGEMENT OF \$617,809

The Commission announced that on August 2, the Honorable Marcel Livaudais of the Eastern District of Louisiana entered a final judgment against defendant Virgie Rae Phillips of Baton Rouge, Louisiana and ordered her to pay \$617,809 of disgorgement plus prejudgment interest in the amount of \$57,712. The Court noted that civil penalties were appropriate, but did not order their payment based on Phillips's inability to pay. The Commission had brought the civil injunctive suit against Phillips and others for violations of the antifraud provisions of the federal securities laws regarding the sale of over \$15,000,000 of securities for the alleged development of a shopping mall in Baton Rouge, Louisiana. Previously, the Court granted summary judgment against all defendants and permanently enjoined Phillips and the others from future violations of the securities laws for the underlying substantive violations. Phillips consented to the entry of the final judgment against her. [SEC v. Sam J. Recile, et al., Civil Action No. 91-1422 Sec. E-1, E.D. La.] (LR-13752)

FINAL JUDGMENTS BY DEFAULT ENTERED AGAINST FRANCIS SABLONE, JR.

The Commission announced the entry on August 4 of a Final Judgement by Default against defendant Francis R. Sablone, Jr. (Sablone), an attorney, in federal court in Connecticut. The Final Judgment permanently enjoins Sablone from violating Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder and holds him liable to disgorge \$86,049.12, representing his illegal gross profits and those of his tippee, plus prejudgment interest of \$56,582.46 on the amount to be disgorged.

The Commission filed its complaint on July 11, 1989, alleging that Sablone and other traded securities while in possession of material nonpublic information contained in unreleased editions of BusinessWeek magazine. [SEC v. Dillion, et al., Dkt. No. 2:89CV00424, PCD, D.Conn.] (LR-13753)

CRAIG MEDOFF, GARY DIGIROLAMO, HERCULES CAPITAL INC. AND AIR TECH INDUSTRIES, INC. NAMED IN CIVIL INJUNCTIVE ACTION

The Commission announced today the filing of a civil action in New York against Craig Medoff of New York, New York, Gary L. DiGirolamo of Santa Monica, California, Hercules Capital Inc., a broker-dealer located in New York, New York, and Air Tech Industries, Inc. (Air Tech) located in Santa Monica, California, arising from the fraudulent offering of Air Tech securities. The complaint seeks a temporary restraining order, a preliminary and a permanent injunction, an order freezing assets, an order for an accounting, an order for expedited discovery, an order preventing the alteration or destruction of documents, and an order for disgorgement, plus prejudgment interest and civil penalties.

On August 10, the Honorable Louis Stanton, United States District Judge for the Southern District of New York, issued an order to show cause, a temporary restraining order, and an order freezing assets and granting other relief (Order) temporarily enjoining defendants from violations of the antifraud provisions of the federal securities laws. The Order freezes certain of defendants' assets, orders defendants to provide accountings to the Commission, enjoins defendants from the alteration or destruction of documents and provides for expedited discovery. [SEC v. Medoff, et al., 93 CIV. 5573, LLS, USDC SDNY] (LR-13754)

PRELIMINARY INJUNCTION ENTERED AGAINST PREMIER BENEFIT CAPITAL TRUST, JAN WEEKS-KATONA AND PREMIER FINANCIAL SERVICES, INC.

The Commission announced that on July 30, following a hearing before United States Magistrate Judge Elizabeth A. Jenkins, the Honorable Steven D. Merryday, U.S. District Judge for the Middle District of Florida, issued an order entering a preliminary injunction against the defendants Premier Benefit Capital Trust (Premier Trust), Jan Weeks-Katona (Weeks-Katona), and Premier Financial Services, Inc. (Premier Financial). The Commission's complaint, filed on July 1, sought preliminary and permanent injunctions and other relief against all defendants.

The complaint alleges that since at least March 1993, the defendants have been offering and selling unregistered securities, namely Premier Trust Certificates, to the general public through newspaper and radio advertisements and public seminars. Premier Trust has raised at least \$6,600,000 through the sale of these Certificates to approximately 180 investors residing in a number of states.

The complaint further alleges that Premier Trust and Premier Financial have been, knowingly and willfully, disseminating and Weeks-Katona has aided and abetted in disseminating to the public various offering documents in connection with the offers and sales of Premier Trust Certificates, which contain material misrepresentations

and omission of material facts regarding Premier Trust. The complaint also alleges that Premier Financial violated the broker-dealer registration provisions of the federal securities laws in connection with its offers and sale of the Certificates. [SEC v. Premier Benefit Capital Trust et al., Civ. Action No. 93-1079-CIV-T-15c] (LR-13755)

INVESTMENT COMPANY ACT RELEASES

PFL LIFE INSURANCE COMPANY, ET AL.

A notice has been issued giving interested persons until September 7, 1993 to request a hearing on an application filed by PFL Life Insurance Company, PFL Wright Variable Annuity Account (Separate Account) and Wright Investors' Services Distributors, Inc. for an order pursuant to Section 6(c) of the Investment Company Act granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account under certain flexible premium group and individual variable annuity contracts. (Rel. IC-19620 - August 11)

INTERNATIONAL LIFE INVESTORS INSURANCE COMPANY, ET AL.

An order has been issued pursuant to Section 6(c) of the Investment Company Act exempting International Life Investors Insurance Company (Life Investors), ILI Endeavor Variable Annuity Account (Variable Account), and AEGON USA Securities, Inc. (AEGON Securities) from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Variable Account under certain flexible premium variable annuity contracts. (Rel. IC-19621 - August 11)

THE EQUITABLE LIFE ASSURANCE SOCIETY OF THE UNITED STATES, ET AL.

An order has been issued pursuant to Section 6(c) of the Investment Company Act exempting The Equitable Life Assurance Society of the United States and Separate Account A of The Equitable Life Assurance Society of the United States (Separate Account) from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account under certain group variable annuity contracts. (Rel. IC-19622 - August - 11)

THE NEW ENGLAND FUNDS, ET AL.

A notice has been issued giving interested persons until September 7 to request a hearing on an application filed by The New England Funds, et al., for an order under Section 6(c) of the Investment Company Act. The order would exempt applicants from Section 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act and Rule 22c-1 thereunder to the extent necessary to permit certain open-end management investment companies to issue and sell separate classes of shares representing interests in the same investment portfolio, and to permit the imposition and waiver of a contingent deferred sales charge on certain redemption of shares. Rel. IC-19624 - August 12)

NATIONAL MULTI-SECTOR FIXED INCOME FUND, INC., ET AL.

A notice has been issued giving interested persons until September 7 to request a hearing on an application filed by National Multi-Sector Fixed Income Fund, Inc., et al. for a conditional, amended order under Section 6(c) of the Investment Company Act exempting applicants from the provisions of Sections 2(a)(32), 2(a)(35), 18(f), 18(i), 22(c), and 22(d), and Rule 22c-1 thereunder. The order would permit certain investment companies to issue multiple classes of shares representing interests in the same portfolio, and to impose a contingent deferred sales charge (CDSC) on certain redemptions of shares, and to waive the CDSC under certain circumstances. (Rel. Ic-19623 - August 12)

HOLDING COMPANY ACT RELEASES

ENTERGY CORPORATION, ET AL.

An order has been issued authorizing Entergy Corporation, a registered holding company, to guarantee the lease obligations of its wholly owned subsidiary service company, Entergy Services, Inc., pursuant to the terms and conditions of the Amendment and Restatement of Lease entered into on April 1, 1993. (Rel. 35-25867)

SELF-REGULATORY ORGANIZATIONS

APPROVAL OF PROPOSED RULE CHANGES

The Commission approved a proposed rule change (SR-NASD-93-34) filed by the National Association of Securities Dealers, which amends Article IX, Section 4 of the NASD By-Laws to conform the procedures for filling vacancies on Nominating Committees to those currently in place for District Committees. (Rel. 34-32730)

The Commission has approved a proposed rule change (SR-MSTC-92-3) filed by the Midwest Securities Trust Company (MSTC) under Section 19(b) of the Securities Exchange Act. The rule change eliminates the Compensation Committee, creates an Audit Committee, and restructures the Finance Committee. (Rel. 34-32732)

The Commission has approved a proposed rule change filed under Exchange Act Rule 19b-4 by the Government Securities Clearing Corporation (SR-GSCC-92-18) to enhance GSCC's financial responsibility standards and to provide greater symmetry between those standards and the Commission's uniform net capital rule (Rule 15c3-1) by amending GSCC's rules to incorporate the notice provisions of Paragraph (e)(1) of the uniform net capital rule. (Rel. 34-32738)

IMMEDIATE EFFECTIVENESS OF PROPOSED RULE CHANGE

On July 26, the MBS Clearing Corporation filed with the Commission a proposed rule change (SR-MBS-93-05) relating to a new fee and trade input standard. Publication of the proposed rule change is expected in the Federal Register during the week of August 9. (Rel. 34-32739)

PROPOSED RULE CHANGE

The Chicago Stock Exchange has filed a proposed rule change (SR-CHX-93-18) under Rule 19(b)-4 of the Exchange Act to establish rules to allow for and govern the trading of standardized baskets and to trade a specific basket of stocks, the Chicago Basket. Publication of the proposal is expected in the Federal Register during the week of August 10. (Rel. 34-32731)

ACQUISITION OF SECURITIES

Companies and individuals must report to the Commission within ten days on Schedule 13D if after the acquisition of equity securities of a public company their beneficial interest therein exceeds five percent. Persons eligible to use the short form (Schedule 13G) may in lieu of filing a Schedule 13D file a Schedule 13G within 45 days after the end of the calendar year in which the person became subject to Section 13(d)(1). Companies and individuals making a tender offer must have on file at the time the tender offer commences a Schedule 14D-1.

Below is a list of recent filings of Schedules 13D and 14D, which includes the following information: Column 1 - the company purchased (top), and the name of the purchaser; Column 2 - the type of security purchased; Column 3 - the type of form filed; Column 4 - the date the transaction occurred; Column 5 - the current number of shares (in 000's) owned (top) and the current percent owned; Column 6 - the CUSIP number (top) and the percent owned; and Column 7 - the status of the filing, i.e., new, update or revision.

NAME AND CLASS OF STOCK/OWNER	FORM	EVENT DATE	SHRS(000)/ %OWNED	CUSIP/ PRIOR%	FILING STATUS
ACTV INC FREEMAN MICHAEL	COM 13D	7/15/93	1,367 19.8	00099710 21.9	UPDATE
AMERICAN EQUITY BANCORP INC DOBBE LESLIE A	COM 13D	7/ 9/93	4 1.0	02899610 0.0	NEW
AMERICAN EQUITY BANCORP INC DOBBE LESLIE A	COM 13D	7/ 9/93	4 1.0	02899610 0.0	RVSION
CASHBUILDER INC CAREY F H	COM 13D	7/30/93	21,000 90.6	14754899 0.0	NEW
CASHBUILDER INC CAREY F H	COM 13D	7/30/93	21,000 90.6	14754899 0.0	RVSION

ACQUISITIONS CONT.

NAME AND CLASS OF STOCK/OWNER	FORM	EVENT DATE	SHRS(000)/ %OWNED	CUSIP/ PRIOR%	FILING STATUS
CASHBUILDER INC YCA INC	COM 13D	7/30/93	21,000 90.6	14754899 0.0	NEW
CASHBUILDER INC YCA INC	COM 13D	7/30/93	21,000 90.6	14754899 0.0	RVSION
CHEFS INTL INC KOENEMUND FRANK	COM NEW 13D	7/23/93	2,500 11.7	16308250 0.0	NEW
CHEFS INTL INC KOENEMUND FRANK	COM NEW 13D	7/23/93	2,500 11.7	16308250 0.0	RVSION
CHICAGO & NO WESTN HLDGS CRP EQUITABLE LIFE ASSUR ET AL	COM 13D	7/28/93	22 0.1	16715510 5.1	UPDATE
CHICAGO & NO WESTN HLDGS CRP EQUITABLE LIFE ASSUR ET AL	COM 13D	7/28/93	22 0.1	16715510 5.1	RVSION
EMISPHERE TECHNOLOGIES INC GOLDBERG MICHAEL M	COM 13D	7/31/93	611 8.1	29134510 6.2	UPDATE
ENVIRONMENTAL PWR CORP KRAFT BAYARD R III	COM 13D	7/30/93	521 5.1	29499610 5.2	UPDATE
FIRST MICH CAP CORP BAKER LOUIS C ET AL	COM 13D	8/ 5/93	657 25.0	32086210 37.3	UPDATE
FIRST MICH CAP CORP BAKER LOUIS C ET AL	COM 13D	8/ 5/93	657 25.0	32086210 37.3	RVSION
INFONOW CORP RAND NAHUM	COM 13D	12/31/92	914 14.7	45666410 0.0	NEW
INFONOW CORP RAND NAHUM	COM 13D	12/31/92	914 14.7	45666410 0.0	RVSION
INTL BANCSHARES CORP SANCHEZ ALICIA M EXECUTRIX	COM 13D	8/ 4/93	829 19.1	45904410 19.1	UPDATE
LAZ FINL CORP RADER TERRY D	COM 13D	8/ 1/93	625 14.6	50173810 5.5	UPDATE
LAZ FINL CORP RADER TERRY D	COM 13D	8/ 1/93	625 14.6	50173810 5.5	RVSION
MANAGEMENT TECHNOLOGIES INC DAVIS J MORTON ET AL	COM 13D	8/ 6/93	4,933 26.9	56170410 19.8	UPDATE
MUELLER INDS INC SOROS GEORGE ET AL	COM 13D	8/ 3/93	1,450 15.0	62475610 48.7	UPDATE
MUELLER INDS INC SOROS GEORGE ET AL	COM 13D	8/ 3/93	1,450 15.0	62475610 48.7	RVSION
MYLEX CORP VALENTE GEORGE ET AL	COM 13D	7/19/93	1,163 9.1	62854610 7.7	UPDATE