

SEC NEWS DIGEST

Issue 98-251

December 31, 1998

ENFORCEMENT PROCEEDINGS

STEVEN GROSS DENIED THE PRIVILEGE OF APPEARING OR PRACTICING BEFORE THE COMMISSION AS AN ACCOUNTANT

On December 29, the Commission issued an order, by consent, denying Steven M. Gross the privilege of appearing or practicing before the Commission as an accountant. The Commission's order was based on the entry of a final judgment against Gross by the Honorable Donald J. Stohr of the United States District Court for the Eastern District of Missouri. Gross consented to the final judgment, which permanently enjoined him from violating the antifraud, books and records, and internal accounting control provisions of the Securities Exchange Act of 1934.

The final judgment related to the Commission's complaint, filed on December 16, 1998 (LR-16003, December 17, 1998). The complaint alleged, among other things, that beginning in February 1993 and continuing through at least June 1995, senior management and others employed by Oliver Transportation Inc. (OTI), a now defunct trucking company, perpetrated a financial fraud. The fraud involved a scheme whereby phony customer orders and, in turn, phony accounts receivable were recorded in OTI's books and records. As a result of the scheme, the financial statements and other disclosures in OTI's registration statement in June 1993 and subsequent periodic filings with the Commission were materially false and misleading. In furtherance of the scheme, while Gross was OTI's chief financial officer, he made or caused the making of materially false and misleading accounting entries in OTI's books and records. He also provided false information to the company's independent auditors in connection with the audit of OTI's financial statements. Finally, Gross prepared and signed OTI's annual report for its fiscal year 1994 and quarterly reports for its first two quarters of fiscal year 1995. These three reports were filed with the Commission. In connection with these filings, Gross knew or was reckless in not knowing that each contained materially false and misleading information because OTI's financial statements included phony accounts receivable. [SEC v. John F. "Pete" Oliver et al., Civil Action No. 2:98 CV 75, DJS, E.D. Mo., Dec. 16, 1998] (Rel. 34-40859; File No. 3-9797)

MICHAEL ROBERTS DENIED THE PRIVILEGE OF APPEARING OR PRACTICING BEFORE THE COMMISSION AS AN ACCOUNTANT

On December 29, the Commission issued an order, by consent, denying Michael W. Roberts the privilege of appearing or practicing before the Commission as an accountant. The Commission's order was based on the entry of a final judgment against Roberts by the Honorable Donald J. Stohr of the United States District Court for the Eastern District of Missouri. Roberts consented to the final judgment, which permanently enjoined him from violating the antifraud, books and records, and internal accounting control provisions of the Securities Exchange Act of 1934.

The final judgment related to the Commission's complaint, filed on December 16, 1998 (LR-16003, December 17, 1998). The complaint alleged, among other things, that beginning in February 1993 and continuing through at least June 1995, senior management and others employed by Oliver Transportation Inc. (OTI), a now defunct trucking company, perpetrated a financial fraud. The fraud involved a scheme whereby phony customer orders and, in turn, phony accounts receivable were recorded in OTI's books and records. As a result of the scheme, the financial statements and other disclosures in OTI's registration statement in June 1993 and subsequent periodic filings with the Commission were materially false and misleading. In furtherance of the scheme, while he was employed as OTI's controller, Roberts caused OTI's books and records to be materially false and misleading. He also provided false information to the company's independent auditors in connection with the audit of OTI's financial statements. Finally, Roberts assisted in the preparation of the financial statements that were included in OTI's annual report for its fiscal year 1994 and quarterly reports for its first two quarters of fiscal year 1995. These three reports were filed with the Commission. In connection with these filings, Roberts knew or was reckless in not knowing that each contained materially false and misleading information because OTI's financial statements included phony accounts receivable. [SEC v. John F. "Pete" Oliver et al., Civil Action No. 2:98 CV 75, DJS, E.D. Mo., Dec. 16, 1998] (Rel. 34-40860; File No. 3-9798)

SEC OBTAINS FINAL JUDGMENTS CONCLUDING PILLSBURY INSIDER TRADING CASE

The Commission has obtained final judgments against the remaining defendants in its insider trading case arising from the 1988 tender offer by Grand Metropolitan PLC for The Pillsbury Company. In accordance with a decision by U.S. District Judge Peter K. Leisure in August 1998 that granted in substantial part the Commission's motion for summary judgment against defendants Robert Falbo and Lorre Meade, the Court has entered a final judgment that enjoins Falbo from violating Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 and Rules 10b-5 and 14e-3 thereunder, and that orders both Falbo and Meade to disgorge their illicit trading profits and pay civil penalties. Specifically, Falbo was ordered to disgorge \$136,000 plus prejudgment interest and to pay a civil penalty of \$50,000, while Meade was ordered to disgorge \$34,125 plus

prejudgment interest and to pay a civil penalty of \$5,000. The Commission did not press the only claim not resolved on summary judgment for an additional \$22,316.14 in insider trading profits by Robert Falbo.

Simultaneously, the Court entered a final judgment on consent against defendant Theresa B. Falbo, Robert Falbo's wife. Without admitting or denying the allegations of the Commission's complaint, Theresa Falbo agreed to a final judgment that enjoins her from violating Exchange Act Sections 10(b) and 14(e) and Rules 10b-5 and 14e-3, and that orders her to disgorge \$158,316.14 in illicit trading profits realized through her husband, plus prejudgment interest. Based on her demonstrated inability to pay, all but \$15,000 of the disgorgement obligation was waived and no civil monetary penalties were imposed against her. [SEC v. Robert Falbo, et al., Civil Action No. 92-CIV-6836, PKL, U.S. Dist. Ct., S.D.N.Y.] (LR-16013)

INVESTMENT COMPANY ACT RELEASES

UNUM LIFE INSURANCE COMPANY OF AMERICA, ET. AL.

An order has been issued pursuant to Section 26(b) of the Investment Company Act to UNUM Life Insurance Company of America (UNUM), UNUM's VA-I Separate Account, First UNUM Life Insurance Company (First UNUM) and First UNUM's VA-I Separate Account. The order permits the separate accounts to substitute shares of Fidelity Variable Insurance Products Fund II Asset Manager Portfolio and Fidelity Variable Insurance Products Fund Growth Portfolio for shares of Calvert Social Balanced Portfolio of Calvert Variable Series and American Century VP Capital Appreciation of American Century Variable Portfolios Inc. currently held by the separate accounts. (Rel. IC-23626 - December 29)

WESTERN-SOUTHERN LIFE ASSURANCE COMPANY, ET. AL.

An order has been issued to Western-Southern Life Assurance Company, Western-Southern Life Assurance Company Separate Account 1 (Separate Account 1), Western-Southern Life Assurance Company Separate Account 2 (Separate Account 2) (collectively, the Section 26 Applicants), The Western and Southern Life Insurance Company and The Western and Southern Life Insurance Company Separate Account A (together with the Section 26 Applicants, the Section 17 Applicants). Pursuant to Section 26(b) of the Investment Company Act the order permits the Section 26 Applicants to substitute: (a) shares of the Select Advisors Variable Insurance Trust (VIT) Touchstone Growth & Income Portfolio for shares of Select Advisors Portfolios (SA Trust) Growth & Income II Portfolio; and (b) shares of VIT Touchstone Bond Portfolio for shares of SA Trust Bond II Portfolio currently held by corresponding sub-accounts of Separate Account 1 and Separate Account 2. Pursuant to Section 17(b) of the Act, the order grants the Section 17 Applicants an exemption from Section 17(a) of the Act

to the extent necessary to permit the Section 17 Applicants to carry out the substitutions in part by redeeming shares of the removed funds in kind, and using the redemption proceeds to purchase shares of the substituted funds. (Rel. IC-23627 - December 29)

DOW TARGET VARIABLE FUND LLC

An order has been issued pursuant to Section 6(c) of the Investment Company Act to Dow Target Fund LLC (the Applicant) exempting the Applicant from the provisions of Section 12(d)(3) of the Act to the extent necessary to permit the Applicant's portfolios to invest up to 10% of their total assets in securities of issuers that derive more than 15% of their gross revenues from securities related activities. (Rel. IC-23628 - December 30)

HOLDING COMPANY ACT RELEASES

AMEREN CORPORATION

An order has been issued authorizing a proposal by Ameren Corporation (Ameren), a registered holding company. Specifically, the Commission has authorized Ameren to implement a shareholder rights plan that gives Ameren's board of directors the right to issue additional shares of stock in the event of a takeover attempt. (Rel. 35-26961)

AMERICAN ELECTRIC POWER COMPANY, INC., ET AL.

An order has been issued authorizing a proposal by American Electric Power Company, Inc. (AEP), a registered holding company, and AEP Resources, Inc. (Resources), a subsidiary of AEP (Applicants). Applicants have been authorized, through December 31, 2000, to sell certain project development and management services and related goods through one or more special purpose subsidiaries (Special Purpose Subsidiaries) to third parties. In addition, Special Purpose Subsidiaries and subsidiaries of Applicants holding interests in exempt wholesale generators or foreign utility companies (Intermediate Subsidiaries) have been authorized to provide certain services and goods at fair market prices under an exemption from the cost standards of Section 13(b) to any subsidiary of Resources that is an Exempt Project or qualifying facility. Further, Applicants have been authorized to acquire, directly or indirectly, through December 31, 2000, interests in one or more financing subsidiaries. These financing subsidiaries would lend to Intermediate Subsidiaries the proceeds of securities issued by the financing subsidiaries. (Rel. 35-26962)

SELF-REGULATORY ORGANIZATIONS

PROPOSED RULE CHANGES

The National Association of Securities Dealers has filed a proposed rule change (SR-NASD-98-85) under Rule 19b-4 of the Exchange Act to establish the Nasdaq application of the OptiMark system. Publication of the proposal is expected in the Federal Register during the week of January 4, 1999. (Rel. 34-40835)

The Municipal Securities Rulemaking Board filed a proposed rule change (SR-MSRB-98-12) under Rule 19b-4 consisting of an interpretive notice regarding electronic delivery and receipt of information by brokers, dealers, and municipal securities dealers. Publication of the proposal is expected in the Federal Register during the week of January 4, 1999. (Rel. 34-40848)

APPROVAL OF PROPOSED RULE CHANGE

The Commission approved a proposed rule change (SR-NASD-98-58) submitted by the National Association of Securities Dealers relating to the elimination of the requirement for personal service of decisions in cases involving bars and expulsions. Publication of the order is expected in the Federal Register during the week of January 4, 1999. (Rel. 34-40854)

ACCELERATED APPROVAL OF PROPOSED RULE CHANGE

The Commission has granted accelerated approval of a proposed rule change (SR-NASD-98-97) submitted by the National Association of Securities Dealers under Rule 19b-4 of the Securities Exchange Act of 1934 relating to the six month extension of effectiveness of the pilot injunctive relief rule. Publication of the order is expected in the Federal Register during the week of January 4, 1999. (Rel. 34-40846)

IMMEDIATE EFFECTIVENESS OF PROPOSED RULE CHANGE

A proposed rule change filed by the National Association of Securities Dealers to reduce the fee for the Regulatory Element of the Securities Industry Continuing Education Program (SR-NASD-98-95) has become immediately effective under Section 19(b)(3)(A) of the Securities Exchange Act of 1934. Publication of the proposal is expected in the Federal Register during the week of January 4, 1999. (Rel. 34-40851)

DELISTINGS

An order has been issued granting the application of PolyGram N.V. to strike from listing its New York Registry Shares, \$0.50 NLG Par Value, from listing and registration on the New York Exchange. (Rel. 34-40865)

A notice has been issued giving interested persons until January 28, 1999, to comment on the application of Grubb & Ellis Company, to withdraw its Common Stock, \$.01 Par Value, from listing and registration on the Pacific Stock Exchange. (Rel. 34-40866)

SECURITIES ACT REGISTRATION

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: <public info @ sec>. In most cases, this information is also available on the Commission's website: <www.sec.gov>.

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(519) 746-8110 - 34,500,000 (\$34,500,000) FOREIGN COMMON STOCK. (FILE
333-9768 - DEC. 22) (BR. 3 - NEW ISSUE)