

# sec news digest

Issue 95-107

June 5, 1995

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## ENFORCEMENT PROCEEDINGS

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### INJUNCTIVE ACTION AGAINST RAYNARD FENSTER AND OTHERS

The Commission announced that on May 30 it filed a complaint in the U.S. District Court for the District of Colorado against Raynard M. Fenster (Fenster), Therese M. Lamb (Lamb), Delaware Technology Corporation (DTC), Russel V. Price (Price), Bruce K. Ritzschke (Ritzschke), Melvin H. Takaki (Takaki) and Hayden H. Thompson (Thompson). The complaint alleges that Fenster, former president of Stat-Tech International Corporation, violated the antifraud provisions of the Securities Act and Exchange Act by causing Stat-Tech to overstate earnings. The complaint alleges, among other things, that Fenster made false accounting entries, and created counterfeit documents to substantiate transactions and to conceal the scheme. As a result, Stat-Tech reported inflated sales in Forms 10-K and 10-Q filed with the Commission and in press releases. The complaint also alleges that Fenster made false statements to Stat-Tech's accountants in connection with an audit. The complaint also alleges that Fenster, Lamb, DTC, Price, Ritzschke, Takaki and Thompson sold Stat-Tech stock receiving proceeds in excess of \$1.8 million in violation of the registration provisions of the Securities Act.

The complaint seeks injunctive relief, disgorgement, prejudgment interest and penalties against Fenster, Lamb, DTC, Price, Ritzschke and Thompson. The complaint seeks injunctive relief, disgorgement and prejudgment interest against Takaki. [SEC v. Raynard M. Fenster, Therese M. Lamb, Delaware Technology Corporation, Russel V. Price, Bruce K. Ritzschke, Melvin H. Takaki and Hayden H. Thompson, Civ. No. 95-N-1367, D. Colo.] (LR-14516; AAE Rel. 676)

ORDER OF PERMANENT INJUNCTION, DISGORGEMENT AND OTHER RELIEF ISSUED AGAINST  
BROKER NAMED IN FRAUDULENT KICKBACK SCHEME

On May 19, the United States District Court for the District of Massachusetts entered a final order against Michael Murphy. Without admitting or denying the Commission's allegations, Murphy consented to the entry of a final judgment which enjoins him from violating Sections 5(a), 5(c) and 17(a) of the Securities Act and orders disgorgement of \$29,161. However, disgorgement was waived and no civil penalty was imposed against Murphy based upon his financial condition. The complaint alleges that, from January 1993 through September 1993, Patrick Collins, Robert Shull and Leonard Fiessel paid kickbacks worth over \$400,000 to stockbrokers, with almost \$30,000 to Murphy, to induce them to offer and sell Fairmont Resources Inc. stock to their customers. The complaint further alleges that Murphy and other stockbrokers failed to disclose the kickback scheme to his customers and more than 150 customers in seventeen states purchased over 1,000,000 shares of Fairmont stock at prices artificially enhanced by the kickbacks. [SEC v. Robert L. Shull, Leonard E. Fiessel, Colleen A. Fiessel, Patrick A. Collins, Mark J. Hamel, Robert J. Raffa, Jeffrey J. Fernandez, Michael J. Murphy and William Cho, Civ. Action No. 94-11759, REK, D. Mass.] (LR-14518)

FINAL JUDGMENT AS TO JOHN GAINES

The Commission announced that on May 17 the United States District Court for the Northern District of Texas entered an Agreed Final Judgment as to Defendant John Martin Gaines (Gaines). Previously, on November 24, 1993, Gaines consented to the entry of an order of permanent injunction enjoining him from further violations of the federal securities laws, and ordering him to pay disgorgement and a civil penalty in amounts to be determined. In this Final Judgment, the Court ordered Gaines to pay disgorgement in the amount of \$2,200,000, plus prejudgment interest thereon in the amount of \$257,368.97, provided, however, that payment of the disgorgement amount is waived based on Gaines' demonstrated financial inability to pay. Also, the Court did not order Gaines to pay a civil penalty based on his financial inability to pay.

The Commission's complaint alleged that Gaines raised at least \$2.6 million from investors for the purpose of purchasing securities on the investors' behalf; however, Gaines converted the investor funds for his own use and to repay prior investments. [SEC v. John Martin Gaines and J.M. Gaines & Associates, Inc., 3:93-CV-2351-X, USDC/ND TX] (LR-14519)

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## INVESTMENT COMPANY ACT RELEASES

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### AMERICA'S UTILITY TAX-FREE INCOME FUND, INC.

An order has been issued under Section 8(f) of the Investment Company Act declaring that America's Utility Tax-Free Income Fund, Inc. has ceased to be an investment company. (Rel. IC-21105 - June 1)

### THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, ET AL.

An order has been issued pursuant to Section 6(c) of the Investment Company Act exempting The Mutual Life Insurance Company of New York (Mutual of New York), MONY Life Insurance Company of America (MONY, together with Mutual of New York, Companies), MONY Variable Account L (Account L), MONY America Variable Account L (MONY Account L), any other separate account established by the Companies in the future to support flexible premium, single premium, or scheduled premium variable life insurance policies (Other Accounts, collectively, with Account L and MONY Account L, "Accounts") and MONY Securities Corp. from the provisions of Section 27(c)(2) of the Act and Rules 6e-2(c)(4)(v), 6e-3(T)(c)(4)(v), 6e-2(a)(2), and 6e-2(b)(15) thereunder. The order provides exemptions to the extent necessary to permit applicants to deduct from premium payments received under certain variable life insurance policies (Contracts) issued by the Accounts and the Companies a charge that is reasonable in relation to the Companies' increased federal income tax burden resulting from the Companies' receipt of such premiums in connection with the Contracts. The order also permits any of the Accounts to derive its assets from both flexible and scheduled premium variable life insurance policies and nevertheless to qualify as a variable life insurance separate account, with respect to single premium or scheduled premium life insurance policies, for the purposes of Rule 6e-2. (Rel. IC-21106 - June 1)

### 1784 FUNDS AND THE FIRST NATIONAL BANK OF BOSTON

A conditional order has been issued under Section 17(d) of the Act and Rule 17d-1 thereunder on an application filed by 1784 Funds and The First National Bank of Boston permitting them to establish one or more joint accounts to be used for repurchase agreements. (Rel. IC-21107 - June 1)

### FRANK RUSSELL INVESTMENT COMPANY, ET AL.

A notice has been issued giving interested persons until June 27 to request a hearing on an application filed by Frank Russell Investment Company, et al. for a conditional order under Section 6(c) of the Investment Company Act to exempt applicants from Section 15(a) of the Act and Rule 18f-2 thereunder; and from certain disclosure requirements

set forth in item 22 of Schedule 14A under the Securities Exchange Act of 1934, items 2, 5(b)(iii), and 16(a)(iii) of Form N-1A, item 3 of Form N-14, item 48 of Form N-SAR, and Sections 6-07(2)(a), (b), and (c) of Regulation S-X. The order would permit the investment adviser to the Frank Russell group of registered investment companies (Russell Funds) to enter into sub-advisory contracts without receiving prior shareholder approval, and permit the Russell Funds to disclose only aggregate sub-advisory fees for each Fund in their prospectuses and other reports. (Rel. IC-21108 - June 2)

**COMPANION LIFE INSURANCE COMPANY, ET AL.**

An order has been issued pursuant to Section 6(c) of the Investment Company Act exempting Companion Life Insurance Company (Company), Companion Life Separate Account C (Separate Account), Mutual of Omaha Investor Services, Inc., and certain principal underwriters of the Separate Account from Sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit the payment to the Company of a mortality and expense risk charge from the assets of the Separate Account under certain flexible payment deferred variable annuity contracts. (Rel. IC-21109 - June 2)

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**HOLDING COMPANY ACT RELEASES**

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**WEST PENN POWER COMPANY ET AL.**

An order has been issued authorizing West Penn Power Company, a public-utility subsidiary company of Allegheny Power System, Inc., a registered holding company, to issue and sell up to an aggregate of \$110,000,000 principal amount of junior subordinated debentures at any time or from time to time through December 31, 1995. Jurisdiction was reserved over the issuance and sale of such debentures by West Penn from January 1, 1996 through December 31, 1998, and over the issuance and sale through December 31, 1998 of up to an aggregate of \$95,000,000 principal amount of junior subordinated debentures by Monongahela Power Company and \$61,834,900 principal amount of junior subordinated debentures by Potomac Edison Company. Monongahela and Potomac Edison are also public-utility subsidiary companies of Allegheny Power System, Inc. (Rel. 35-26298)

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**SELF-REGULATORY ORGANIZATIONS**

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**WITHDRAWAL GRANTED**

An order has been issued granting the application of Southern Union Company to withdraw from listing and registration its Common Stock, \$1.00 Par Value, on the American Stock Exchange. (Rel. 34-35793)

## PROPOSED RULE CHANGES

The New York Stock Exchange filed a proposed rule change (SR-NYSE-95-13) to amend the NYSE's Allocation Policy and Procedures to permit Floor broker Senior Floor Officials to replace Governors for quorum purposes. Publication of the proposal is expected in the Federal Register during the week of June 5. (Rel. 34-35776)

The National Association of Securities Dealers filed a proposed rule change (SR-NASD-95-21) to amend Article III, Section 34 of the Rules of Fair Practice, Subsections (b)(3)(C) and (3)(D) to exclude freely-tradeable direct participation program securities from the prohibition on transactions in discretionary accounts without written approval. (Rel. 34-35788)

## IMMEDIATE EFFECTIVENESS OF PROPOSED RULE CHANGES

A proposed rule change (SR-PHLX-95-29) filed by the Philadelphia Stock Exchange, which increases from 25 to 50 the maximum number of public customer market and marketable limit orders in U.S. Top 100 Index options that are eligible for execution through AUTO-X, the automatic execution feature of the PHLX's Automated Options Market (AUTOM) system, has become effective under Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4(e)(6) thereunder. Publication of the order is expected in the Federal Register during the week of June 5. (Rel. 34-35781)

A proposed rule change (SR-PHLX-95-30) filed by the Philadelphia Stock Exchange, which increases the maximum number of option contracts eligible for routing and delivery through the PHLX's Automated Options Market (AUTOM) system from 100 to 500 contracts, has become effective under Section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Rule 19b-4(e)(6) thereunder. Publication of the order is expected in the Federal Register during the week of June 5. (Rel. 34-35782)

## ACCELERATED APPROVAL OF PROPOSED RULE CHANGE

The American Stock Exchange filed and the Commission has granted accelerated approval to a proposed rule change (SR-Amex-95-18) relating to the use of the Series 7A and 7B examination modules for members and their clerks who conduct a professional customer business from the Amex Floor. (Rel. 34-35784)

## APPROVAL OF PROPOSED RULE CHANGES

The Commission approved a proposed rule change (SR-CBOE-94-54) filed by the Chicago Board Options Exchange that expands its firm quote rule to certain two-part equity option orders in an attempt to allow public customers to execute defined risk strategies, such as spreads and straddles, at the disseminated market quotes. Publication of the Order is expected to in the Federal Register during the week of June 5. (Rel. 34-35785)

The Commission approved a proposed rule change (SR-Amex-94-51) and has granted accelerated approval of Amendment Nos. 1 and 2 to the proposed rule change filed by the American Stock Exchange relating to the in person trading requirement for Registered Option traders. Publication of the notice and approval order is expected in the Federal Register during the week of June 5. (Rel. 34-35786)

The Commission approved proposed rule changes (SR-CBOE-95-05) submitted by the Chicago Board Options Exchange regarding factors considered in a decision to halt or suspend trading and the circumstances under which trading will be halted or suspended; establishing procedures for the resumption of trading after a halt or suspension is lifted; and granting the CBOE Control Room authority to turn off the Retail Automatic Execution System (RAES) if the Control Room receives a credible indication that trading has stopped in the underlying stock. Publication of the approval order is expected in the Federal Register during the week of June 5. (Rel. 34-35789)

#### APPROVAL OF APPLICATION FOR EXTENSION OF TEMPORARY REGISTRATION AS A CLEARING AGENCY

The Commission has approved the application for extension of temporary registration as a clearing agency (File No. 600-23) filed by the Government Securities Clearing Corporation. The temporary registration is extended through November 31, 1995. Publication of the notice and order is expected in the Federal Register during the week of June 12. (Rel. 34-35787)

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#### RECENT 8K FILINGS

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Form 8-K is used by companies to file current reports on the following events:

- Item 1. Changes in Control of Registrant.
- Item 2. Acquisition or Disposition of Assets.
- Item 3. Bankruptcy or Receivership.
- Item 4. Changes in Registrant's Certifying Accountant.
- Item 5. Other Materially Important Events.
- Item 6. Resignations of Registrant's Directors.
- Item 7. Financial Statements and Exhibits.
- Item 8. Change in Fiscal Year.

The companies listed below have filed 8-K reports for the date indicated and/or amendments to 8-K reports previously filed, responding to the item(s) of the form specified. Copies of the reports may be purchased from the Commission's Public Reference Room (when ordering, please give the date of the report). An invoice will be included with the requested material when mailed.

NAME OF ISSUER	STATE CODE	8K ITEM NO.								DATE	COMMENT
		1	2	3	4	5	6	7	8		
AIR & WATER TECHNOLOGIES CORP	DE	X								06/01/95	
AMERICAN AIRLINES INC	DE	X								06/02/95	
ARINCO COMPUTER SYSTEMS INC	NM	X								05/16/95	
CCB FINANCIAL CORP	NC	X		X	X					05/19/95	
CENTRAL ILLINOIS PUBLIC SERVICE CO	IL	X								06/01/95	
CITICORP MORTGAGE SEC INC REMIC PAS THRO					X					05/22/95	
COLONIAL CREDIT CARD TRUST 1992-A	NY			X	X					05/05/95	
COMARCO INC	CA			X						05/26/95	
COMDISCO RECEIVABLES INC COMDISCO RECEIV	DE			X	X					05/12/95	
COMPREHENSIVE CARE CORP	DE			X	X					05/22/95AMEND	
CULP INC	NC			X						06/02/95	
DELL COMPUTER CORP	DE			X						05/15/95	
DELTA COMPUTEC INC	NY			X						06/01/95	
DIAMOND SHAMROCK INC	DE			X	X					06/01/95	
DIVERSIFAX INC	DE	X			X					04/27/95	
EXIDE CORP	DE	X			X					05/18/95	
FIRST COMMERCE CORP /LA/	LA			X	X					05/15/95	
HARKEN ENERGY CORP	DE	X			X					06/02/95	
HEALTHDYNE INC	GA	X			X					05/22/95	
HEALTHSOUTH CORP	DE	X			X					05/19/95AMEND	
HORIZON HEALTHCARE CORP	DE	X			X					02/11/94AMEND	
HORIZON HEALTHCARE CORP	DE	X			X					07/29/94AMEND	
INSITUFORM MID AMERICA INC	DE	X			X					05/23/95	
LAURENTIAN CAPITAL CORP/DE/	DE	X			X					05/25/95	
LOEWEN GROUP INC					X	X				05/17/95	
M MORTGAGE INC 1992-C					X					05/15/95	
M MORTGAGE INC 1993-D					X					05/15/95	
MARINE MIDLAND BANKS INC	DE				X					05/15/95	
MCNEIL REAL ESTATE FUND XXIII LP	CA	X								05/18/95	
METAL ARTS CO INC	NY				X					06/01/95	
MONEY STORE CALIFORNIA INC 1992-C					X					05/15/95	
MONEY STORE CALIFORNIA INC 1993-A-I					X					05/15/95	
MONEY STORE CALIFORNIA INC 1993-B					X					05/15/95	
MONEY STORE CALIFORNIA INC 1993-D					X					05/15/95	
MONEY STORE COLORADO INC 1993-D					X					05/15/95	
MONEY STORE CONNECTICUT INC 1992-C					X					05/15/95	
MONEY STORE CONNECTICUT INC 1993-A-I					X					05/15/95	
MONEY STORE CONNECTICUT INC 1993-B					X					05/15/95	
MONEY STORE CONNECTICUT INC 1993-D					X					05/15/95	
MONEY STORE D C INC 1992-C					X					05/15/95	
MONEY STORE D C INC 1993-A-1					X					05/15/95	
MONEY STORE D C INC 1993-B					X					05/15/95	
MONEY STORE D C INC 1993-D					X					05/15/95	
MONEY STORE DELAWARE INC 1992-C					X					05/15/95	
MONEY STORE DELAWARE INC 1993-A-I					X					05/15/95	
MONEY STORE DELAWARE INC 1993-B					X					05/15/95	
MONEY STORE DELAWARE INC 1993-D					X					05/15/95	
MONEY STORE EMPIRE STATE INC 1992-C					X					05/15/95	
MONEY STORE EMPIRE STATE INC 1993-A-1					X					05/15/95	
MONEY STORE EMPIRE STATE INC 1993-D					X					05/15/95	

8&K REPORTS CONT.

NAME OF ISSUER	STATE CODE	8&K ITEM NO.								DATE	COMMENT
		1	2	3	4	5	6	7	8		
MONEY STORE FINANCIAL CO INC 1992-C									X	05/15/95	
MONEY STORE FINANCIAL CO INC 1993-A-I									X	05/15/95	
MONEY STORE FINANCIAL CO INC 1993-D									X	05/15/95	
MONEY STORE FLORIDA INC 1992-C									X	05/15/95	
MONEY STORE FLORIDA INC 1993-A-I									X	05/15/95	
MONEY STORE FLORIDA INC 1993-B									X	05/15/95	
MONEY STORE FLORIDA INC 1993-D									X	05/15/95	
MONEY STORE GEORGIA INC 1992-C									X	05/15/95	
MONEY STORE GEORGIA INC 1993-A-I									X	05/15/95	
MONEY STORE GEORGIA INC 1993-B									X	05/15/95	
MONEY STORE GEORGIA INC 1993-D									X	05/15/95	
MONEY STORE HOME EQUITY CORP 1992-C									X	05/15/95	
MONEY STORE HOME EQUITY CORP 1993-A-I									X	05/15/95	
MONEY STORE HOME EQUITY CORP 1993-D									X	05/15/95	
MONEY STORE ILLINOIS INC 1992-C									X	05/15/95	
MONEY STORE ILLINOIS INC 1993-A-I									X	05/15/95	
MONEY STORE ILLINOIS INC 1993-B									X	05/15/95	
MONEY STORE ILLINOIS INC 1993-D									X	05/15/95	
MONEY STORE INC TMS HOME EQ LO AS BACKED	NJ								X	05/15/95	
MONEY STORE INC TMS HOME EQ LO AS BK CER	NJ								X	05/15/95	
MONEY STORE INC TMS HOME EQ LOAN ASSET B	NJ								X	05/15/95	
MONEY STORE INC TMS HOME EQUITY LOAN ASS	NJ								X	05/15/95	
MONEY STORE INC TMS HOME EQUITY LOAN ASS	NJ								X	05/15/95	
MONEY STORE INDIANA INC 1992-C									X	05/15/95	
MONEY STORE INDIANA INC 1993-A-1									X	05/15/95	
MONEY STORE INDIANA INC 1993-B									X	05/15/95	
MONEY STORE INDIANA INC 1993-D									X	05/15/95	
MONEY STORE KENTUCKY INC 1992-C									X	05/15/95	
MONEY STORE KENTUCKY INC 1993-A-I									X	05/15/95	
MONEY STORE KENTUCKY INC 1993-D									X	05/15/95	
MONEY STORE MAINE INC 1992-C									X	05/15/95	
MONEY STORE MAINE INC 1993-A-I									X	05/15/95	
MONEY STORE MAINE INC 1993-D									X	05/15/95	
MONEY STORE MARYLAND INC 1992-C									X	05/15/95	
MONEY STORE MARYLAND INC 1993-A-I									X	05/15/95	
MONEY STORE MARYLAND INC 1993-B									X	05/15/95	
MONEY STORE MARYLAND INC 1993-D									X	05/15/95	
MONEY STORE MASSACHUSETTS INC 1992-C									X	05/15/95	
MONEY STORE MASSACHUSETTS INC 1993-A-I									X	05/15/95	
MONEY STORE MASSACHUSETTS INC 1993-B									X	05/15/95	
MONEY STORE MASSACHUSETTS INC 1993-D									X	05/15/95	
MONEY STORE MICHIGAN INC 1992-C									X	05/15/95	
MONEY STORE MICHIGAN INC 1993-A-I									X	05/15/95	
MONEY STORE MICHIGAN INC 1993-B									X	05/15/95	
MONEY STORE MICHIGAN INC 1993-D									X	05/15/95	
MONEY STORE MINNESOTA INC 1992-C									X	05/15/95	
MONEY STORE MINNESOTA INC 1993-A-1									X	05/15/95	
MONEY STORE MINNESOTA INC 1993-B									X	05/15/95	
MONEY STORE MINNESOTA INC 1993-D									X	05/15/95	
MONEY STORE MISSOURI INC 1993-A-I									X	05/15/95	
MONEY STORE MISSOURI INC 1993-D									X	05/15/95	
MONEY STORE NEVADA INC 1993-A-I									X	05/15/95	
MONEY STORE NEVADA INC 1993-D									X	05/15/95	