

# SEC NEWS DIGEST

Issue 99-47

March 11, 1999

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## RULES AND RELATED MATTERS

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### PROPOSED RULEMAKING IN CONNECTION WITH EDGAR MODERNIZATION

The Commission has issued a release proposing new rules and amendments to existing rules and forms in connection with the modernization of the Commission's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. The release provides a 30-day comment period.

When the programming for the new system is accomplished, the Commission will be able to accept filings submitted to EDGAR in HyperText Markup Language (HTML) as well as documents submitted in the American Standard Code for Information Interchange (ASCII) format. Filers will have the option of accompanying their required filings with unofficial copies in Portable Document Format (PDF). This proposing release reflects initial changes to filing requirements resulting from EDGAR modernization, as well as certain other changes to clarify or update the rules.

For further information about the proposed rules, please contact: in the Division of Investment Management, Ruth Armfield Sanders, Senior Counsel, (202) 942-0633; and in the Division of Corporation Finance, Margaret R. Black, (202) 942-2940. For questions about the development of the modernized EDGAR system, please contact Richard D. Heroux, (202) 942-8885, in the Office of Information Technology. (Rels. 33-7653; 34-41150; IC-23735)

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## ENFORCEMENT PROCEEDINGS

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### NOTICE OF PROPOSED PLAN AND OPPORTUNITY FOR COMMENT BY THIRD PARTIES IN THE MATTER OF ROBERT SMITH

The Commission announced that on March 10 it gave notice that, pursuant to Rule 612 of the Rules of Practice of the Securities and Exchange Commission, 17 C.F.R. § 201.612, the Division of Enforcement has filed its proposed Plan for the Distribution of Disgorged Funds (Distribution Plan) In the Matter of Robert J. Smith. Robert J. Smith paid to the Commission a total of \$51,653.73, which includes \$34,865 consisting of the amount by which the performance-based fees paid by clients to Smith exceeded his usual

fee of one and one-half percent of the assets under management and prejudgment interest on that excess of \$16,788.73. The Distribution Plan provides that the unlawful performance-based fees paid to Smith will be repaid to the clients who paid those fees. The Distribution Plan further provides that a proportionate share of the prejudgment interest paid by Smith will be paid to those clients who provide a valid social security number or tax identification number. A copy of the Distribution Plan may be obtained by submitting a written request to Joseph A. Zangri, United States Securities and Exchange Commission, 7 World Trade Center, 13th Floor, New York, New York 10048. All persons desiring to comment on the Distribution Plan may submit their views, in writing, no later than April 12, 1999, to the Office of the Secretary, United States Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. (Rel. IA-1793; File No. 3-9782)

#### **CIVIL AND CRIMINAL ACTION INVOLVING PONZI SCHEME**

On March 9, Pete Buffo entered a plea of guilty to criminal securities fraud charges in connection with two investment schemes. The Felony Information was filed on February 24, 1999, by the United States Attorney in Salt Lake City, Utah, against Buffo and Wayne Notwell, alleging that the defendants perpetrated a "Ponzi" scheme in violation of the federal securities laws. The Felony Information concerns schemes perpetrated under the names of Capital Acquisitions, Inc. and the Laser Leasing companies, which are also the subjects of a civil case brought by the Securities and Exchange Commission. The Commission filed its complaint against Notwell, Capital Acquisitions, and others in December 1997, and then amended the complaint in September 1998 to add Buffo, Laser Leasing, and related entities. According to the Commission's amended complaint, Notwell, Buffo, and others raised approximately \$31 million from over 600 investors through offerings of Capital Acquisitions and Laser Leasing promissory notes. On the Commission's motion, the Court appointed a receiver for Capital Acquisitions, Laser Leasing, and related companies in September 1998.

The Felony Information alleges that Buffo was primarily responsible for the Capital Acquisitions and Laser Leasing offerings, and that Notwell worked with Buffo by administering money raised in the offerings and holding positions as officers in the issuers. The offerings were alleged to be Ponzi schemes, in that money sent to investors as a return on investment actually derived from funds obtained from other investors. The Information also alleges that the defendants failed to disclose or misrepresented facts pertaining to the business of Laser Leasing and Capital Acquisitions, and to the uses of offering proceeds, including commissions paid to sales agents. The Commission assisted the United States Attorney's office in the investigation that led to the Felony Information. For further information see LR-15868 (September 2, 1998), LR-15670 (March 13, 1998), and LR-15601 (December 23, 1997). [SEC v. Capital Acquisitions, Inc, et al., Civil Action No. 2:97-0977S, D. Utah]; [U.S. v. Pete Buffo and Wayne Notwell, Criminal Action No. 2:99-0063W, D. Utah] (LR-16083)

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## INVESTMENT COMPANY ACT RELEASES

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### NATIONS FUNDS PORTFOLIOS, INC., ET AL.

A notice has been issued giving interested persons until March 30 to request a hearing on an application filed by Nations Funds Portfolios, Inc. (Portfolios), et al. for an exemption from Section 17(a) of the Investment Company Act. The order would permit one series of the Portfolios to acquire all of the assets and assume all of the liabilities of another series of the Portfolios. Because of certain affiliations, applicants may not rely on Rule 17a-8 under the Act. (Rel. IC-23733 - March 9)

### THE INFINITY MUTUAL FUNDS, INC., ET AL.

An order has been issued on an application filed by The Infinity Mutual Funds, Inc., et al. for an exemption from Section 17(a) of the Investment Company Act and under Rule 17d-1 permitting certain joint transactions. The order permits certain registered investment companies (a) to pay BISYS Fund Services Limited Partnership and certain of its affiliated persons fees for acting as lending agent with respect to a securities lending program (Program); (b) to lend portfolio securities to affiliated broker-dealers; (c) to deposit the cash collateral received in connection with the Program and other uninvested cash in one or more joint trading accounts; and (d) to use cash collateral received in connection with the Program to purchase shares of an affiliated private investment company. (Rel. IC-23734 - March 9)

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## SELF-REGULATORY ORGANIZATIONS

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### DELISTINGS GRANTED

An order has been issued granting the application of the New York Stock Exchange to strike from listing and registration Buenos Aires Embotelladora S.A., American Depositary Shares (each representing two Ordinary Class B Shares). (Rel. 34-41148)

An order has been issued granting the application of the New York Stock Exchange to strike from listing and registration TCC Industries, Inc., Common Stock, \$1.00 Par Value. (Rel. 34-41149)

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## SECURITIES ACT REGISTRATIONS

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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>.

S-8 GRUBB & ELLIS CO, 2215 SANDERS RD, STE 400, NORTHBROOK, IL 60062  
(415) 956-1990 - 2,250,000 (\$14,695,425) COMMON STOCK. (FILE 333-73331 -  
MAR 04) (BR. 8)