

# sec news digest

Issue 95-119

June 21, 1995

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## COMMISSION ANNOUNCEMENTS

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## COMMISSION MEETINGS

Following is a schedule of Commission meetings which will be conducted under provisions of the Government in the Sunshine Act. In general, the Commission expects to follow a schedule of holding open meetings on Wednesday mornings. Otherwise, meetings will be scheduled according to the requirements of agenda items under consideration.

Visitors are welcome at all open meetings, insofar as space is available.

Meetings will be held in the Commission Meeting Room, Room 1C30, at the Commission's headquarters building, 450 Fifth Street, N.W., Washington, D.C. Persons wishing to photograph or videotape Commission meetings must obtain permission in advance from the Secretary of the Commission. Persons wishing to tape record a Commission meeting should notify the Secretary's office 48 hours in advance of the meeting.

Any member of the public who requires auxiliary aids such as a sign-language interpreter or material on tape to attend a public meeting should contact Nancy Wolynetz, Office of Administrative and Personnel Management, to make arrangements. Ms. Wolynetz can be reached at (202) 942-4091 or at a TTY number (202) 942-4075. Staff members at the Commission are encouraged to contact Ms. Wolynetz if they receive inquiries on availability of auxiliary aids.

### OPEN MEETING - TUESDAY, JUNE 27, 1995 - 10:00 A.M.

The subject matter of the open meeting scheduled for Tuesday, June 27, 1995, at 10:00 a.m., will be:

1. Consideration of a release expressing the views of the Commission concerning problematic practices under Regulation S of the Securities Act of 1933. In connection with these practices, consideration of proposals (a) designed to streamline requirements

with respect to financial statements of significant acquisitions by eliminating certain impediments to registered offerings of securities under the Securities Act of 1933 and by providing an automatic 75-day waiver for reports under the Securities Exchange Act of 1934 for certain unavailable acquiree financial statements and (b) requiring registrants to report on a quarterly basis recent sales of equity securities that have not been registered under the Securities Act of 1933. For further information, contact: Paul Dudek or Annemarie Tierney, Office of International Corporate Finance, Division of Corporation Finance, at (202) 942-2990, or Douglas Tanner, Office of Chief Accountant, Division of Corporation Finance, at (202) 942-2960.

2. Consideration of a recommendation to propose revisions to rules under the Securities Exchange Act of 1934 to double the total assets threshold for Section 12(g) registration from \$5 million to \$10 million. For further information, contact: Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance, at (202) 942-2950.
3. Consideration of a recommendation to propose regulations that would implement a system whereby registrants could choose to include abbreviated financial statements in annual reports and other disclosure documents that are delivered to investors. For further information, contact: Elizabeth M. Murphy or William B. Haseltine, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942-2910.
4. Consideration of a recommendation to propose streamlining the proxy statement by permitting certain executive compensation information to be provided in the annual report on Form 10-K; consideration of a recommendation to improve the presentation of director compensation disclosure. For further information, contact: Elizabeth M. Murphy or William B. Haseltine, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942-2910.
5. Consideration of a recommendation to propose a new Section 3(b) exemption from the registration requirements of the Securities Act of 1933 for issues of up to \$5 million where the securities are offered and sold in reliance on a recently adopted California qualification exemption, and to solicit comment on whether the prohibition against general solicitation in certain Regulation D offerings should be reconsidered in light of the new California exemption's approach to this issue. For further information, contact: Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance, at (202) 942-2950, or James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942-2910.

6. Consideration of whether to propose amendments to the Securities Act rules that would allow issuers to solicit interest in their companies prior to the filing of a Securities Act registration statement for an initial public offering. For further information, contact: Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance, at (202) 942-2950, or James R. Budge, Office of Disclosure Policy, Division of Corporation Finance, at (202) 942-2910.
7. Consideration of a recommendation to propose amendments to the holding period requirements contained in Rule 144(d) and (k) under the Securities Act of 1933 to permit limited resales of "restricted" securities after a one-year, rather than a two-year holding period, and free resales by non-affiliated shareholders after a two-year, rather than a three-year holding period. Further, comment would be requested on whether Rule 144 should be revised to address new trading strategies, such as equity swaps, and a reminder would be issued to persons subject to the reporting requirements of Section 16 under the Securities Exchange Act of 1934 that these transactions are required to be reported. For further information, contact: Richard K. Wulff, Office of Small Business Policy, Division of Corporation Finance, at (202) 942-2950.

**CLOSED MEETING - TUESDAY, JUNE 27, 1995 - FOLLOWING THE OPEN MEETING**

The subject matter of the closed meeting scheduled for Tuesday, June 27, 1995, following the 10:00 open meeting, will be: Institution of administrative proceedings of an enforcement nature; Institution of injunctive actions; Settlement of injunctive actions; Settlement of administrative proceedings of an enforcement nature; Formal orders of investigation; and Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942-7070.

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**ENFORCEMENT PROCEEDINGS**

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**ASSET FREEZE AND OTHER EMERGENCY RELIEF ORDERED AGAINST MARK DALY, CONCEPT CAPITAL FUND, LTD. AND MULTINATIONAL FUND MANAGEMENT, LTD.**

The Commission announced that on June 19 the Honorable John L. Kane, Jr., U.S. District Judge for the District of Colorado, entered an order freezing assets and granting other emergency relief against Mark G. Daly (Daly), Concept Capital Fund, Ltd. (CCF) and Multinational Fund Management Ltd. (MFM). A preliminary injunction hearing is scheduled for June 28, 1995.

The Commission's June 19, 1995 complaint alleged, among other things, that the defendants participated in a fraudulent sales scheme involving the sale of mutual fund shares of CCF. Both CCF and MFM were created and operated by Daly, a Denver financial planner and unregistered investment adviser who solicited several of his clients to invest their money in CCF without disclosing to them his control of or financial interest in that entity. The complaint further alleges, that in connection with offering the shares of this fund to investors, the defendants, among other things, misrepresented the fund's trading strategy and the components of its portfolio, misrepresented the qualifications of the fund's trading adviser, and failed to disclose substantial trading losses and the firing of the trading adviser. Daly, CCF and MFM are alleged to have violated Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and Daly, Sections 206(1) and 206(2) of the Investment Advisers Act of 1940. [SEC v. Mark G. Daly, Concept Capital Fund, Ltd., and Multinational Fund Management, Ltd., USDC Colo., Civil Action No. 95-S-1554] (LR-14534)

FIRST LAUDERDALE SECURITIES, INC. AND MICHAEL CURRAN ENJOINED FOR MISAPPROPRIATION OF CUSTOMER FUNDS

The Commission announced that on June 10 the U.S. District Court for the Southern District of Florida entered a Final Judgment of Permanent Injunction (Final Judgment) against First Lauderdale Securities, Inc. (First Lauderdale), a broker-dealer formerly registered with the Commission, and Michael B. Curran (Curran), president of First Lauderdale, both of Ft. Lauderdale, Florida. Without admitting or denying the allegations in the complaint, Curran and First Lauderdale consented to the entry of the Final Judgment which permanently enjoins Curran from future violations of the antifraud provisions, and First Lauderdale from future violations of the antifraud, net capital and books and records provisions, and orders Curran and First Lauderdale to disgorge \$3 million, plus prejudgment interest, provided, however, that disgorgement is waived and civil penalties are not imposed based on their demonstrated financial inability to pay.

The Commission's complaint, filed on November 29, 1994, alleged that from September 1988 to November 1994, Curran and First Lauderdale misappropriated at least \$3 million by misrepresenting that funds would be used for investments, when, in fact, Curran was misappropriating the funds for his own use. The complaint also alleged that First Lauderdale violated the broker-dealer books and records and net capital provisions. [SEC v. Michael B. Curran and First Lauderdale Securities, Inc., Case No. 94-7156-CIV-HURLEY] (LR-14535)

## CIVIL ACTION AGAINST FIRST JERSEY SECURITIES

The Commission today announced that the Honorable Richard Owen of the United States District Court for the Southern District of New York issued an opinion in SEC v. First Jersey Securities, Inc. and Robert E. Brennan, No. 85 Civ. 8585 (RO), in which the Court found defendants First Jersey Securities and Robert E. Brennan jointly and severally liable for \$71,539,620 in disgorgement, with prejudgment interest through December 31, 1994 (to be updated through the date of the judgment), for the violations of Section 17 of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder that the Commission proved in the 1994 trial of the case. Judge Owen also enjoined First Jersey and Brennan from further violations of those provisions and authorized the appointment of a special agent to review First Jersey's books and records to determine whether the defendants committed additional violations.

The Court found, among other things, that defendants' conduct "constituted a massive and continuing fraud on [First Jersey's] customers," that First Jersey's sales practices "were intended by defendants to operate, and did operate, as a pervasive fraud on First Jersey's hundreds of thousands of retail customers, and "that "the evidence compels the conclusion that Brennan is primarily liable ... for the securities violations in this case." In authorizing the appointment of a special agent, the Court said "I am thoroughly convinced under any standard that the particular violations proved at trial are in all probability only the tip of the iceberg." For further information see Litigation Release No. 10919, October 31, 1985. [SEC v. First Jersey Securities, Inc. and Robert E. Brennan, USDC SDNY, Civil Action No. 85 Civ. 8585, RO] (LR-14536)

### RICHARD KEVIN GERSON ENJOINED

The Commission announced today that a Final Consent Judgment of Permanent Injunctive and Other Relief was obtained on May 31, 1995 against Richard Kevin Gerson. The Commission's complaint, filed September 30, 1994, alleges that Gerson and others made false statements and omitted to disclose material information in the offer, purchase and sale of three penny stocks, Omnet, Corp., Performance Nutrition, Inc. and Remington Financial Group, Inc. The complaint further alleges that the defendants engaged in fraudulent conduct in order to artificially inflate the price of the stocks and personally profit by selling shares they controlled at inflated prices.

Under the terms of the Final Judgment, Gerson is enjoined from committing or causing future violations of the securities registration,

broker-dealer registration and antifraud provisions of the federal securities laws. Additionally, Gerson is ordered to disgorge \$79,747.79, representing his gains from the conduct alleged in the Commission's complaint, including prejudgment interest. However, payment of disgorgement, prejudgment interest and imposition of a civil monetary penalty are waived based upon Gerson's demonstrated financial inability to pay. [SEC v. Royal American Management, Inc., et al., Civil Action No. CIV-94-1619-T] (LR-14537)

#### FINAL JUDGMENTS ENTERED AGAINST NINE DEFENDANTS IN WIRELESS CABLE TELEVISION CASE

The Commission today announced that on June 20 final judgments were entered against nine of the ten defendants (settling defendants) named in the action, pursuant to their consent. The settling defendants are: Knoxville, LLC (KLLC), Wireless Solutions, Inc. (WSI), TENEVA Impound Management Corp., D.R. Williams Consulting, Inc., Goldcap Consulting Group, Inc., Digital Wireless, Inc., U.S. Wireless, Steven J. Moran and Mark Maradei. The action continues against the remaining defendant, North American Wireless Services. In its complaint filed on July 11, 1994, the Commission alleged that each of the defendants violated one or more provisions of the Federal securities laws in connection with offering and selling unregistered securities in KLLC to the public.

The final judgments entered against the settling defendants contain all of the permanent injunctive relief requested in the complaint. In addition, with the exception of KLLC, all of the settling defendants have been ordered to pay disgorgement, plus prejudgment interest thereon, and civil penalties. The final judgments also contain provisions requiring cooperation with the Commission and prohibiting the destruction of documents. [SEC v. Knoxville, LLC, et al., Civil Action No. 94-1073-S, RBB, SD Cal.] (LR-14538)

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#### INVESTMENT COMPANY ACT RELEASES

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##### G.T. GLOBAL GROWTH SERIES, ET AL.

A notice has been issued giving interested persons until July 11 to request a hearing on an application filed by G.T. Global Growth Series, et al. for an order under Section 6(c) of the Investment Company Act that would exempt applicants from Section 15(a) of the Act. The order would permit G.T. Capital Management, Inc. to have served as investment adviser to certain investment companies for approximately one month under interim advisory agreements, without a shareholder vote, following a change in its ownership and to receive from the investment companies fees earned under interim advisory agreements. (Rel. IC-21141 - June 16)

PACIFIC MUTUAL LIFE INSURANCE COMPANY, ET AL.

A notice has been issued giving interested persons until July 14 to request a hearing on an application filed by Pacific Mutual Life Insurance Company, Separate Account A, and Pacific Equities Network. Applicants request an order under Section 6(c) of the Investment Company Act exempting them from Sections 26(a)(2)(C) and 27(c)(2) of the Act to permit Pacific Mutual Life Insurance Company to deduct a mortality and expense risk charge from the assets of Separate Account A. (Rel. IC-21143 - June 19)

CITIBANK, N.A., ET AL.

An order has been issued on an application by Citibank, N.A. (Citibank), and Citicorp granting a conditional exemption from Section 17(f) of the Act and Rule 17f-5 thereunder to let Citibank offer United States registered investment companies both agency and direct custodial arrangements with certain foreign subsidiaries of Citibank and Citicorp. (Rel. IC-21145; International Series Rel. 819 - June 19)

KIDDER, PEABODY CORPORATE INCOME FUND  
KIDDER, PEABODY SERIES TRUST  
KIDDER, PEADBODY U.S. TREASURY SECURITIES FUND

Orders have been issued under Section 8(f) of the Investment Company Act declaring that the above-named companies have ceased to be investment companies. (Rels. IC-21146; IC-21147; IC-21148, respectively - June 19)

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**SIGNIFICANT NO-ACTION, EXEMPTIVE AND INTERPRETIVE LETTERS**

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The following is a list of significant no-action and interpretative letters recently issued by the Division of Corporation Finance. These letters express the view of the Division respecting novel or important questions arising under the Securities Act of 1933, the Securities Exchange Act of 1934, the Trust Indenture Act of 1939, the Investment Company Act of 1940, and the Investment Advisers Act of 1940. Copies of these letters may be obtained by writing to the Public Reference Room, Securities and Exchange Commission, Washington, D.C. 20549, or by making a request in person at the Public Reference Room, 450 Fifth Street, N.W., Room 1024, Washington, D.C., stating the name of the subject company, the Act and the Section of the Act to which it relates, and the public availability date.

<u>COMPANY</u>	<u>ACT/SECTION/RULE OR RELEASE</u>	<u>DATE MAILED</u>	<u>PUBLIC AVAILABILITY DATE</u>
Allied Telesyn International Corp.	1933 Act - Rules 144(a)(2)(ii) and 701(c)(3)	3/3/95	3/3/95
Sasco Marketing, Inc.	1933 Act - Rules 144(d)(3)(vii) 144(e)(3)(v)	3/16/95	3/16/95
United Telephone Company of Ohio	1934 Act - Rule 12h-3	3/1/95	3/1/95
Richard P. Conrad	Regulations S-K and S-B - Item 601(c)	4/14/95	4/14/95
Grupo Financiero InverMexico, S.A.	1933 Act - Section 5	4/4/95	4/4/95