

SEC NEWS DIGEST

Issue 96-177

September 17, 1996

ENFORCEMENT PROCEEDINGS

RAUL RODRIGUEZ BARRED FROM APPEARING BEFORE COMMISSION

The Commission announced today the issuance of an Order Instituting Public Administrative Proceedings, And Opinion and Order against Raul N. Rodriguez (Rodriguez). Simultaneously, the Commission accepted Rodriguez's Offer of Settlement. Previously the Commission had authorized but delayed the institution of administrative proceedings.

Rodriguez consented to the entry of the Order finding that Rodriguez, a sole practitioner, was counsel for Melbourne Capital Corp. (MCC) from its inception in 1988 until at least 1991; Rodriguez currently is suspended from the practice of law by both the State of Colorado, and the United States District Court for the District of Colorado; and on August 28, 1996, Rodriguez was permanently enjoined from further violations the antifraud provisions of the federal securities laws, Section 17(a) of the Securities Act of 1933, and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 (SEC v. Melbourne Capital Corp., et al., 95 Civ. 0678, SHS, SDNY, Jan. 31, 1995).

The Commission's Order denies Rodriguez the privilege of appearing or practicing before the Commission as an attorney, with the right to apply for reinstatement after a period of two years from the date of the Order. For further information, see Litigation Release No. 14396. (Rel. 34-37682)

WILLIAM SCOTT SMITH BARRED

The Commission announced today the issuance of an Order Instituting Proceedings, Making Findings and Imposing Remedial Sanctions against William Scott Smith (Smith). Simultaneously, the Commission accepted Smith's Offer of Settlement. Previously the Commission had authorized but delayed the institution of administrative proceedings.

Smith consented to the entry of the Order finding that from 1987 to December 1989, Smith was a registered representative of Baird Patrick & Co., Inc., a broker-dealer registered with the Commission, and that from December 1989 to December 1990, Smith was a registered

representative of Paulson Investment Company, Inc., another broker-dealer registered with the Commission; and on August 28, 1996, Smith was permanently enjoined from further violations of Section 17(a) of the Securities Act of 1933, and Sections 10(b), 13(b)(2), 15(a), 15(c)(1) and 15(d) of the Securities Exchange Act of 1934 and Rules 10b-5, 12b-20, 15c1-5, 15c1-6, 15d-1 and 15d-13 (SEC v. Melbourne Capital Corp., et al., 95 Civ. 0678, SHS, SDNY, Jan. 31, 1995).

The Commission's order permanently bars Smith from association with any broker, dealer, investment adviser, investment company or municipal securities dealer. For further information see Litigation Release No. 14396. (Rel. 34-37683)

DOMENICK SCHINA BARRED

The Commission today issued an order instituting public administrative proceedings under the Securities Exchange Act of 1934 against Domenick M. Schina (Schina), and simultaneously accepted Schina's Offer of Settlement.

Without admitting or denying the findings, Schina consented to the issuance of the order which found that on September 3 Schina was permanently enjoined in United States District Court for the Northern District of Texas, in an action styled Securities and Exchange Commission v. EnviroMent Holdings, Inc., et al. Schina consented to the entry of the injunction without admitting or denying the allegations in the Commission's complaint. The complaint alleged that Schina violated the registration and antifraud provisions of the federal securities laws based on his participation in the fraudulent offer and sale of the securities of EnviroMent Holdings, Inc., which facilitated and enhanced a fraudulent scheme initiated and conducted by one or more of his codefendants.

The order provides that Schina be barred from association with any broker, dealer, transfer agent, municipal securities dealer, investment adviser or investment company. (Rel. 34-37685)

CIVIL ACTION AGAINST CERTAIN PURCHASERS OF CALL OPTIONS OF DURACELL INTERNATIONAL, INC.

The Commission today announced the filing of a civil complaint in the United States District Court for the Southern District of New York against certain purchasers (defendants) of call options of Duracell International, Inc. The complaint alleged that the defendants engaged in illegal insider trading prior to the public announcement on September 12, 1996 of a merger agreement between Duracell International and The Gillette Co., thereby violating Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The Commission is seeking injunctive relief, disgorgement, and civil penalties.

The complaint alleged that the defendants purchased "out of the money" September call options on September 10 and 11, 1996. In

particular, the complaint alleged that the defendants purchased a total of 1100 September 50 call options and 600 September 55 call options on those two days. The trades were allegedly conducted through foreign financial institutions in a manner that concealed the beneficial owners of the trades. The complaint alleged that the defendants' trading resulted in profits of approximately \$950,000.

Simultaneously with filing the complaint, the Commission applied to the court for an order temporarily freezing the assets in the defendants' accounts attributable to the trading in Duracell call options, requiring the defendants to identify themselves, allowing expedited discovery, and granting other relief.

The Commission wishes to acknowledge the assistance of the American Stock Exchange. [SEC v. Certain Purchasers of Call Options of Duracell International, Inc., Civil Action No. 96-7017, SAS, SDNY] (LR-15045)

CIVIL ACTION AGAINST LEONARD SANDS, ET AL.

The Commission today announced that on August 28 the Honorable John G. Davies, United States District Judge, Central District of California, following a 17 day trial, issued findings of fact and conclusions of law in SEC v. Leonard S. Sands, et al., Civ. Action 93-7510. The Court found that defendants Leonard S. Sands, First Pacific Bancorp and PacVen, Inc., had violated the antifraud, reporting and books and records provisions in connection with a 1987 mini-max offering, and the reporting of RIWNs and Liberian CDs on the financial statements and periodic reports of the Bancorp. The Court issued injunctions against all the defendants, ordered that Sands be permanently and unconditionally barred from acting as an officer and director, and ordered restitution of \$688,000, plus prejudgment interest. [SEC v. Leonard S. Sands, et al., Civil Action No. 93-7510, JGD, JRx] (LR-15046; AAE Rel. 814)

PERMANENT INJUNCTION ENTERED AGAINST DOMENICK SCHINA

The Commission announced that on September 3 a final judgment of permanent injunction and other equitable relief was entered in United States District Court in Dallas, Texas, against Domenick Schina (Schina). Without admitting or denying the allegations in the Commission's complaint, Schina consented to be permanently enjoined from future violations of the securities registration and antifraud provisions of the federal securities laws based on his participation in the fraudulent offer and sale of the securities of Enviroment Holdings, Inc (EHI). As alleged in the complaint, Schina, a former registered representative of a broker-dealer, received cash and free-trading EHI stock as an inducement to recommend EHI stock to his clients.

The Court also ordered Schina to pay disgorgement in the amount of \$125,368.81, plus prejudgment interest thereon, representing his gains from the conduct alleged in the complaint. However, based on Schina's demonstrated poor financial condition, collection of all but \$25,000 was waived. Additionally, because of his poor financial

condition, a civil money penalty was not imposed. [SEC v. EnviroMent Holdings, Inc., et al., 3:95-CV-2192-H, USDC, ND/TX) (LR-15047)

ANTHONY ESCOBAR PERMANENT ENJOINED IN PENNY STOCK SCHEME PARKER

The Commission announced that on July 31, 1996, a final judgment was entered in United States District Court in Oklahoma City, Oklahoma, against Anthony Escobar (Escobar). Without admitting or denying the allegations in the Commission's complaint, Escobar consented to be permanently enjoined from future violations of the securities registration and antifraud provisions of the federal securities laws based on his participation in the offering of the common stock of Omnet Corporation, a penny stock company. According to the complaint, Escobar, and other defendants in this case, engaged in the fraudulent activity in order to artificially inflate the stock price of Omnet and personally benefit by selling shares they controlled at inflated prices.

The Court also ordered Escobar to pay disgorgement in the amount of \$30,600, which represents the proceeds attributable to him from the allegedly unlawful sales of securities, plus prejudgment interest of \$9,601.48. However, the payment of all disgorgement and prejudgment interest was waived based on Escobar's demonstrated financial inability to pay. Additionally, the Court did not impose a civil penalty because of Escobar's poor financial condition. [SEC v. Royal American Management, Inc., et al., CIV-94:1619-T, USDC, WD/OK] (LR-15048)

U.S. v. JAMES O'HAGAN

On September 16, the Commission submitted an amicus curiae brief to the United States Court of Appeals for the Eighth Circuit, supporting the United States' petition for rehearing and suggestion for rehearing en banc. In United States v. O'Hagan, a three-judge panel of the court of appeals rejected the "misappropriation" theory of insider trading under Section 10(b) of the Exchange Act and the Commission's Rule 10b-5. In so holding, the panel rejected the decisions of the Second, Seventh and Ninth Circuit Courts of Appeals, which have all accepted the misappropriation theory, and followed the recent decision of the Fourth Circuit Court of Appeals in United States v. Bryan.

The panel also invalidated, as beyond the Commission's authority, the Commission's Rule 14e-3, which prohibits insider trading in connection with tender offers. This holding conflicts with the decisions of three other circuit courts--the Second, Seventh, and Tenth Circuit Courts of Appeals--which have upheld the validity of Rule 14e-3.

The Commission's brief urges the Eighth Circuit to rehear the O'Hagan case en banc and to follow the decisions of those courts which have upheld the use of these important tools in the Commission's attack on insider trading. [U.S. v. James Herman

O'Hagan, 8th Cir., Nos. 94-3174 and 94-3856] (LR-15049); (Press Rel. 96-109)

WINCANTON CORPORATION CONSENTS TO INJUNCTION

On September 17, the Commission filed a complaint in the United States District Court for the District of Columbia against Wincanton Corporation. The complaint alleges that Wincanton, a Reno, Nevada corporation, engaged in the exploitation and development of natural resource properties, failed to make available to the investing public current and accurate information about its financial condition and results of operation through the filing of periodic reports with the Commission as required by the Securities Exchange Act of 1934 (Exchange Act). Specifically, the complaint alleges that Wincanton has not filed its Annual Report on Form 10-K for the fiscal year ended June 30, 1995, three Quarterly Reports on Form 10-Q for the fiscal quarters ended March 31, 1996, December 31, 1995 and September 30, 1995, and three Notifications of Late Filing with respect to its delinquent reports and failed to timely file two Annual Reports on Form 10-K and a Quarterly Report on Form 10-Q. The Commission seeks to compel Wincanton to file certain delinquent periodic reports and to enjoin Wincanton from further violations of Section 13(a) of the Exchange Act of 1934 and Rules 12b-25, 13a-1 and 13a-13 thereunder. Simultaneously with the filing of the Commission's complaint, Wincanton consented to the entry of a Final Judgment granting the relief sought by the Commission and admitted that it had not filed and had filed late the periodic reports as described above. [SEC v. Wincanton Corporation, Case No. 96-CV-02152, D.D.C.] (LR-15052)

TRUST INDENTURE ACT RELEASES

ORDER GRANTING APPLICATION OF PREMIUM STANDARD FARMS, INC.

The Commission has issued an order under Section 304(d) of the Trust Indenture Act of 1939 (Act) on an application by Premium Standard Farms, Inc. (Company), with respect to an indenture (Indenture) among the Company, PFS Holdings, L.L.C., and Fleet National Bank, as trustee, conditionally exempting specified provisions of the Indenture from the requirements of Section 314(d) of the Act to the extent such requirements otherwise would apply. (Rel. TI-2341; File No. 22-22241)

INVESTMENT COMPANY ACT RELEASES

MERRILL LYNCH BALANCED FUND FOR INVESTMENT AND RETIREMENT, INC.

A notice has been issued giving interested persons until October 8 to request a hearing on an application filed by Merrill Lynch Balanced Fund for Investment and Retirement, Inc. for an order under

Section 8(f) of the Investment Company Act declaring that applicant has ceased to be an investment company. (Rel. IC-22221 - September 13)

REICH & TANG DISTRIBUTORS L.P., ET AL.

A notice has been issued giving interested persons until October 8 to request a hearing on an application filed by Reich & Tang Distributors, et al. for an order pursuant to Sections 11(a) and (c) of the Investment Company Act. The order would permit certain offers of exchange between unit investment trusts. The requested order would supersede three prior orders. (Rel. IC-22222 - September 13)

THE GABELLI EQUITY TRUST INC.

A notice has been issued giving interested persons until October 11 to request a hearing on an application filed by the Gabelli Equity Trust Inc. for an order under Section 6(c) of the Investment Company Act that would grant an exemption from Section 19(b) of the Act and Rule 19b-1 thereunder. The order would permit applicant to make up to four distributions of long-term capital gains in any one taxable year, so long as it maintains in effect a distribution policy calling for quarterly distributions of a fixed percentage or fixed amount of its net asset value. (Rel. IC-22223 - September 16)

HOLDING COMPANY ACT RELEASES

AMERICAN ELECTRIC POWER COMPANY, INC., ET AL.

An order has been issued authorizing American Electric Power Company, Inc., a registered holding company, to form one or more nonutility subsidiary companies (New Subsidiaries) to engage in wholesale marketing and brokering of electric power, natural and manufactured gas, emission allowances, coal, oil, refined petroleum, refined petroleum products, and natural gas liquids. The order also authorizes related financing and provisions of services. To manage risks, the New Subsidiaries may enter into futures, forwards, swaps and options contracts related to Energy Commodities. Jurisdiction has been reserved over retail marketing of gas and electricity. A request for a hearing was denied. (Rel. 35-26572)

THE COLUMBIA GAS SYSTEM, INC.

A notice has been issued giving interested persons until October 7 to request a hearing on a proposal by The Columbia Gas System, Inc. (Columbia), a registered holding company, to form a wholly owned subsidiary company (Captive) to engage in the business of reinsuring certain predictable risks for Columbia and its subsidiaries; and fund the Captive up to an aggregate amount of \$3 million consisting of \$1 million in capital contributions and/or cash in exchange for

Captive common stock, \$25 par value, and \$2 million in letters of credit under Columbia's previously authorized credit facilities. (Rel. 35-26574)

SELF-REGULATORY ORGANIZATIONS

IMMEDIATE EFFECTIVENESS OF PROPOSED RULE CHANGE

The Options Clearing Corporation filed a proposed rule change (SR-OCC-96-12) to give notice that it has amended its schedule of fees. Publication is expected in the Federal Register during the week of September 16. (Rel. 34-37677)

PROPOSED RULE CHANGE

The Government Securities Clearing Corporation filed a proposed rule change (SR-GSCC-96-9) to establish a mechanism for returning certain excess clearing fund collateral to members on a daily basis rather than on the current once-per-month basis. Publication of the proposal is expected in the Federal Register during the week of September 16. (Rel. 34-37678)

SECURITIES ACT REGISTRATIONS

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.

- S-8 CRYO CELL INTERNATIONAL INC, 1223 ANDERSON AVE, FORT LEE, NJ 07024
(201) 224-7070 - 65,000 (\$195,000) COMMON STOCK. (FILE 333-5520 - SEP. 05)
(BR. 1)
- F-6 PERDIGAO S A COMERCIO E INDUSTRIA \ADRI, 48 WALL ST,
C/O BANK OF NEW YORK, NEW YORK, NY 10286 (212) 495-1727 - 5,000,000
(\$500,000) DEPOSITARY RECEIPTS FOR COMMON STOCK. (FILE 333-5522 - SEP. 06)
(BR. 99 - NEW ISSUE)
- F-10 RENAISSANCE ENERGY LTD, 3000 425 1ST ST SW, CALGARY, ALBERTA CANADA, A0
(403) 750-1400 - 1,200,000 (\$33,768,000) FOREIGN COMMON STOCK. (FILE
333-5524 - SEP. 09) (BR. 4 - NEW ISSUE)
- F-9 CANADIAN NATIONAL RAILWAY CO, 935 DE LA GAUCHETIERE ST W,
MONTREAL QUEBEC CANADA H3B 2M9, A8 (514) 399-5430 - 108,288,000
(\$108,288,000) FOREIGN GOVERNMENT AND AGENCY DEBT. (FILE 333-5526 -
SEP. 09) (BR. 5)
- S-1 AMERICAN MEDSERVE CORP, 184 SHUMAN BLVD, STE 200, NAPERVILLE, IL 60563
(708) 717-2904 - 6,160,250 (\$92,408,250) COMMON STOCK. (FILE 333-11667 -
SEP. 10) (NEW ISSUE)

- S-8 CPI AEROSTRUCTURES INC, 200A EXECUTIVE DR, EDGEWOOD, NY 11717
(516) 586-5200 - 577,836 (\$1,214,137.93) COMMON STOCK. (FILE 333-11669 -
SEP. 09) (BR. 5)
- S-8 SUBURBAN LODGES OF AMERICA INC, 120 INTERSTATE NORTH PARKWAY EAST,
STE 120, ATLANTA, GA 30339 (770) 951-9511 - 750,000 (\$16,410,000)
COMMON STOCK. (FILE 333-11671 - SEP. 09) (BR. 5)
- S-4 HOLOGIC INC, 590 LINCOLN ST, WALTHAM, MA 02154 (617) 890-2300 - 4,901
(\$153,802.02) COMMON STOCK. (FILE 333-11677 - SEP. 10) (BR. 1)
- S-8 NORTH AMERICAN RESORTS INC, 315 EAST ROBINSON ST, ORLANDO, FL 32801
(407) 841-1917 - 4,600,000 (\$322,000) COMMON STOCK. 60,000 (\$42,000)
PREFERRED STOCK. (FILE 333-11679 - SEP. 10) (BR. 5)
- S-8 COMPUTRON SOFTWARE INC, MEADOWS OFFICE COMPLEX, 301 RT 17 NORTH,
RUTHERFORD, NJ 07070 (201) 935-3400 - 1,500,000 (\$5,812,500) COMMON STOCK.
(FILE 333-11681 - SEP. 10) (BR. 3)
- S-8 ATLANTIC ENERGY INC, 6801 BLACK HORSE PIKE, EGG HARBOR TOWNSHIP, NJ
08234 (609) 645-4518 - 25,000 (\$446,875) COMMON STOCK. (FILE 333-11683 -
SEP. 10) (BR. 4)
- S-8 ELECTRONICS FOR IMAGING INC, 2855 CAMPUS DR, SAN MATEO, CA 94403
(415) 286-8600 - 950,000 (\$60,562,500) COMMON STOCK. (FILE 333-11685 -
SEP. 10) (BR. 3)
- S-3 INACOM CORP, 200 FARNAM EXECUTIVE CNTR, 10810 FARNAM DR, OMAHA, NE 68154
(402) 392-3900 - 55,250,000 (\$55,250,000) CONVERTIBLE DEBENTURES AND NOTES.
(FILE 333-11687 - SEP. 10) (BR. 4)
- S-8 INTERNATIONAL BANCSHARES CORP, 1200 SAN BERNARDO AVE, PO BOX 1359,
LAREDO, TX 78040 (210) 722-7611 - 300,000 (\$12,300,000) COMMON STOCK.
(FILE 333-11689 - SEP. 10) (BR. 7)
- S-8 CYTOCLONAL PHARMACEUTICS INC /DE/, 9000 HARRY HINES BLVD, DALLAS, TX
75235 (214) 353-2922 - 750,000 (\$2,906,250) COMMON STOCK. (FILE 333-11691
- SEP. 10) (BR. 9)
- S-1 AMERICAN CRYSTAL SUGAR CO /MN/, 101 N 3RD ST, MOORHEAD, MN 56560
(612) 202-8110 - 500 (\$5,000) COMMON STOCK. 20,729 (\$31,093,500)
PREFERRED STOCK. (FILE 333-11693 - SEP. 10) (BR. 2)
- S-8 EXIDE CORP, 1400 N WOODLAND AVE, BLOOMFIELD HILL, MI 48304
(810) 258-0080 - 20,000 (\$548,800) COMMON STOCK. (FILE 333-11695 -
SEP. 10) (BR. 6)
- S-8 RAYTEL MEDICAL CORP, 2755 CAMPUS DRIVE, SUITE 200, SAN MATEO, CA 94403
(415) 349-0800 - 1,884,342 (\$17,851,245.39) COMMON STOCK. (FILE 333-11697
- SEP. 10) (BR. 1)
- S-2 SUN LIFE ASSURANCE CO OF CANADA US, SC 1335 ONE SUN LIFE EXECUTIVE PARK,
WELLESLEY HILLS, MA 02181 (617) 237-6030 - \$50,000,000
VARIABLE ANNUITY ISSUES. (FILE 333-11699 - SEP. 10) (BR. 20)
- S-8 SAWTEK INC \FL/, 1818 SOUTH HIGHWAY 441, APOPKA, FL 32703 (407) 886-8860
- 500,000 (\$12,875,000) COMMON STOCK. (FILE 333-11701 - SEP. 10) (BR. 6)
- S-3 TRITON ENERGY LTD, C/O TRITON ENERGY CORP,
6688 N CENTRAL EXPRESSWAY SUITE 1400, DALLAS, TX 75206 (809) 949-0050
(FILE 333-11703 - SEP. 10) (BR. 4)
- S-3 SEACOR HOLDINGS INC, 11200 WESTHEIMER STE 850, HOUSTON, TX 77042
(713) 782-5990 - 1,176,646 (\$54,787,579.38) COMMON STOCK. (FILE 333-11705
- SEP. 10) (BR. 5)
- S-4 CRANE CO /DE/, 100 FIRST STAMFORD PLACE, STAMFORD, CT 06902
(203) 363-7300 - 8,414,130 (\$92,555,430) COMMON STOCK. (FILE 333-11707 -
SEP. 10) (BR. 6)
- S-1 GIGA INFORMATION GROUP INC, ONE LONGWATER CIRCLE, NORWELL, MA 02061 -
\$50,600,000 COMMON STOCK. (FILE 333-11711 - SEP. 10)

- SB-2 YOUNG MINDS INC, 1910 ORANGE TREE LANE, REDLANDS, CA 92374
(909) 335-1350 - \$16,445,000 COMMON STOCK. (FILE 333-11713 - SEP. 10)
- S-8 SHONEYS INC, 1727 ELM HILL PIKE, NASHVILLE, TN 37210 (615) 391-5201 -
5,000,000 (\$48,125,000) COMMON STOCK. (FILE 333-11715 - SEP. 11) (BR. 2)
- S-8 SHONEYS INC, 1727 ELM HILL PIKE, NASHVILLE, TN 37210 (615) 391-5201 -
620,000 (\$13,559,400) COMMON STOCK. (FILE 333-11717 - SEP. 11) (BR. 2)
- S-3 BARRINGER LABORATORIES INC, 15000 WEST 6TH AVE, STE 300, GOLDEN, CO
80401 (303) 277-1687 - 644,706 (\$805,883) COMMON STOCK. (FILE 333-11719 -
SEP. 11) (BR. 1)
- S-3 NEIMAN MARCUS GROUP INC, 27 BOYLSTON ST, P O BOX 9187, CHESTNUT HILL, MA
02167 (617) 232-0760 - 9,200,000 (\$297,850,000) COMMON STOCK. (FILE
333-11721 - SEP. 11) (BR. 2)
- SB-2 GLOBAL MED TECHNOLOGIES INC, 12600 W COLFAX, SUITE 500 A, LAKEWOOD, CO
80215 (303) 238-2000 - 2,300,000 (\$13,800,000) COMMON STOCK. 1,250,001
(\$575,100) WARRANTS, OPTIONS OR RIGHTS. 2,582,443 (\$18,394,658)
COMMON STOCK. (FILE 333-11723 - SEP. 11) (BR. 1)
- S-3 OCCIDENTAL PETROLEUM CORP /DE/, 10889 WILSHIRE BLVD, LOS ANGELES, CA
90024 (310) 208-8800 - 3,493,427 (\$81,877,195) COMMON STOCK. (FILE
333-11725 - SEP. 11) (BR. 4)



U.S. Securities and Exchange Commission
Washington, D.C. 20549 (202) 942-0020

News
Release

FOR IMMEDIATE RELEASE

96-109

COMMISSION FILES AMICUS BRIEF IN
UNITED STATES V. JAMES HERMAN O'HAGAN

Washington, D.C., September 17, 1996 -- The General Counsel of the Securities and Exchange Commission, Richard H. Walker, announced that on September 16 the Commission submitted for filing a friend of the court brief in the United States Court of Appeals for the Eighth Circuit, supporting the United States' petition for rehearing and suggestion for rehearing en banc. The Commission filed a motion seeking leave of the court to file the brief. In O'Hagan, a three-judge panel of the court of appeals rejected the "misappropriation" theory of insider trading under Section 10(b) of the Exchange Act and the Commission's Rule 10b-5. In so holding, the panel rejected the decisions of the Second, Seventh and Ninth Circuit Courts of Appeals, which have all accepted the misappropriation theory, and followed the recent decision of the Fourth Circuit Court of Appeals in United States v. Bryan.

The panel also invalidated, as beyond the Commission's authority, the Commission's Rule 14e-3, which prohibits insider trading in connection with tender offers. This holding conflicts with the decisions of three other circuit courts--the Second, Seventh, and Tenth Circuit Courts of Appeals--which have upheld the validity of Rule 14e-3.

The Commission's brief urges the Eighth Circuit to rehear the O'Hagan case en banc and to follow the decisions of those courts which have upheld the use of these important tools in the Commission's attack on insider trading.

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FOR IMMEDIATE RELEASE

96-111

COMMISSION ADOPTS ELIMINATION OF IOAA FEES

Washington, D.C., September 17, 1996 -- The Securities and Exchange Commission today announced the elimination of each of the user fees currently collected under the Independent Offices Appropriations Act of 1952 in conjunction with rules under the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act, the Investment Company Act and the Investment Advisers Act. These fees were first adopted in 1972 to help pay the cost of agency operations.

With the encouragement of Commerce Committee Chairman Thomas Bliley, the Commission is eliminating these fees for two reasons. First, the Commission is committed to eliminate unnecessary regulatory costs imposed on the capital formation process. Second, the collection of these fees imposes a disproportionate cost on the Commission. In 1995, these fees represented less than 2% of the total fee revenue collected by the Commission. However, the collection of these fees represented 50% of the total number of fee payments processed by Commission staff. Recordkeeping for these fees was disproportionately costly.

Chairman Levitt stated today, "Running the SEC is no different than running a business. As any CEO would tell you, if you are spending 50% of your effort collecting 2% of your revenue, you need to rethink your priorities."

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