

SEC NEWS DIGEST

Issue 97-23

February 4, 1997

ENFORCEMENT PROCEEDINGS

COMMISSION BARS BENJAMIN FRANKLIN BUSH, III AND REVOKES REGISTRATION OF BEN BUSH INVESTMENT MANAGEMENT, INC.

The Commission instituted a public administrative proceeding against Benjamin Franklin Bush, III (Bush) and Ben Bush Investment Management, Inc. (BBIM) pursuant to Sections 203(e) and 203(f) of the Advisers Act. Simultaneous with the institution of the proceeding, Bush and BBIM submitted Offers of Settlement in which, while neither admitting nor denying the Commission's findings, except they admit the entry of the injunction, Bush consented to the entry of an Order barring him from the securities industry, and BBIM consented to the entry of an order revoking its registration. The Order was based on permanent injunctions entered against Bush and BBIM for violating the antifraud, books and records, custody and possession, and registration filing provisions of the federal securities laws. The Commission's complaint alleges that from at least January 1995 to September 1996, Bush and BBIM were commingling and misappropriating client funds, maintaining custody of client assets without complying with the appropriate asset protection provisions, failing to maintain accurate records, and making false representations on various statements filed with the Commission. In addition, Bush also used forged brokerage statements to solicit clients' business. (Rel. IA-1612)

BENJAMIN FRANKLIN BUSH, III AND BEN BUSH INVESTMENT MANAGEMENT, INC.
PERMANENTLY ENJOINED

On January 24, the United States District Court for the Central District of California entered Judgments of Permanent Injunction and Other Relief against Benjamin Franklin Bush, III and his investment firm, Ben Bush Investment Management, Inc. The defendants consented to the entry of the judgments, which also provide that the defendants will pay disgorgement, prejudgment interest, and civil penalties in amounts subsequently to be determined by the Court, without admitting or denying the Commission's allegations.

The complaint alleged that defendants violated Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 204, 206(1), 206(2), 206(4) and 207 of the Advisers Act and Rules 204-1(b)(2), 204-2(a), 204-2(b) and 206(4)-2

thereunder by commingling and misappropriating client funds, maintaining custody of client assets without complying with the appropriate asset protection provisions, failing to maintain accurate records, and making false representations on various statements filed with the Commission. [SEC v. Benjamin Franklin Bush, III, and Ben Bush Investment Management, Inc., Civil Action No. 96-6748, RSWL, Ex, C.D. Cal.] (LR-15241)

CEASE AND DESIST ORDER ENTERED AGAINST JERRY SILVA

The Commission announced the issuance of an Order pursuant to Section 21C of the Securities Exchange Act of 1934 (Exchange Act) against Jerry Silva (Silva), requiring him to cease and desist from committing or causing any violations of, or any future violations of, Sections 13(d) and 16(a) of the Exchange Act and Rules 13d-1, 13d-2, 16a-2 and 16a-3 promulgated thereunder. Silva, without admitting or denying the allegations in the Commission's Order, consented to its entry. Silva is a former officer, director, and Chairman of the Board of Directors of Communications & Entertainment Corporation (ComEnt). Silva founded Double Helix, Inc. (Double Helix) and is a former officer, director and Chairman of its Board. Silva is a former director of Odyssey Entertainment LTD (Odyssey). Silva beneficially owned more than ten percent of the equity securities of ComEnt and Double Helix. The shares of ComEnt are traded on the OTC Bulletin Board.

The Order finds that Silva failed for periods ranging from one month to more than five years and ten months to file eight amendments to his Schedule 13D reporting changes in the information with respect to his beneficial ownership of the common stock of Double Helix and ComEnt, and failed for periods ranging from two weeks to more than five years and eight months to file eleven Forms 4 reporting changes in his beneficial ownership of ComEnt's securities, and failed for periods ranging from two years and two months to five years and two months to file four Forms 5 for ComEnt securities. Silva failed for seven years and six months to file a Form 3 reporting his holdings of Double Helix, and failed for three months and two weeks and four months and three weeks to file two Forms 4 reporting changes in his beneficial ownership of Double Helix securities. Silva failed for three weeks to file a Form 3 reporting his holdings of Odyssey. The combined value of Silva's stock transactions in late Form 4 filings for ComEnt and Double Helix is approximately \$889,000. (Rel. 34-38228)

NICHOLAS PACE PERMANENTLY ENJOINED AND ORDERED TO DISGORGE \$742,500

The Commission announced that Nicholas J. Pace (Pace), formerly chief financial officer of Valley Systems, Inc. (Valley), an industrial cleaning company headquartered in Canal Fulton, Ohio, has been permanently enjoined from violating Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rules 10b-5, 13b2-1 and 13b2-2. Pace also was barred from serving as an officer and director of a public company, and ordered to disgorge \$742,500 plus prejudgment and postjudgment interest.

The complaint, filed on September 14, 1995, alleged that Pace engaged in a fraudulent scheme to understate Valley's expenses and overstate revenue, which resulted in Valley's filing three materially false quarterly reports. It also alleged that Pace recorded fictitious revenue in Valley's books and records and lied to Valley's auditors. Finally, the complaint alleged that Pace sold Valley common stock while he was in possession of material nonpublic information, thereby avoiding losses of \$742,500.

Pace consented to the sanctions without admitting or denying the allegations in the complaint. [SEC v. Nicholas J. Pace and Eugene R. Valentine, USDC, ND Ohio, Civil Action No. 5:95CV1999, Dowd] (LR-15240; AAE Rel. 875)

FINAL JUDGMENT BY DEFAULT ENTERED AGAINST DAVID FREITAG

The Commission announced that on January 23 the United States District Court for the Northern District of Illinois entered a Final Order Granting Permanent Injunction and Other Equitable Relief by Default against David E. Freitag (Freitag). The order enjoins Freitag from committing future violations of the registration and antifraud provisions of the federal securities laws. The Commission's complaint arose out of a Ponzi scheme Freitag operated between 1993 and 1995. Freitag defrauded at least 240 investors of nearly \$7 million. Freitag told investors that he could obtain immediate returns of up to 10% and guaranteed annual returns of up to 25% by pooling investors' money and then investing the money in mutual funds. In fact, Freitag did not invest any of the money in any mutual funds. Instead, Freitag used investors' funds to pay returns to earlier investors and for his personal expenses.

The securities that Freitag offered were not registered. Additionally, Freitag was not registered as a broker in the operation of his scheme. [SEC v. David E. Freitag, N.D.Ill. No. 96 C 50345] (LR-15242)

COMMISSION FILES AMICUS BRIEF IN SILICON GRAPHICS, INC. SECURITIES LITIGATION

The Commission announced that it has submitted for filing a friend of the court brief in In re Silicon Graphics, Inc. Securities Litigation, a securities fraud class action case pending before the U.S. District Court for the Northern District of California. The court dismissed the plaintiffs' original complaint after finding that it did not meet the strict pleading requirements imposed by the Private Securities Litigation Reform Act of 1995. One of the grounds for dismissing the complaint was the court's determination that under the Reform Act it was no longer sufficient for a complaint to allege reckless behavior on the part of defendants. Rather, the court held, plaintiffs must allege "conscious behavior" by the defendants and create a strong inference of "knowing" misrepresentations. With respect to some of the allegations, the Court gave leave to the plaintiffs to amend the complaint. The amended complaint is now the subject of a new motion to dismiss.

The Commission's brief urges the district court to reconsider its earlier decision and to hold that recklessness is sufficient for liability under Section 10(b) of the Securities Exchange Act of 1934 and the Commission's Rule 10b-5. In the Commission's view, the Reform Act made no change in the definition of the state of mind required to be shown in a private securities fraud action (except in the case of certain forward-looking statements entitled to the protection of a safe harbor). In adopting a strict procedural standard for pleading state of mind in private actions, Congress did not intend to alter the substantive scope of the securities laws by eliminating recklessness in such cases. [In re Silicon Graphics, Inc. Securities Litigation, Lead Case No. C 96-0393 FMS, ND Cal.] (LR-15243)

HOLDING COMPANY ACT RELEASES

GPU, INC.

A notice has been issued giving interested persons until February 24 to request a hearing on a proposal by GPU, Inc. (GPU) to allow GPU to issue 200,000 shares of common stock so that GPU may issue such stock to qualified outside directors as compensation under a new deferred unit stock plan for outside directors (New Plan). GPU also requests authorization to solicit proxies from its stockholders for approval of the New Plan at its 1997 annual meeting. (Rel. 35-26658)

ENTERGY CORPORATION, ET AL.

A notice has been issued giving interested persons until February 24 to request a hearing on a proposal by Entergy Corporation, a registered public-utility holding company, and its nonutility subsidiary company, Entergy Enterprises, Inc., to form and finance in amounts of up to \$350 million through December 31, 1997, directly and indirectly, various subsidiaries that will engage in nonutility businesses. (Rel. 35-26658)

EASTERN UTILITIES ASSOCIATES, ET AL.

A notice has been issued giving interested persons until February 24 to request a hearing on a proposal by Eastern Utilities Associates (EUA), a registered holding company, and its subsidiaries, Blackstone Valley Electric Company, Eastern Edison Company, Montaup Electric Company, and Newport Electric Corporation (collectively, Declarants), concerning financing authority. Declarants propose to enter into a revolving credit facility (Facility), through a period ending five years after the closing date of the agreement, aggregating up to \$150 million. EUA also proposes to guarantee up to \$75 million of borrowings by EUA Cogenex Corporation, a nonutility subsidiary, under the Facility. (Rel. 35-26658)

ENTERGY CORPORATION

An order has been issued authorizing Entergy Corporation, a registered holding company, to issue and sell shares of Entergy common stock to employees under an employee stock option plan, through March 31, 2000. (Rel. 35-26659)

SELF-REGULATORY ORGANIZATIONS

APPROVAL OF PROPOSED RULE CHANGE

The Commission has granted approval of proposed rule changes submitted by the New York Stock, Inc., American Stock Exchange, Inc., Boston Stock Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., and the Philadelphia Stock Exchange Inc., (SR-NYSE-96-38, SR-Amex-96-49, SR-BSE-96-12, SR-CBOE-96-78, SR-CHX-96-33, and SR-Phlx-97-03) relating to amendments to trading halts due to extraordinary market volatility (certain market-wide circuit breaker provisions). Publication of the order is expected in the Federal Register during the week of February 3. (Rel. 34-38221)

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.

SB-2 WHEELS SPORTS GROUP INC, 1368 SALISBURY ROAD, MOCKSVILLE, NC 27028
(704) 634-3000 - 1,552,500 (\$10,764,000) COMMON STOCK. 180,000 (\$790,200)
WARRANTS, OPTIONS OR RIGHTS. 45,000 (\$351,000) COMMON STOCK. (FILE
333-6340 - JAN. 27) (BR. 9 - NEW ISSUE)

F-6 MENZIES GOLD NL /ADR/, 31 WEST 52ND ST,
C/O DEUTSCHE BANK AG-NEW YORK BRANCH, NEW YORK, NY 10019 (212) 469-6744 -
10,000,000 (\$500,000) DEPOSITARY RECEIPTS FOR COMMON STOCK. (FILE
333-6344 - JAN. 27) (BR. 99 - NEW ISSUE)

S-3 ESTEE LAUDER COMPANIES INC, 767 FIFTH AVE, NEW YORK, NY 10153
(212) 572-4200 - 6,514,750 (\$324,108,812.50) COMMON STOCK. (FILE
333-20521 - JAN. 28) (BR. 2)

S-8 VAIL RESORTS INC, P O BOX 7, C/O ANACONDA TOWER, VAIL, CO 81658
(970) 845-2950 - 250,000 (\$5,250,000) COMMON STOCK. (FILE 333-20523 -
JAN. 28) (BR. 5)

SB-2 XETAL INC, 3590 OCEANSIDE RD, OCEANSIDE RD, NY 11572 (516) 594-0005 -
450,000 (\$2,700,000) COMMON STOCK. 900,000 (\$90,000)
WARRANTS, OPTIONS OR RIGHTS. 4,055,000 (\$24,330,000) COMMON STOCK.
3,155,000 (\$363.50) WARRANTS, OPTIONS OR RIGHTS. (FILE 333-20525 -

JAN. 28)

- S-3 EXPERT SOFTWARE INC, 800 DOUGLAS RD, STE 750 EXECUTIVE TOWER,
CORAL GABLES, FL 33134 (305) 567-9990 - 315,409 (\$1,320,617.50)
COMMON STOCK. (FILE 333-20529 - JAN. 28) (BR. 3)
- S-3 DATA SYSTEMS NETWORK CORP, 34705 W TWELVE MILE RD, STE 300,
FARMINGTON HILLS, MI 48331 (810) 489-7117 - 540,000 (\$4,421,250)
COMMON STOCK. (FILE 333-20531 - JAN. 28) (BR. 3)
- S-8 MEDICAL TECHNOLOGY & INNOVATIONS INC /FL/,
1428 BRICKELL AVENUE, 8TH FLOOR, MIAMI, FL 33131 (717) 892-6770 - 35,000
(\$21,875) COMMON STOCK. (FILE 333-20533 - JAN. 28) (BR. 5)
- S-8 HEALTH POWER INC /DE/, 1209 ORANGE ST, WILMINGTON, DE 43017
(614) 461-9900 - 35,000 (\$133,700) COMMON STOCK. (FILE 333-20535 -
JAN. 28) (BR. 1)
- S-3 FAIR ISAAC & COMPANY INC, 120 N REDWOOD DR, SAN RAFAEL, CA 94903
(415) 472-2211 - 21,000 (\$879,375) COMMON STOCK. (FILE 333-20537 -
JAN. 28) (BR. 6)
- S-8 WILD OATS MARKETS INC, 1645 BROADWAY, BOULDER, CO 80302 (303) 440-5220
- 951,123 (\$14,970,446) COMMON STOCK. (FILE 333-20539 - JAN. 28) (BR. 2)
- S-3 FIRST PACIFIC NETWORKS INC, 871 FOX LANE, SAN JOSE, CA 95131
(408) 943-7600 - 6,456,882 (\$2,518,184) COMMON STOCK. (FILE 333-20541 -
JAN. 28) (BR. 3)
- SB-2 PROTOSOURCE CORP, 2300 TULARE STREET, STE 210, FRESNO, CA 93721
(209) 448-8040 - 6,400,000 (\$1,984,000) COMMON STOCK. 4,400,000
(\$264,000) WARRANTS, OPTIONS OR RIGHTS. 4,400,000 (\$1,100,000)
COMMON STOCK. (FILE 333-20543 - JAN. 28) (BR. 3)
- S-3 OVERSEAS PARTNERS LTD, CRAIG APPIN HOUSE, 8 WESLEY STREET,
HAMILTON 5 BERMUDA, DO (809) 295-0788 - 5,000,000 (\$71,200,000)
COMMON STOCK. (FILE 333-20545 - JAN. 28) (BR. 5)
- S-3 MEDPLUS INC /OH/, 8805 GOVERNORS HILL DR, STE 100, CINCINNATI, OH 45249
(513) 583-0500 - 113,523 (\$709,518.75) COMMON STOCK. (FILE 333-20547 -
JAN. 28) (BR. 9)
- S-8 POWERWAVE TECHNOLOGIES INC, 2026 MCGAW AVE, IRVINE, CA 92614
(714) 757-0530 - 4,138,615 (\$47,351,778) COMMON STOCK. (FILE 333-20549 -
JAN. 28) (BR. 3)
- S-3 SEARCH CAPITAL GROUP INC, 700 N PEARL ST STE 400,
PLZ OF THE AMERICAS NORTH TOWER, DALLAS, TX 75201 (214) 965-6000 - 638,514
(\$10,116,425) COMMON STOCK. (FILE 333-20551 - JAN. 28) (BR. 7)
- S-3 INTERNATIONAL ASSETS HOLDING CORP, 250 PARK AVENUE SOUTH, SUITE 200,
WINTER PARK, FL 32789 (407) 629-1400 - 468,386 (\$1,405,158) COMMON STOCK.
(FILE 333-20553 - JAN. 28) (BR. 9)
- S-3 PEOPLESOFT INC, 4440 ROSEWOOD DR, PLEASANTON, CA 94588 (510) 225-3000 -
358,482 (\$19,268,408) COMMON STOCK. (FILE 333-20555 - JAN. 28) (BR. 3)
- S-8 INTERNATIONAL POST LTD, 545 FIFTH AVE, NEW YORK, NY 10017 (212) 687-4000
- 878,818 (\$5,318,919.30) COMMON STOCK. (FILE 333-20557 - JAN. 28)
(BR. 5)
- SB-2 IRATA INC, 6150 RICHMOND, STE 116, HOUSTON, TX 77057 (713) 785-4433 -
8,233,500 (\$7,718,906) COMMON STOCK. (FILE 333-20559 - JAN. 28) (BR. 9)
- S-3 VIRGINIA ELECTRIC & POWER CO, ONE JAMES RIVER PLAZA, RICHMOND, VA 23219
(804) 771-3000 - 400,000,000 (\$400,000,000) STRAIGHT BONDS. (FILE
333-20561 - JAN. 28) (BR. 4)
- S-8 CAMERON FINANCIAL CORP /DE/, 123 EAST THIRD, PO BOX 555, CAMERON, MO
64429 (816) 623-2154 - 121,077 (\$1,949,340) COMMON STOCK. (FILE 333-20563
- JAN. 28) (BR. 7)

S-3 STERLING COMMERCE INC, 8080 NORTH CENTRAL EXPRESSWAY, STE 1100, DALLAS, TX 75206 (214) 891-8680 - 14,375,000 (\$510,312,500) COMMON STOCK. (FILE 333-20565 - JAN. 28) (BR. 3)

S-3 MARQUETTE ELECTRONICS INC, 8200 W TOWER AVE, MILWAUKEE, WI 53223 (414) 355-5000 - 3,162,500 (\$66,017,188) COMMON STOCK. (FILE 333-20567 - JAN. 28) (BR. 1)

S-3 GENERAL DATACOMM INDUSTRIES INC, ROUTE 63, MIDDLEBURY, CT 06762 (203) 574-1118 - 800,000 (\$20,000,000) PREFERRED STOCK. (FILE 333-20569 - JAN. 28) (BR. 3)

S-4 INFOCURE CORP, 2970 CLAIRMONT ROAD, SUITE 950, ATLANTA, GA 30329 (404) 633-0046 - 3,862,385 (\$42,486,235) COMMON STOCK. (FILE 333-20571 - JAN. 28) (BR. 9)

S-8 PICK COMMUNICATIONS CORP, 115 ROUTE 46 WEST, WAYNE INTERCHANGE PLAZA II, WAYNE, NJ 07470 (201) 334-2929 - 5,400,000 (\$3,465,000) COMMON STOCK. (FILE 333-20573 - JAN. 28) (BR. 3)

S-8 SPARTA PHARMACEUTICALS INC, PENNSYLVANIA BUSINESS CAMPUS, ROCK PLAZA III 111 ROCK ROAD, HORSHAM, PA 19044 (215) 442-1700 - 2,500,000 (\$4,567,813.26) COMMON STOCK. (FILE 333-20575 - JAN. 28) (BR. 1)

S-1 TRITON SYSTEMS INC / FA, 522 EAST RAILROAD STREET, LONG BEACH, MS 39560 (601) 868-1317 - 4,830,000 (\$62,790,000) COMMON STOCK. (FILE 333-20577 - JAN. 28) (BR. 6 - NEW ISSUE)

S-1 TRITEAL CORP, 2011 PALOMAR AIRPORT RD, STE404, CARLSBAD, CA 92009 (619) 930-2077 - 2,415,000 (\$44,073,750) COMMON STOCK. (FILE 333-20579 - JAN. 28) (BR. 3)

S-8 TELULAR CORP, ATTN ACCOUNTS PAYABLE, 920 DEERFIELD PKWY, BUFFALO GROVE, IL 60089 (847) 465-4500 - 2,500,000 (\$11,064,240) COMMON STOCK. (FILE 333-20581 - JAN. 28) (BR. 3)

S-1 VISIGENIC SOFTWARE INC, 951 MARINERS ISLAND BLVD, SUITE 120, SAN MATEO, CA 94404 (415) 286-1900 - 2,300,000 (\$31,193,750) COMMON STOCK. (FILE 333-20583 - JAN. 28) (BR. 3)

S-3 FORTUNE PETROLEUM CORP, 515 WEST GREENS ROAD, SUITE 720, HOUSTON, TX 77067 (713) -87-2-11 - 618,000 (\$1,738,125) COMMON STOCK. (FILE 333-20585 - JAN. 29) (BR. 4)

S-3 ST MARY LAND & EXPLORATION CO, 1776 LINCOLN ST STE 1100, DENVER, CO 80203 (303) 861-8140 - 2,300,000 (\$65,693,750) COMMON STOCK. (FILE 333-20587 - JAN. 28) (BR. 4)

S-8 NATIONWIDE HEALTH PROPERTIES INC, 4675 MACARTHUR COURT STE 1170, NEWPORT BEACH, CA 92660 (714) 251-1211 - 800,000 (\$18,200,000) COMMON STOCK. (FILE 333-20589 - JAN. 28) (BR. 8)

S-3 CADENCE DESIGN SYSTEMS INC, 555 RIVER OAKS PKWY, SAN JOSE, CA 95134 (408) 943-1234 - 700,000 (\$2,717,607.50) COMMON STOCK. (FILE 333-20591 - JAN. 28) (BR. 3)



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

News
Release

FOR IMMEDIATE RELEASE

97-7

COMMISSION FILES AMICUS BRIEF IN SILICON GRAPHICS LITIGATION

Washington, D.C., February 4, 1997 -- The General Counsel of the Securities and Exchange Commission, Richard H. Walker, announced that the Commission yesterday submitted for filing a friend of the court brief in In re Silicon Graphics, Inc. Securities Litigation, a securities fraud class action case pending before the U.S. District Court for the Northern District of California. The court dismissed the plaintiffs' original complaint after finding that it did not meet the strict pleading requirements imposed by the Private Securities Litigation Reform Act of 1995. One of the grounds for dismissing the complaint was the court's determination that under the Reform Act it was no longer sufficient for a complaint to allege reckless behavior on the part of defendants. Rather, the court held, plaintiffs must allege "conscious behavior" by the defendants and create a strong inference of "knowing" misrepresentations.

The Commission's brief urges the district court to reconsider its earlier decision and to hold that recklessness is sufficient for liability under Section 10(b) of the Securities Exchange Act of 1934 and the Commission's Rule 10b-5. In the Commission's view, the Reform Act made no change in the definition of the state of mind required to be shown in a private securities fraud action, except in the case of certain forward-looking statements entitled to the protection of a "safe harbor". In adopting a strict procedural standard for pleading state of mind in private actions, Congress did not intend to alter the substantive scope of the securities laws by eliminating recklessness in such cases.

The Commission has consistently supported a recklessness standard for Section 10(b) liability in both Commission and private actions under the federal securities laws. Such a standard is needed to protect investors and the securities markets from fraudulent conduct and to protect the integrity of the disclosure process. The recklessness standard discourages deliberate ignorance and also prevents defendants from escaping liability simply because of the difficulty of proving knowledge or conscious intent on the basis of the circumstantial evidence frequently used in securities fraud cases. A retreat from the

recklessness standard would greatly erode the deterrent effect of Section 10(b) actions.

In its brief, the Commission points out that every court of appeals that has considered the question of the required degree of state of mind, has held that recklessness is sufficient to establish liability under Section 10(b) and Rule 10b-5. A hearing on the defendants' motion to dismiss the amended complaint has been scheduled for March 21, 1997.

Mr. Walker said, "While Congress certainly sought to strengthen the pleading requirements in private securities fraud actions, it clearly did not intend to eliminate liability for reckless behavior. The recklessness standard requires a high level of culpability and has long been recognized by the courts as sufficient for a finding of fraud."