

# SEC NEWS DIGEST

Issue 97-233

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## COMMISSION ANNOUNCEMENTS

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## COMMISSION MEETINGS

### CLOSED MEETING - THURSDAY, DECEMBER 11, 1997 - 2:30 P.M.

The subject matter of the closed meeting scheduled for Thursday, December 11, 1997, at 2:30 p.m., will be: Institution and settlement of injunctive actions; and Institution and settlement of administrative proceedings of an enforcement nature.

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 at (202) 942-7070.

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## ENFORCEMENT PROCEEDINGS

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### LAZARD FRERES ORDERED TO PAY \$1 MILLION PENALTY

On December 3, the Commission instituted public administrative proceedings pursuant to Section 8A of the Securities Act of 1933 and Sections 15B(c)(2) and 21C of the Securities Exchange Act of 1934 against Lazard Freres & Co. LLC, a registered broker-dealer and municipal securities dealer. Without admitting or denying the findings contained in the Commission order, Lazard Freres consented to the issuance of the order, which finds that it willfully violated Section 17(a)(2) and (3) of the Securities Act of 1933, Sections 10(b), 15B(c)(1) and 17(a)(1) of the Securities Exchange Act of 1934 and Rules 10b-5 and 17a-3 thereunder, and Rules G-8, G-17 and G-20 of the Municipal Securities Rulemaking Board; directs it to cease and desist from future violations of those provisions; and orders it to pay a civil penalty of \$1 million.

In its order, the Commission found that Lazard Freres, through a former partner and former vice-president in its Municipal Finance Department, violated the antifraud and books and records provisions.

In particular, the order finds that the former partner and former vice-president made an undisclosed payment of \$41,936, through a consultant, to a financial advisor who recommended to his clients, the Fulton County (Georgia) Commission and the Fulton-Dekalb (Counties, Georgia) Hospital Authority (FDHA) that Lazard Freres be selected for underwriting business; that the former partner failed to disclose the use and compensation of a consultant in connection with Lazard Freres' selection in a 1992 municipal securities offering by the Duval County (Florida) School Board (DCSB), in violation of certain representations the former partner caused to be made in a contract with the DCSB; and that the former partner used third parties as conduits for political contributions in certain jurisdictions, under cover of false and misleading invoices. The Order relates to conduct alleged in the action (SEC v. Richard P. Poirier, Jr., James E. Eaton and Michael S. deVegter, Civil Action No. 1:97-CV-3478, N.D. Ga. 1997, LR-15565, November 20, 1997). Separately, Lazard Freres entered into a civil settlement with the United States arising from the Fulton County and FDHA transactions, pursuant to which Lazard Freres agreed to pay a civil settlement of \$10 million to the United States and approximately \$1 million in restitutionary payments to Fulton County and the FDHA. (Rel. Nos. 33-7480; 34-39388; File No. 3-9495)

COMMISSION SUSTAINS NASD DISCIPLINARY ACTION AGAINST CLINGER & CO., INC.  
AND NORMAN CLINGER

The Commission has sustained the NASD's disciplinary action against Clinger & Co., Inc. (Firm) of Houston, Texas, and Norman E. Clinger, the Firm's president and sole shareholder, but has remanded the matter to the NASD for reconsideration of the sanctions imposed.

The Commission agreed with the NASD's findings that Clinger and the Firm failed to keep accurate records as required by Commission Rule 17a-3 and failed to comply with the Commission's customer protection rule (Rule 15c3-3), which requires transactions with customers to be effectuated through one or more special bank accounts, and thereby violated Article III, Sections 1 and 21 of the NASD's Rules of Fair Practice.

The Commission found that Clinger and the Firm recognized as received certain revenue before that revenue was actually received pursuant to the accrual method of accounting required of broker-dealers by the Commission. In addition, the Commission found that Clinger and the Firm deposited one customer's money into the Firm's operating account, rather than into a special account for the benefit of the customer, as required by Commission Rule 15c3-3.

The Commission did not find Clinger's and the Firm's recordkeeping violations to be as widespread as did the NASD, however, and therefore remanded the matter to the NASD for reconsideration of the \$7,500 fine which the NASD imposed upon Clinger and the Firm. The Commission sustained the NASD's censure of Clinger and the Firm, as well as the NASD's requirement that the Firm retain a Financial and Operations Limited Principal. (Rel. 34-39390; File No. 3-9204)

CIVIL ACTION FILED AGAINST PETER CASERTA, SALVATORE MARINO AND DANA VERRILL, AND ADMINISTRATIVE PROCEEDING FILED AGAINST BRENT BERRY

The Commission today announced the filing of a complaint with the United States District Court for the Eastern District of New York against Peter T. Caserta, Salvatore T. Marino and Dana C. Verrill, former officers and directors of Spectrum Information Technologies, Inc. In the complaint, the Commission alleges that Caserta and Marino violated the antifraud provisions of the Securities Act, and the antifraud, reporting and recordkeeping provisions of the Exchange Act by recognizing as revenue fees from licensing agreements while those fees were largely offset by expenses from companion advertising agreements; prematurely recognizing revenue from certain licensing agreements before the agreements were designed; recognizing as revenue amounts due from certain licensees that were contingent on future engineering efforts to be performed by Spectrum; issuing materially false and misleading financial statements in its Forms 10-Q and a registration statement filed from June 1993 through December 1, 1993; and selling Spectrum's common stock while in possession of material nonpublic information about the company. The Commission further alleges that Caserta and Verrill violated the registration provisions of the Securities Act by offering and selling Spectrum securities for which no registration statement was in effect.

The Commission's action seeks judgments permanently enjoining defendants from further violating the securities laws; requiring each defendant to pay appropriate civil penalties under the securities laws; requiring Caserta and Marino to disgorge all losses avoided as a result of their trading on insider information, plus pre-judgment interest; and permanently prohibiting Caserta and Marino from acting as a director or officer of any public company.

The Commission also instituted a related administrative proceeding pursuant to Section 8A of the Securities Act and Section 15(b)(6) of the Exchange Act against Brent W. Berry. The Commission found that Berry, while employed as a registered representative of Toluca Pacific Securities Corporation, violated the registration provisions of the Securities Act by acting as an underwriter in an unregistered distribution of Spectrum common stock. Without admitting or denying the Commission's findings, Berry consented to the issuance of an order requiring him to cease and desist, censuring him, and requiring him to pay a \$25,000 penalty. [SEC v. Peter T. Caserta, Salvatore T. Marino and Dana C. Verrill, USDC, EDNY, Civil Action No. CV 97-7091] (LR-15578, AAE Rel. 993); Administrative Proceedings - (Rel. Nos. 33-7481; 34-39396; File No. 3-9496)

IN THE MATTER OF KPMG PEAT MARWICK LLP

The Commission announced today that it had instituted public administrative proceedings to determine if the public accounting firm KPMG Peat Marwick engaged in improper professional conduct and violated and caused violations of the federal securities laws in connection with its audit of the financial statements of a client from which it lacked independence.

In the Order Instituting Proceedings, the Division of Enforcement and the Office of the Chief Accountant allege that, in early 1995, Peat Marwick organized and capitalized "KPMG BayMark" as a vehicle to engage in new lines of business, including the "corporate turnaround" business. Later in 1995, BayMark installed one of its four principals as the President and Chief Operating Officer of Porta Systems Corp., a financially troubled Peat Marwick audit client. When Peat Marwick audited Porta's 1995 year-end financial statements, according to the allegations in the Order, Peat Marwick lacked independence from Porta because, among other things, Peat Marwick had loaned \$100,000 to the President/COO of its audit client, Porta, and Peat Marwick was entitled, through its relationship with BayMark, to a percentage of the earnings of Porta.

A hearing will be scheduled to determine whether the allegations against Peat Marwick are true and, if so, what remedial actions, if any, are appropriate. (Rel. 34-39400; AAE Rel. 994; File No. 3-9500)

ADMINISTRATIVE PROCEEDING INSTITUTED AGAINST A. MORGAN MAREE, JR. & ASSOCIATES, INC., AND HUGH ROBERTSON

The Commission announced that on December 4 it issued an Order Instituting Public Administrative and Cease and Desist Proceeding (Order) against A. Morgan Maree, Jr. & Associates, Inc. (AMM), a registered investment adviser, and Hugh Duff Robertson (Robertson), AMM's president and sole owner. The Commission's Order alleges that AMM accepted undisclosed fees from a non-client in connection with giving advice to advisory clients; engaged in principal transactions with advisory clients without disclosing to its advisory clients the capacity in which it was acting and failing to obtain the written consent of the advisory clients prior to the completion of the transactions; and filed false statements with the Commission in Form ADV submissions regarding this conduct. The Order further alleges that Robertson aided and abetted and caused AMM's violative conduct and filed false statements with the Commission in Form ADV submissions regarding this conduct.

A hearing will be scheduled to take evidence on the staff's allegations and to afford the Respondents an opportunity to present any defenses thereto. The purpose of the hearing is to determine whether the allegations are true and whether any remedial action should be ordered by the Commission. (Rel. Nos. IA-1683; 34-39397; File No. 3-9497)

ADMINISTRATIVE PROCEEDING INSTITUTED AGAINST ARMSCOTT SECURITIES, LTD.

The Commission announced that on December 4 it instituted and simultaneously settled public administrative and cease and desist proceedings against Armscott Securities, Ltd. (Armscott), a registered broker-dealer. The Commission alleged that Armscott charged its clients undisclosed markups and markdowns in connection with the purchase and sale of government agency and municipal

securities which were excessive under the facts and circumstances of the transactions. The Order alleges that, between 1995 and 1997, customers were charged at least \$26,090 in excessive, undisclosed markups and markdowns in 20 bond transactions.

Armstrong consented to the entry of a cease and desist order, agreed to pay disgorgement with prejudgment interest totalling \$7,016.41, and undertook to withdraw its registration with the Commission as a broker-dealer. A civil money penalty was not imposed based on Armstrong's demonstrated inability to pay. Armstrong consented to the administrative order without admitting or denying the Commission's allegations. (Rel. Nos. 33-7482; 34-39398; File No. 3-9498)

#### ADMINISTRATIVE PROCEEDING INSTITUTED AGAINST MARK DAVID ANDERSON

The Commission announced that on December 4 it issued an Order Instituting Public Administrative and Cease and Desist Proceeding (Order) against Mark David Anderson (Anderson), the former president of Armstrong Securities, Ltd. (Armstrong), and the former president and owner of Annandale Securities, Inc. (Annandale), a defunct broker-dealer. The Commission's Order alleges that Anderson charged clients of Armstrong and Annandale undisclosed markups and markdowns in connection with the purchase and sale of United States Treasury, government agency, and municipal securities which were excessive under the facts and circumstances of the transactions. The Order alleges that, between 1992 and 1997, customers were charged at least \$129,624 in excessive, undisclosed markups and markdowns in 98 bond transactions.

A hearing will be scheduled to take evidence on the staff's allegations and to afford the Respondent an opportunity to present any defenses thereto. The purpose of the hearing is to determine whether the allegations are true and whether any remedial action should be ordered by the Commission. (Rel. Nos. 33-7483; 34-39399; File No. 3-9499)

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#### INVESTMENT COMPANY ACT RELEASES

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#### SELIGMAN CAPITAL FUND, ET AL.

A notice has been issued giving interested persons until December 29 to request a hearing on an application filed by Seligman Capital Fund, et al. for an order under Section 6(c) of the Investment Company Act granting an exemption from Sections 13(a)(2), 13(a)(3), 18(a), 18(c), 18(f)(1), 22(f), 22(g), and 23(a) of the Act and Rule 2a-7 under the Act, under Sections 6(c) and 17(b) of the Act granting an exemption from Section 17(a) of the Act, and under Section 17(d) of the Act and Rule 17d-1 under the Act to permit certain joint transactions. The order would permit certain registered investment companies to enter into deferred compensation arrangements with certain directors. (Rel. IC-22923 - December 3)

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## HOLDING COMPANY ACT RELEASES

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### WEST TEXAS UTILITIES COMPANY

A supplemental order has been issued authorizing West Texas Utilities Company, a wholly owned electric public-utility subsidiary company of Central and South West Corporation, a registered holding company, to extend its time period to issue and sell up to \$130 million of first mortgage bonds, through December 31, 2002. (Rel. 35-26787)

### CONECTIV, ET AL.

A notice has been issued giving interested persons until December 28 to request a hearing on a proposal by Conectiv, Inc. (Conectiv), a Delaware corporation not currently subject to the Act, and two utility companies Conectiv has proposed to acquire, Delmarva Power & Light Company and Atlantic City Electric Company, and all the non-utility subsidiaries associated with these companies, to engage in various financing transactions through December 31, 2000. (Rel. 35-26788)

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## SELF-REGULATORY ORGANIZATIONS

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### IMMEDIATE EFFECTIVENESS OF PROPOSED RULE CHANGE

The Philadelphia Stock Exchange filed a proposed rule change (SR-Phlx-97-50) amending its option rules by adopting a definition of "foreign broker-dealer" to ensure that foreign broker-dealer orders shall receive the same treatment as U.S. broker-dealer orders for option orders on the Exchange, as opposed to customer treatment. Publication of the notice in the Federal Register is expected during the week of December 8. (Rel. 34-39382)

### PROPOSED RULE CHANGE

The Options Clearing Corp. filed a proposed rule change (SR-OCC-97-11) that will amend OCC's by-laws to eliminate the requirements in OCC's stock loan/hedge system with respect to the accounts in which stock loan positions must be maintained. Publication of the proposal is expected in the Federal Register during the week of December 8. (Rel. 34-39386)

### APPROVAL OF PROPOSED RULE CHANGE

The Commission approved a proposed rule change filed by The Depository Trust Company (SR-DTC-97-13) that will allow DTC to enter into contracts with participants to provide customized custodian, transaction, and related processing services as a part of DTC's

existing branch deposit service. (Rel. 34-39387)

DELISTINGS GRANTED

An order has been issued granting the application of the New York Stock Exchange to strike from listing and registration Levitz Furniture Incorporated, Common Stock, \$0.01 Par Value. (Rel. 34-39384)

An order has been issued granting the application of the New York Stock Exchange to strike from listing and registration Isomedix, Inc., Common Stock, \$0.01 Par Value. (Rel. 34-39385)