

# sec news digest

Issue 87-138

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JUL 24 1987  
U.S. SECURITIES AND  
EXCHANGE COMMISSION

July 23, 1987

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## NOTICE OF COMMISSION MEETINGS

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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 closed meetings on Tuesdays, and open meetings on Thursday morning. Meetings on Wednesday, and if necessary on Thursday afternoons, will be either open or closed 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, NW, Washington, DC. 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.

### CLOSED MEETING - TUESDAY, JULY 28, 1987 - 2:30 p.m.

The subject matter of the July 28 closed meeting will be: Institution of injunctive action; Settlement of injunctive action; Settlement of administrative proceedings of an enforcement nature; Institution of an administrative proceedings of an enforcement nature; Amendment of an administrative proceeding.

### OPEN MEETING - THURSDAY, JULY 30, 1987 - 10:00 a.m.

The subject matter of the July 30 open meeting scheduled for 10:00 a.m. will be:

- (1) Consideration of whether to authorize publication of a release proposing for comment two alternative versions of a new Rule 433 which would allow, if certain conditions are met, the prospectus meeting the requirements of Section 10(a) of the Securities Act of 1933 (final prospectus) to be sent to an investor no later than five business days following the date a confirmation of sale is sent to an investor in a firm commitment offering of securities sold for cash. FOR FURTHER INFORMATION, PLEASE CONTACT Gerard S. DiFiore at (202) 272-2589.
- (2) Consideration of whether to authorize publication of a release proposing for comment proposed amendments to Rule 81 of the Commission's regulations on Information and Requests, which would permit immediate publication of interpretative and no-action letters written by the Commission's staff at the time such letters are sent or given to the requesting party, unless temporary confidential treatment is granted. FOR FURTHER INFORMATION, PLEASE CONTACT Michael Hyatte or Kenneth L. Wagner at (202) 272-2573.
- (3) Consideration of whether to authorize publication of a release which repropose for comment a revised Rule 701, new temporary Rules 702 and 703, and a revised Form 701 to provide an exemption from the registration requirements of the Securities Act of 1933 for offers and sales of securities pursuant to employee benefit plans or compensation contracts of issuers that are not subject to the reporting requirements of the Securities Exchange Act of 1934. FOR FURTHER INFORMATION, PLEASE CONTACT John D. Reynolds at (202) 272-2644.

### OPEN MEETING - THURSDAY, JULY 30, 1987 - 2:30 p.m.

The subject matter of the July 30 open meeting scheduled for 2:30 p.m. will be:

Oral argument on an appeal by Adrian Antoniu from the decision of an administrative law judge. FOR FURTHER INFORMATION, PLEASE CONTACT R. Moshe Simon at (202) 272-7400.

CLOSED MEETING - THURSDAY, JULY 30, 1987 - FOLLOWING THE 2:30 p.m. OPEN MEETING

The subject matter of the July 30 closed meeting will be: Post oral argument discussion.

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: Patrick Daugherty at (202) 272-3077

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## **RULES AND RELATED MATTERS**

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ADOPTION OF PROPOSED RULES 3a43-1 and 3a44-1

The Commission adopted Rules 3a43-1 and 3a44-1 under the Securities Exchange Act of 1934 to implement provisions of the Government Securities Act of 1986, which authorizes the Commission, after consultation with the Commodity Futures Trading Commission, to determine for purposes of exceptions in the definitions of government securities broker and government securities dealer that certain activities are incidental to the futures-related business of certain persons directly or indirectly regulated by the Commodity Futures Trading Commission. (Rel. 34-24726)

FOR FURTHER INFORMATION CONTACT: Lynne G. Masters at (202) 272-2848

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## **CORPORATE REORGANIZATION RELEASES**

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CUSTOM LABORATORIES, INC.

The Commission filed objections, in the Chapter 11 case of Custom Laboratories, Inc., to Custom's proposed plan of reorganization and disclosure statement. The Commission's objections focused on three points: First, Custom did not provide adequate information about the reorganized debtor, under Section 1125(d) of the Bankruptcy Code, in its disclosure statement used for soliciting acceptances or rejections of the plan of reorganization. Second, Custom failed to provide sufficient information in its disclosure statement to determine whether the proposed sale of securities to existing shareholders, in exchange for their stock interests, came within the scope of the registration exemption afforded by Section 1145 of the Bankruptcy Code. And third, Custom should not be permitted, because of the prohibition in Section 524(e), to use the reorganization process as a vehicle to obtain the release of nondebtor third-party liability for possible violations of the securities laws. Following the filing of the Commission's objections, Custom withdrew its proposed plan and disclosure statement. (In re Custom Laboratories, Inc., No. 4-86-1507[K], Bankr. D. Minn.). (Rel. CR-367)

FOR FURTHER INFORMATION CONTACT: Michael A. Berman at (202)-272-2493

STANDARD METALS CORP.

The Commission filed a brief on rehearing on July 7 in the case of Standard Metals Corp. before the U.S. Court of Appeals for the Tenth Circuit on the issue whether notice of the claims bar date in a bankruptcy reorganization case is required to be given to unscheduled creditors. The Commission argued that the Bankruptcy Code and Rules require notice to all creditors, including unscheduled creditors such as the class of bondholders with securities fraud claims in this case. In the Commission's view, moreover, due process requires notice whether or not claims have been scheduled. Once the existence of a class of bondholders with fraud claims became evident upon the filing of appellant's claim, the bankruptcy court erred in denying a motion to give notice to the bondholder class and to extend the bar date for their claims. Finally, the Commission stated that the bankruptcy court has independent responsibility to supervise notice and, as a court of equity, to order sua sponte that notice be given once it becomes apparent that a class of creditors has not been notified. (In re Standard Metals Corp., Sheftelman v. Standard Metals Corp., No. 85-2783, 10th Cir.). (Rel. CR-368)

FOR FURTHER INFORMATION CONTACT: Leslie E. Smith at (202)-272-7524

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## **CIVIL PROCEEDINGS**

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### **PERMANENT INJUNCTION ENTERED AGAINST FORMER PRESIDENT OF HOME STATE SAVINGS BANK**

The Atlanta Regional and Miami Branch Offices announced that on June 25 U.S. District Judge Jose A. Gonzalez, Jr., Southern District of Florida, entered a Final Judgment of Permanent Injunction against Burton M. Bongard, former president and chairman of Home State Savings Bank, an Ohio savings institution, which closed on March 9, 1985 after sustaining more than \$143.9 million in losses resulting from the March 4, 1985 collapse of E.S.M. Government Securities, Inc. Bongard consented to the Final Judgment, without admitting or denying the allegations in the Commission's Complaint.

The Final Judgment permanently enjoined Bongard from violating the antifraud and reporting provisions of the securities laws by misrepresenting and omitting to state material facts concerning an issuer's financial condition and results of operations, including all material risks and contingencies; transactions between an issuer and its officers, directors, principal shareholders, and related parties; material transactions between an issuer's principal suppliers of goods and services and its officers, directors, and principal shareholders; agreements with or directives issued by federal or state regulators over an issuer's business; material transactions in securities; and the risk of an investment in securities. (SEC v. Marvin L. Warner, et al., Civil Action No. 86-6742-CIV-GONZALEZ, SDFL). (LR-11491)

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## **INVESTMENT COMPANY ACT RELEASES**

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### **SUN LIFE ASSURANCE COMPANY OF CANADA (U.S.)**

An order has been issued exempting Sun Life Assurance Company of Canada (U.S.), Sun Life of Canada (U.S.) Variable Account D, and Clarendon Insurance Agency, Inc. from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the Investment Company Act to permit the deduction or mortality and expense risk charges in connection with the issuance of certain master group deferred combination fixed/variable annuity contracts. (Rel. IC-15883 - July 17)

### **CIGNA AGGRESSIVE GROWTH FUND**

A notice has been issued giving interested persons until August 13 to request a hearing on an application filed by CIGNA Funds Group, et al., all future funds for which subsidiaries or affiliated persons of CIGNA Corporation (CIGNA) serve as investment adviser and/or principal underwriter, and CIGNA for an order exempting from the provisions of Section 17(a) of the Investment Company Act and permitting CIGNA to indemnify partially the Funds' fidelity bond issuer and settle any claims under the fidelity bond. (Rel. IC-15884 - July 21)

### **NML VENTURE ANNUITY ACCOUNTS 1 AND 2**

A notice has been issued giving interested persons until August 17 to request a hearing on an application filed by NML Variable Annuity Accounts 1 and 2 seeking an order declaring that they have ceased to be investment companies. (Rel. IC-15885 - July 21)

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## **SELF-REGULATORY ORGANIZATIONS**

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### **APPROVAL OF PROPOSED RULE CHANGE**

The Commission approved a proposed rule change filed by the National Association of Securities Dealers, Inc. The proposal (SR-NASD-87-8) revises Schedule D to the NASD's By-Laws, which governs the operation of the NASDAQ System. In addition to making certain organizational and editorial changes, the revision updates Schedule D to reflect current NASDAQ practice and procedure and incorporates certain material that now appears in the NASDAQ Symbol Directory and other NASD notices and publications. (Rel. 34-24718)

## 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-18 CONSOLIDATED ENERGY SYSTEMS INC /CA/, 558 ST CHARLES DR STE 211, THOUSAND OAKS, CA 91360 (805) 497-3905 - 1,000,000 (\$3,725,000) COMMON STOCK. UNDERWRITER: HAMILTON WILLIAMS & CO INC. (FILE 33-15565-LA - JUL. 01) (BR. 7 - NEW ISSUE)
- S-18 REI DIVERSIFIED ENERGY ACQUISITION PARTNERS 1987 L P, 2876 S ARLINGTON RD, AKRON, OH 44312 (216) 644-6626 - 7,500 (\$7,500,000) LIMITED PARTNERSHIP CERTIFICATE. UNDERWRITER: DIVERSIFIED INVESTMENTS GROUP INC. (FILE 33-15626-C - JUL. 07) (BR. 3 - NEW ISSUE)
- S-18 PAVICHEVICH BREWING CO IL/, 2 MID AMERICA PLZ STE 800, OAKBROOK TERRACE, IL 60181 (312) 954-2280 - 575,000 (\$2,875,000) COMMON STOCK. UNDERWRITER: LISTRUM LOWELL H & CO INC. (FILE 33-15656-C - JUL. 08) (BR. 11 - NEW ISSUE)
- S-18 WILSHIRE FINANCIAL CORP, 6676 GUN PARK DR STE D, BOULDER, CO 80301 (303) 530-1958 - 45,000,000 (\$450,000) COMMON STOCK. 4,500,000 (\$100) WARRANTS, OPTIONS OR RIGHTS. 4,500,000 (\$54,000) COMMON STOCK. UNDERWRITER: FITZGERALD TALMAN INC. (FILE 33-15743-D - JUL. 09) (BR. 5 - NEW ISSUE)
- S-6 PAINWEBBER EQUITY TRUST SPECIAL SITUATIONS SERIES 4, 1285 AVE OF THE AMERICAS, C/O PAINWEBBER INC, NEW YORK, NY 10019 - INDEFINITE SHARES. DEPOSITOR: PAINWEBBER INC. (FILE 33-15760 - JUL. 15) (BR. 22 - NEW ISSUE)
- S-6 PAINWEBBER EQUITY TRUST GROWTH STOCK SERIES 5, 1285 AVE OF THE AMERICAS, C/O PAINWEBBER INC, NEW YORK, NY 10019 - INDEFINITE SHARES. (FILE 33-15761 - JUL. 16) (BR. 22 - NEW ISSUE)
- S-8 ALBA WALDENSIAN INC, 201 ST GERMAIN ST SW, P O BOX 100, VALDESE, NC 28690 (704) 874-2191 - 100,000 (\$843,750) COMMON STOCK. (FILE 33-15833 - JUL. 15) (BR. 8)
- S-11 GS MORTGAGE SECURITIES CORP, EXCHANGE PL, 53 STATE ST, BOSTON, MA 02109 - 2,100,000,000 (\$2,100,000,000) MORTGAGE BONDS. (FILE 33-15841 - JUL. 15) (BR. 11)
- S-3 DIASONICS INC, 533 CABOT RD, SOUTH SAN FRANCISCO, CA 94080 (415) 872-2722 - 3,303,000 (\$11,973,375) COMMON STOCK. (FILE 33-15844 - JUL. 15) (BR. 8)
- S-2 ALLIED SUPERMARKETS INC /MI//NEW/, 8711 MEADOWDALE, DETROIT, MI 48229 (313) 943-3300 - 5,000,000 (\$5,000,000) STRAIGHT BONDS. (FILE 33-15845 - JUL. 15) (BR. 1)
- S-4 EEI LTD PARTNERSHIP, 5530 WISCONSIN AVE STE 520, CHEVY CHASE, MD 20815 (301) 654-4884 - 97 (\$3,292,620) LIMITED PARTNERSHIP CERTIFICATE. (FILE 33-15846 - JUL. 15) (BR. 6)
- N-1A MUTUAL FUND GROUP, 200 BERKELEY ST, BOSTON, MA 02116 (617) 423-3500 (FILE 33-15847 - JUL. 16) (BR. 18)
- S-1 IMO DELAVAL INC, 3450 PRINCETON PIKE, LAWRENCEVILLE, NJ 08548 (609) 896-7600 - 150,000,000 (\$150,000,000) STRAIGHT BONDS. (FILE 33-15848 - JUL. 16) (BR. 8)

### REGISTRATIONS EFFECTIVE

July 8: AT&T Credit Corporation, 33-15237; Advanced Telecommunications Corporation, 33-15072; Avemco Corporation, 33-15495; Carrera Capital Corporation, 33-12917-D; Colgate-Palmolive Company, 33-15515; Covington Development Group, Inc., 33-14763; Diversified Foods, Inc., 33-15021; Harbor American Health Care Trust, Inc., 33-11863; Hills Department Stores, Inc., 33-13479; Medtron Laboratories, Inc., 33-12848-NY; Northern Trust Corporation, 33-15200; Patrick Petroleum Company, 33-13894; Shearson Lehman Brothers Holdings Inc., 33-15448; Taste It Presents, Inc., 33-13771-NY; The Toro Company, 33-15385; Veeco Instruments Inc., 33-14513; Zenith Electronics Corporation, 33-15277.