

# sec news digest

Issue 95-97

May 19, 1995

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## COMMISSION ANNOUNCEMENTS

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### CHANGE IN METHOD FOR CALCULATING FEES

Effective at 9:00 a.m. on Monday, May 22, 1995, the formula used to calculate the filing fees paid pursuant to Section 6(b) of the Securities Act of 1933 will be changed from multiplying by the factor of .00034483 in order to more accurately reflect the statutory fee rate. The fee rate of one-twenty-ninth of one percent (1/29 of 1%) will remain the same, but the fee will now be calculated by dividing by 2900. Questions should be directed to the Office of Filings and Information Services at 202-942-8900.

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## ENFORCEMENT PROCEEDINGS

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### COMPLAINT FILED AGAINST THE FOUNDATION FOR NEW ERA PHILANTHROPY AND JOHN BENNETT, JR.

The Commission filed a civil complaint in the United States District Court for the Eastern District of Pennsylvania against The Foundation for New Era Philanthropy, a Radnor, Pennsylvania-based entity formed in 1989 as a public charity under IRS guidelines which has recently filed for bankruptcy protection, and John G. Bennett, Jr., the founder, president and chairman of the board of New Era.

The complaint alleges that Bennett and New Era engaged in a massive fraudulent scheme in which hundreds of not-for-profit organizations, such as churches, charities and universities, and others, were defrauded

out of at least \$100 million, and possibly hundreds of millions of dollars. Bennett and New Era promised the investors that money provided by anonymous benefactors would be utilized by New Era to double the investors' money. In fact, there were no anonymous benefactors and New Era used new investors' funds to repay earlier investors. As part of this fraudulent scheme, Bennett and New Era made material misrepresentations and omissions to the nonprofit institutions concerning the nature of their investments and the use of the funds invested with New Era, and also conducted an unregistered public offering of securities.

The complaint seeks orders of preliminary and permanent injunction, an order freezing Bennett's assets, an order prohibiting the destruction of documents, and an order directing Bennett to provide an accounting. The complaint also seeks an order directing Bennett to disgorge all ill-gotten gains and an order imposing civil penalties against Bennett. The Commission acknowledges the cooperation of the Department of Justice and the Office of the Attorney General for the Commonwealth of Pennsylvania in this matter. [SEC v. John G. Bennett, Jr. and The Foundation For New Era Philanthropy, Civil Action No. 95-CV-3005, AB, USDC, ED/PA] (LR-14503)

#### COMPLAINT SEEKING JUDGMENTS OF PERMANENT INJUNCTION FILED AGAINST LEE PIOSKE AND WILLIAM MORIARTY

On May 17, the Commission filed a complaint against defendants Lee F. Pioske (Pioske) and William J. Moriarty (Moriarty) charging them with violations of the registration and antifraud provisions of the Securities Act and Exchange Act. Simultaneous with the filing of the complaint, the defendants consented to the entry of Permanent Injunctions. Moriarty also consented to an order requiring him to pay disgorgement of \$10,000. Pioske was previously ordered in related criminal proceedings to make restitution of \$2.9 million following his release from prison.

The Commission's complaint alleges that from approximately February 1990 through June 1992, Pioske, founder of Pioske Financial Services (PFS), formerly doing business in several states, created and directed a fraudulent Ponzi scheme involving the sale of interests in fictitious bond and commodity pools to more than 171 investors. Moriarty fraudulently sold these securities from about October 1990 through June 1992. Investors lost about \$2.9 million through the fraudulent scheme. Pioske is currently incarcerated in federal prison in Arizona. [SEC v. Lee F. Pioske and William J. Moriarty, Civil Action No. CIV 95-987 PHX SMM, D. Ariz.] (LR-14504)

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## INVESTMENT COMPANY ACT RELEASES

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### SENTRY INVESTORS VARIABLE ACCOUNT II

A notice has been issued giving interested persons until June 12 to request a hearing on an application filed by Sentry Investors Variable Account II for an order under Section 8(f) of the Investment Company Act declaring that applicant has ceased to be an investment company. (Rel. IC-21080 - May 17)

### SBM COMPANY

A notice has been issued giving interested persons until June 12 to request a hearing on an application filed by SBM Company to amend an order under Section 8(f) of the Investment Company Act declaring that applicant has ceased to be an investment company. The requested order would eliminate the conditions to the prior order, thus permitting applicant to sell substantially all of its assets, including a subsidiary that is a registered investment company, to another company. (Rel. IC-21081 - May 17)

### T. ROWE PRICE EQUITY SERIES, INC., ET AL.

A notice has been issued giving interested persons until June 12 to request a hearing on an application filed by T. Rowe Price Equity Series, Inc., T. Rowe Price International Series, Inc. and T. Rowe Price Fixed Income Series, Inc. (Funds) and T. Rowe Price Associates, Inc. and Rowe Price-Fleming International, Inc. for an order pursuant to Section 6(c) of the Investment Company Act granting exemptions from the provisions of Sections 9(a), 13(a), 15(a), and 15(b) of the Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder. The order would grant exemptions to the extent necessary to permit shares of the Funds to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies (including variable annuity and variable life insurance separate accounts that are exempt from registration under the Act). (Rel. IC-21082 - May 17)

### GENERAL AMERICAN LIFE INSURANCE COMPANY, ET AL.

An order has been issued under Section 6(c) of the Investment Company Act exempting General American Life Insurance Company (General American), General American Separate Account Eleven and Walnut Street Securities, Inc. from Sections 27(c)(2) and 27(e) of the Act and Rules 6e-3(T)(c)(4)(v), 6e-3(T)(b)(13)(vii) and 27e-1 thereunder. The order provides exemptions to the extent necessary to permit the deduction from

premium payments of a charge to compensate General American for its increased federal tax burden resulting from the application of Section 848 of the Internal Revenue Code of 1986, as amended, to the receipt of premiums under certain flexible premium variable life insurance contracts (Contracts); and General American not to send owners of the Contracts a written notice of refund and withdrawal rights. (Rel. IC-21083 - May 17)

WNC HOUSING TAX CREDIT FUND V, L.P., SERIES 3 THROUGH 8, AND WNC & ASSOCIATES, INC.

A notice has been issued giving interested persons until June 12 to request a hearing on an application filed by WNC Housing Tax Credit Fund V, L.P., series 3 through 8 (Partnership), and its general partner, WNC & Associates, Inc., for an order under Section 6(c) of the Investment Company Act. The order would exempt the Partnership from all provisions of the Act and permit the Partnership to invest in limited partnerships that engage in the ownership and operation of apartment complexes for low and moderate income persons. (Rel. IC-21084 - May 18)

#### CORRECTION

The following is a corrected summary for Release No. IC-21071, which appeared in yesterday's Digest.

SMITH BARNEY MUNI FUNDS, ET AL.

An order has been issued on an application filed by Smith Barney Muni Funds, et al. under Section 17(b) of the Investment Company Act for an exemption from Section 17(a) of the Act. The order permits Smith Barney Intermediate Maturity California Municipals Fund, a series of the Smith Barney Income Trust, to acquire substantially all of the assets of the C1071alifornia Limited Term Portfolio, a series of the Smith Barney Muni Funds. Because of certain affiliations, the two series may not rely on Rule 17a-8 under the Act. (Rel. IC-21071 - May 16)

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#### HOLDING COMPANY ACT RELEASES

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CENTRAL AND SOUTH WEST CORPORATION, ET AL.

An order has been issued authorizing a proposal by Central and South West Corporation (CSW), a registered holding company, and its wholly owned nonutility subsidiary, Central and South West Services, Inc. (CSWS), to consolidate and centralize in CSWS certain service and management functions that were previously performed individually by each of CSW's operating subsidiaries. (Rel. 35-26293)

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## SELF-REGULATORY ORGANIZATIONS

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### DELISTINGS GRANTED

An order has been issued granting the application of the New York Stock Exchange to strike from listing and registration Martin Marietta Corporation, 7% Debentures, due March 15, 2011. (Rel. 34-35726)

An order has been issued granting the application of the Boston Stock Exchange to strike from listing and registration California Quartz, Inc., Common Stock, \$.001 Par Value and Redeemable Warrants. (Rel. 34-35727)

An order has been issued granting the application of the New York Stock Exchange to strike from listing and registration Chicago and North Western Transportation Company, Common Stock, \$.01 Par Value. (Rel. 34-35737)

### APPROVAL OF PROPOSED RULE CHANGES

The Commission approved a proposed rule change filed by the Cincinnati Stock Exchange (SR-CSE-95-04) relating to three day settlement of securities transactions. Publication of the approval order is expected in the Federal Register during the week of May 22. (Rel. 34-35724)

The Commission approved a proposed rule change (SR-NASD-94-9) filed by the National Association of Securities Dealers. The rule change modifies the NASD's SelectNet service in two ways. The first modification provides real-time access to non-members to view all "broadcast" orders in SelectNet immediately as they are entered. The second modification provides for the transmission of such orders solely on an anonymous basis through the service. (Rel. 34-35732)

The Commission has approved proposed rule changes (SR-Amex-95-13, SR-CBOE-95-13, SR-NYSE-95-04, SR-PSE-95-05, and SR-PHLX-95-10) filed by the American Stock Exchange, the Chicago Board Options Exchange, the New York Stock Exchange, the Pacific Stock Exchange, and the Philadelphia Stock Exchange (collectively, Exchanges) which grant permanent approval to the Exchanges' programs establishing position limit exemptions for hedged option positions. Publication of the approval order is expected in the Federal Register during the week of May 22. (Rel. 34-35738)

### IMMEDIATE EFFECTIVENESS OF PROPOSED RULE CHANGES

A proposed rule change filed by the Chicago Board Options Exchange (SR-CBOE-95-15) has become immediately effective under Section 19(b)(3)(A) of the Securities Exchange Act of 1934. Publication of the immediate effectiveness order is expected in the Federal Register during the week of May 22. (Rel. 34-35725)

The Depository Trust Company filed a proposed rule change (SR-DTC-95-08) which became effective upon filing. The proposed rule change adjusts DTC's charges for various services. Publication of the proposal is expected in the Federal Register during the week of May 22. (Rel. 34-35736)

#### PROPOSED RULE CHANGES

The Commission has published notice of a proposed rule change filed by the American Stock Exchange (SR-Amex-95-17). The proposed rule change will establish depository eligibility requirements for issuers applying for listing on AMEX. Publication of the proposal is expected in the Federal Register during the week of May 22. (Rel. 34-35734)

The Commission has published notice of a proposed rule change filed under Section 19(b) of the Exchange Act by the Boston Stock Exchange (SR-BSE-95-09). The proposed rule change will establish depository eligibility requirements for issuers applying for listing on BSE. Publication of the proposal is expected in the Federal Register during the week of May 22. (Rel. 34-35735)

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#### SECURITIES ACT REGISTRATIONS

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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-4 BANK OF NEW YORK CO INC, 48 WALL ST 15TH FL, NEW YORK, NY 10296  
(212) 495-1784 - 5,000,000 (\$157,679,132) COMMON STOCK. (FILE 33-59225 - MAY. 10) (BR. 2)
- S-3 ALCO CAPITAL RESOURCE INC, 1738 BASS RD, MACON, GA 31210 (215) 296-8000  
- 1,000,000,000 (\$1,000,000,000) STRAIGHT BONDS. (FILE 33-59227 - MAY. 10)  
(BR. 7)
- S-3 CLINICOM INC, 4720 WALNUT ST STE 106, BOULDER, CO 80301 (303) 443-9660  
- 2,300,000 (\$43,125,000) COMMON STOCK. (FILE 33-91948 - MAY. 05) (BR. 10)
- SB-2 PLANET POLYMER TECHNOLOGIES INC, 9985 BUSINESS PARK WAY STE A,  
SAN DIEGO, CA 92131 (619) 549-5130 - 1,150,000 (\$8,050,000) COMMON STOCK.  
UNDERWRITER: HAGERTY STEWART & ASSOCIATES INC. (FILE 33-91984-LA -  
MAY. 05) (BR. 2 - NEW ISSUE)
- S-4 MASON DIXON BANCSHARES INC/MD, 45 WEST MAIN ST, WESTMINSETER, MD 21157  
(410) 857-3400 - 958,471 (\$14,616,683) COMMON STOCK. (FILE 33-92122 -  
MAY. 10) (BR. 1)
- S-8 MGIC INVESTMENT CORP, 250 E KILBOURN AVE, MILWAUKEE, WI 53202  
(414) 347-6480 - 500,000 (\$21,156,250) COMMON STOCK. (FILE 33-92128 -  
MAY. 10) (BR. 10)