

sec news digest

Issue 95-140

July 21, 1995

COMMISSION ANNOUNCEMENTS

COMMISSION MEETINGS

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 open meetings on Wednesday mornings. Otherwise, meetings will be scheduled 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, N.W., Washington, D.C. 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.

Any member of the public who requires auxiliary aids such as a sign-language interpreter or material on tape to attend a public meeting should contact Nancy Wolynetz, Office of Administrative and Personnel Management, to make arrangements. Ms. Wolynetz can be reached at (202) 942-4091 or at a TTY number (202) 942-4075. Staff members at the Commission are encouraged to contact Ms. Wolynetz if they receive inquiries on availability of auxiliary aids.

OPEN MEETING - THURSDAY, JULY 27, 1995 - 10:00 A.M.

The subject matters of the open meeting scheduled for Thursday, July 27, 1995, at 10:00 a.m., will be:

1. Consideration of whether to propose for public comment amendments to Rule 17f-5 under the Investment Company Act, the rule that governs the custody of investment company assets outside the United States. The

amendments would revise the findings that currently must be made in establishing foreign custody arrangements to focus exclusively on the safekeeping of investment company assets, permit a company's board of directors to delegate its responsibilities under the rule to evaluate these arrangements, and expand the class of foreign banks and securities depositories that could serve as investment company custodians.

2. Consideration of whether to publish for public comment revised proposed Rule 3a-4 and proposed Form N-3a4, both under the Investment Company Act of 1940. Revised proposed Rule 3a-4 would provide a nonexclusive safe harbor from the definition of investment company for certain programs under which investment advisory services are provided to clients ("investment advisory programs"). Proposed Form N-3a4 would be filed with the Commission by sponsors of investment advisory programs intending to rely on Rule 3a-4. Additionally, the Commission is considering requesting comment regarding the application of certain provisions of the Investment Advisers Act of 1940 to investment advisers participating in investment advisory programs.

CLOSED MEETING - THURSDAY, JULY 27, 1995 - FOLLOWING OPEN MEETING

The subject matter of the closed meeting scheduled for Thursday, July 27, 1995, after the 10:00 a.m. open meeting, will be: Institution of injunctive actions; Settlement of injunctive action; Institution of administrative proceedings of an enforcement nature; Settlement of administrative proceedings of an enforcement nature; Formal orders of investigation; and Opinion.

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 (202) 942-7070.

ENFORCEMENT PROCEEDINGS

INITIAL DECISION IN THE MATTER OF TIMOTHY MOBLEY

Administrative Law Judge Brenda P. Murray barred Timothy Mobley of San Diego, California from association with any broker or dealer and from association with any member of a national securities exchange or registered association. Judge Murray's order was based on findings that Mr. Mobley willfully violated Section 17(a) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder by engaging knowingly or recklessly in fraudulent sales practices with respect to the offer and sale of securities, and that he

willfully aided and abetted violations by his broker-dealer employer of Section 17(a) of the Securities Act, Sections 10(b), 15(c) and 17(a) of the Exchange Act, and Rules 10b-5, 15c1-2, and Rule 17a-3(a)(9) thereunder. On March 17, 1994, the United States Court for Nevada permanently enjoined Mr. Mobley from violating these provisions of the securities laws and rules. (Initial Decision No. 69)

MONEY GROWTH INSTITUTE, INC. AND STEPHEN LEEB ORDERED TO CEASE AND DESIST

The Commission has issued an Order Instituting Proceedings, Making Findings and Imposing Remedial Sanctions and Cease and Desist Order (Order) against Money Growth Institute, Inc. (MGI) and Stephen Leeb (Leeb). The Commission simultaneously accepted Offers of Settlement from MGI and Leeb, in which they consented to the Order without admitting or denying the Commission's findings.

The Order alleges that MGI, aided and abetted by Leeb, MGI's control person, violated the cash solicitation, books and records and insider trading procedures provisions of the Investment Advisers Act of 1940 (Advisers Act). Among other things, the Order alleges that MGI had an arrangement with a solicitor pursuant to which MGI paid the solicitor a cash fee with respect to solicitation activities, but that there was no written agreement between the solicitor and MGI concerning the arrangement and there was no separate written statement furnished by the solicitor to MGI's clients.

Pursuant to the Order, MGI and Leeb were censured and ordered to cease and desist from violating or causing violations of Sections 206(4), 204, 204A and 207 of the Advisers Act and Rules 206(4)-3, 204-1(c), 204-2(a)(3), 204-2(a)(16), 204-2(e)(1), 204-2(e)(2) and 204-3 thereunder. In addition, a \$15,000 civil penalty was imposed against MGI, and MGI and Leeb were ordered to comply with certain undertakings. (Rel. IA-1506)

SEC SANCTIONS TERENCE ZAWACKI

The Commission announced the issuance of an Order Making Findings and Imposing Remedial Sanctions (Order) pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 (Exchange Act) and Section 203(f) of the Investment Advisers Act of 1940 (Advisers Act) against Terence W. Zawacki (Zawacki) and acceptance of Zawacki's Offer of Settlement (Offer). In his Offer, Zawacki consents to the entry of the Order without admitting or denying the findings in the Commission's Order except as to the previous entry of an order of permanent injunction and a prior criminal conviction, which he admits, and the Commission's jurisdiction, which he also admits. Zawacki was the general securities and financial/operations principal of a now defunct broker-dealer.

The Order finds that on June 10, 1993, Zawacki was permanently enjoined from aiding and abetting violations of several provisions of the Securities Act of 1933, the Exchange Act, and the Advisers Act. The Order further finds that on September 21, 1993, Zawacki was convicted of multiple counts of securities fraud, mail fraud and wire fraud.

The Order bars Zawacki from association with any broker, dealer, investment company, investment adviser or municipal securities dealer. (Rel. 34-35973; IA-1507)

DEFAULT JUDGMENT ENTERED AGAINST MICHAEL MORSE, WTF, LTD. AND RHEIMS INVESTMENTS, LTD.

The Commission announced that on July 12 a default judgment was entered in the United States District Court for the Southern District of New York against Michael J. Morse, WTF, Ltd., a South Carolina corporation owned by Morse, and Rheims Investments, Ltd., a Bahamian entity beneficially owned by Morse. The default judgment, signed by Judge John G. Koeltl, enjoins each defendant from violations of the antifraud and credit extension provisions of the federal securities laws; orders disgorgement on a joint and several basis of \$13,510,571, plus prejudgment interest; and imposes a civil penalty of \$100,000 on each defendant.

The complaint, filed February 27, 1995, alleges that, during July and August 1994, Morse, through WTF and Rheims, placed sell orders in cash accounts for the common stock of six different companies without owning the stock sold. The complaint alleges that Morse maintained the cash accounts at nine broker-dealers and that Morse made various misrepresentations and omissions to these broker-dealers. Specifically, the complaint alleges that Morse failed to tell the broker-dealers that he did not own the stock he sold; falsely told the broker-dealers that the stock would be forthcoming to settle the trades; and falsely supplied the various broker-dealers with inconsistent and fraudulent information regarding his net worth and annual income. The complaint alleges that, as a result, the broker-dealers lost in excess of \$13.5 million. [SEC v. Michael J. Morse, et al., USDC, SDNY, 95 Civ. 1352 JGK] (LR-14568)

CIVIL ACTION AGAINST WILLIAM YOUNG

The Commission today announced the filing of a civil injunctive action in United States District Court against William J. Young, the former president of American Mobile Systems, Inc.

The Commission alleges that between July 1988 and March 1992, Young arranged for AMS to advance substantial funds to various nonpublic entities under his control. Ultimately, Young used this arrangement to misappropriate approximately \$4 million. The Commission further alleges that Young was responsible for material misrepresentations and omissions concerning AMS's transactions with the entities in periodic reports. Moreover, the Commission alleges that Young made false statements to AMS's auditors in connection with audits of AMS's financial statements. Further, the complaint alleges that Young failed to implement a sufficient system of internal accounting controls at AMS.

The complaint requests that the Court permanently enjoin Young from violating Section 17(a) of the Securities Act and Sections 10(b) and 13(b)(5) of the Exchange Act and Rules 10b-5 and 13b2-2 thereunder, prohibit Young from serving as an officer or director of a public company, and direct Young to disgorge amounts that he misappropriated. [SEC v. William J. Young, USDC for the District of Columbia, Civil Action No. 1: 95CV01336, GK] (LR-14569)

INVESTMENT COMPANY ACT RELEASES

PIONEER WINTHROP REAL ESTATE INVESTMENT FUND, ET AL.

A notice has been issued giving interested persons until August 14 to request a hearing on an application filed by Pioneer Winthrop Real Estate Investment Fund, et al. for an order under Section 6(c) of the Investment Company Act exempting applicants from Section 15(a) of the Act. Apollo Real Estate Advisors, L.P. has agreed to acquire W.L. Realty, L.P. (Realty LP) including the investment advisory business of its indirect subsidiary Winthrop Advisors Limited Partnership, from The Nomura Securities Co. and certain principals of Realty LP. The reorganization will result in the assignment, and thus the termination of existing investment advisory contracts of the applicant investment companies. The order will permit the implementation, without shareholder approval of interim investment advisory contracts, during a period of up to 120 days following July 3, 1995. The order also will permit the applicant investment adviser to receive from the applicant investment companies fees earned under the interim investment advisory contracts following approval by the investment companies' shareholders. (Rel. IC-21219 - July 19)

GOC FUND, INC.

An order has been issued under Section 8(f) of the Investment Company Act declaring that GOC Fund, Inc. has ceased to be an investment company. (Rel. IC-21218 - July 19)

HOLDING COMPANY ACT RELEASES

ATLANTIC ENERGY, INC.

An order has been issued authorizing Atlantic Energy, Inc. (Atlantic), an exempt public utility holding company, to remove a condition restricting Atlantic's ability to make certain investments that was contained in a 1987 Commission order granting Atlantic's exemption from regulation under the Public Utility Holding Company Act of 1935. (Rel. 35-26334)

NORTHEAST UTILITIES, ET AL.

A supplemental order has been issued authorizing a proposal by Northeast Utilities, a registered holding company, and HEC Inc., a nonutility subsidiary of Northeast, and HEC International Corporation and HEC Energy Consulting Canada Inc., each a wholly owned nonutility subsidiary of HEC, and HECI, a joint venture subsidiary that is 50% owned by HEC International and 50% owned by a non-affiliate (collectively, Applicants). Applicants propose that they be allowed to engage in energy management, demand-side management and consulting services, as authorized by prior Commission orders, without regard to a revenue limitation imposed by prior Commission orders. In addition, HEC requests authorization to form joint ventures with utilities serving customers in different areas outside of the New England and New York region without subsequent Commission approval. These joint ventures would be organized to provide the services that HEC currently provides. (Rel. 35-26335)

APPALACHIAN POWER COMPANY, ET AL.

An order has been issued authorizing Appalachian Power Company (APCo), a public-utility subsidiary company of American Electric Power Company, a registered holding company, to acquire all of the assets and assume all of the liabilities of Kanawha Valley Power Company, a wholly owned subsidiary of APCo, in a merger in which APCo would be the surviving corporation. (Rel. 35-26336)

SELF-REGULATORY ORGANIZATIONS

WITHDRAWAL SOUGHT

A notice has been issued giving interested persons until August 10 to comment on the application of Xerographic Laser Images Corporation to

withdraw its Common Stock, \$.01 Par Value, and its Preferred Stock \$.01 Par Value, from listing and registration on the Boston Stock Exchange. (Rel. 34-35994)

APPROVAL OF PROPOSED RULE CHANGES

The Commission approved a proposed rule change (SR-OCC-95-03) filed by The Options Clearing Corporation which reduces the exercise threshold for expiring index option contracts in connection with OCC's Exercise-by-Exception Procedures. (Rel. 34-35982)

The Commission approved a proposed rule change submitted by the National Association of Securities Dealers (SR-NASD-95-25) to amend Sections 37, 43 and 44 of the Code of Arbitration Procedure (Code) and to add a new Part IV to the Code to provide procedures governing the administration of mediation proceedings. (Rel. 34-35990)

The Commission approved proposed rule change filings as amended by the Philadelphia Stock Exchange (SR-Phlx-95-08), American Stock Exchange (SR-Amex-95-12), Pacific Stock Exchange (SR-PSE-95_07), Chicago Board Options Exchange (SR-CBOE-95-19), and New York Stock Exchange (SR-NYSE-95-12) to establish a twelve-month pilot program under which the exchanges may select certain listed equity options with strike prices between \$25 and \$50 for the listing of 2-1/2 point strike price intervals. Publication of the approval order is expected in the Federal Register during the week of July 24. (Rel. 34-35993)

IMMEDIATE EFFECTIVENESS OF PROPOSED RULE CHANGES

The National Securities Clearing Corporation filed a proposed rule change (SR-NSCC-95-07) which was effective upon filing. The proposal reduces certain of the Networking service fees charged to NSCC participants effective June 1, 1995. Publication of the proposal is expected in the Federal Register during the week of July 24. (Rel. 34-35983)

The Midwest Securities Trust Company filed a proposed rule change (SR-MSTC-95-07) which was effective upon filing. The proposal makes MSTC's Legal Expert System available to transfer agents that are not participants of MSTC pursuant to individually negotiated contracts between MSTC and the individual transfer agents. Publication of the proposal is expected in the Federal Register during the week of July 24. (Rel. 34-35984)

A proposed rule change filed by the Chicago Board Options Exchange (SR-CBOE-95-37) relating to the listing of options on the CBOE Technology Index, has become immediately effective, but does not become operative for 30 days from July 14. Publication of the immediate effectiveness order is expected in the Federal Register during the week of July 24. (Rel. 34-35989)

PROPOSED RULE CHANGE

The Boston Stock Exchange filed a proposed rule change (SR-BSE-95-12) to adopt permanently its rules governing concentration of specialist units. Publication of the proposal is expected in the Federal Register during the week of July 24. (Rel. 34-35987)