

sec news digest

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COMMISSION ANNOUNCEMENTS

SEC ANNOUNCES AGREEMENT TO PROMOTE COORDINATED INDUSTRY EXAMINATIONS

The Commission today released a Memorandum of Understanding, signed by all regulators responsible for conducting examinations of broker-dealers, which lays the groundwork for more efficient and effective industry oversight. The MOU was signed at the first Planning Summit held on November 28, 1995, between the SEC, the examining self-regulatory organizations and the North American Securities Administrators Association (NASAA).

The purpose of the Memorandum of Understanding is to promote cooperation and coordination among the examining authorities as well as to eliminate unnecessary and burdensome duplication in the examination process. The MOU signators include the SEC, the American Stock Exchange (AMEX), the Chicago Board Options Exchange (CBOE), the National Association of Securities Dealers (NASD), the New York Stock Exchange (NYSE) and on behalf of its members, NASAA. (Press Rel. 95-248)

ENFORCEMENT PROCEEDINGS

NASD ACTION AGAINST FRANKLIN WOLF, JAMES PETRANTIS AND RICHARD SULLIVAN SUSTAINED

The Commission has sustained NASD disciplinary action against Franklin N. Wolf, James H. Petrantis, and Richard T. Sullivan, principals of F.N. Wolf & Co., Inc., a former NASD member. Applicants were censured, suspended for varying periods from association in any principal or supervisory capacity, and required to requalify by passing the appropriate qualification examination. Applicants also were fined and Wolf was required to offer restitution or rescission to affected customers.

The Commission upheld NASD findings that Applicants were responsible for selling "designated securities," i.e., penny stocks, without complying with the suitability and disclosure requirements of former Securities Exchange Act Rule 15c2-6 (subsequently amended and redesignated as Rule 15g-9), and that Sullivan and the firm failed to establish adequate procedures for compliance with this rule. Among other things, the Commission rejected Applicants' claim that the rule was impermissibly vague, and noted that clear guidance about the rule was given in an NASD publication that two of the three Applicants admittedly reviewed prior to the period at issue. The Commission noted that Applicants' actions deprived the firm's customers of the significant protections to which they were legally entitled, and helped to undermine the investor confidence the rule was designed to promote. (Rel. 34-36523)

CONTEMPT ACTIONS AGAINST OSCAR OLSON, JR.

The Commission announced the filing of two civil contempt actions against Oscar William Olson, Jr., the general counsel of Copol Investments Limited, a defendant in the action SEC v. John D. Lauer, et al., seeking compliance with Court orders requiring him to produce documents and appear for a deposition. In the first action, the Commission alleged that Olson failed to comply with a Court-ordered subpoena requiring him to appear for his deposition in London, England on June 2nd and to produce documents to the Commission before such deposition. On June 9th, the Court compelled Olson to produce to the Commission by July 5th all responsive documents in the United Kingdom and to produce all other responsive documents by August 22nd. In addition, the Court ordered Olson to appear for his deposition at the U.S. Embassy in London on July 11th. The Court affirmed this order on July 10th. Nonetheless, Olson failed to appear for his deposition on the date ordered. In addition, Olson failed to produce any documents to the Commission pursuant to the subpoena or Court orders. Thus, the Commission filed a second action against Olson in which it alleged that Olson refused to comply with the Court's June 9th and July 10th orders. On November 9th, the Court ordered Olson to produce to the Commission all Copol business records in his possession. The Court also ordered Olson to pay costs of \$1,087. to the Commission as a sanction for his delay in beginning the deposition. [SEC v. John D. Lauer, Clifton Capital Investors, L.P., Konex Holding Corp., Lyle E. Neal, Copol Investments Limited, Joseph Polichemi, N.D. Ill., No. 94 C 3770] (LR-14736)

SETTLEMENTS ENTERED IN ACTION FOR ILLEGAL TRADING IN SECURITIES OF COLORADO PRIME CORP. AND DESOTO, INC.

The Commission announced today that the Honorable Louis L. Stanton of the United States District Court for the Southern District of New

York entered final judgments on consent against defendants Gary Howard Felsher, Richard D. Zipes, James A. Weil, Ronald A. Leichtner and Jason Cohen permanently enjoining each of them from future violations of Sections 10(b) and 14(e) of the Securities Exchange Act of 1934 and Rules 10b-5 and 14e-3 thereunder. Also, the Court entered a final judgment on consent against defendant Jon Turnquist permanently enjoining him from future violations of Section 14(e) of the Securities Exchange Act of 1934 and Rule 14e-3. The final judgments order a total of \$941,825.11 in disgorgement plus prejudgment interest, and a total of \$266,035.45 in civil penalties under the Insider Trading and Securities Fraud Enforcement Act of 1988. These defendants each consented to the entry of the final judgment against him without admitting or denying the allegations in the complaint, as amended.

Any disgorgement and prejudgment interest paid by defendants is being held by the Court for the benefit of persons who submit valid claims arising under the federal securities laws by reason of the conduct alleged against these defendants in the complaint, as amended. Such claims must be submitted within one year after the date of entry of each final judgment. The Commission intends to petition the Court to appoint a special claims master to develop a distribution plan.

In this action, the Commission alleged that, on or before June 6, 1989, defendant Ihor G. Kupchynsky (Kupchynsky) learned of a planned tender offer for Colorado Prime Corp. (Colorado Prime) and communicated that information to defendants Bubolo, Felsher and Turnquist. These defendants then purchased Colorado Prime securities on June 6 and 7, 1989, while in possession of this information. The Commission also alleged that, on or about October 30, 1989, defendant Zipes misappropriated material, nonpublic information concerning a planned tender offer for DeSoto, Inc. (DeSoto). Defendants Kupchynsky, Felsher, Bubolo, Weil, George Kupchynsky, Roman Kupchynsky, Leichtner, and Cohen then purchased DeSoto securities during the period October 30, through November 9, 1989, while in possession of the misappropriated information. The litigation is pending as to the remaining defendants. For further information, see LR-14115 (June 7, 1994). [SEC v. Felsher, et al., 94 Civ. 4150, LLS, USDC, SDNY] (LR-14738)

ACTION FILED AGAINST JOHN ACORD, THE BUSINESS AND TAXPAYERS COALITION FOR AFFORDABLE HOUSING, SUSAN HALL, DOUGLAS KENNETT, EQUITY ASSURANCE CORPORATION, MICHAEL MEDKIFF, GREAT WESTERN MANAGEMENT CORPORATION AND SEAN ORTEGA

The Commission today announced the filing of a complaint on November 15 in the U.S. District Court for the Northern District of Texas against John Acord (Acord), The Business and Taxpayers Coalition

for Affordable Housing (Coalition), Susan Hall (Hall), Douglas Kennett (Kennett), Equity Assurance Corporation (EAC), Michael Medkiff (Medkiff) and Great Western Management Corporation (Great Western).

The complaint alleges that each defendant violated the antifraud provisions, that Coalition, Acord, Hall, Kennett and EAC violated the registration provisions, and that Kennett, EAC, Medkiff and Great Western violated the broker-dealer registration provisions of the federal securities laws. The complaint seeks an accounting, civil penalties and disgorgement from each defendant. The Commission alleges that from at least May 1991 until May 1994 the defendants raised at least \$9.7 million from over 813 investors through the offer and sale of interests in limited partnerships formed to invest in low-income housing properties. The Commission also alleges that the defendants made material misrepresentations and omissions concerning, among other things, the intended uses for investors' funds, and the condition and value of the housing properties and the attendant likelihood of profitable operations. The complaint further alleges that investor monies were used, among other things, to make fraudulent profit distributions to prior investors and for the personal expenses of defendants Acord, Hall and Kennett. In addition, the complaint alleges that defendant Acord diverted investor monies to his brother Sean Ortega (Ortega), who was named as a defendant solely for purposes of equitable relief in the form of an accounting and disgorgement. The complaint alleges that Ortega used these monies to pay personal expenses for himself, Acord and other family members. [SEC v. John Acord, The Business and Taxpayers Coalition For Affordable Housing, Susan Hall, Douglas Kennett, Equity Assurance Corporation, Michael Medkiff, Great Western Management Corporation and Sean Ortega, USDC, NDTX, Dallas Div., Civil Action No. CA-3:95-CV-2728-T] (LR-14739)

COURT ENTERS JUDGMENT IN MEDIMMUNE CASE

The Commission announced today that on October 30 the Honorable Alan H. Nevas of the United States District Court for the District of Connecticut entered a final consent judgment in this action against defendant William D. Morgan. The disgorgement (\$52,101.92) and prejudgment interest (\$33,793.29) to be paid by defendant Morgan pursuant to that judgment will be held by the Court for the benefit of persons who submit valid claims arising under the federal securities laws by reason of the conduct alleged against defendant Morgan in the complaint. Such claims must be filed within one year after the date of entry of the final judgment.

In this action, the Commission alleged that defendant Morgan purchased securities of MedImmune, Inc. (MedImmune) during the first three weeks of October 1991 while he was in possession of misappropriated material, nonpublic information concerning a proposed collaboration agreement between MedImmune and Merck, Inc. to develop an immunotherapy and vaccine for the AIDS virus using MedImmune's monoclonal antibody technology. The Commission also alleged that defendant Morgan tipped others. Defendant Morgan consented to the entry of the final judgment without admitting or denying the allegations. For further information, see LR-14661 (September 29, 1995). [SEC v. Robert J. Young, William Douglas Morgan, Russell Lozis and Beth Lombardo, 3:95 CV 2106, AHN, D. Conn.] (LR-14740)

MICHAEL SCHOUMAN AND SARAH DELANEY INCARCERATED FOR CIVIL CONTEMPT

The Commission announced that on November 27 the Honorable Horace Gilmore, U.S. District Court Judge for the Eastern District of Michigan, ordered Defendants Michael Schouman and Sarah Delaney to be incarcerated for their failure to turn over certain assets as partial payment for disgorgement. Earlier, on April 25, 1995, Schouman and Delaney had agreed to the entry of an Order of Permanent Injunction and Other Equitable Relief which included ordering Schouman and Delaney to pay disgorgement and prejudgment interest of \$291,250.86 and \$323,196.50, respectively, by May 24, 1995. After Defendants failed to pay disgorgement or prejudgment interest, on October 2, 1995, the Commission filed a Contempt Motion against Schouman and Delaney. On November 9, 1995, the Court entered an Order requiring Schouman and Delaney to turn over certain assets by November 20, 1995. On November 27, 1995, the Court held a hearing to determine if Schouman and Delaney had complied with the November 9th Order. After determining that there had not been compliance, Judge Gilmore entered an Order of Civil Contempt and had Schouman and Delaney incarcerate until full compliance with the November 9th Order. [SEC v. Basic Energy & Affiliated Resource, Inc., et al., E.D. MI, File 94-74434] (LR-14741)

INVESTMENT COMPANY ACT RELEASES

ESC STRATEGIC FUNDS, INC. AND EQUITABLE SECURITIES CORPORATION

A conditional order has been issued on an application filed by ESC Strategic Funds, Inc. (Company) and Equitable Securities Corporation under Section 6(c) of the Investment Company Act exempting applicants from the provisions of Section 15(a) of the Act and Rule 18f-2 thereunder; and from certain disclosure requirements set forth in item 22 of Schedule 14A under the Securities Exchange Act of 1934, items 2, 5(b)(iii), and 16(a)(iii) of Form N-1A, item 3 of

Form N-14, item 48 of Form N-SAR, and Sections 6-07.2(a), (b), and (c) of Regulation S-X. The order permits the sub-advisers approved by the Company's board of directors to serve as portfolio managers for the Company's series without obtaining shareholder approval, and permits the Company to disclose only aggregate sub-advisory fees for each series in its prospectuses and other reports. (Rel. IC-21540 - November 22)

ROCHESTER TAX MANAGED FUND, INC.

An order has been issued under Section 8(f) of the Investment Company Act declaring that Rochester Tax Managed Fund, Inc. has ceased to be an investment company. (Rel. IC-21546 - November 28)

HOLDING COMPANY ACT RELEASES

CENTRAL AND SOUTH WEST CORPORATION, ET AL.

A supplemental order has been issued authorizing a proposal by Central and South West Corporation (CSW), a registered holding company, and CSW Energy, Inc. (CSW Energy), a nonutility subsidiary company of CSW. By prior Commission order, CSW and CSW Energy were authorized, through December 31, 1995, to issue letters of credit, bid bonds or guarantees (collectively, Guarantees) in connection with the development of qualifying cogeneration facilities, qualifying small power production facilities and independent power facilities, including exempt wholesale generators, in an aggregate amount not to exceed \$50 million. CSW and CSW Energy now propose to increase the aggregate amount of Guarantees that may be issued from \$50 million to \$75 million; and extend the existing authorization until December 31, 2000. (Rel. 35-26416)

CENTRAL AND SOUTH WEST CORPORATION, ET AL.

A supplemental order has been issued authorizing a proposal by Central and South West Corporation (CSW), a registered holding company, and CSW Energy, Inc. (CSW Energy), a nonutility subsidiary company of CSW. By prior Commission orders, CSW and CSW Energy were authorized, among other things, through December 31, 1995, to spend \$150 million (Aggregate General Authority) to conduct preliminary studies of, investigate, research, develop, agree to construct (such

construction subject to further Commission authorization) and consult with respect to qualifying cogeneration facilities, qualifying small power production facilities and independent power producers. CSW and CSW Energy now propose that the Aggregate General Authority be increased from \$150 million to \$250 million, and the outstanding authorization from the prior Commission orders be extended until December 31, 2000. (Rel. 35-26417)

ALLEGHENY POWER SYSTEM, INC., ET AL.

A supplemental order has been issued authorizing a proposal by Allegheny Power System, Inc., a registered holding company, and its wholly owned subsidiary companies, Allegheny Power Service Corporation, Allegheny Generating Company, Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (collectively, Applicants). Applicants propose, through December 31, 1997, to continue to issue notes for short-term debt; draw down on bank lines of credit; issue commercial paper; provide certain guarantees; and operate the Allegheny System Money Pool. (Rel. 35-26418)

ENERGY INITIATIVES, INC., ET AL.

A supplemental order has been issued authorizing a proposal by Energy Initiatives, Inc. (EII), a nonutility subsidiary of General Public Utilities Corporation (GPU), and GPU, a registered holding company. EII proposes to provide management, administrative and similar services to project partnerships involving qualifying cogeneration facilities, as defined in the Public Utility Regulatory Policies Act of 1978, as amended, in which EII has a direct or indirect ownership interest to the extent such services are not limited to the cost thereof. (Rel. 35-26419)

SELF-REGULATORY ORGANIZATIONS

WITHDRAWAL GRANTED

An order has been issued granting the application of Response Technologies, Inc. to withdraw from listing and registration its Common Stock, \$.002 Par Value, on the American Stock Exchange. (Rel. 34-36507)

WITHDRAWAL SOUGHT

A notice has been issued giving interested persons until December 19 to comment on the application of San Diego Gas & Electric Company

to withdraw from listing and registration on the Pacific Stock Exchange Incorporated its 5.0% Cumulative Preferred Stock, \$20 Par Value, 4.5% Cumulative Preferred Stock, \$20 Par Value, 4.4% Cumulative Preferred Stock, \$20 Par Value, Cumulative Preferred Stock, \$7.20 Series, No Par Value, Cumulative Preferred Stock, \$1.82 Series, No Par Value. (Rel. 34-36521)

APPROVAL OF PROPOSED RULE CHANGES

The Commission granted approval of a proposed rule change (SR-PHILADEP-95-07) filed by the Philadelphia Depository Trust Company that approves the Fully Automated Securities Transfer Reconciliation Accounting Control System. (Rel. 34-36503)

The Commission approved a proposed rule change (SR-PSE-95-18) filed by the Pacific Stock Exchange that increased the position and exercise limits on the Technology Index from 15,000 contracts on the same side of the market to 37,500 contracts on the same side of the market, with no more than 22,500 contracts in the series with the nearest expiration month. Publication of the Order is expected in the Federal Register during the week of November 27. (Rel. 34-36504)

The Commission approved a proposed rule change submitted by the Philadelphia Stock Exchange (SR-Phlx-95-58) to require certain persons who solicit or handle business in securities and are compensated by a member or participant organization for which the Phlx is the Designated Examining Authority to register with the Phlx by filing Form U-4 and to clarify that the Series 7A is the appropriate examination for Phlx Limited Registration/Floor Members. Publication of the proposal is expected in the Federal Register during the week of December 4. (Rel. 34-36515)

The Commission approved a proposed rule change (SR-CBOE-95-16) filed by the Chicago Board Options Exchange to codify the duties of CBOE members when executing and cancelling stock-option and stock-option combination orders, the execution of which involves transactions in CBOE's options market and in another market. Publication of the approval order is expected in the Federal Register during the week of December 4. (Rel. 34-36516)

IMMEDIATE EFFECTIVENESS OF PROPOSED RULE CHANGES

The Chicago Board Options Exchange filed a proposed rule change (SR-CBOE-95-55) to make minor technical changes to its uniform listing and trading guidelines for stock index, currency, and currency index warrants. The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act and Rule 19b-4 thereunder. Publication of the approval order is expected in the Federal Register during the week of November 27. (Rel. 34-36499)

The Chicago Board Options Exchange filed a proposed rule change (SR-CBOE-95-59) that makes certain changes to its rules relating to the requirement to make prior arrangements to borrow stock or to obtain other assurances that delivery can be made on settlement date before a member or person associated with a member may sell short. The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act and Rule 19b-4(e)(6) thereunder. Publication of the approval order is expected in the Federal Register during the week of December 4. (Rel. 34-36513)

APPROVAL OF APPLICATION FOR EXTENSION OF TEMPORARY REGISTRATION AS A CLEARING AGENCY

The Commission has approved the application for extension of temporary registration as a clearing agency (File No. 600-23) filed by the Government Securities Clearing Corporation. The temporary registration is extended through November 30, 1996. Publication of the notice and order is expected in the Federal Register during the week of December 4. (Rel. 34-36508)

PROPOSED RULE CHANGES

The Chicago Stock Exchange filed a proposed rule change (SR-CHX-95-27) relating to proposed arrangements regarding a decision by CHX to withdraw from the clearance and settlement, securities depository, and branch receive businesses. Publication of the proposal is expected in the Federal Register during the week of December 4. (Rel. 34-36509)

The Midwest Securities Trust Company filed a proposed rule change (SR-MSTC-95-10) relating to proposed arrangements regarding a decision by MSTC to withdraw from the securities depository business. Publication of the proposal is expected in the Federal Register during the week of December 4. (Rel. 34-36510)

The Midwest Clearing Corporation filed a proposed rule change (SR-MCC-95-04) relating to proposed arrangements regarding a decision by MCC to withdraw from the clearance and settlement business. Publication of the proposal is expected in the Federal Register during the week of December 4. (Rel. 34-36511)

The New York Stock Exchange filed a proposed rule change (SR-NYSE-95-36) to adopt a Japanese module (Series 47) of the General Securities Registered Representative Examination (Series 7). Publication of the proposal is expected in the Federal Register during the week of December 4. (Rel. 34-36514; International Series Rel. 890)

The National Association of Securities Dealers submitted a proposed rule change (SR-NASD-95-51) to reorganize the NASD Manual to make its use easier by members and others. Publication of the Notice is expected in the Federal Register the week of December 4. (Rel. 34-36517)

The Municipal Securities Rulemaking Board filed a proposed rule change (SR-MSRB-95-15) to amend MSRB Rules G-8 and G-9, on recordkeeping and record retention, Rule G-37, on political contributions and prohibitions on municipal securities business, and add a new Rule G-38 regarding consultants. Publication of the proposal is expected in the Federal Register during the week of December 4. (Rel. 34-36522)