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ENFORCEMENT PROCEEDINGS

NASD DISCIPLINARY ACTION AGAINST STRATEGIC RESOURCE MANAGEMENT, INC. AND WILLIAM MOLER SET ASIDE

The Commission has set aside findings of violations by the NASD against Strategic Resource Management, Inc. (Strategic), a member of the NASD, and its president, William A. Moler (collectively, Applicants). The NASD had found that Strategic, through Moler, charged excessive markups to retail customers in the sale of Technigen Corporation (Technigen) common stock. The NASD had censured Applicants, and had fined them \$10,000, jointly and severally. The NASD had also ordered Moler to requalify by examination as a general securities principal before again acting in that capacity.

On 65 occasions in 1992, Strategic had sold Technigen to retail customers. The Firm had charged its customers a price within 5% of the Nasdaq inside ask quotation. The NASD concluded that these 65 retail transactions were riskless principal transactions. Relying on the Commission's decision in Kevin B. Waide, the NASD calculated the markups on the basis of Strategic's actual cost of purchasing these shares from an account owned by a Strategic salesman.

The Commission noted that the NASD found that Strategic was a market maker when it bought and sold to other dealers but treated Strategic as a non-market maker for purposes of calculating markups. The Commission concluded that Strategic should be considered a market maker for all the trades because Strategic often bought from the salesman's account and from dealers on the same day. The Commission stated that the principles enunciated in Waide do not normally apply to market making activity.

The District Business Conduct Committee decision stated that the prices Strategic charged to retail customers were appropriate for a market maker. In light of this and the Commission's conclusion that Strategic was a market maker, the Commission set aside the NASD's findings of excessive markups and the resulting sanctions. (Rel. 34-36618)

COMMISSION SUSTAINS NASD DISCIPLINARY ACTION AGAINST FALCON TRADING GROUP, LTD. AND GLEN VITTOR

The Commission has sustained disciplinary action against Falcon Trading Group, Ltd., of Boca Raton, Florida, and Glen T. Vittor, the firm's president and registered general securities principal. The NASD had found that Falcon, through Vittor, failed to honor trade commitments with other NASD member firms and permitted the association with the firm of an individual whose NASD registration had been revoked. The NASD had censured Falcon, fined it \$50,000 and suspended it in all capacities for thirty business days. It had censured Vittor, fined him \$50,000, suspended him for one year in all capacities, barred him from acting in all principal capacities, and required that he requalify as a registered representative. Vittor and the firm also were, jointly and severally, fined \$200,000 and ordered to pay restitution of \$189,125 (to be offset by any amounts paid in accordance with any arbitration order or settlement).

The Commission found that Falcon, through Vittor, agreed to purchase shares of stock from two broker-dealers at a time when the firm was seeking to cover its short position in the stock, but later failed to honor the trades. Finding that the stock's price fell more than 50% by the end of that trading day, the Commission concluded that Falcon deliberately had failed to honor the two trades in order to limit its potential losses.

The Commission also found that Falcon, through Vittor, allowed Philip Gurian, an individual whose NASD registration had been revoked, to trade securities for the firm and provide Vittor with trading advice for approximately one year. The Commission stated that Vittor's admission that Gurian "helped out" at Falcon was alone sufficient to make out a violation of NASD rules, but that the record showed Gurian's activities on behalf of Falcon were actually much more extensive. (Rel. 34-36619)

NASD ACTION AGAINST MICHAEL NIEBUHR SUSTAINED

The Commission has sustained NASD disciplinary action taken against Michael A. Niebuhr, formerly a registered representative and trader with American Aegis Securities, Inc., a former member of the NASD. The NASD censured Niebuhr, ordered him to make restitution, fined him \$15,000, and suspended him from association with any member firm in any capacity for 90 days. The Commission found that Niebuhr participated in an unregistered distribution of securities, and recommended and sold securities without disclosing to a customer that Niebuhr was selling those securities from his own account and that he had acquired the securities at no cost. (Rel. 34-36620)

NASD DISCIPLINARY ACTION AGAINST CLINTON HOLLAND, JR. SUSTAINED

The Commission has sustained disciplinary action against Clinton Hugh Holland, Jr. of Salem, Oregon by the NASD. The NASD found that, during the period of January 1988 through August 1990, Holland violated Article III, Sections 1 and 2 of the NASD's Rules of Fair Practice by making unsuitable recommendations to a customer. The Commission sustained the NASD's sanctions of a censure, a fine of \$5,000, a suspension from association with any member in any capacity for five business days, and the requirement that Holland requalify by examination as a registered principal within 120 days of the date upon which the decision becomes final or cease to function as manager until such time as he has requalified. (Rel. 34-36621)

TEMPORARY RESTRAINING ORDER ENTERED AGAINST ROBERT WILSON AND OTHERS

On December 20, the United States District Court for the District of Colorado entered a temporary restraining order against Robert C. Wilson, Gary F. Long, Debenture Guaranty Corporation and, Texas attorney Samuel L. Boyd. The order also froze the assets of each defendant, as well as freezing assets of John J. Kenny, Kenny Capital Management and Nicholson Kenny Capital Management, Inc. as relief defendants, and ordered immediate accountings from all defendants and relief defendants.

The lawsuit was based on a fraudulent scheme of massive proportions masterminded by Wilson in which victims were induced to invest in his securities trading program. Wilson and his accomplices claimed that they could buy and sell U.S. Treasury Bills in such a way as to generate profits far in excess of the interest rates paid by such bills. The investments were to be fully collateralized by U.S. Treasury Bills, maintained in a segregated account.

In actuality, unbeknownst to the victims, Wilson purchased the U.S. Treasury Bills on margin, and then misappropriated the additional money the victims had invested.

In a related action, the Commission instituted cease and desist and administrative proceedings against George R. Johnston and Johnston Kent Securities, Inc., who aided Wilson and his accomplices in the scheme. [SEC v. Robert C. Wilson, et.al., Civil Action No. 95-K-3174, LR-14761; In the Matter of George R. Johnston and Johnston Kent Securities, Inc., 33-7249; 34-36614)

MOTION FOR JUDGMENT OF CIVIL CONTEMPT FILED AGAINST LAW FIRM OF O'NEILL,
LYSAGHT & SUN

On December 13, the Commission filed a motion for civil contempt against the law firm of O'Neill, Lysaght & Sun (O'Neill), in the U.S. District Court for the Central District of California, based upon O'Neill's receipt on September 12, 1995 of \$75,000 from its client, Michael J. Colello, in violation of a September 7, 1995 order of the Court.

Colello is a relief defendant in a Commission civil enforcement action in which over \$21 million was raised from investors in violation of the registration and antifraud provisions of the federal securities laws. The Court ordered Colello to pay over \$2.6 million in disgorgement and prejudgment interest thereon. The Court froze all of Colello's assets until such time as he pays the ordered disgorgement. Colello has failed to pay any of the disgorgement. [SEC v. Cross Financial Services, Inc., et al., Civil Action No. 94-4228 RAP(Ex), C.D. Cal.] (LR-14763)

INJUNCTION ENTERED AGAINST HIBBARD BROWN & CO., INC.

The Commission announced that on December 12 the United States District Court for the Southern District of New York entered a Final Judgment and Order of Permanent Injunction and Other Equitable Relief (Order) Against Defendant Hibbard Brown & Co., Inc. (Hibbard). Hibbard consented to the entry of the injunction without admitting or denying any of the allegations made against it in the Commission's complaint. The Court also ordered Hibbard to disgorge \$916,437 in ill-gotten gains, but the Order provided that the amount of disgorgement can only be enforced in accordance with the applicable provisions of the United States Bankruptcy Code and Bankruptcy Rules.

In the complaint, the Commission alleged that Hibbard registered representatives misrepresented and omitted material facts about the securities of Treats International Enterprises Inc. (Treats), including but not limited to, its financial condition, its plans to expand and its stock's price history. Hibbard registered representatives also improperly compared the potential appreciation of Treats' securities to other successful franchises. The complaint further alleged that Hibbard registered representatives omitted to disclose that Robert Brennan, and related entities, owned a material amount of Treats' securities. [SEC v. F.N. Wolf & Co., Inc., et al., SDNY 93 Civ 0379, LLS] (LR-14764)

INVESTMENT COMPANY ACT RELEASES

SPECTRA FUND, INC., ET AL.

A notice has been issued giving interested persons until January 16 to request a hearing on an application filed by Spectra Fund, Inc., et al. for an order under Section 17(b) of the Investment Company Act to exempt applicants from Sections 17(a)(1) and 17(a)(2) of the Act. The order would permit Spectra Fund, Inc. to convert from a closed-end management investment company organized as a Massachusetts corporation to an open-end management investment company organized as a Massachusetts business trust by transferring all of its assets and liabilities to Spectra Fund in exchange for shares thereof. (Rel. IC-21617 - December 21)

SELF-REGULATORY ORGANIZATIONS

APPROVAL OF PROPOSED RULE CHANGE

The Commission granted approval of a proposed rule change (SR-OCC-95-11) filed by The Options Clearing Corporation. The rule change modifies OCC's rules concerning the financial requirements of Canadian clearing members, including the capital computation formula and reporting requirements applicable to Canadian clearing members, to reflect revisions to the capital computation and reporting standards recently adopted by various Canadian regulatory authorities. (Rel. 34-36606; International Series Rel. 905)

PROPOSED RULE CHANGES

The Chicago Board Options Exchange filed a proposed rule change (SR-CBOE-95-68) to expand the firm facilitation exemption that is currently available for S&P 500 Index (SPX) options and for interest rate options to all non-multiply-listed Exchange option classes. Publication of the notice is expected in the Federal Register during the week of December 25. (Rel. 34-36609)

The National Association of Securities Dealers filed a proposed rule change (SR-NASD-95-53) that would amend Section 1 and add new Section 73 and Exhibit A to the NASD's Uniform Practice Code to require members to use standardized limited partnership transfer forms when transferring certain limited partnership securities. (Rel. 34-36611)

IMMEDIATE EFFECTIVENESS OF PROPOSED RULE CHANGE

The Municipal Securities Rulemaking Board filed a notice of filing and immediate effectiveness of a proposed rule change (SR-MSRB-95-19) requesting an extension of its interim Continuing Disclosure Information (CDI) system of the Municipal Securities Information Library® (MSIL™) system. The extension would run from December 31, 1995 through September 30, 1996. (Rel. 34-36610)