

# sec news digest

Issue 95-22

February 2, 1995

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## RULES AND RELATED MATTERS

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### SCHEDULE OF APPEARANCES FOR SAFE HARBOR HEARINGS

The Commission today released a schedule of appearances for its hearings on the safe harbor for forward-looking statements that will be held in Washington, D.C., commencing February 13, 1995, and in San Francisco, California, commencing February 16, 1995. The Washington, D.C. hearings will be held in Room 1C30 of the Commission's headquarters building at 450 Fifth Street, N.W., in Washington, D.C. 20549. The San Francisco, California hearings will be held in the California Public Utility Commission Auditorium, 505 Van Ness Avenue, San Francisco, California 94102. (Rel. 33-3171)

### ADOPTION OF AMENDMENTS TO RULES 138 AND 139 TO CLARIFY THE AVAILABILITY OF THE RESPECTIVE SAFE HARBOR PROVISIONS

The Commission adopted amendments to the broker-dealer research report safe harbor provisions of Rules 138 and 139 to clarify the availability of the rules for reports involving an expanded class of issuers, including sizable first-time foreign private issuers. FOR FURTHER INFORMATION CONTACT: Annemarie Tierney at (202) 942-2990. (Rel. 33-7132; International Series Rel. 780; File No. S7-36-94)

### PROPOSAL OF RULE AMENDMENTS TO RULES 24f-1 AND 24f-2

The Commission has proposed for public comment amendments to Rule 24f-2 under the Investment Company Act of 1940, the rule that permits certain investment companies to register an indefinite number of securities under the Securities Act of 1933. The proposed amendments would clarify the date when annual notices required under Rule 24f-2 are deemed filed with the Commission and would include certain technical changes to clarify the operation of the rule. In addition, the Commission proposed a new form, Form 24F-2, which would provide a standard format for annual notices filed under Rule 24f-2. FOR FURTHER INFORMATION CONTACT: Karen J. Garnett at (202) 942-0728. (Rel. 33-7133; IC-20874; File No. S7-3-95)

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## ENFORCEMENT PROCEEDINGS

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### THOMAS KOLTER PLEADS GUILTY

The Commission and James B. Burns, United States Attorney for the Northern District of Illinois, announced that on January 23 Thomas Kolter (Kolter) pled guilty to a one count information charging him with wire fraud in violation of 18 U.S.C. §1343. According to the information, Kolter, while general counsel of Stotler and Company (Stotler), formerly a government securities broker-dealer registered with the Commission and futures commission merchant, and president of Stotler Funds, Inc. (SFI), formerly a commodity pool operator, devised a scheme to defraud and to obtain money and property from the investors of four SFI related commodity pools.

On August 10, 1993, a Final Judgment of Permanent Injunction and Other Equitable Relief was entered against Kolter. Kolter consented to the entry of an order, permanently enjoining him from violating and/or aiding and abetting violations of the antifraud, books and records and reporting provisions of the federal securities laws and, ordering disgorgement, plus prejudgment interest, payment of which was waived based on his demonstrated inability to pay (SEC v. Thomas M. Egan, et al., 92 C 3480, N.D. Ill.). For further information see Lit. Release Nos. 13252, 13574, 13606 and 13775. [U.S. v. Thomas Kolter, Criminal No. 95 cr 37, USDC, ND ILL.] (LR-14394)

### FINAL JUDGMENT OF DISGORGEMENT AND CIVIL PENALTIES ENTERED AGAINST JEAN LEROYER AND KAREN LEROYER

On January 20, U.S. District Court, Central District of California, ordered Jean Claude LeRoyer and Karen LeRoyer (LeRoyers) to disgorge a total of \$1,753,996.82 and pay prejudgment interest. Of the disgorgement figure, the Court ordered Jean Claude LeRoyer to pay \$1,422,968.24, Karen LeRoyer to pay \$281,706.24, and the LeRoyers to pay \$49,322.34 jointly and severally. The Court further ordered that the payment of disgorgement and prejudgment interest be waived and that civil penalties not be assessed due to the LeRoyers' demonstrated financial inability to pay disgorgement or penalties.

The Commission filed its complaint on January 27, 1992. On February 14, 1992, pursuant to the consents of Metro Display Advertising, Inc., dba Bustop Shelters of California and the LeRoyers, without admitting or denying the Commission's allegations that they had sold roughly \$45 million of unregistered securities through a Ponzi scheme, the Court entered orders permanently enjoining them from violating the securities registration and antifraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934. The orders also required the Defendants to pay disgorgement, prejudgment interest and civil penalties in amounts to be determined. [SEC v. Metro Display Advertising, Inc., dba Bustop Shelters of California, Jean Claude Leroyer, Karen Leroyer,

Bustop Shelters of Nevada, Inc., Showcase Display, Inc., Continental Shelters, Inc., Civil Action No. 92-511, WDK, JRx, C.D. Cal.] (LR-14395)

**UNDISCLOSED PROMOTER AND HIS NOMINEES CHARGED WITH MISAPPROPRIATING IPO PROCEEDS AND FILING FALSE DOCUMENTS WITH THE COMMISSION**

The Commission announced that it filed a civil injunctive action on January 31 in the United States Court for the Southern District of New York against Melbourne Capital Corporation (MCC), William Scott Smith (Scott Smith), Raul N. Rodriguez (Rodriguez), William G. Smith (Smith), Anthony Skulski (Skulski), Alicia Grady Skulski (Alicia Skulski), and S.S. Investors Inc. (SSII).

MCC, a blind pool and blank check company, raised proceeds of approximately \$246,300 from investors through its initial public offering in May 1989 and the subsequent exercise of its warrants. The complaint alleges that Scott Smith, his wholly-owned unregistered broker, SSII, and MCC's officers and directors, Smith, Skulski and Alicia Skulski, misused and misappropriated almost all of the proceeds. Moreover, the complaint alleges that MCC filed false and misleading documents with the Commission, all drafted by MCC's attorney, Rodriguez.

In connection with these allegations, the Commission seeks permanent injunctions against future violations by MCC, Scott Smith, Rodriguez, Smith, Skulski and Alicia Skulski of Section 17(a) of the Securities Act of 1933 (Securities Act), Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5; by MCC and Scott Smith of Sections 13(b)(2) and 15(d) of the Exchange Act, and Rules 12b-20, 15d-1 and 15d-13; and by SSII and Scott Smith of Sections 10(b), 15(a) and 15(c) of the Exchange Act, and Rules 10b-5, 15c1-5 and 15c1-6.

Furthermore, because Scott Smith and the officers and directors allegedly looted MCC by causing it to pay for their own and others' personal expenses, the Commission seeks a total of \$173,696 in disgorgement from them, plus prejudgment interest. The Commission also seeks \$27,671 in disgorgement from Rodriguez, plus prejudgment interest.

Finally, the Commission seeks to bar Scott Smith permanently from acting as an officer and director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, or that is required to file reports pursuant to Section 15(d) of the Exchange Act. [SEC v. Melbourne Capital Corporation, William Scott Smith, Raul N. Rodriguez, William G. Smith, Anthony Skulski, Alicia Grady Skulski, and S.S. Investors, Inc., 95 Civ. 0678, KMW, SDNY] (LR-14396)

**CIVIL AGAINST CONCORD ASSETS GROUP, INC.**

The Commission announced the filing of a complaint in the U.S. District Court for the District of Columbia against Concord Assets Group, Inc., alleging that Concord violated the antifraud provisions of the federal securities laws through the forgery of investor signatures on proxy cards in connection with a merger of two real estate limited partnerships. The complaint further alleges that Concord failed timely to provide certain investors in the partnerships with partnership lists

as required by the proxy rules. Concord has consented, without admitting or denying the Commission's allegations, to the entry of a final judgment ordering it to pay a civil penalty of \$500,000 and enjoining it from violating Section 17(a) of the Securities Act of 1933, Sections 10(b) and 14(a) of the Securities Exchange Act of 1934, and Rules 10b-5 and 14a-7 thereunder. [SEC v. Concord Assets Group, Inc., C.A. No. 95-CV-0222, GK] (LR-14398)

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## **INVESTMENT COMPANY ACT RELEASES**

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### **RIVERS FUNDS**

A notice has been issued giving interested persons until February 27 to request a hearing on an application filed by Rivers Funds for an order under Section 8(f) of the Investment Company Act declaring that applicant has ceased to be an investment company. (Rel. IC-20871 - January 31)

### **AVESTA TRUST, ET AL.**

An order has been issued under Section 17(d) of the Investment Company Act and Rule 17d-1 thereunder to permit series of AVESTA Trust and other investment companies that are advised by Texas Commerce Bank, N.A. or any entity controlling, controlled by, or under common control with Texas Commerce Bank to pool their uninvested cash balances and deposit the balances into one or more joint accounts. Cash balances in the joint accounts would be invested in short-term repurchase agreements. (Rel. IC-20872 - January 31)

### **GOLDEN AMERICAN LIFE INSURANCE COMPANY, ET AL.**

A notice has been issued giving interested persons until February 27 to request a hearing on an application for exemptive relief filed by Golden American Life Insurance Company (Golden American), Separate Account A of Golden American, Any Other Separate Account Established by Golden American In The Future to Support Variable Life Insurance Contracts Issued by Golden American, and Directed Services, Inc. The application is for an order under Section 6(c) of the Investment Company Act granting exemptions from Sections 26(a)(2)(C), 27(c)(1), and 27(c)(2) of the Act and paragraphs (b)(1), (b)(12)(i), (b)(13)(iv), and (c)(4)(v) of Rules 6e-2 and 6e-3(T), and from Rule 22c-1 thereunder. Applicants propose to deduct a charge from premium payments, or on a deferred basis from contract cash value with the balance of any unrecovered amount being deducted upon surrender, to compensate Golden 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 such premiums under certain variable life insurance contracts. (Rel. IC-20873 - January 31)

## FIRST SUNAMERICA LIFE INSURANCE COMPANY, ET AL.

A notice has been issued giving interested persons until February 27 to request a hearing on an application by First SunAmerica Life Insurance Company (First SunAmerica), FS Variable Annuity Account Two (Separate Account), and Vista Broker-Dealer Services, Inc. for an order under Section 6(c) under the Investment Company Act. The order would grant exemptions from Sections 26(a)(2) and 27(c)(2) of the Act to the extent necessary to permit the deduction of mortality, expense risk, and distribution expense charges from the assets of the Separate Account under certain variable annuity contracts (Contracts) funded through the Separate Account, and under materially similar contracts which may be funded in the future through the Separate Account; and the assets of any other separate account established in the future by First SunAmerica in connection with the issuance of contracts which are materially similar to the Contracts. (Rel. IC-20875 - February 1)

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## SELF-REGULATORY ORGANIZATIONS

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### ACCELERATED APPROVAL OF PROPOSED RULE CHANGES

The Commission approved on an accelerated basis a proposed rule change (SR-PTC-94-07) filed by the Participants Trust Company establishing a daily penalty fee applicable to a participant's failure to fund on a timely basis a shortfall in its mandatory deposit to the participants fund. Publication of the approval order is expected in the Federal Register during the week of February 6. (Rel. 34-35299)

The Commission approved a proposed rule change filed by the New York Stock Exchange (SR-NYSE-95-02) to extend until July 21, 1995 its pilot program under NYSE Rule 116.30 to allow specialists to stop stock in a minimum variation market. (Rel. 34-35309)

### APPROVAL PROPOSED RULE CHANGES

The Commission approved a proposed rule change (SR-CBOE-94-46) submitted by the Chicago Board Options Exchange, which amends CBOE Rule 17.50, "Imposition of Fines for Minor Rule Violations," to extend the "lookback period" for determining certain sanctions; limit the number of transactions for which a member may request verification; clarify appeal procedures; provide for the waiver of certain fees for appeals; conform procedures for requests for review under CBOE Rule 17.50 with other CBOE rules; and clarify certain provisions of the rule. Publication of the order is expected in the Federal Register during the week of February 6. (Rel. 34-35300)

The Commission approved a proposal (SR-Phlx-94-23) filed by the Philadelphia Stock Exchange that allows spread priority for eligible spreads between two different foreign currency options. (Rel. 34-35306)

## PROPOSED RULE CHANGES

The New York Stock Exchange filed a proposed rule change (SR-NYSE-95-01) relating to domestic listing standards. Publication of the proposal is expected in the Federal Register during the week of February 6. (Rel. 34-35301)

The Philadelphia Stock Exchange filed a proposed rule change (SR-Phlx-94-77) relating to the imposition of an approved lessor's initiation fee and a requirement that approved lessors pledge to abide by the By-Laws and rules. Publication of the proposal is expected in the Federal Register during the week of February 6. (Rel. 34-35302)

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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-3 SEALED AIR CORP, PARK 80 EAST, SADDLE BROOK, NJ 07662 (201) 791-7600 - 882,930 (\$35,096,467) COMMON STOCK. (FILE 33-57441 - JAN. 26) (BR. 5)

S-6 DEFINED ASSET FUNDS MUNICIPAL INVT TR FD MULTISTATE SER 83, C/O DAVIS POLK & WARDWELL, 450 LEXINGTON AVE, NEW YORK, NY 10017 - INDEFINITE SHARES. (FILE 33-57443 - JAN. 26) (BR. 17 - NEW ISSUE)

S-6 TAX EXEMPT SECURITIES TRUST NEW YORK TRUST 142, C/O DAVIS POLK & WARDWELL, 450 LEXINGTON AVE, NEW YORK, NY 10017 (212) 450-4540 - INDEFINITE SHARES. (FILE 33-57445 - JAN. 26) (BR. 22 - NEW ISSUE)

S-6 TAX EXEMPT SECURITIES TRUST NATIONAL TRUST 201, C/O DAVIS POLK & WARDWELL, 450 LEXINGTON AVE, NEW YORK, NY 10017 (212) 450-4540 - INDEFINITE SHARES. (FILE 33-57447 - JAN. 26) (BR. 22 - NEW ISSUE)

S-4 VALSPAR CORP, 1101 THIRD ST SOUTH, MINNEAPOLIS, MN 55415 (612) -37-5-78 - 500,000 (\$17,969,000) COMMON STOCK. (FILE 33-57449 - JAN. 26) (BR. 1)

S-6 VAN KAMPEN AMERICAN CAPITAL EQUITY OPPORTUNITY TRUST SER 10, ONE PARKVIEW PLAZA UIT ADMN, C/O VAN KAMPEN MERRITT INC, OAKBROOK TERRACE, IL 60181 (NUL) L - INDEFINITE SHARES. (FILE 33-57451 - JAN. 26) (BR. 18 - NEW ISSUE)

S-3 MERRY LAND & INVESTMENT CO INC, 624 ELLIS ST, AUGUSTA, GA 30901 (706) 722-6756 (FILE 33-57453 - JAN. 26) (BR. 5)

REGISTRATIONS CONT.

- S-8 SIGNET BANKING CORP, 7 N EIGHTH ST, PO BOX 25970, RICHMOND, VA 23260  
(804) 747-2000 - 300,000 (\$9,243,750) COMMON STOCK. 300,000  
PREFERRED STOCK. (FILE 33-57455 - JAN. 26) (BR. 2)
- S-8 LTX CORP, LTX PARK AT UNIVERSITY AVE, WESTWOOD, MA 02090 (617) 461-1000  
- 1,200,000 (\$6,372,000) COMMON STOCK. (FILE 33-57457 - JAN. 26) (BR. 8)
- S-8 LTX CORP, LTX PARK AT UNIVERSITY AVE, WESTWOOD, MA 02090 (617) 461-1000  
- 100,000 (\$531,000) COMMON STOCK. (FILE 33-57459 - JAN. 26) (BR. 8)
- S-8 JEFFERSON BANKSHARES INC, 123 E MAIN ST, P O BOX 711, CHARLOTTESVILLE,  
VA 22902 (804) 972-1100 - 150,000 (\$2,868,750) COMMON STOCK. (FILE  
33-57461 - JAN. 26) (BR. 1)
- N-1A KENNEBEC FUNDS TRUST, 237 PARK AVE, NEW YORK, NY 10017 (800) 524-2276 -  
INDEFINITE SHARES. (FILE 33-88568 - JAN. 24) (BR. 17 - NEW ISSUE)
- F-6 MAYR MELNHOF KARTON AKTIENGESELLSCHAFT, 111 WALL ST, C/O CITIBANK NA,  
NEW YORK, NY 10043 (212) 657-7691 - 10,000,000 (\$500,000)  
DEPOSITARY RECEIPTS FOR COMMON STOCK. (FILE 33-88658 - JAN. 23) (BR. 99  
- NEW ISSUE)
- S-8 THREE FIVE SYSTEMS INC, 10230 S 50TH PL, PHOENIX, AR 85044  
(602) 496-0035 - 100,000 (\$3,647,500) COMMON STOCK. (FILE 33-88706 -  
JAN. 24) (BR. 3)
- S-3 GENERAL AUTOMATION INC, 1045 S EAST ST, ANAHEIM, CA 92805 (714) 778-4800  
- 125,000 (\$70,312.50) COMMON STOCK. (FILE 33-88708 - JAN. 24) (BR. 10)
- S-3 VTX ELECTRONICS CORP, 61 EXECUTIVE BLVD, FARMINGDALE, NY 11735  
(516) 293-9880 - 3,339,500 (\$2,087,187.50) COMMON STOCK. (FILE 33-88710 -  
JAN. 24) (BR. 3)
- S-8 ILLINOIS SUPERCONDUCTOR CORPORATION, 1840 OAK AVE, EVANSTON, IL 60201  
(708) 866-0435 - 617,956 (\$4,634,670) COMMON STOCK. (FILE 33-88716 -  
JAN. 24) (BR. 3)
- S-11 MID STATE TRUST IV, RODNEY SQUARE NORTH, C/O WILMINGTON TRUST CO,  
WILMINGTON, DE 19890 (302) 651-1000 - 2,000,000 (\$2,000,000)  
STRAIGHT BONDS. (FILE 33-88718 - JAN. 23) (BR. 11 - NEW ISSUE)
- S-1 TIVOLI SYSTEMS INC, 9442 CAPITAL OF TEXAS HIGHWAY NORTH,  
STE 500 ARBORETUM PLAZA ONE, AUSTIN, TX 78759 (512) 794-9070 - 2,673,750  
(\$29,411,250) COMMON STOCK. (FILE 33-88738 - JAN. 24) (BR. 9 - NEW ISSUE)
- S-1 EQUALNET HOLDING CORP, 1250 WOOD BRANCH PARK DR, HOUSTON, TX 77079  
(713) 556-4600 - 2,415,000 (\$28,980,000) COMMON STOCK. UNDERWRITER:  
BRADFORD J C & CO, JOHNSON RICE & CO. (FILE 33-88742 - JAN. 24) (BR. 7  
- NEW ISSUE)
- S-8 COMMAND CREDIT CORP, 100 GARDEN CITY PLAZA, GARDEN CITY, NY 11530  
(516) 739-8800 - 4,000,000 (\$940,000) COMMON STOCK. (FILE 33-88754 -  
JAN. 25) (BR. 6)
- S-3 PENN AMERICA GROUP INC, 420 SOUTH YORK RD, HATBORO, PA 19040  
(215) 443-3600 - 200,000 (\$1,400,000) COMMON STOCK. (FILE 33-88758 -  
JAN. 25) (BR. 9)

REGISTRATIONS CONT.

- S-8 HUMMINGBIRD COMMUNICATIONS LTD, 2900 JOHN STREET, MARKHAM,  
ONTARIO CANADA L3R 5G3, A1 - 150,000 (\$2,272,739.43) FOREIGN COMMON STOCK.  
(FILE 33-88762 - JAN. 25) (BR. 9)
- S-4 TRANSAMERICAN WASTE INDUSTRIES INC, 314 N POST OAK LANE, HOUSTON, TX  
77024 (713) 956-1212 - \$6,682,620 COMMON STOCK. (FILE 33-88764 - JAN. 25)  
(BR. 8)
- S-3 MCAFFEE ASSOCIATES INC, 2710 WALSH AVE STE 200, SANTA CLARA, CA 95051  
(408) 988-3832 - 1,759,500 (\$29,911,500) COMMON STOCK. (FILE 33-88766 -  
JAN. 25) (BR. 10)
- S-3 MICROS SYSTEMS INC, 12000 BALTIMORE AVE, BELTSVILLE, MD 20705  
(301) 210-6000 - 4,849,123 (\$158,808,778.25) COMMON STOCK. (FILE 33-88768  
- JAN. 25) (BR. 10)
- S-1 MEDISENSE INC /MA/, 266 SECOND AVE, WALTHAM, MA 02154 (617) 895-6000 -  
6,118,000 (\$118,918,625) COMMON STOCK. (FILE 33-88774 - JAN. 26) (BR. 8)
- S-1 CAMERON ASHLEY INC, 11100 PLANO RD, DALLAS, TX 75238 (214) 340-1996 -  
3,450,000 (\$54,337,500) COMMON STOCK. UNDERWRITER:  
ROBINSON HUMPHREY CO INC, SG WARBURG & CO. (FILE 33-88778 - JAN. 26)  
(BR. 9)
- S-8 MAPINFO CORP, ONE GLOBAL VIEW, TROY, NY 12180 (518) 285-6000 - 275,000  
(\$6,771,875) COMMON STOCK. (FILE 33-88780 - JAN. 26) (BR. 10)
- S-3 DUTY FREE INTERNATIONAL INC, 63 COPPS HILL RD, RIDGEFIELD, CT 06877  
(203) 431-6057 - 48,193 (\$415,664.63) COMMON STOCK. (FILE 33-88782 -  
JAN. 26) (BR. 2)
- S-8 DUTY FREE INTERNATIONAL INC, 63 COPPS HILL RD, RIDGEFIELD, CT 06877  
(203) 431-6057 - 1,000,000 (\$8,625,000) COMMON STOCK. (FILE 33-88784 -  
JAN. 26) (BR. 2)
- S-3 HOMELAND BANKSHARES CORP, 229 EAST PARK AVENUE, WATERLOO, IA 50704  
(319) 291-5260 - 250,000 (\$5,500,000) COMMON STOCK. (FILE 33-88830 -  
JAN. 24) (BR. 1)
- S-3 PLASMA THERM INC, 9509 INTERNATIONAL COURT, ST PETERSBURG, FL 33716  
(813) 577-4999 - 2,150,000 (\$13,437,500) COMMON STOCK. (FILE 33-88836 -  
JAN. 25) (BR. 9)
- S-8 ARTISOFT INC, 2202 N FORBES BLVD, TUCSON, AZ 85745 (602) 670-7100 -  
2,214,743 (\$18,133,208.31) COMMON STOCK. (FILE 33-88842 - JAN. 25)  
(BR. 9)
- S-8 CHESTER HOLDINGS LTD, 555 E MAIN ST, CHESTER, NJ 07930 (908) 879-9002 -  
12,900,000 (\$3,612,000) COMMON STOCK. (FILE 33-88850 - JAN. 25) (BR. 12)