

sec news digest

Issue 95-228

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COMMISSION ANNOUNCEMENTS

CHAIRMAN LEVITT TO TESTIFY

Chairman Levitt will testify on Thursday, November 30, before the House Subcommittee on Telecommunications and Finance concerning the Capital Markets Deregulation and Liberalization Act of 1995, H.R. 2131. The hearing will begin at 10:00 a.m. in Room 2123 of the Rayburn House Office Building.

ENFORCEMENT PROCEEDINGS

IN THE MATTER OF JAMES HATFIELD

The Commission today announced the institution of public administrative proceedings as to James M. Hatfield. The Commission, in its Order, found that Hatfield violated of the antifraud provisions of the federal securities laws in connection with the offer and sale of certain fictitious financial instruments.

In May 1992, Hatfield, at that time an account executive for the Lexington, Kentucky office of Shearson, Lehman Brothers was approached by T. Robert Hughes and other individuals previously unknown to him to solicit his clients to invest in "prime bank notes," which they purported could provide extraordinary returns in "no risk" transactions. In fact, no such instruments exist in any legitimate financial market.

Hatfield introduced Hughes to one of his clients, the Kentucky Association of Counties (KACO), at KACO's offices in Frankfort, Kentucky, as a Shearson money manager, which he was not. Hatfield did not disclose to KACO personnel that Hughes intended to invest KACO's funds in prime bank notes. At Hatfield's suggestion, KACO employees executed powers of attorney and related documents granting Hughes investment authority over KACO funds. Immediately thereafter

Hughes attempted to transfer approximately \$33 million in KACO funds to a bank account he controlled in Los Angeles, California. Hatfield's superiors at Shearson, however, prevented this transfer of funds from occurring.

Hatfield, without admitting or denying the findings set forth therein, consented to the issuance of the Commission's Order, which requires that he cease and desist from violations of the antifraud provisions of the federal securities laws and permanently bars him from association with any broker, dealer, municipal securities dealer, investment adviser or investment company, with a right to re-apply after a period of two years from the date of the Order. (Rel. 34-36502)

COMMISSION SUSTAINS NASD ACTION AGAINST JON BUTZEN

The Commission has sustained disciplinary action taken by the NASD against Jon R. Butzen. Butzen was formerly associated with Franklin-Lord, Inc. and Thomas James Associates, Inc., NASD members. The NASD censured Butzen, fined him \$12,500, and barred him from association with any NASD member firm.

The Commission found that Butzen failed to disclose a pending NASD complaint in a form for registration with an NASD member firm, that Butzen effected an unauthorized sale of stock in a customer's account, and that Butzen did not furnish in a timely manner the information requested by the NASD. (Rel. 34-36512)

THE FELDMAN INVESTMENT GROUP, INC.

The Commission announced the entry of an Order Instituting Public Administrative Proceedings, Making Findings and Imposing Remedial Sanctions and Issuing a Cease and Desist Order (Order, against the Feldman Investment Group, Inc. (Feldman), and accepting Feldman's Offer of Settlement. Feldman consented to the issuance of the Order without admitting or denying the Commission's findings.

The Order contains findings that during 1992 and 1993, Feldman, while dually registered with the Commission as an investment adviser and a broker-dealer, executed approximately 5,670 riskless principal transactions for or with its advisory clients and did not obtain the advisory clients' consent before it executed the transaction in violation of Section 206(3) of the Investment Advisers Act of 1940 (Advisers Act). In addition, Feldman violated Section 206(4) of the Advisers Act and Rule 206(4)-1(a)(5) thereunder by furnishing its advisory clients and prospective clients a marketing brochure which falsely stated that Feldman had more than \$5 billion under advisement when, in fact, Feldman had approximately \$1.1 billion under advisement. Moreover, Feldman provided its advisory clients

misleading and unsubstantiated performance figures through certain advertisements, also in violation of Section 206(4) and Rule 206(4)-1(a)(5). Feldman also violated Section 207 of the Advisers Act because it omitted material information about its principal transactions from its Forms ADV filed in 1992 and 1993. Furthermore, Feldman failed to provide Part II of its Form ADV, or equivalent information, to its clients in violation of Rule 204-3 of the Advisers Act. Finally, Feldman violated Section 204 of the Advisers Act and Rules 204-2(a)(3), 204-2(a)(16) and 204-2(e)(3) promulgated thereunder because of its various books and records deficiencies.

As a result, the Commission ordered Feldman to cease and desist from committing or causing any of the above-mentioned violations now or in the future; required Feldman to undertake certain corrective measures concerning its advisory and brokerage practices; and imposed a civil penalty against Feldman in the amount of \$25,000 pursuant to Section 203(i) of the Advisers Act. (Rel. IA-1538)

JOHN KAWESKE ENJOINED AND BARRED

The Commission announced that on November 24 John J. Kaweske (Kaweske), a former executive vice president and portfolio manager with the Invesco complex of mutual funds, was permanently enjoined, by consent, from future violations of the antifraud and other provisions of the federal securities laws and ordered to pay a penalty of \$115,000. The Commission's complaint alleged that Kaweske defrauded investors by failing to disclose two conflicts of interests to Invesco and the funds that he managed, namely that he had arranged for commissions to be paid to his son based upon investments being made by Invesco funds under his management; and was a director of a Canadian company in whose subsidiary he caused Invesco funds to invest. The complaint also alleged that Kaweske failed to report certain personal securities transactions to Invesco. In a related administrative proceeding, the Commission entered an order, again by consent, barring Kaweske from association with any investment adviser, investment company, broker, dealer, or municipal securities dealer, with a right to reapply for association after a period of five years. [SEC v. John J. Kaweske, Civil Action No. 95-N-296, USDC Colo.] (Lk-4737); (Rel. Nos. 34-36518; IA-1539; IC-21541)

DONALD BAINTON AND JOHN CURTIN SETTLE CIVIL INJUNCTIVE ACTION

The Commission announced that on November 15 the Honorable Milton Pollack, of the United States District Court for the Southern District of New York, ordered the entry of final consent judgments of permanent injunction and other equitable relief against Donald J. Bainton (Bainton) and John R. Curtin (Curtin).

Curtin, who is president of WWF International, Inc., a private paper trading company in Greenwich, Connecticut, consented to the entry of a final judgment permanently enjoining him from violating Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder, without admitting or denying the allegations contained in the Commission's complaint. The final judgment orders Curtin to pay \$49,084.23 in disgorgement, prejudgment and post-judgment interest, and a civil penalty under the Insider Trading and Securities Fraud Enforcement Act of 1988 (ITSFEA) of \$39,607.50, which includes post-judgment interest.

Bainton, who is president and chief executive officer of Continental Can Company, Inc., which, at the time of the events alleged in the complaint, was known as Viatech, Inc., a packaging company in Syosset, New York., consented to the entry of a final judgment permanently enjoining him from violating Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, without admitting or denying the allegations contained in the Commission's complaint. Bainton consented to the entry of the final judgment following the start of the trial in this matter, which began on November 14, 1995. The final judgment orders Bainton to pay a civil penalty of \$30,000 under the ITSFEA. [SEC v. Bainton and Curtin, 94 Civ. 0439, MP, USDC, SDNY] (LR-14727)

MOTIONS FOR JUDGMENT OF CIVIL CONTEMPT FOR FAILURE TO PAY COURT ORDERED DISGORGEMENT AND PREJUDGMENT INTEREST AND FOR ORDER DIRECTING REPATRIATION OF FOREIGN ASSETS FILED AGAINST DEFENDANT MICHAEL COLELLO

On November 20, the Commission filed a motion for civil contempt against Defendant Michael J. Colello (Colello) in the U.S. District Court for the Central District of California based upon Colello's failure to pay Court-ordered disgorgement and prejudgment interest awarded as a result of the Commission's civil enforcement action. In addition, the Commission moved for an order directing Colello to repatriate all foreign assets to satisfy the disgorgement and prejudgment interest. On September 7, 1995, the Court entered a Judgment Against Defendants Owen R. Fox, Carroll E. Siemens, Bruce Franklin, Michael J. Colello and Douglas S. Cross (Judgment) following granting the Commission's summary judgment motions. The Judgment orders Colello to pay \$2,620,598.00 in disgorgement, plus prejudgment interest of \$276,954.63. [SEC v. Cross Financial Services, Inc., et al., Civil Action No. 94-4228 RAP, Ex, C.D. Cal.] (LR-14728)

PERMANENT INJUNCTION ENTERED AGAINST JOHN FAULS, III

The Commission announced that the Honorable Marvin E. Aspen, Chief Judge of the United States District Court for the Northern District of Illinois issued an Order of Permanent Injunction against John L. Fauls, III (Fauls) prohibiting him from future violations of the antifraud provisions of the federal securities laws. Fauls, while a registered representative and principal of a broker-dealer, engaged in a three year scheme of trade allocations and interpositioning in United States government securities, to the detriment of a client, the Union Carbide Pension Fund. Fauls would interposition the broker-dealer and a Bank between the Fund and the market, needlessly increasing its transaction costs. In addition, he would execute transactions and not identify the purchaser until after he determined if the transaction was profitable. Profitable transactions would be assigned to the Bank. Fauls was previously found guilty of criminal charges for this conduct and is serving a 57 month sentence in federal prison. Fauls was also ordered to pay \$3.32 million in restitution and to forfeit \$3.32 in connection with his criminal conviction. [U.S. v. John L. Fauls, III, Civil Action No. 95-C-5206, N.D. Ill.] (LR-14729)

INJUNCTION FROM FURTHER VIOLATIONS OF SECTION 10(b) AND RULE 10b-5 GRANTED AGAINST ROBERT SAYEGH

On November 1, the Hon. John F. Keenan, United States District Judge for the Southern District of New York, found in favor of the Commission and against defendant Robert Sayegh, recently employed as a registered representative at Stuart Coleman & Co., a New York, broker-dealer. In an amended complaint filed in June 1991, the Commission charged that Sayegh, then a partner of Moore & Schley, Cameron & Co., violated Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder by participating in a scheme to artificially manipulate the price of Institute of Clinical Pharmacology (ICP) American Depositary Receipts (ADRs) between October 1987 and December 1988. The Court found that Sayegh willfully violated the securities laws by accumulating significant quantities of ICP ADRs, ordering the ADRs placed in the accounts of customers whom he knew would not pay for them, refusing to execute sell orders for ICP and using nominees, or "beards," to create the illusion of heightened demand for the securities. The Court enjoined Sayegh from future violations of Section 10(b) and Rule 10b-5 and ordered Sayegh to disgorge his unlawful gains, the amount of which is to be determined in an audit by an independent, Court-appointed, accountant. [SEC v. Robert Sayegh, 89 Civ. 572, S.D.N.Y.] (LR-14730)

**TEMPORARY RESTRAINING ORDER GRANTED AGAINST SMARTBOX SYSTEMS GROUP INC.
AND THEODORE FLOWERS**

On November 16, the Commission filed an emergency action in U.S. District Court for the Eastern District of Pennsylvania seeking a temporary restraining order, preliminary and permanent injunctions, and other expedited relief against Smartbox Systems Group Inc. and its president and chairman, Theodore K. Flowers. The action also seeks a freeze of assets against Smartbox. The honorable Stewart Dalzell granted the TRO and the asset freeze, and scheduled a preliminary injunction hearing for December 14, 1995. The complaint charges Smartbox and Flowers with violating the antifraud provisions of the federal securities laws. The action also names Kymberly Ogburn, Flower's then girlfriend, as a relief defendant for purposes of seeking an asset freeze and disgorgement of funds paid to her by Flowers.

The Commission's complaint alleges that, from at least November 1994 through the present, Flowers engaged in a \$1 million fraudulent offering of Smartbox common stock. Flowers raised at least \$65,000 for Smartbox from at least eight investors, by falsely telling them that almost all of their money would be held in an escrow account, and would be returned to them if Smartbox was unable to acquire a wireless telecommunications license through the FCC. In reality, Flowers deposited the funds in a Smartbox bank account, and used the funds to pay personal and business expenses. [SEC v. Smartbox Systems Group Inc., et al., USDC, ED PA, Civil Action No. 95-7237] (LR-14733)

INVESTMENT ADVISERS ACT RELEASES

CORRECTED NOTICE

A notice concerning Fortis Advantage Portfolios, Inc., et al. (Rel. IC-21501), previously issued on November 15, was inadvertently repeated in the November 24th issue of the Digest. The following notice should have appeared regarding release number IA-1537 in the November 24th issue:

FOSTER INDUSTRIES, INC.

A notice has been issued giving interested persons until December 15 to request a hearing on an application filed by Foster Industries, Inc. for an order under Section 206A of the Investment Advisers Act that would exempt applicant from Section 205(a)(1) of the Act. Applicant is a corporation engaged solely in the business of investing for the benefit of

fifteen natural persons, ten trusts, and five custodianships. All such natural persons, and the beneficiaries of the trusts and custodianships, are related to one family. The order would permit registered investment advisers to charge applicant performance-based advisory fees. (Rel. IA-1537 - November 20)

SELF-REGULATORY ORGANIZATIONS

APPROVAL OF PROPOSED RULE CHANGES

The Commission approved a proposed rule change (SR-PHLX-95-50) submitted by the Philadelphia Stock Exchange which amends PHLX Rule 722(c)(6), "Time Within Which Margin or 'Mark-to-Market' Must Be Obtained," to reduce from seven business days after the trade date to five business days after the trade date the time in which a customer must either pay for a long foreign currency option (FCO) position or post initial margin for a short FCO position. Publication of the order is expected in the Federal Register during the week of November 27. (Rel. 34-36501)

The Commission approved a proposed rule change (SR-Phlx-95-42) filed by the Philadelphia Stock Exchange that would list and trade options on the Dollar Denomination Delivery (3D) options on the Japanese yen. Publication of the approval order is expected in the Federal Register during the week of November 27. (Rel. 34-36505; International Series Rel. 889)

SECURITIES ACT REGISTRATIONS

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-1 WESTERN FINANCIAL AUTO LOANS INC, 16485 LAGUNA CANYON RD STE 250, IRVINE, CA 92718 (714) 753-3000 - 450,000,000 (\$450,000,000) EQUIPMENT TRUST CERTIFICATES. (FILE 33-99418 - NOV. 17) (BR. 11)
- S-1 WESTERN FINANCIAL AUTO LOANS INC, 16485 LAGUNA CANYON RD STE 250, IRVINE, CA 92718 (714) 753-3000 - 450,000,000 (\$450,000,000) EQUIPMENT TRUST CERTIFICATES. (FILE 33-99420 - NOV. 17) (BR. 11)
- S-1 WESTERN FINANCIAL AUTO LOANS INC, 16485 LAGUNA CANYON RD STE 250, IRVINE, CA 92718 (714) 753-3000 - 450,000,000 (\$450,000,000) EQUIPMENT TRUST CERTIFICATES. (FILE 33-99422 - NOV. 17) (BR. 11)

- S-1 WESTERN FINANCIAL AUTO LOANS INC, 17485 LAGUNA CANYON RD STE 250, IRVINE, CA 92718 (714) 753-3000 - 450,000,000 (\$450,000,000) EQUIPMENT TRUST CERTIFICATES. (FILE 33-99424 - NOV. 17) (BR. 11)
- S-3 ZEBRA TECHNOLOGIES CORP/DE, 333 CORPORATE WOODS PKWY, VERNON HILLS, IL 60061 (708) 674-6700 - 4,355 (\$246,057.50) COMMON STOCK. (FILE 33-99428 - NOV. 17) (BR. 10)
- F-6 SVENSKA CELLULOSE AKTIEBOLAGET SCA /ADR/, S 85188, SUNDSVALL SWEDEN, V7 ----- (212) 577-6018 - 10,000,000 (\$500,000) DEPOSITARY RECEIPTS FOR COMMON STOCK. (FILE 33-99430 - NOV. 17) (BR. 99 - NEW ISSUE)
- S-8 INTELLIGENT SYSTEMS CORP, 4355 SHACKLEFORD RD, NORCROSS, GA 30093 (404) 381-2900 - 650,000 (\$947,950) COMMON STOCK. (FILE 33-99432 - NOV. 17) (BR. 10)
- S-8 SITEL CORP, 13215 BIRCH ST, SUITE 100, OMAHA, NE 68164 (402) 298-6810 - 3,710,893 (\$19,374,809) COMMON STOCK. (FILE 33-99434 - NOV. 17) (BR. 6)
- S-3 FIRST DEPOSIT NATIONAL BANK, 219 MAIN ST, TILTON, NH 03276 (603) 286-4348 - 1,000,000,000 (\$1,000,000,000) EQUIPMENT TRUST CERTIFICATES. (FILE 33-99462 - NOV. 15) (BR. 11)
- S-8 AG SERVICES OF AMERICA INC, 2302 WEST FIRST ST, CEDAR FALLS, IA 50613 (319) 277-0261 - 150,000 (\$1,312,500) COMMON STOCK. (FILE 33-99522 - NOV. 15) (BR. 7)
- S-8 CASH CAN INC, 5020 SERVICE CTR DR, SAN ANTONIO, TX 78209 (210) 666-5520 - 150,000 (\$93,000) COMMON STOCK. 200,000 (\$145,000) WARRANTS, OPTIONS OR RIGHTS. 419,000 (\$259,780) COMMON STOCK. 1,100,000 (\$1,907,500) WARRANTS, OPTIONS OR RIGHTS. (FILE 33-99524 - NOV. 15) (BR. 11)
- S-3 OMOSSO CORP, ONE TOWER BRIDGE, 100 FRONT ST, WEST CONSHOHOCKEN, PA 19428 (610) 834-0222 - 300,000 (\$3,225,000) COMMON STOCK. (FILE 33-99526 - NOV. 17) (BR. 7)
- S-3 MAGAININ PHARMACEUTICALS INC, 5110 CAMPUS DRIVE, PLYMOUTH MEETING, PA 19462 (610) 941-4020 - 125,000 (\$1,156,250) COMMON STOCK. (FILE 33-99528 - NOV. 17) (BR. 4)
- S-8 SCOPIUS TECHNOLOGY INC, 190J POWELL ST SUITE 700, EMERYVILLE, CA 94608 (510) 428-0500 - 2,372,102 (\$16,646,455) COMMON STOCK. (FILE 33-99532 - NOV. 17) (BR. 9)
- S-1 TEXTAINER EQUIPMENT TRUST FUND VI LP, 650 CALIFORNIA ST, 16TH FL, SAN FRANCISCO, CA 94108 - 7,500,000 (\$150,000,000) LIMITED PARTNERSHIP CERTIFICATE. (FILE 33-99534 - NOV. 17) (BR. 5 - NEW ISSUE)
- S-3 AFG RECEIVABLES CORP, OAKMONT CIRCLE 1, 601 OAKMONT LN STE 110, WESTMONT, IL 60550 (708) 953-6170 - 100,000,000 (\$100,000,000) EQUIPMENT TRUST CERTIFICATES. (FILE 33-99536 - NOV. 17) (BR. 11)
- F-3 AS EKSPORTFINANS, DRONNING MAUDS GT 15 0250, OSLO 2 NORWAY, 08 (212) 421-9210 - 300,000,000 (\$300,000,000) STRAIGHT BONDS. (FILE 33-99538 - NOV. 17) (BR. 11)
- S-3 OVERSEAS PARTNERS LTD, CRAIG APPIN HOUSE, WESLEY ST, HAMILTON 5 BERMUDA, DO (809) 295-0788 - 1,647,500 (\$16,277,300) COMMON STOCK. (FILE 33-99544 - NOV. 17) (BR. 9)
- S-1 CHASE MANHATTAN BANK NATIONAL ASSOCIATION, ONE CHASE MANHATTAN PLAZA, C/O RICHARD J WOLF/VICE PRESIDENT, NEW YORK, NY 10081 (212) 552-2222 - 1,500,000,000 (\$1,500,000,000) EQUIPMENT TRUST CERTIFICATES. (FILE 33-99546 - NOV. 17) (BR. 11)
- S-3 SECURITY CAPITAL INDUSTRIAL TRUST, 14100 EAST 35TH PLACE, AURORA, CO 80011 (303) 375-9292 (FILE 33-99548 - NOV. 17) (BR. 6)