



# SECURITIES AND EXCHANGE COMMISSION NEWS DIGEST

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## NEW RULES AND RULE PROPOSALS

NEW BROKER-DEALER RULE REQUIRING REPORTS OF CONDITION OF NET CAPITAL AND BOOKS AND RECORDS. The SEC announced today that it has adopted Rule 17a-11 and Form X-17A-11 under the Securities Exchange Act of 1934 to provide the Commission and the self-regulatory bodies with an adequate and timely flow of information on the financial and operational condition of broker-dealers. The rule provides that when the net capital of a broker-dealer is less than the minimum required or its books and records are not current, the broker-dealer must give immediate telegraphic notice to the Commission and the self-regulatory organizations to which it belongs and file a report within 24 hours. The rule also provides that whenever a broker-dealer's aggregate indebtedness exceeds 1200% of its net capital or its total net capital is less than 120% of the minimum net capital required of it, the broker-dealer must file a report on Form X-17A-11 furnishing data as to its financial and operational condition. The rule becomes effective on September 15, 1971. (Release 34-9268)

## DECISION IN ADMINISTRATIVE PROCEEDING

"TIPPEE" RESPONSIBILITY STANDARDS ANNOUNCED. The Commission in a decision announced today, which affirmed a hearing examiner's action censuring twelve respondents who were found to have used inside information in effecting sales in June 1966 of over 154,000 shares of stock of Douglas Aircraft Co., Inc., in violation of the antifraud provisions of the Federal securities laws, set forth detailed standards of responsibility of "tippees." The respondents cited, all of whom were investment companies or partnerships or advisers or managers of such interests, were Investors Management Co., Inc., Madison Fund, Inc., J. M. Hartwell & Co., Hartwell and Associates, Park Westlake Associates, Van Strum & Towne, Inc., Fleschner Becker Associates, A. W. Jones & Co., A. W. Jones Associates, Fairfield Partners, Burden Investors Services, Inc., and William A. M. Burden & Co. Most of the companies are located in New York.

The respondent organizations were found to have been given non-public information of a substantial decrease in Douglas' current and prospective earnings by salesmen of Merrill Lynch, Pierce, Fenner & Smith, Inc., which as the respondents knew was the prospective underwriter of a proposed offering of Douglas debentures. Most of the respondents had shortly before purchased Douglas stock and some had indicated to Merrill Lynch an interest in buying debentures. Upon receiving the unfavorable Douglas information respondents sold virtually all their holdings and some sold shares short. The price of the stock, which had a high of 90 on the day the information was first imparted to the respondents, fell to 76 when Douglas publicly announced the earnings figures and to 69 the next day, and later declined to a low of 30 in October 1966.

The Commission declared the requisite elements for the imposition of responsibility to be "that the information in question be material and non-public; that the tippee, whether he receives the information directly or indirectly, know or have reason to know that it was non-public and had been obtained improperly by selective revelation or otherwise and that the information be a factor in his decision to effect the transactions." It held that the Douglas earnings information divulged by Merrill Lynch was material because it could be expected to affect the judgment of investors whether to buy, sell or hold Douglas stock and, if generally known, to affect materially the market price of the stock. The Commission observed that although the case of an indirect recipient of inside information may present more questions of factual proof, the need for the protections of the antifraud provisions apply in the entire tippee area. It stated: "The ability of a corporate insider to take action with the benefit of non-public information may be limited by his position in the company and his own personal resources. However others may have a greater capacity to act, particularly those who, like the respondents here, are engaged in professional securities activities and have not only access to or advisory functions with respect to substantial investment funds but also the sophistication to appraise and capitalize upon the market effect of the information."

The Commission further held that where a transaction of the kind indicated by the information (e.g., a sale or short sale upon adverse information) is effected by the recipient prior to its public dissemination, an inference arises that the information was a factor in the recipient's investment decision, an inference which the recipient may seek to overcome by countervailing evidence but as to which respondents did not meet their burden of proof.

The Opinion noted that the Commission's standards would clearly attach responsibility in a situation where the recipient knew or had reason to know the information was obtained by industrial espionage, commercial bribery or the like. It also considered that there would be potential responsibility, depending on an evaluation of the specific facts and circumstances, where persons innocently come into possession of and then use information which they have reason to know is intended to be confidential. The standards would not attach responsibility with respect to information which is obtained by general observation of analysis.

The Commission had previously in these proceedings sanctioned Merrill Lynch and various of its personnel pursuant to an offer of settlement submitted by them.

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Commissioner Smith, in a concurring opinion, agreed that respondents' conduct violated the Commission's antifraud provisions under Rule 10b-5. However, he disagreed with certain of the tests specified by the majority for determining the applicability of the Rule to an inside information trading case which in his view could thwart analysts and researchers in seeking new knowledge from corporate managements. (Release 34-9267)

**BACHE & CO. CITED AND CENSURED.** The SEC today announced the institution of administrative proceedings under the Securities Exchange Act and the Investment Advisers Act with respect to Bache & Co., Inc. The proceedings are based on staff allegations that during the period from about July 1970 to June 4, 1971 the firm violated the registration provisions of the Securities Act in the offer and sale of certain securities consisting of investment contracts and evidences of indebtedness in connection with the attempt to obtain and the obtaining from certain persons the subordination of their securities accounts and the lending to the firm of certain funds and securities. (Release 34-9265)

In an offer of settlement submitted by Bache & Co., the firm, without admitting or denying the allegations in the order for proceedings, consented to a finding that it had violated the registration provisions and to entry of an order of censure. The firm also agreed not to solicit further subordinated accounts from persons other than directors or officers, except pursuant to a plan submitted to and approved by the Commission, and to take steps to phase out the subordinated accounts referred to above. The Commission issued an order accepting the offer of settlement and making the findings and imposing the sanctions provided for in the offer. (Release 34-9266)

**ALLIED BOND & SHARE, INC. REVOKED, H. L. WETTSCURACK BARRED.** The SEC has revoked the broker-dealer registration of Allied Bond & Share, Inc., Indianapolis, Ind., and barred its president, Hubert Leroy Wettsturack, from association with any broker or dealer. These sanctions were based on findings that during the period 1969-1971, among other things, the respondents had violated the antifraud provisions of the securities acts by charging unreasonable prices for securities; the net capital requirements by engaging in business when the firm's aggregate indebtedness exceeded the required ratio and it did not have a minimum capital of \$5,000; and the recordkeeping and reporting requirements in that the firm failed accurately to keep certain books and records and to file an annual financial report in time. The respondents had consented, solely for the purpose of these or other administrative proceedings, to the finding of willful violations and to the imposition of the sanctions. (Release 34-9259)

#### COMMISSION ANNOUNCEMENT

**AUGION-UNIPOLAR REHEARING DENIED.** The SEC today announced the denial of a petition by Augion-Unipolar Corporation of Guilford, New York, seeking rehearing with respect to the Commission's decision and order which suspended the effectiveness of the corporation's registration statement. The Commission also denied Augion's requests to introduce additional evidence and for a stay of the Commission's order pending determination of an appeal.

#### COURT ENFORCEMENT ACTION

**COMPLAINT CITES FINANCIAL SECURITY.** The SEC San Francisco Regional Office announced that on July 23, a complaint was filed in Federal District court in Los Angeles charging Financial Security Corporation, a broker-dealer of Garden Grove, Calif., with violating anti-fraud and net capital provisions of the Federal securities laws. The complaint also asks the court to take exclusive jurisdiction of Financial Security and the appointment of a receiver until such time as the Securities Investor Protection Corporation shall determine whether to make application for the appointment of a trustee under its laws. (LR-5106)

#### TRUST INDENTURE ACT

**KIMBERLY-CLARK CORPORATION.** The Commission issued a notice giving interested persons until August 25 to request a hearing on application of Kimberly-Clark Corp. for a finding that the trusteeship of First National City Bank, under an indenture heretofore qualified under the Trust Indenture Act, and a new indenture not qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify FNCB from acting as Trustee under either of the indentures. 1/

#### SECURITIES ACT REGISTRATIONS

**THE FLYING TIGER CORPORATION.** The Flying Tiger Corp., 7401 World Way West, Los Angeles, Calif. 90009, filed a registration statement on July 27 seeking registration of 45,792 shares of common stock which may be offered for public sale from time to time by selling shareholders at a proposed maximum offering price of \$36.125 per share \*\*. The company is engaged in the air transportation of property and mail and the leasing of specialized types of railroad cars. (File 2-41280)

**SUKUT-COULSON, INC.** Sukut-Coulson, Inc., 4301 West Castor, Santa Ana, Calif. 92704, filed a registration statement on July 28 seeking registration of 200,000 shares of common stock of which 25,000 shares are being offered for sale by principal shareholders of the company, and 175,000 shares by the company at a proposed maximum offering price of \$10 per share\*\*, through underwriters headed by Seidler, Arnett & Spillane, Inc., 445 South Figueroa, Los Angeles, Calif. The company is a general engineering contracting firm primarily in the business of constructing sites for residential, commercial and industrial developments. The net proceeds will be used to improve the company's financial position for the purpose of increasing its bonding capacity and prequalification ratings as determined by certain departments of the State of California. (File 2-41281)

**GULF POWER CORPORATION.** Gulf Power Corporation, 75 North Pace Blvd., Pensacola, Fla. 32502, filed a registration statement on July 28 seeking registration of 50,600 shares of preferred stock, cumulative par value \$100, to be offered for public sale at a proposed maximum offering price of \$102\*\*. Gulf proposes to use the proceeds from the sale to refund \$5,060,000 of its first mortgage bonds, 3-1/8 per cent, due 1971 which mature on September 1, 1971. (File 2-41282)

**MISSISSIPPI POWER COMPANY.** Mississippi Power Company, 2992 West Beach, Gulfport, Miss. 29501, filed a registration statement on July 28 seeking registration of 84,040 shares of preferred stock, cumulative par value, \$100, to be offered for public sale at a proposed maximum offering price \$102 per share\*\*. Mississippi proposes to use the proceeds from the sale of the shares to refund \$8,404,000 of its first mortgage bonds, 3-1/8% series, which mature on September 1, 1971. (File 2-41283)

**IATRIC CORPORATION.** Iatric Corp., 645 Madison Ave., New York 10022, filed a registration statement on July 28 seeking registration of 150,000 shares of common stock to be offered for public sale at \$7 per share; no underwriting is involved. The company intends to operate laboratories for the cryogenic preservation of human semen for possible later use in artificial insemination. Of the net proceeds \$200,000 will be used for equipping and opening a third laboratory and \$285,000 to be retained for working capital. (File 2-41284)

**MACK, BUSHNELL & EDELMAN, INC.** Mack, Bushnell & Edelman, Inc., 110 East 59th St., New York 10022, filed a registration statement on July 28 seeking registration of 200,000 shares of common stock to be offered for public sale at a proposed maximum offering price of \$7 per share\*\*, through underwriters headed by J. D. Winer & Co., Inc., 5 Hanover Sq., New York 10004. The company is engaged in the securities business primarily as a broker for institutional and individual investors. Net proceeds will be added to the company's working capital to provide additional funds for general business purposes. (File 2-41285)

**MSS INFORMATION CORPORATION.** MSS Information Corporation, 19 East 48th St., New York 10022, filed a registration statement on July 28 seeking registration of 100,000 shares of common stock to be offered for public sale at \$6 per share through underwriters headed by A.C. Kluger & Co., 200 East 42nd St., New York. The company is engaged in the business of publishing custom made paper bound books of selected readings for student use in college courses. Of the net proceeds, \$100,000 will be used for production of books and the balance for specified corporate purposes. (File 2-41287)

**ZAYRE INC.** Zayre Inc., Framingham, Mass. 01701, filed a registration statement on July 27 seeking registration of \$25,500,000 of Units, each consisting of a \$1,000 sinking fund debenture due 1996 and warrants to purchase shares of common stock, to be offered for public sale through Lehman Brothers, One William St., New York 10004. The company is engaged in the operation of self-service general merchandise stores known as discount stores. Of the net proceeds, \$11,500,000 will be applied toward repayment of general corporate notes, and for other specified corporate purposes. (File 2-41278)

**CONSOLIDATED EDISON.** Consolidated Edison Company of New York, Inc., 4 Irving Place, New York, N. Y. 10003, filed a registration statement on July 28 seeking registration of \$150 million of first and refunding mortgage bonds, Series JJ, due 2001, to be offered for public sale through underwriters headed by Merrill Lynch, Pierce, Fenner and Smith, 70 Pine St., and The First Boston Corporation and Kidder, Peabody & Company, 20 Exchange Place, all of New York City. Net proceeds from the sale will be used for the construction of utility plant and to repay from time to time short-term obligations incurred as a result of construction programs. (File 2-41292)

**DIAMONDHEAD CORP.** Diamondhead Corporation, 1136 Route 22, Mountainside, N. J. 07092, filed a registration statement on July 28 seeking registration of 1,000,000 shares of common stock, to be offered for public sale at a proposed maximum offering price of \$15 per share\*\* through underwriters headed by Reynolds Securities Inc., 120 Broadway, New York 10005. The company is principally engaged in the real estate development and land sales business. Of the net proceeds, \$13,400,000 will be used to repay short-term indebtedness and the balance added to working capital. (File 2-41294)

**SECURITIES ACT REGISTRATIONS.** Effective July 27: GAC Corporation, 2-40001, 2-40935; Carson Pirie Scott & Co., 2-40824. Effective July 28: Altius Corp., 2-40184 (90 days); American Hospital Supply Corp., 2-41154; Archie Enterprises, Inc., 2-40267 (90 days); BTA Oil Producers, 2-40796; Charming Shoppers, Inc., 2-40205 (90 days); Executone, Inc., 2-40402; Florida Tile Industries, Inc., 2-40393; Franklin Resources, Inc., 2-35786 (90 days); Golden West Financial Corp., 2-40940; Frank B. Hall & Co., Inc., 2-41198; Hexcel Corp., 2-40553; Huyck Corp., 2-40831; Indiana Bell Telephone Co., Inc., 2-40976; Interlake, Inc., 2-39962; Land O'Fabrics, Inc., 2-40204 (90 days); Puget Sound Power & Light Co., 2-40997; Southeast Banking Corp., 2-40741; Wichita Resources, Inc., 2-38729 (90 days); Wild Rover Corp., 2-39240 (90 days).

**NOTE TO DEALERS.** The period of time dealers are required to use the prospectus in trading transactions is shown above in parentheses after the name of the issuer.

\*\* As estimated for purposes of computing the registration fee.

1/ Pending distribution of this Release by the Commission to the appropriate mailing lists, interested persons should consult the Federal Register for details of the release.