

# sec news digest

Issue 94-183

September 26, 1994

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## COMMISSION ANNOUNCEMENTS

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### CHAIRMAN LEVITT TO TESTIFY

On Tuesday, September 27, at 9:30 a.m., Chairman Levitt will testify before the House Subcommittee on Telecommunications and Finance concerning mutual funds and derivatives pricing and portfolio manager personal trading. The hearing will be held in Room 2123 of the Rayburn House Office Building.

### UPDATED EDGAR FILER MANUAL ADOPTED

The Commission today issued a release adopting an updated EDGAR Filer Manual, effective October 31, 1994, which reflects enhancements to EDGARLink and the EDGAR system. Among other changes, electronic filers will now be required to identify for EDGAR the national securities exchanges or national securities association, if any, on or through which the issuer's securities are listed or traded. A number of new form types also have been added to accommodate a broader range of submissions, including more variations of proxy filings. FOR FURTHER INFORMATION CONTACT: In the Office of Information Technology, David T. Copenhafer at (202) 942-8800; in the Division of Corporation Finance, Barbara C. Jacobs, James R. Budge or Joseph P. Babits at (202) 942-2910 or Sylvia J. Reis at (202) 942-2940; in the Division of Investment Management, Anthony A. Vertuno or Ruth Armfield Sanders at (202) 942-0591 (EDGAR IM Project) or David Marsh at (202) 942-0558 (Office of Public Utility Regulation). (Rels. 33-7094; 34-34708; 35-26129; 39-2323; IC-20569)

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## ENFORCEMENT PROCEEDINGS

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### JAY HOUSTON MEADOWS

Administrative Law Judge Glenn Robert Lawrence ordered that Jay Houston Meadows, a registered representative, be barred from associating with any broker-dealer with a right to reapply in two years; cease and desist from committing or causing any violation of any present or future violation of the antifraud provisions of the Securities Act of 1933 or of the Securities Exchange Act of 1934 and rules thereunder; and pay a civil money penalty of \$100,000.

Judge Lawrence found that Meadows willfully violated the antifraud provisions of the federal securities laws and regulations in connection with the sale of several hundred thousand dollars in securities resulting in a substantial loss to investors. These violations consisted, in part, of misrepresentations and failure to investigate new and speculative securities. (Initial Decision No. 56)

### NOTICE OF PERMANENT SUSPENSION ENTERED AGAINST DAVID KAGEL

Today the Commission announced that David L. Kagel has been permanently suspended, pursuant to Rule 2(e)(3)(ii) of the Commission's Rules of Practice, from appearing or practicing before the Commission. The permanent suspension is based upon a permanent injunction, entered on April 6, 1994, in SEC v. David L. Kagel, et al., Civil Action No. 93-0855-ER (C.D. Cal.).

The Court determined, as alleged by the Commission in its complaint, that Kagel orchestrated a fraudulent scheme to take a private company, The Magic Group, public by way of acquisition by a public shell company, Wetherly Venture Associates, Inc., which was to then become known as Magic Restaurants, Inc. Among other things, as part of the scheme, the Court recognized that Kagel, as the attorney for Wetherly, prepared and filed with the Commission's Los Angeles Regional Office a registration statement for an initial public offering on Commission Form S-18, an amendment thereto, four post-effective amendments, and a current report on Commission Form 8-K, which contain false and misleading statements of material fact. Accordingly, the Court determined that Kagel committed repeated and deliberate violations of the federal securities laws, he knew of the violations, and that he attempted to conceal his violations from the Commission even after being specifically asked by the staff.

Based upon these findings, the Court permanently enjoined Kagel from violating Section 17(a) of the Securities Act of 1933, 15 U.S.C. 77q(a), Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. 78j(b) and Rule 10b-5 thereunder, 17 C.F.R. 240.10b-5. The Court also enjoined Kagel from failing or causing the failure to file timely and in proper form with the Commission accurate and complete information and documents as are required to be filed pursuant to Section 13(a) of the Exchange Act, 15 U.S.C. 78m(a), and the Commission's rules thereunder. (Rel. 34-34680)

#### IN THE MATTER OF MELVIN HIRSCH

The Commission announced today that it had ordered Melvin L. Hirsch to cease and desist from committing or causing any violation, and any future violation, of Sections 13(a)(2), 17(a)(2), 17(a)(3), 21(a), 21(b), 30(d), 31(a), 34(b), and 37 of the Investment Company Act and Rules 8b-16, 30d-1 and 31a-1(b)(2)(i)(d) thereunder. The Commission also ordered that Hirsch be prohibited from association with any investment company, investment adviser, broker, dealer or municipal securities dealer. Hirsch was also ordered to pay a civil money penalty in the amount of \$50,000.

Hirsch had submitted an Offer of Settlement consenting to the entry of the Order without admitting or denying the allegations in the Order, (Rel. IC-20560; AAE Rel. 593)

#### SETTLEMENT OFFER OF ROY LA BOLLE, JR. ACCEPTED

The Commission announced the entry of an Order Instituting Public Administrative Proceedings, Making Findings and Imposing Remedial Sanctions against Roy La Bolle, Jr. (La Bolle), and accepting La Bolle's Offer of Settlement. La Bolle consented to the issuance of the Order without admitting or denying the Commission's findings.

The Order contains findings that La Bolle violated the antifraud provisions of the federal securities laws. Specifically, La Bolle, while employed by PaineWebber, Inc., engaged in unauthorized trading and excessive and unsuitable trading in two of his customers' accounts, made material false and misleading statements to his clients regarding the values of their accounts and failed to disclose the risks related to his trading strategy. The Order also contains findings that on August 22, 1994, an Order of Permanent Injunction was entered by the United States District Court for the Northern District of Illinois which permanently enjoins La Bolle from future violations of the same federal securities laws.

The Commission's Order bars La Bolle from associating with any regulated entity, with a right to reapply after a period of three years. (Rel. 34-34683)

## ADMINISTRATIVE PROCEEDINGS INSTITUTED AGAINST JOHN PAPARELLA

The Commission announced that public administrative proceedings have been instituted against John W. Paparella. The Commission's Order Instituting Public Proceedings alleges that Paparella aided and abetted a fraudulent scheme involving M. Wesley Groshans (Groshans), the former president and controlling shareholder of SFT, Inc. (SFT), a now-defunct mutual fund formerly located in King of Prussia, Pennsylvania. Paparella was a director of SFT and a friend of Groshans.

The Order alleges that in February 1990, Groshans sold shares in a private company he owned to SFT for the grossly inflated price of \$2,016,000. From August through October 1990, Paparella aided and abetted Groshans' violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, by creating or altering documents designed to conceal the transaction. At Groshans' request, Paparella signed backdated letters and documents to create the false appearance that a fictitious entity had been the original purchaser, rather than SFT. In return for his assistance, Groshans paid off an outstanding back loan owed by Paparella, in the amount of \$159,966.57.

The Order seeks appropriate remedial action against Paparella, a cease and desist order, and disgorgement together with reasonable interest. (Rel. 33-7093; 34-34684; IC-20561)

## PUBLIC ADMINISTRATIVE PROCEEDINGS INSTITUTED AGAINST JAMES ROBERT VOIGTSBERGER AND PETER CHASE ADVISORS, INC.

The Commission has instituted public administrative proceedings under Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 (Exchange Act) and Sections 203(e) and (f) of the Investment Advisers Act of 1940 (Advisers Act) against Peter Chase Advisors, Inc. (Peter Chase), a registered investment adviser, and its president James Robert Voigtsberger (Voigtsberger), also a registered investment adviser.

The Order Instituting Proceedings alleges that on March 31, 1994, Voigtsberger was found guilty after a jury trial of fifteen counts of mail fraud (U.S. v. James Robert Voigtsberger, Cr. No. 4-93-172, D. Minn. 1994). On July 21, 1994, Voigtsberger was sentenced to thirty-three months in prison and was ordered to pay approximately \$200,000 in restitution. The Indictment charged that from 1981 until 1993, Voigtsberger defrauded his investment adviser clients of money and property in excess of \$350,000. The Indictment also charged that instead of purchasing securities which the clients had agreed to buy, Voigtsberger converted client funds to his own use in order to pay personal and business expenses.

A hearing will be held to determine whether the allegations in the Order are true and to determine what remedial sanctions, if any, are appropriate and in the public interest. (Rel. 34-34685; IA-1441)

#### ADMINISTRATIVE PROCEEDING INSTITUTED AGAINST ALVIN LIPOFF

On September 19, the Commission instituted an administrative proceeding against Alvin Lipoff pursuant to Rule 2(e)(3) of the Commission's Rules of Practice, based on the entry of a permanent injunction against Lipoff. Lipoff consented to the entry of an administrative order barring him from practice as an accountant pursuant to Rule 2(e) of the Commission's Rules of Practice.

Lipoff was previously enjoined from violating Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934 and Rules 10b-5 and 13b2-1 thereunder (SEC v. Mautner and Lipoff, Civ. No. 94-6197, TPG, SDNY). The Commission's complaint alleged that between 1989 and 1992 Lipoff participated in a scheme to misstate PSI's financial statements. The scheme involved filing financial statements that materially misstated PSI's income, among other things. As a result of the scheme, PSI reported materially misstated financial information in the company's Forms 10-K for the fiscal years ended on February 28, 1989, 1990, and 1991. Lipoff participated in the preparation of these filings and signed all of them as PSI's executive vice president, chief financial officer and treasurer. The Commission also alleged that Lipoff knew that, contrary to representations in the Forms 10-K, the financial statements included therein had never been audited. Lipoff consented, without admitting or denying the allegations, to the entry of a permanent injunction and a permanent officer and director bar, and agreed to pay a \$50,000 penalty. (Rel. 34-34714; AAE Rel. 597)

#### CIVIL ACTION AGAINST U.S. ENVIRONMENTAL, INC., ET AL.

The Commission announced that on September 14 the Court entered an Order temporarily freezing the assets of defendant Louis J. Sepe (Sepe) and Sepe's spouse, relief defendant Maria Sepe, and requiring Sepe and Maria Sepe to file an accounting. Sepe, 63, was Chairman of the Board, President, and Chief Executive Officer of U.S. Environmental, Inc. (USE), purportedly an environmental services company. The complaint charges eleven defendants in connection with a fraudulent offering and subsequent manipulation of USE securities. Sepe has been charged with conspiracy to violate certain registration and antifraud provisions, violations of certain antifraud provisions, and, as a controlling person of USE, violations of certain reporting provisions.

A hearing will be held to determine whether the asset freeze should be continued pendente lite. [SEC v. U.S. Environmental Inc., Castle Securities Corp., Mark J. D'Onofrio, Ramon N. D'Onofrio, Louis J. Sepe, Ernest Micciche, Mark A. Geller, Michael T. Studer, John Romano, Leslie S. Roth, and Dudley Mihran Freeland, Defendants, and Maria Sepe, Relief Defendant, 94 Civ. 6608, PKL, SDNY] (LR-14249)

WILLIAM HEATON, III, JAMES MATUSZEWSKI AND BRIDAL EXPOS, INC. NAMED IN CIVIL INJUNCTIVE ACTION

The Commission announced today the filing of a civil action on September 19 in the U.S. District Court for the Southern District of New York against William F. Heaton, III (Heaton), James E. Matuszewski (Matuszewski), and Bridal Expos, Inc. (Bridal), all of Long Island, New York, alleging violations of the antifraud provisions by all three defendants; violations of the reporting provisions by Bridal, for which Heaton is also liable as a controlling person; and violations of the books and records provisions by Bridal. The complaint alleges Bridal, Heaton, its president and chief executive officer, and Matuszewski, a former employee, fraudulently closed Bridal's 1990 minimum/maximum initial public offering, by using non bona-fide sales to create the appearance that the minimum number of shares had been sold. The complaint further alleges that after the IPO, Bridal failed to file accurate and timely reports with the Commission, and to make and keep accurate books and records.

The complaint seeks permanent injunctions against future violations of Section 17(a) of the Securities Act of 1933 (Securities Act) and Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rules 10b-5 and 10b-9 against all three defendants; permanent injunctions against future violations of Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1 and 13a-13, and Rule 463 under the Securities Act of 1933, against Bridal; an order that Bridal file required reports; disgorgement with interest from Heaton; and civil penalties against Heaton and Matuszewski. [SEC v. Heaton, et al., 94 Civ. 6787, USDC, SDNY] (LR-14241)

CHARLES CHUGERMAN CONSENTS TO PERMANENT INJUNCTION IN CIVIL INJUNCTIVE ACTION

The Commission has filed a civil injunctive action against Charles H. Chugerman (Chugerman), formerly an officer and director of Towers Financial Corporation (Towers). The complaint alleges that Chugerman violated Section 17(a) of the Securities Act of 1933 (Securities Act) and Section 10(b) of the Securities Exchange Act of 1934 (Exchange Act) and Rule 10b-5 thereunder by participating in a scheme to defraud purchasers of Towers promissory notes and corporate debt. According to the Commission's complaint, Chugerman created lists of fictitious accounts receivable that were used in the preparation of Towers's inflated financial statements, and were provided to investors, brokers, and the Commission. The complaint seeks a permanent injunction against Chugerman, disgorgement of ill-gotten gains, plus pre-judgment interest and civil penalties.

Simultaneously with filing of the complaint, the Commission asked Judge Whitman Knapp to enter a final judgment of permanent injunction against Chugerman by consent. Without admitting or denying the allegations in the complaint, Chugerman has consented to the entry of a final judgment of permanent injunction, which permanently enjoins him from violating Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The issue of economic remedy (disgorgement, pre-judgment interest thereon and penalties) remains open for judicial determination. [SEC v. Charles H. Chugerman, 94 Civ. 6945, WK, SDNY] (LR-14246; AAE Rel. 596)

#### PONZI SCHEME PROMOTERS ARRESTED BY GERMAN AUTHORITIES

On August 31, the State Prosecutor of Frankfurt, Germany, arrested Damara A. Bertges (D. Bertges) and Harald K. Bertges (H. Bertges) and three others on charges arising from their involvement in a German-based "Schneeballsystem" or "Ponzi" scheme known as the European Kings Club (EKC). Unconfirmed news reports estimate that, at the time of the arrests, EKC had raised over \$200 million from fifty to sixty thousand European investors.

On November 15, 1993, EKC and the Bertgeses and several persons and entities under their control were named as defendants in an enforcement action filed by the Commission in U.S. District Court for the District of Maine. In that action, the Commission alleged that EKC and the Bertgeses had violated the antifraud and securities registration provisions of the U.S. securities laws in connection with their offer and sale of interests in the "Ponzi" scheme to U.S. investors. On March 22, 1994, the Bertgeses and the others named in the complaint consented to the entry of an order permanently enjoining them from future violations of the federal securities laws and ordering them to pay disgorgement and prejudgment interest of \$997,343 and a civil monetary penalty of \$1 million. All defrauded U.S. investors who were not related to the defendants in the action have received a complete refund of their investments through distributions of the disgorged amount. [SEC v. European Kings Club, et al., C.A. No. 93-0258-B, D. Maine] (LR-14247)

#### CIVIL ACTION FILED AGAINST ROBERT KUSS AND ROBERT KUSS AND ASSOCIATES, INC.

On September 21, the Commission filed a complaint in the United States District Court for the Eastern District of Pennsylvania against Robert J. Kuss (Kuss) and Robert J. Kuss and Associates (RJK Associates). The complaint alleges that Kuss and RJK Associates violated the antifraud provisions of the securities laws. The complaint seeks permanent injunctive relief and the imposition of civil penalties.

Kuss, operating through RJK Associates, provided investment services to the pension plans of Springfield Township and Upper Providence Township, two municipalities located in southeastern Pennsylvania. From March

1989 through March 1992, Kuss misappropriated for his own use approximately \$1,482,524 of pension plan monies from the townships' pension plans. Kuss misappropriated the funds by redeeming securities which had been purchased with the townships' funds for investment purposes and depositing the proceeds of the redemption into his personal bank account. Kuss also deposited into his bank account checks which he had drawn from the townships' holdings in mutual funds and money market funds. [SEC v. Robert J. Kuss and Robert J. Kuss and Associates, Inc., Civil Action No. 94-cv-5776, E.D. PA] (LR-14248)

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#### **INVESTMENT COMPANY ACT RELEASES**

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##### **ALEX. BROWN CASH RESERVE FUND, INC., ET AL.**

An order has been issued on an application filed by Alex. Brown Cash Reserve Fund, Inc., et al. under Section 6(c) of the Investment Company Act for an exemption from Sections 13(a)(2), 13(a)(3), 17(a)(1), 18(f)(1), 22(f), and 22(g) and Rule 2a-7 thereunder, and under Section 17(d) and Rule 17d-1 thereunder. The order permits certain investment companies to enter into deferred compensation arrangements with their independent directors. (Rel. IC-20570 - September 23)

##### **THE BRINSON FUNDS, ET AL.**

A notice has been issued giving interested persons until October 18 to request a hearing on an application filed by The Brinson Funds, et al. for a conditional order under Section 6(c) of the Investment Company Act that would exempt applicants from the provisions of Sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c), and 22(d) of the Act and Rule 22c-1 thereunder. The order would permit certain open-end management investment companies to issue multiple classes of shares representing interests in the same investment portfolio and assess and, under certain circumstances, waive or reduce a contingent deferred sales charge on certain redemptions of shares. (Rel. IC-20571 - September 23)