

sec news digest

Issue 79-174

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RULES AND RELATED MATTERS

PROPOSED COMMENTS RE RULE 12b-1 AND 17d-3 AND REVISIONS OF FORM N-1

The Commission is proposing for public comment two rules under the Investment Company Act of 1940 and revisions to the registration and reporting form for open-end management investment companies (mutual funds) relating to the use of mutual fund assets for distribution. Proposed rule 12b-1 would permit mutual funds to bear expenses incurred in the distribution of their shares if such funds complied with certain conditions and procedures. Any decision by a mutual fund to bear distribution expenses would have to be approved by at least two-thirds of its directors, at least two-thirds of its disinterested directors, and at least two-thirds of its outstanding voting securities. In addition, the rule contains conditions intended to ensure that the disinterested directors are neither dominated nor unduly influenced by management, that the directors are fully informed, and they exercise reasonable business judgment. To achieve these objectives, the rule requires that selection and nomination of the disinterested directors be committed to the discretion of such disinterested directors, and that the directors give appropriate weight to all pertinent factors in a decision to bear distribution expenses, including, but not limited to, those set forth in the rule. Proposed rule 17d-3 would provide an exemption from section 17(d) of the Act and rule 17d-1 thereunder to the extent necessary for agreements between mutual funds and their affiliated persons under which payments are made by the fund with respect to distribution, if those agreements are entered into in compliance with rule 12b-1. The proposed revisions to Form N-1 would require disclosure of, among other material facts, the amount spent by the fund for distribution and the benefits accruing to the fund from such expenditures. All comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 on or before December 7 and should refer to File No. S7-743. (Rel. 33-6119)

FOR FURTHER INFORMATION CONTACT: Richard W. Grant at (202) 272-2041 or Dianne E. O'Donnell at (202) 272-2115

SHAREHOLDER COMMUNICATIONS, SHAREHOLDER PARTICIPATION IN THE CORPORATE ELECTORAL PROCESS AND CORPORATE GOVERNANCE GENERALLY

The Commission has authorized the Division of Corporation Finance to issue its interpretive views regarding recently adopted proxy statement disclosure requirements relating to certain business and personal affiliations of directors. Some of the more frequently raised questions regarding these disclosures are set forth together with the Division's interpretive responses. The Commission is also requesting comments on the operation and efficacy of these requirements as well as certain other disclosure requirements (adopted in December 1978, Rel. 34-15384) relating to the structure, functioning and composition of boards of directors.

All comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 on or before November 30 and should refer to File No. S7-799. All comments will be available for public inspection. (Rel. 34-16163)

FOR FURTHER INFORMATION CONTACT: Richard B. Nesson at (202) 272-3098 or G. Michael Stakias at (202) 272-2589

ADMINISTRATIVE PROCEEDINGS

SANCTIONS IMPOSED AGAINST GROTH, MARTIN, MOYSEY & CO., INC., OTHERS

The Commission simultaneously entered an order instituting administrative proceedings and imposing remedial sanctions against Groth, Martin, Moysey & Co., Inc. (Registrant), a registered broker-dealer and investment adviser with its principal place of business in Rockville, Maryland, John H. Groth, the former president of Registrant, John R. Moysey, the current president of Registrant and Thomas E. Martin, a vice-president of Registrant. The Commission has accepted Offers of Settlement submitted by Registrant, Martin, Moysey, and Groth. Based on Registrant's offer, the Commission entered an order finding that Registration wilfully violated the Commission's net capital, bookkeeping and reporting rules and allowing a barred person to become associated with it without adhering to the representations made to and upon which the Commission's consent to such association was based. Based on Martin, Moysey, and Groth's offers, the Commission entered an order finding that they failed to exercise their duty of reasonable supervision in connection with the activities of Registrant resulting in Registrant's wilful violations as set forth above. Respondents' offers of settlement neither admit nor deny the allegations in the Commission's order for proceedings.

The Commission has censured Registrant, suspended Moysey and Martin from association with any broker or dealer for a period of fifteen business days each and limited Groth's activities in connection with his association with any broker or dealer to those of a non-supervisory nature for a period of six months. Additionally, Registrant has undertaken to employ an appropriate individual as the firm's financial principal. (Rel. 34-16148)

CIVIL PROCEEDINGS

COMPLAINT NAMES LAWRENCE H. AND SHIRLEY B. KRUTT

The Atlanta Regional Office and the Miami Branch Office announced that on August 2 a complaint was filed in the U.S. District Court for the Southern District of Florida, charging Lawrence H. Krutt and Shirley B. Krutt with violations of the antifraud provisions of the Securities Exchange Act of 1934. The complaint alleged that the Krutt's made purchases of the common stock of Beverage Cannery, Inc. (BCAN), a public company whose stock is traded in the over-the-counter market, while in possession of material non-public information concerning an impending tender offer by the company for its own common stock. The Krutt's obtained this information, prior to the company's public announcement, as a result of L. Krutt's position as treasurer and a director of BCAN. Pursuant to the tender offer, the defendants tendered the common stock so required.

On August 27 the defendants submitted their consents to the entry of permanent injunctions and an order of disgorgement, without admitting or denying the allegations contained in the complaint. On August 30 the Honorable Sidney M. Aronovitz entered a Final Judgment of Permanent Injunction and Order of Disgorgement. (SEC v. Lawrence H. Krutt and Shirley B. Krutt, Civil Action No. 79-3402-CIV-SMA). (LR-8861)

CRIMINAL PROCEEDINGS

RICHARD BERRY FOUND GUILTY

The Denver Regional Office announced that on August 20 a Federal District Court jury in Phoenix found Richard S. Berry, an attorney, guilty of one count of conspiracy to obstruct an investigation, commit perjury and suborn perjury before the Commission and falsely testify in the U.S. District Court for the Western District of Texas. The defendant was acquitted of two counts of subornation of perjury and two counts of obstruction of proceedings before the Commission concerning an investigation of Bankers Trust Company of New Mexico. (U.S. v. Richard S. Berry, USDC, District of Arizona, CR-79-038 PHX). (LR-8864)

INVESTMENT COMPANY ACT RELEASES

KEYSTONE CUSTODIAN FUND, SERIES S-2

An order has been issued on an application of Keystone Custodian Fund, Series S-2, declaring that it has ceased to be an investment company. (Rel. IC-10861 - Sept. 6)

HOLDING COMPANY ACT RELEASES

ALABAMA POWER COMPANY

A notice has been issued giving interested persons until October 1 to request a hearing on a proposal of Alabama Power Company, subsidiary of The Southern Company, whereby Alabama will enter into arrangements for nuclear fuel financing. (Rel. 35-21207 - Sept. 5)

CENTRAL POWER & LIGHT COMPANY

An order has been issued authorizing Central Power and Light Company, subsidiary of Central and South West Corporation, to acquire 347 coal rail cars to be used for transporting coal to Central Power and Light's Coletto Creek Station. The total estimated cost of the coal cars is \$15,773,000. (Rel. 35-21208 - Sept. 5)

PUBLIC SERVICE COMPANY OF OKLAHOMA

An order has been issued authorizing Public Service Company of Oklahoma, subsidiary of Central and South West Corporation, to acquire 726 coal rail cars for a total estimated cost of \$27,162,680. The cars will be used to supply coal to Public Service of Oklahoma's Northeastern Electric Generating Station. (Rel. 35-21209 - Sept. 6)

SECURITIES ACT REGISTRATIONS

The following registration statements have been filed with the SEC pursuant to the Securities Act of 1933. The information noted below has been taken from the cover page and the facing sheet of the prospectus and registration statement and will appear as follows: Form; Name, address and phone number (if available) of the issuer of the security; Title and the number or face amount of the securities being offered; Name of the managing underwriter (if applicable); Whether the offering is a rights offering; and File number and date filed.

- (S-7) INDEPENDENT BANKSHARES CORPORATION, 1108 Fifth Ave., San Rafael, Cal. 94901 (415) 456-8000 - 200,000 shares of common stock. Underwriter: Davis, Skaggs & Co., Inc. The company is engaged in the banking and trust business. (File 2-65416 - Sept. 6)
- (S-8) PAY LESS DRUG STORES, 8000 Edgewater Dr., Oakland, Cal. 94621 (415) 635-9600 - 200,000 shares of common stock. (File 2-65417 - Sept. 6)
- (S-16) THE TIMES MIRROR COMPANY, Times Mirror Sq., Los Angeles, Cal. 90053 (213) 972-3700 - \$100 million of notes, due 1986. Underwriters: Morgan Stanley & Co. Inc. and Goldman, Sachs & Co. The company is engaged in newspaper publishing, among other things. (File 2-65418 - Sept. 6)
- (S-8) PHILLIPS PETROLEUM COMPANY, Phillips Bldg., Bartlesville, Okla. 74004 (918) 661-6130 - 9,747 shares of common stock and \$400,000 of participation. (File 2-65419 - Sept. 6)
- (S-16) EMERSON ELECTRIC CO., 8100 West Florissant Ave., St. Louis, Mo. 63136 (314) 553-2000 - 81,000 shares of common stock. (File 2-65420 - Sept. 6)
- (S-7) ALLEGHENY LUDLUM INDUSTRIES, INC., 2700 Two Oliver Plaza, Pittsburgh, Pa. 15222 (412) 562-4000 - \$95 million of 10-1/2% subordinated sinking fund debentures, due 1999. Underwriter: Smith Barney, Harris Upham & Co. Inc. The company is engaged in the manufacture and sale of specialty steels and alloys, among other things. (File 2-65421 - Sept. 6)
- (S-8) METEX CORPORATION, 51 Cragwood Rd., South Plainfield, N.J. 07080 (201) 287-0800 - 70,000 shares of common stock. (File 2-65422 - Sept. 6)

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