

# SEC NEWS DIGEST

Issue 98-140

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## COMMISSION ANNOUNCEMENTS

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### COMMISSION MEETINGS

Following is a schedule of Commission meetings which will be conducted under provisions of the Government in the Sunshine Act. Meetings will be scheduled according to the requirements of agenda items under consideration.

Meetings will be held in the Commission Meeting Room, Room 1C30, at the Commission's headquarters building, 450 Fifth Street, N.W., Washington, D.C. Visitors are welcome at all open meetings, insofar as space is available. Persons wishing to photograph or videotape Commission meetings must obtain permission in advance from the Secretary of the Commission. Persons wishing to tape record a Commission meeting should notify the Secretary's office 48 hours in advance of the meeting.

Any member of the public who requires auxiliary aids such as a sign language interpreter or material on tape to attend a public meeting should contact Rochelle Franks, Office of Administrative and Personnel Management, to make arrangements. Ms. Franks can be reached at TTY number (202) 942-9558. If you are calling from a non-TTY number, please call the Relay Service at 1-800-877-8339.

### OPEN MEETING - WEDNESDAY, JULY 29, 1998 - 11:00 A.M.

The subject matter of the open meeting scheduled for Wednesday, July 29, 1998, at 11:00 a.m., will be:

Consideration of whether to issue an interpretive release setting forth the Commission's views on how public companies, investment companies, investment advisers, and municipal securities issuers should meet their disclosure obligations regarding the Year 2000 issue and its consequences. For further information, contact Mauri Osheroff at (202) 942-2840.

**CLOSED MEETING - FRIDAY, JULY 31, 1998 - 10:00 A.M.**

The subject matter of the closed meeting scheduled for Friday, July 31, 1998, at 10:00 a.m., will be: Institution of injunctive actions; Institution of administrative proceedings of an enforcement nature; and Formal order of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

**STAFF LEGAL BULLETIN NO. 6**

The Divisions of Corporation Finance, Market Regulation and Investment Management have issued Staff Legal Bulletin No. 6 reminding public issuers, broker-dealers, investment advisers and investment companies to consider their disclosure obligations in connection with the conversion by certain member states of the European Union to a common currency, the "euro." The Staff Legal Bulletin also urges regulated entities to assess their operations readiness and to implement necessary measures to prepare for the euro conversion by September 30, 1998, to permit sufficient time for systems testing.

For further information, please contact Anne Krauskopf at (202) 942-2900 regarding public issuers; Paul P. Andrews at (202) 942-0799 regarding broker-dealers; and Paul T. Kraft at (202) 942-0590 regarding investment companies and investment advisers.

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**ENFORCEMENT PROCEEDINGS**

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**BOLESLAW WOLNY MOTION TO RECONSIDER DENIED**

On July 20, the Commission denied a motion by Boleslaw Wolny to have the Commission reconsider its May 20, 1998, dismissal of an appeal from action taken by the National Association of Securities Dealers, Inc. (NASD). The NASD had denied an application by Kingston Securities Corp. to remain an NASD member if it employed Wolny. Wolny is subject to a statutory disqualification based on a 1996 felony conviction. The Commission's denial order rejected Wolny's numerous arguments, most of which were addressed in the Commission's order of May 20, 1998, dismissing the appeal. (Rel. 34-40236; File No. 3-9241)

**APPEAL OF RICHARD PENDLETON DISMISSED**

On July 21, the Commission dismissed an appeal taken by Richard R. Pendleton of Rollinsville, Colorado, from the National Association

of Securities Dealers, Inc.'s revocation of Pendleton's registration. Pendleton had failed to pay an arbitration award entered in 1996.

Pendleton admitted that he had not paid his award, settled the claim, or filed for bankruptcy. He also did not claim that he was unable to pay the award. Rather, Pendleton had asserted that the award, which arose from Pendleton's description of a registered representative's activities on a Form U-5, was unjust. The Commission concluded that Pendleton's arguments amounted to an impermissible collateral attack on the arbitration award and dismissed the appeal. (Rel. 34-40237; File No. 3-9501)

#### **COMMISSION SETS ASIDE NASD'S DETERMINATION REQUIRING REQUALIFICATION BY EXAMINATION AFTER A SUMMARY REVOCATION**

On July 21, the Commission set aside a determination by the National Association of Securities Dealers, Inc. (NASD) requiring Frank R. Rubba, a former registered representative who was summarily suspended for failure to pay a fine, to requalify by examination before seeking to re-enter the securities industry. The Commission held that the NASD rules do not require persons summarily suspended pursuant to Rule 8320 of the NASD's Complaints, Investigations and Sanctions Rules to requalify by examination pursuant to Membership and Registration Rule 1031(c) before seeking re-entry into the securities industry. (Rel. 34-40238; File No. 3-9480)

#### **COMMISSION DENIES PETITION OF STEPHEN WIEN TO VACATE BAR ORDER**

On July 21, the Commission denied the petition of Stephen S. Wien, of Jersey City, New Jersey, to vacate a 1982 Commission order, entered with Wien's consent, barring him from association in a supervisory or proprietary capacity with any broker, dealer, investment company, investment adviser, or municipal securities dealer. The Commission's order was based on findings that Wien, at that time president of M.S. Wien & Co., Inc. (MSW or the firm), a registered broker-dealer, aided and abetted his firm's violations of credit extension, customer protection, recordkeeping, and reporting provisions. In a related Commission injunctive action, MSW and its officers were enjoined from further violations of net capital provisions. In addition, a SIPC trustee was appointed to liquidate the firm.

In denying Wien's petition, the Commission stated that it was not convinced that lifting the bar would be consistent with the protection of public customers. It noted that Wien's failure to monitor and safeguard his firm's financial condition led to its financial collapse and forced liquidation. The Commission observed that, although Wien has been permitted since the bar to occupy supervisory and proprietary positions with a brokerage firm, he has done so subject to significant recordkeeping and reporting restrictions that guard against a repetition of his prior misconduct. (Rel. 34-40239; File No. 3-6102)

## **ADMINISTRATIVE SANCTIONS IMPOSED AGAINST STEVEN DOWN**

On July 21, the Commission accepted an offer of settlement submitted by Steven L. Down in connection with administrative proceedings which had previously been instituted against Down pursuant to Section 203 (f) of the Investment Advisers Act. The Order bars Down from association with any broker, dealer, investment company, investment adviser or municipal securities dealer, provided that Down may apply for reassociation with a regulated entity after two years.

The proceedings against Down were based on an injunction which had been entered against him in SEC v. Investors Dynamics Corporation and Steven L. Down. The complaint in the civil action alleged that from October 1994 through March 1996, Down offered and sold unregistered securities in the form of a pyramid marketing plan. The complaint also alleged that in marketing these securities Down fraudulently exaggerated earnings projections by stating participants in the program could earn \$ 1,000 per week; failed to disclose the risk of market saturation which arose as a result of the pyramid nature of the program; and failed to disclose that Down had received virtually all the net profit of the company in the form of putative loan repayments or other compensation. (Rel. IA-1735; File No. 3-9578)

## **BOND DELLAPP FLETCHER AND MEDIAJET, INC. ENJOINED FOR ROLE IN CENTENNIAL TECHNOLOGIES, INC. FRAUD**

The Commission announced today the entry of a judgment enjoining Bond Dellapp Fletcher (Fletcher) and Mediajet, Inc. (Mediajet) from violating certain antifraud and reporting provisions of the Exchange Act and ordering Fletcher to pay disgorgement of \$7,024,184, plus prejudgment interest thereon. Under the terms of the settlement, Fletcher will pay approximately \$3 million and the remainder will be waived based on his demonstrated inability to pay. Fletcher and Mediajet consented to the entry of the judgments.

The Commission's complaint, filed in the United States District Court for the District of Massachusetts, alleged that Fletcher and Mediajet aided and abetted the financial fraud conducted by Emanuel Pinez (Pinez) and Centennial Technologies, Inc. (Centennial). According to the complaint, Pinez and Centennial engaged in a fraudulent scheme to defraud investors in Centennial stock by falsely overstating the company's revenues and profits. The complaint alleged that Defendants Fletcher and Mediajet facilitated the scheme by, among other things, fabricating fictitious purchase orders, signing backdated sales orders falsely acknowledging receipt of products from Centennial, accepting shipment of mock and/or obsolete computer equipment, and using Centennial's funds to purchase treasurers checks, payable to Centennial, on behalf of purported Centennial customers. [SEC v. Bond Dellapp Fletcher and Mediajet, Inc., Civ. No. 97-12443-PBS, D. Mass] (LR-15818)

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**INVESTMENT COMPANY ACT RELEASES**

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**VARIABLE INSURANCE PRODUCTS FUND, ET AL.**

An amended order has been issued pursuant to Section 6(c) of the Investment Company Act exempting Variable Insurance Products Fund (VIPF), Variable Insurance Products Fund II (VIPF II), and Variable Insurance Products Fund III (VIPF III) from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the Act, and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder, to the extent necessary to permit shares of VIPF, VIPF II and VIPF III, as well as shares of any future funds for which Fidelity Management & Research Company (FMR) or any affiliate of FMR serves as the investment manager, advisor, principal underwriter or sponsor to be issued to and held by qualified pension and retirement plans outside of the separate account context. (Rel. IC-23320 - July 21)

**THE EMERGING GERMANY FUND INC.**

An order has been issued on an application filed by The Emerging Germany Fund Inc. for an order under Section 6(c) of the Act for an exemption from Section 19(b) of the Act and Rule 19b-1 under the Act. The order permits applicant to make up to four distributions of net long-term capital gains in any one taxable year, so long as it maintains in effect a distribution policy calling for quarterly distributions of a fixed percentage of its net asset value. (Rel. IC-23321 - July 21)

**PAINWEBBER AMERICA FUND, ET AL.**

An order has been issued on an application filed by PaineWebber America Fund, et al. under Sections 6(c) and 17(b) of the Investment Company Act that would grant an exemption from Sections 17(a) and 17(e) of the Act, and under Section 17(d) of the Act and Rule 17d-1 under the Act. The order permits (i) certain registered investment companies to invest cash collateral from securities lending transactions and uninvested cash in shares of an affiliated private investment company (New Fund); (ii) PaineWebber Incorporated (PaineWebber) and Mitchell Hutchins Asset Management Inc. to accept fees from certain other registered investment companies that are affiliated persons solely because they hold 5 % or more of the shares of New Fund (Other Funds); and (iii) PaineWebber and certain affiliated broker-dealers to borrow portfolio securities from certain affiliated registered investment companies and to receive brokerage commissions from, and to engage in principal securities transactions with, the Other Funds. (Rel. IC-23322 - July 21)

**WEISS, PECK & GREER FUNDS TRUST, ET AL.**

A notice has been issued giving interested persons until August 18, 1998, to request a hearing on an application filed by Weiss, Peck & Greer Funds Trust, et al. for an order under Section 6(c) of the

Investment Company Act exempting applicants from Section 15(a) of that Act. The order would permit the implementation, without prior shareholder approval, of new investment advisory and subadvisory agreements for a period of up to 90 days following acquisition of Weiss, Peck & Greer, L.L.C. (WPG) by Robeco Groep N.V., but in no event later than October 31, 1998 (Interim Period). The order would also permit payment of all fees earned under the new advisory agreements during the Interim Period following shareholder approval. (Rel. IC-23323 - July 21)

#### **BOND FUND SERIES, ET AL.**

An order has been issued on an application filed by Bond Fund Series, et al. under Section 12(d)(1)(J) of the Investment Company Act granting relief from Section 12(d)(1)(G)(i)(II) of the Act. The order permits a fund of funds relying on Section 12(d)(1)(G) of the Act to make investments in securities and other instruments. (Rel. IC-23324 - July 21)

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#### **HOLDING COMPANY ACT RELEASES**

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#### **SEMPRA ENERGY, ET AL.**

A notice has been issued giving interested persons until August 13, 1998, to request a hearing on a proposal by Sempra Energy (Sempra), an exempt holding company under Section 3(a)(1) of the Public Utility Holding Company Act (Act), and Sempra's indirect subsidiary, Frontier Pacific, Inc. (Frontier Pacific). Applicants request authority for Frontier Pacific to acquire up to 90.1% of the outstanding shares of Frontier Energy LLC, a North Carolina partnership that will construct, own and operate a gas utility distribution system in North Carolina. In addition, applicants seek an order under Section 3(1)(a) of the Act exempting Sempra, Frontier Pacific, and each of their subsidiary companies from all provisions of the Act, except Section 9(a)(2). (Rel. 35-26897)

#### **CENTRAL AND SOUTH WEST SERVICES, INC.**

A supplemental order has been issued authorizing Central and South West Services, Inc., a nonutility service subsidiary company of Central and South West Corporation, a registered holding company, to provide engineering and construction services and related environmental and equipment maintenance services to nonassociate entities. (Rel. 35-26898)

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#### **SELF-REGULATORY ORGANIZATIONS**

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## APPROVAL OF PROPOSED RULE CHANGES

The Commission approved a proposed rule change filed by The Depository Trust Company (SR-DTC-98-02) under Section 19(b)(1) of the Exchange Act. The rule change implements the HUB Mailbox service. (Rel. 34-40219)

The Commission approved a proposed rule change (SR-MSRB-97-14) submitted by the Municipal Securities Rulemaking Board to amend Rule G-32, on disclosures in connection with new issues. The proposed rule change strengthens the provisions of the rule relating to dissemination of official statements among dealers and incorporates a long-standing Board interpretation relating to disclosures required to be made to customers in connection with negotiated sales of new issue municipal securities. Publication in the Federal Register is expected during the week of July 20. (Rel. 34-40230)

The Commission approved a proposed rule change filed by the Chicago Stock Exchange (SR-CHX-98-09) relating to modifications to the SuperMAX and Enhanced SuperMAX algorithms. Publication is expected in the Federal Register the week of July 20. (Rel. 34-40235)

## PROPOSED RULE CHANGES

The National Association of Securities Dealers, through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. filed a proposed rule change (SR-NASD-98-01) and Amendments Nos. 1, 2, and 3 relating to the NASD's rules regarding electronic communications networks, locked and crossed markets, and a member's obligation to provide Nasdaq with certain information. Publication of the notice is expected in the Federal Register the week of July 20. (Rel. 34-40227)

The American Stock Exchange filed a proposed rule change (SR-Amex-98-24) to approve for listing and trading Market Index Target Term Securities (MITTS Securities), the value of which will be based in whole or in part on changes in the Merrill Lynch EuroFund Index. Publication of the notice is expected in the Federal Register during the week of July 20. (Rel. 34-40228)

The New York Stock Exchange filed a proposed rule change (SR-NYSE-98-20) relating to a Interpretation of Article IV, Section 14 of the Exchange Constitution. Publication of the proposal is expected in the Federal Register during the week of July 20. (Rel. 34-40229)