

sec news digest

Issue 95-62

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RULES AND RELATED MATTERS

COMMISSION ADOPTS QUORUM RULE

The Commission has adopted a rule that specifies the number of Commission members required to constitute a quorum. The rule is designed to promote flexibility, finality, and collegiality of Commission decisionmaking. The rule formalizes the Commission's past practice of generally requiring three members for a quorum, with two exceptions. First, if the number of members in office is two or one, that number is sufficient for a quorum. Second, if the number of members in office minus the number disqualified with respect to a matter is two, two constitute a quorum for purposes of that matter. (Rel. 34-35548)

ENFORCEMENT PROCEEDINGS

COMMISSION DENIES MOTION TO STRIKE AND DISMISS

The Commission has denied Richard H. Morrow's motion to strike and dismiss a claim against Morrow for a cease-and-desist order. The order instituting administrative proceedings against Morrow alleges that, between December 1989 and April 1990, Morrow, while participating in a minimum-maximum private place of limited partnership offerings, willfully violated Section 17(a) of the Securities Act of 1933 and Sections 10(b) and 15(c) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The order seeks a cease-and-desist order, as well as other sanctions, against Morrow.

Morrow noted that the Commission's authority to obtain cease-and-desist orders was granted by the enactment of the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 in October 1990, after the date of his alleged violations. He argued that the Commission could not therefore impose a cease-and-desist order against him for conduct that occurred before that date. The Commission held that, when an intervening statute authorizes prospective relief such as a cease-and-desist order, imposition of such relief is not retroactive. (Rel. 34-35508)

ACTION FILED AGAINST JAMES MCCURRY AND WILLIAM POWDRILL, III

The Commission today announced the filing of a complaint For Civil Injunction and Other Equitable Relief on March 24 in the U.S. District Court for the Western District of Louisiana against James McCurry (McCurry) and William E. Powdrill, III (Powdrill) (collectively, defendants).

The complaint alleges that each defendant violated the antifraud and securities registration provisions of the federal securities laws and seeks an accounting and disgorgement from Powdrill and civil penalties from each defendant. According to the complaint, from at least April 1988 until September 1992, the defendants raised \$12.8 million through the offer and sale of notes issued by Towers Credit Corporation and Towers Financial Corporation (Towers). The complaint further alleges that \$5.2 million of these notes are currently in default. The Commission also alleges that the defendants misrepresented the safety of the notes by comparing them to Certificates of Deposit and by claiming the notes offered high yields without the risks associated with high yield investments, when they knew, or were reckless in not knowing that the notes were speculative and subject to numerous risks. The complaint further alleges that the defendants falsely told investors that certain of the notes were covered by insurance or were fully collateralized, when such was not the case.

In a related action, on February 8, 1993, the Commission filed a civil action against Towers and certain of its principals alleging antifraud and registration violations of the federal securities laws (see LR-13514). [SEC v. James McCurry and William E. Powdrill, III, USDC/WD LA/Shreveport Div/Civil Action No. CA-95-0552-S] (LR-14450)

TEMPORARY RESTRAINING ORDER ENTERED AGAINST TELECOM MARKETING, INC. AND OTHERS

The Commission announced that on March 28 the Honorable Orinda Evans, Judge of the United States District Court for the Northern District of Georgia issued an ex parte temporary restraining order against Telecom Marketing, Inc., Telecom Industries, Inc., Barry Smith, and Jeffrey Jolcover, for violations of registration and antifraud provisions of the

Securities Act of 1933 (Securities Act) and the Securities Exchange Act of 1934 (Exchange Act). The Court also issued an ex parte temporary restraining order against Century Wireless Communications Corp., Ron Schroeder, Tri-Star Communications, Inc., Paul Iwankowski, Brixel, Inc., and John Field IV, for violations of registration and antifraud provisions of the Securities Act and the broker dealer registration provisions of the Exchange Act. Finally the Court issued an ex parte temporary restraining order against Midas Media, Inc., for violations of the antifraud provisions. The complaint seeks other equitable relief in the form of accountings by the foregoing proposed defendants; a freeze of the foregoing proposed defendants' assets; prohibitions against the destruction and alteration of documents; disgorgement of any ill-gotten gains together with prejudgment interest; expedited discovery; and civil penalties under Section 20(d) of the Securities Act and Section 21(d)(3) of the Exchange Act.

Simultaneously, the Court ordered William G. Hays of Atlanta, Georgia, as temporary receiver for defendant Telecom Marketing, Inc., Telecom Industries, and Midas Media, Inc.

The complaint alleges that the defendants violated the antifraud and registration violations arising from the interstate offer and sale of as much as \$28.5 million in investment contracts involving units in two general partnerships formed to invest in wireless cable television systems in Mobile, Alabama and Madison, Wisconsin. The partnership units in question were sold to over 2,600 investors residing throughout the United States at prices ranging from \$3,750 to \$5,450 per unit.

Both offerings were sold by a network of boiler rooms which conducted interstate telephone solicitations in conjunction with the mailing of written offering materials by Telecom-Mobile and Telecom-Madison. According to the general partnership agreements, which are essentially identical, the day-to-day affairs of the partnerships are purported to be controlled by a majority vote of the partners. The partnership agreements require the formation of committees of partners to evaluate issues facing the systems and recommend courses of action to the partnerships. Both the offering documents and the boiler room sales persons touted the wireless cable expertise of an executive of Midas to induce those inexperienced in wireless cable television to invest.

Neither set of offering materials disclose the relatively low prices paid by the promoters for the assets to be transferred to the partnerships, or the correspondingly large profits to be made by the promoters on the transactions. Also, sales persons offering units in the Mobile partnership falsely represented to investors that a previous system developed by Midas was a success. Finally, the offering materials for both offerings disclose sales commissions of 15%, when in fact the boiler rooms received sales commissions of 50% of the funds they raised. [SEC v. Telecom Marketing, Inc., N.D. Georgia Civil Action No. 1:95-CV-0804-ODE] (LR-14451)

NEW WAY GROUP AND GEORGE PILCHER A/K/A JAKE PILCHER PERMANENTLY ENJOINED AND ORDERED TO PAY DISGORGEMENT AND CIVIL PENALTY

On March 3, Judge Harold H. Greene, U.S. District Judge for the District of Columbia, issued an order permanently enjoining New Way Group (New Way) and its owner and operator, George Pilcher a/k/a Jake Pilcher (Pilcher), from violating the registration and antifraud provisions of the federal securities laws (Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933; Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder). The Order also requires New Way to pay a civil penalty of \$1 million, Pilcher to pay a civil penalty of \$250,000, and New Way and Pilcher to disgorge \$51,455 in illegally obtained profits.

The Commission's complaint alleges that New Way and Pilcher offered and sold unregistered securities and induced investors to "lend" money to New Way and an unidentified offshore trust through guaranteed short-term returns of up to 625 to 1, with no disclosed risk of loss. The complaint alleged that defendants purported to generate profits from the "pooling" of investor funds in the unidentified offshore trust to finance the purchase and sale of so-called "prime bank securities" by an unidentified offshore bank. [SEC v. George Pilcher a/k/a Jake Pilcher, Civ. No. 94-1371, D.D.C.] (LR-14452)

INVESTMENT COMPANY ACT RELEASES

PRUDENTIAL SECURITIES INCORPORATED, ET AL.

An order has been issued on an application filed by Prudential Securities Incorporated, National Municipal Trust, Prudential Unit Trusts, National Equity Trusts, and Government Securities Equity Trust, under Section 6(c) of the Investment Company Act for an exemption from Sections 2(a)(32), 2(a)(35), 22(c), 22(d), and 26(a)(2)(C) of the Act, and Rule 22c-1 thereunder, and pursuant to Section 11(a) to amend a prior order granting relief from Section 11(c). (Rel. IC-20975 - March 29)

DEAN WITTER SELECT EQUITY TRUST, ET AL.

An order has been issued on an application filed by Dean Witter Select Equity Trust, et al. under Sections 6(c) and 17(b) of the Investment Company Act exempting applicants from Section 17(a) of the Act. The order permits a terminating series of a unit investment trust to sell portfolio securities to a new series of the trust. (Rel. IC-20976 - March 29)

THE NORTHWESTERN MUTUAL LIFE INSURANCE COMPANY, ET AL.

An order has been issued pursuant to Section 6(c) of the Investment Company Act exempting The Northwestern Mutual Life Insurance Company, NML Variable Annuity Account B (Account B) and Northwestern Mutual Investment Services, Inc. from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the Act. The order provides exemptions to the extent necessary to permit the deduction from the assets of Account B of a mortality and expense risk charge under certain variable annuity contracts. (Rel. IC-20978 - March 30)

HOLDING COMPANY ACT RELEASES

ALLEGHENY POWER SYSTEM, INC.

A notice has been issued giving interested persons until April 24 to request a hearing on a proposal by Allegheny Power System, Inc. (APS), a registered holding company, to amend its charter and to make conforming changes to its by-laws to eliminate the rights of APS common stockholders to cumulate votes in the election of directors, and eliminate the preemptive rights of APS common stockholders to purchase additional shares of APS common stock in certain circumstances. APS also proposes to submit these proposed amendments for action at APS's annual meeting of shareholders to be held on May 11, 1995 and an order has been issued authorizing APS to solicit proxies from shareholders in connection with the proposed amendments. (Rel. 35-26259)

CONSOLIDATED NATURAL GAS COMPANY, ET AL.

A supplemental order has been issued authorizing a proposal by Consolidated Natural Gas Company (CNG), a registered holding company, and its wholly owned nonutility subsidiary companies, CNG Research Company, Consolidated System LNG Company, Consolidated Natural Gas Service Company, Inc., CNG Coal Company, CNG Producing Company and its subsidiary company, CNG Pipeline Company, CNG Transmission Corporation, CNG Storage Service Company, CNG Gas Services Corporation, and CNG's public-utility subsidiary companies, The Peoples Natural Gas Company, The East Ohio Gas Company, The River Gas Company, Virginia Natural Gas, Inc. (VNG), Hope Gas, Inc. and West Ohio Gas Company, whereby, through June 30, 1995, CNG will finance VNG in an aggregate amount not exceeding \$60 million. Within the overall financing limitation, jurisdiction has been reserved over CNG's acquisition of VNG's common stock in amounts exceeding \$53.4 million; and all long-term debt financing proposed in this matter between CNG and VNG in excess of \$24.9 million, pending completion of the record. (Rel. 35-26260)

NATIONAL FUEL GAS COMPANY

An order has been issued authorizing National Fuel Gas Company (National), a registered holding company, to issue and sell, from time to time through December 31, 2000, up to 2,000,000 shares of its authorized but unissued common stock, \$1.00 par value, to the agent for participants in National's Dividend Reinvestment and Stock Purchase Plan. National proposes to use the proceeds from the sale of the common stock to repay existing short-term and long-term debt, to pay interest and dividends, to make additional capital contributions to its wholly owned subsidiaries and for other corporate purposes. (Rel. 35-26261)

THE SOUTHERN COMPANY, ET AL.

An order has been issued authorizing The Southern Company (Southern), a registered holding company, and Southern Nuclear Operating Company Inc., a wholly owned subsidiary company of Southern to borrow, from time to time through March 31, 1998, up to an aggregate principal amount of \$10 million from Southern or other lenders. (Rel. 35-26262)

SELF-REGULATORY ORGANIZATIONS

PROPOSED RULE CHANGE

The Chicago Stock Exchange filed a proposed rule change (SR-CHX-95-08) relating to execution guarantees for orders executed through its automated execution system. Publication of the proposal is expected in the Federal Register during the week of April 3. (Rel. 34-35547)

APPROVAL OF PROPOSED RULE CHANGE

The Commission approved a proposed rule change, and issued a notice and order granting accelerated approval of Amendment No. 2, filed by the Chicago Stock Exchange (SR-CHX-95-03) to amend Article VI, Rule 5 and add an interpretation thereto to require that members and member organizations maintain written procedures to ensure compliance with the securities laws and the CHX rules; amend Article XI, Rule 4 to provide the CHX with the authority to require any member or member organization to have an accounting firm audit its books and to clarify that all members and member organizations are required to comply with the disclosure requirements of Rule 17a-5; and add Article XI, Rule 9 to require that floor brokers who do not clear their own trades procure a letter of guarantee prior to trading. (Rel. 34-35550)

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-8 DOW CHEMICAL CO /DE/, 2030 WILLARD H DOW CTR, MIDLAND, MI 48674
(517) 636-1000 - 100,000 (\$6,837,500) COMMON STOCK. (FILE 33-58205 - MAR. 24) (BR. 2)
- S-3 DANAHER CORP /DE/, 1250 24TH ST NW, SUITE 800, WASHINGTON, DC 20037
(202) 828-0850 - 1,143,914 (\$32,315,570.50) COMMON STOCK. (FILE 33-58207 - MAR. 24) (BR. 10)
- S-3 WHITMAN CORP, 3501 ALGONQUIN RD, ROLLING MEADOWS, IL 60008
(708) 818-5000 - 300,000,000 (\$300,000,000) STRAIGHT BONDS. (FILE 33-58209 - MAR. 24) (BR. 11)
- S-8 DOW CHEMICAL CO /DE/, 2030 WILLARD H DOW CTR, MIDLAND, MI 48674
(517) 636-1000 - 2,000 (\$110,000) COMMON STOCK. (FILE 33-58211 - MAR. 24) (BR. 2)
- S-6 INSURED MUNICIPALS INCOME TRUST 176TH INSURED MULTI SERIES,
ONE PARKVIEW PLAZA, UIT ADMN, C/O VAN KAMPEN MERRITT INC, OAKBROOK TERRACE,
IL 60181 (NUL) L - - 1,000 (\$1,020,000) UNIT INVESTMENT TRUST. (FILE 33-58213 - MAR. 24) (BR. 18 - NEW ISSUE)
- S-6 TAX EXEMPT SECURITIES TRUST NATIONAL TRUST 206,
1345 AVENUE OF THE AMERICAS, C/O SMITH BARNEY INC, NEW YORK, NY 10105
(212) 450-4540 - INDEFINITE SHARES. DEPOSITOR: SMITH BARNEY INC. (FILE 33-58215 - MAR. 24) (BR. 16 - NEW ISSUE)
- S-6 TAX EXEMPT SECURITIES TRUST NATIONAL TRUST 207,
1345 AVENUE OF THE AMERICAS, C/O SMITH BARNEY INC, NEW YORK, NY 10105
(212) 450-4540 - INDEFINITE SHARES. DEPOSITOR: SMITH BARNEY INC. (FILE 33-58217 - MAR. 24) (BR. 16 - NEW ISSUE)
- S-3 DOMINION RESOURCES INC /VA/, 901 E BYRD ST, P O BOX 26532, RICHMOND, VA
23219 (804) 775-5700 - 1,850,000 (\$66,600,000) COMMON STOCK. (FILE 33-58219 - MAR. 24) (BR. 8)
- S-8 ANHEUSER BUSCH COMPANIES INC, ONE BUSCH PL,
C/O OFFICE OF THE VP & SEC'Y, ST LOUIS, MO 63118 (314) 577-2000 -
5,000,000 (\$288,437,500) COMMON STOCK. (FILE 33-58221 - MAR. 24) (BR. 11)
- S-8 DOW CHEMICAL CO /DE/, 2030 WILLARD H DOW CTR, MIDLAND, MI 48674
(517) 636-1000 - 1,500,000 (\$82,500,000) COMMON STOCK. (FILE 33-58223 - MAR. 24) (BR. 2)
- S-6 INSURED MUNICIPALS INCOME TRUST 177TH INSURED MULTI SERIES,
ONE PARKVIEW PLAZA, UIT ADMN, C/O VAN KAMPEN MERRITT INC, OAKBROOK TERRACE,
IL 60181 (NUL) L - - 1,000 (\$1,020,000) UNIT INVESTMENT TRUST. (FILE 33-58225 - MAR. 24) (BR. 18 - NEW ISSUE)

REGISTRATIONS CONT.

- S-6 INSURED MUNICIPALS INCOME TRUST 178TH INSURED MULTI SERIES,
ONE PARKVIEW PLAZA, UIT ADMN, C/O VAN KAMPEN MERRITT INC, OAKBROOK TERRACE,
IL 60181 (NHL) L - - 1,000 (\$1,020,000) UNIT INVESTMENT TRUST. (FILE
33-58227 - MAR. 24) (BR. 18 - NEW ISSUE)
- S-3 RHONE POULENC RORER INC, 500 ARCOLA RD, P O BOX 1200, COLLEGEVILLE, PA
19426 (215) 454-8000 - 78,130 (\$3,300,992.50) COMMON STOCK. (FILE
33-58229 - MAR. 24) (BR. 4)
- S-8 COLGATE PALMOLIVE CO, 300 PARK AVE, NEW YORK, NY 10022 (212) 310-2000 -
600,000 (\$39,862,500) COMMON STOCK. (FILE 33-58231 - MAR. 24) (BR. 10)
- S-3 ALLIANCE GAMING CORP, 4380 BOULDER HWY, LAS VEGAS, NV 89121
(702) 435-4200 - 250,999 (\$1,453,125) COMMON STOCK. (FILE 33-58233 -
MAR. 24) (BR. 12)
- S-3 GENERAL MOTORS CORP, 3044 W GRAND BLVD, DETROIT, MI 48202 (313) 556-5000
- 15,000,000 (\$590,625,000) COMMON STOCK. UNDERWRITER: COWEN & CO,
GOLDMAN SACHS & CO, MORGAN STANLEY & CO INC, SALOMON BROTHERS INC. (FILE
33-58235 - MAR. 24) (BR. 4)
- S-8 DATA GENERAL CORP, 4400 COMPUTER DR, WESTBORO, MA 01580 (508) 898-5000
- 3,000,000 (\$22,140,000) COMMON STOCK. (FILE 33-58237 - MAR. 24) (BR. 9)
- S-3 PHOTRONICS INC, 1061 INDIANTOWN ROAD, SUITE 318, JUPITER, FL 33477
(407) -74-7-41 - 2,300,000 (\$54,337,500) COMMON STOCK. (FILE 33-58239 -
MAR. 24) (BR. 9)
- S-8 ANHEUSER BUSCH COMPANIES INC, ONE BUSCH PL,
C/O OFFICE OF THE VP & SEC'Y, ST LOUIS, MO 63118 (314) 577-2000 -
5,000,000 (\$288,437,500) COMMON STOCK. (FILE 33-58241 - MAR. 24) (BR. 11)
- SB-2 WESTERN COUNTRY CLUBS INC, 1601 WEST EVANS, DENVER, CO 80223
(303) 934-2424 - 211,000 (\$1,160,500) COMMON STOCK. (FILE 33-90470 -
MAR. 20) (BR. 11)
- S-8 BLACKHAWK BANCORP INC, 400 BROAD ST, BELOIT, WI 53511 (608) 364-8911 -
40,000 (\$610,000) COMMON STOCK. (FILE 33-90550 - MAR. 23) (BR. 1)
- S-8 BLACKHAWK BANCORP INC, 400 BROAD ST, BELOIT, WI 53511 (608) 364-8911 -
120,000 (\$1,738,500) COMMON STOCK. (FILE 33-90552 - MAR. 23) (BR. 1)
- S-3 GENERAL GROWTH PROPERTIES INC, 215 KEO WAY, DES MOINES, IA 50309
(515) 281-9100 (FILE 33-90556 - MAR. 23) (BR. 5)
- S-1 INDUSTRIAL BANCORP INC, 211 NORTH SANDUSKY ST, BELLEVUE, OH 44811
(419) 483-3375 - 4,628,750 (\$46,287,500) COMMON STOCK. (FILE 33-90566 -
MAR. 23) (BR. 2 - NEW ISSUE)
- S-4 CENTURA BANKS INC, 134 N CHURCH ST, ROCKY MOUNT, NC 27804 (919) 977-4400
- 2,522,006 (\$66,681,838.64) COMMON STOCK. (FILE 33-90568 - MAR. 23)
(BR. 1)