

sec news digest

LIBRARY

Issue 92-243

December 17, 1992

RULES AND RELATED MATTERS

INTERPRETATION OF NEW RULES UNDER ITEM 402 OF REGULATIONS S-K AND S-B

The Division of Corporation Finance has announced the publication of staff correspondence interpreting the recently adopted revisions to Item 402 under the Securities Act of 1933 and the Exchange Act of 1934, the Commission's executive compensation disclosure requirements. The letter addressed to the American Bar Association Subcommittee on Employee Benefits and Executive Compensation was made available December 11, 1992. Copies of the letter may be obtained by writing to, or by making a request in person at, the Public Reference Room, Securities and Exchange Commission, 450 Fifth Street, N.W., Room 1024, Washington, D.C. 20549. Each request must state the name of the letter, the Act and the Section of the Act to which it relates, and the public availability date.

COMMISSION ANNOUNCEMENTS

JUAN MARCELINO APPOINTED ACTING REGIONAL ADMINISTRATOR IN BOSTON

Chairman Richard C. Breeden today announced the appointment of Juan Marcelino to the position of Acting Regional Administrator of the Commission's Boston Regional Office. Mr. Marcelino currently is an Assistant Director in the Commission's Division of Enforcement in Washington, D.C. Mr. Marcelino will serve as Acting Regional Administrator until the position is filled on a permanent basis. While serving as Acting Regional Administrator, Mr. Marcelino will also maintain his present responsibilities as an Assistant Director in the headquarters office. (Press Rel. 92-46)

PUBLIC REFERENCE ROOM, MAIL ROOM, PUBLICATIONS SECTION AND FILE DESK TO CLOSE EARLY

The Public Reference Room, the Mail Room, the Publications Section and the Filing Counter in the Branch of Document Control will close at 2:00 p.m. tomorrow, December 18, 1992. Filings and other packages will be received but not processed at the Filing Counter, Room 1006.

CIVIL PROCEEDINGS

THOMAS GILMARTIN, JR. ET ANO ENJOINED

The Commission announced that on December 4 a complaint was filed in the U.S. District Court of the Northern District of Ohio, Eastern Division, charging registered representatives Thomas P. Gilmartin, Jr. (Gilmartin) and Terrence W. Zawacki (Zawacki) with violations of the federal securities laws.

During the relevant time period, defendants Gilmartin and Zawacki were employed by First Ohio Securities Company (First Ohio), a registered broker-dealer owned by Gilmartin. The complaint alleges that Gilmartin, through First Ohio and aided and abetted by Zawacki, offered and sold to the public approximately \$6 million in unregistered securities and defrauded investors by misappropriating the proceeds from the sale of these and other securities. The complaint further alleges that in furtherance of this fraudulent scheme, Gilmartin and Zawacki aided and abetted First Ohio's net capital and books and records violations of the Securities Exchange Act of 1934. The complaint also alleges that Gilmartin aided and abetted violations of certain books and records provisions of the Investment Company Act of 1940 and that he directly violated the registration, antifraud and books and records provisions of the Investment Advisers Act of 1940. [SEC v. Thomas P. Gilmartin, Jr. and Terence W. Zawacki, USDC, NDOH, Eastern Division, Civil Action No. 4:92CV 2590] (LR-13469)

TROY CLARK BURKINSHAW IS PERMANENTLY ENJOINED

The Commission announced that on November 16, 1992 the Honorable Bruce S. Jenkins, Chief U.S. District Court Judge for the District of Utah, entered a Final Judgment of Permanent Injunction against Troy Clark Burkinshaw (Burkinshaw), to which Burkinshaw consented, without admitting or denying the allegations in the Commission's complaint. The Final Judgment against Burkinshaw enjoins him from violations of Sections 10(b) of the Securities Exchange Act of 1934 (Exchange Act), as amended, and Rule 10b-5 promulgated under Section 10(b) of the Exchange Act and Section 7(f) of the Exchange Act and Regulation X promulgated thereunder.

Burkinshaw aided and abetted a scheme to manipulate the price of the stock of Life Concepts, Inc. formerly known as USA Medical Corporation (Life Concepts) and engaged in a free-riding scheme by placing an order for the purchase of shares of USA with a broker-dealer knowing he did not have the funds to pay for the transaction. Burkinshaw also provided false information to the broker-dealer in order to facilitate the purchase of stock in his account. [SEC v. Troy Clark Burkinshaw, USDC, UT, Civil Action No. 92-C830B] (LR-13471)

CIVIL ACTION AGAINST RON WHITTEN, ET AL.

The Commission announced that on December 16 it filed an enforcement action in the U.S. District Court for the District of Arizona against Ron Whitten and Ron Whitten & Associates Inc. The complaint alleges that the defendants violated Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934

and Rule 10b-5 thereunder by making false and misleading statements and omitting to state material facts in connection with the offer, purchase and sale of securities. According to the complaint, from August 1991 through January 1992, the defendants sold \$120,000 worth of securities in Ron Whitten & Associates to several investors. In soliciting the investments, the Commission alleges, inter alia, that the defendants misrepresented the safety and profitability of investing in the company, the status of joint ventures sponsored by the company and the engagement by the company of prominent accounting and law firms. In addition, the Commission alleges that the defendants failed to disclose that funds raised were to be used for the personal expenses of Ron Whitten and others. In the action, the Commission is seeking permanent injunctive relief, disgorgement of all ill-gotten gains and interest thereon and a civil money penalty. [SEC v. Ron Whitten, et al., Civil Action No. CIV-92-2333-Phx-SMM, D. Arizona] (LR-13472)

CIVIL ACTION AGAINST LEE HADDAD, ANDREW COHEN, JEFFREY BROOKS SECURITIES, INC., JEFFREY BROOKS AND DAVID BROOKS

On December 17, the Commission filed a civil injunctive action alleging violations of the insider trading prohibitions of the Securities Exchange Act by Lee A. Haddad (Haddad), formerly a financial analyst at Morgan Stanley & Co. and by Andrew Cohen, formerly a registered representative at Jeffrey Brooks Securities (JBS), a registered broker-dealer.

In addition to the relief sought against Haddad and Cohen, the Commission's complaint also seeks injunctive relief and the imposition of a civil penalty pursuant to Section 21A of the Exchange Act against JBS, Jeffrey Brooks, the firm's president and chief executive officer, and his brother, David Brooks. The Commission's complaint specifically alleges that JBS violated Sections 15(f) and 15(b) of the Exchange Act and Rule 15b3-1 promulgated thereunder and that Jeffrey Brooks and David Brooks aided and abetted such violations.

Haddad and Cohen, without admitting or denying the allegations of the complaint, have consented to the entry of Permanent Injunctions enjoining them from further violations of Sections 10(b) and 14(e) of the Exchange Act, and Rules 10b-5 and 14e-3 promulgated thereunder and ordering Cohen to disgorge \$373,468 and to pay a penalty of \$460,968, the payments of which have been waived based upon Cohen's inability to pay. Haddad has also consented to the entry of a Final Judgment imposing a penalty of \$2,188,430, the payment of which has been waived based upon Haddad's inability to pay.

JBS, Jeffrey Brooks and David Brooks, without admitting or denying the allegations of the complaint, have consented to the entry of Final Judgments of Permanent Injunction enjoining them from further violations of Sections 15(f) and 15(b) of the Exchange Act and Rule 15b3-1 promulgated thereunder and imposing a fine of \$405,000. [SEC v. Lee A. Haddad, Andrew Cohen, Jeffrey Brooks Securities, Inc., Jeffrey Brooks and David Brooks, 92 Civ. 9122, USDC, SDNY] (LR-13473)

CIVIL ACTION AGAINST CITIBANK, N.A.

Today, the Commission simultaneously instituted and settled a court action and an administrative proceeding against Citibank, N.A. (Citibank) for transactions concerning Citibank's transfer agent activities.

SEC PUBLIC INFORMATION NUMBERS

Members of the public seeking information and/or material from the Commission continue to complain of being incorrectly referred to the wrong telephone number by Commission staff. The following information is furnished to assist you in directly calling the appropriate office:

Consumer Affairs (202-272-7440): Investor inquiries and complaint processing information.

Freedom of Information Branch (202-272-7420): Requests concerning FOIA, Privacy Act, Sunshine Act, confidential treatment matters, etc.

Personnel Locator (202-272-2550): Requests for names and phone numbers of Commission personnel.

Public Affairs (202-272-2650): Information about matters in the SEC News Digest, the Commission's operations, and calls from the press not directed to particular individuals, and other related matters.

Public Reference (202-272-7450): Requests for information on whether or not a document has been filed, etc.

Publications Unit (202-272-7460/7461): Requests for forms, studies, directories, etc.

Office of the Secretary (202-272-2600): Requests for information on the Commission calendar.

SEC Information Line (202-272-3100/5624): General information about SEC operations and activities through a series of recorded messages.
