

# SEC NEWS DIGEST

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## RULES AND RELATED MATTERS

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### PROPOSED RULES RELATING TO PRIVATE INVESTMENT COMPANIES

The Commission has issued a release proposing for public comment Rules 2a51-1, 2a51-2, 2a51-3, 3c-1, 3c-5, 3c-6 and 3c-7 under the Investment Company Act of 1940. The proposed rules would implement certain provisions of the National Securities Markets Improvement Act of 1996 (1996 Act) relating to private investment companies. The 1996 Act, among other things, amended Section 3(c)(1) of the Investment Company Act (the existing exclusion from Investment Company Act regulation used by private investment companies) and added Section 3(c)(7) to create a new exclusion from regulation under the Act for private investment companies that consist solely of highly sophisticated "qualified purchasers" owning or investing on a discretionary basis a specified amount of "investments" (Section 3(c)(7) funds). The new rules would define the term "investments" for purposes of the qualified purchaser definition; define the term "beneficial owner" for purposes of the provisions that permit an existing private investment company to convert into a Section 3(c)(7) fund or to be treated as a qualified purchaser; address certain interpretative issues under Section 3(c)(7); address certain interpretative issues under Section 3(c)(1) resulting from changes made by the 1996 Act; address investments in private investment companies by certain "knowledgeable employees"; and address transfers of securities issued by private investment companies when the transfer was caused by legal separation, divorce, death, and certain other involuntary events. FOR FURTHER INFORMATION CONTACT: David P. Mathews at (202) 942-0978. (Rel. IC-22405; IS-1037; S7-30-96)

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## ENFORCEMENT PROCEEDINGS

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### ADMINISTRATIVE PROCEEDINGS INSTITUTED AGAINST PETER HARRINGTON

The Commission instituted public administrative proceedings, pursuant to Sections 15(b) and 19(h) of the Securities Exchange Act of 1934 (Exchange Act), against Peter M. Harrington. Harrington, age 51, has been a registered representative with various broker-dealers since 1977 and, from June 1987 through July 1995, was the



from the conduct alleged in the complaint, plus pre-judgment interest thereon in the amount of \$3,522, provided, however, that payment of all but \$8,400 of the disgorgement and pre-judgment interest be waived based on McGahee's demonstrated financial inability to pay the full amount.

The Commission's complaint alleged that McGahee participated in the sale of over \$3 million in interests or shares in the GPA Growth Fund and its pooled brokerage accounts to over 100 people. Further, the complaint alleged that McGahee made material misrepresentations and omissions of material fact in connection with the offer and sale of GPA Growth Fund shares, concerning, among other things, the rate of return on the investments and the use of proceeds. [SEC v. Geoffrey Paul Adams, et al., 3:96-CV-0300-H, USDC, ND/TX, Dallas Division] (LR-15192)

#### **MARK FERBER SETTLES SEC COMPLAINT**

On December 19, the Commission filed a complaint in the U.S. District Court for the District of Massachusetts against Mark S. Ferber (Ferber), a former partner of Lazard Freres & Co. (Lazard), for violations of the antifraud provisions and Rule G-17 of the Municipal Securities Rulemaking Board, which requires fair dealing in the municipal securities markets. In its complaint, the Commission alleged that Ferber failed to adequately disclose a contract with Merrill Lynch, Pierce, Fenner & Smith Incorporated (Merrill Lynch) to three of Lazard's financial advisory clients that were serviced by Ferber and that selected Merrill Lynch to provide underwriting, interest rate swap or other financial services. Simultaneously with the filing of the complaint, Ferber consented, without admitting or denying the allegations in the complaint, to a permanent injunction enjoining him from future violations of Sections 10(b) and 15B(c)(1) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder and Rule G-17 of the Municipal Securities Rulemaking Board. Ferber also agreed to pay disgorgement of \$553,000, which represents his portion of the financial advisory fees that he received, plus prejudgment interest of \$97,000, for a total of \$650,000. [SEC v. Mark S. Ferber, Civil Action No. 96-12563-EFH, D. Mass.] (LR-15193)

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

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##### **CALVERT SOCIAL INVESTMENT FUND, ET AL.**

An order has been issued on an application filed by Calvert Social Investment Fund, et al. under Section 6(c) of the Investment Company Act. The order permits applicants to enter into and materially amend contracts with certain funds' subadvisers without shareholder approval. (Rel. IC-22403 - December 17)

## WANGER ADVISORS TRUST, ET AL.

An order has been issued under Section 6(c) of the Investment Company Act exempting Wanger Advisors Trust (Trust) and Wanger Asset Management, L.P. (Adviser) 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. The order permits shares of any current or future series of the Trust and shares of any other investment company that is offered as a funding medium for variable insurance products, and for which the Adviser, or any of its affiliates, may serve now or in the future as manager, investment adviser, administrator, principal underwriter or sponsor, to be sold to and held by variable annuity and variable life insurance company separate accounts of both affiliated and unaffiliated life insurance companies; and qualified pension and retirement plans outside the separate account context. (Rel. IC-22404 - December 18)

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## HOLDING COMPANY ACT RELEASES

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### NATIONAL FUEL GAS COMPANY

A notice has been issued giving interested persons until January 10 to request a hearing on a proposal by National Gas Fuel Company (NFG) and its wholly owned subsidiaries, National Fuel Gas Distribution Corporation, National Fuel Gas Supply Corporation (Supply), Seneca Resources Corporation, Highland Land & Minerals, Inc., Leidy Hub, Inc., Horizon Energy Development, Inc., Data-Track Account Services, Inc., National Fuel Resources, Inc., and Utility Constructors, Inc. (Subsidiaries). National proposes to acquire, directly, or indirectly through Supply, a subsidiary (New Subsidiary) which will participate in a joint venture with a non-affiliate to develop, construct, finance, own and operate natural gas gathering and processing facilities in the Gulf of Mexico and Louisiana. NFG and its Subsidiaries propose to add New Subsidiary to the system money pool arrangement and NFG proposes to add New Subsidiary to the system long-term credit arrangement both to finance construction costs up to \$250 million. NFG also proposes to provide guarantees for the joint venture's ongoing business operations after construction is completed up to \$175 million. (Rel. 35-26630)

### GPU INTERNATIONAL, INC.

An order has been issued authorizing GPU International, Inc. (GPUI), a wholly-owned subsidiary of GPU, Inc., a registered holding company, to invest in an enterprise (Enterprise) with one or more nonaffiliated entities to develop, manufacture and market stationary fuel cell power systems, to acquire securities of the Enterprise, and related transactions. GPUI's aggregate investment in the Enterprise will not exceed \$30 million. (Rel. 35-26631)







