

SEC NEWS DIGEST

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ENFORCEMENT PROCEEDINGS

COMMISSION SUSTAINS NASD ACTION AGAINST KENNETH KRULL

On December 10, the Commission sustained NASD disciplinary action against Kenneth C. Krull of Marysville, Washington. Krull was formerly a principal and registered representative of Investment Management and Research, Inc., an NASD member firm. The NASD censured Krull, barred him in any principal or supervisory capacity, fined him \$20,000, and suspended him for one year in any capacity with the requirement that he requalify as a general securities representative prior to acting again in that capacity. The Commission reduced the amount of restitution ordered by the NASD to \$81,705, the actual losses suffered by Krull's customers as a result of his misconduct. The NASD specified that payment of the restitution amount is a condition for Krull's re-entry into the securities industry.

The Commission found that, during the period November 1990 through July 1993, Krull violated NASD suitability requirements by switching eight customers in and out of a series of common stock mutual funds almost all of which charged a front-end sales load. The Commission reiterated its longstanding position that mutual fund shares are generally suitable only as long-term investments and cannot be regarded as a proper vehicle for short-term trading, particularly where such trading involves new sales loads. It found that Krull had ignored his fundamental obligation of fair dealing by placing his own interests in garnering commissions above those of his customers. (Rel. 34-40768; File No. 3-9394)

SEC CHARGES TWO BIRMINGHAM BUSINESSMEN WITH CAUSING MISLEADING STATEMENTS IN PRESS

On December 10, the Commission settled an enforcement proceeding against Anthony J. Bruno, of Birmingham, Alabama, and James A. Bruno, of Vestavia Hills, Alabama. Each consented to the entry of a cease and desist order restraining him from further violations of the antifraud provisions of the federal securities laws. Neither respondent admitted nor denied the findings made by the Commission.

The matter involved two inaccurate statements made to the financial press regarding possible acquisitions of Big B, Inc., formerly a large drugstore chain, and the subsequent failure to correct one of those statements.

The Commission found that on August 14, 1996, after an interview of James A. Bruno, the Wall Street Journal (WSJ) published a statement attributed to James A. Bruno to the effect that no company had approached Big B, Inc. about a possible merger. Later, on August 20, 1996, James A. Bruno was interviewed by a reporter for the Birmingham, Alabama Business Journal (BBJ). During that interview, James Bruno indicated that Big B, Inc. wanted to remain an independent company and that no competitors had approached with offers. On August 26, 1996, the BBJ published a statement attributed to James A. Bruno that no competitors had approached Big B, Inc. with an offer to merge. The Commission found that both of these statements were false, because several competitors had in fact approached Big B, Inc. about possible acquisitions.

The Commission also found that both Brunos read and discussed the WSJ article. Although Anthony J. Bruno, and through him, the company, knew the statements attributed to James A. Bruno were false, neither of the Brunos took any action to correct the statements.

Based on the foregoing the Commission found that Anthony J. Bruno and James A. Bruno had caused Big B, Inc. to violate Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, and ordered them to cease and desist from committing or causing any violation and any future violation of those provisions. (Rel. 34-40769; File No. 3-9787)

IN THE MATTER OF CITY OF MOORHEAD, MISSISSIPPI

On December 10, the Commission issued an Order Making Findings and Imposing Cease and Desist Order (Order) against the City of Moorhead, Mississippi. The Order directs Moorhead to cease and desist from committing or causing any violations or future violations of the antifraud provisions of the Securities Act of 1933 or the Securities Exchange Act of 1934. Moorhead consented to the Order without admitting or denying the violations.

In its order, the Commission found that the purportedly tax exempt notes were issued in reliance on exceptions to the anti-arbitrage provisions of the Internal Revenue Code which permit municipalities to issue securities and invest the proceeds at a higher rate, provided the funds, among other things, are reasonably expected to be used for qualifying municipal projects within a three year period. The bulk of the offering proceeds were invested at a higher yield than the notes sold in the offering. However, despite representations to the contrary, the City of Moorhead did not have the resources, intent or expectation to utilize any proceeds from the offering, other than a premium of \$45,000 derived from the arbitrage profit for capital projects. The lack of a reasonable expectation to utilize more than a small portion of the proceeds for capital projects made the temporary period exception inapplicable, creating a substantial risk that the U.S. Internal Revenue Service would declare interest on the notes subject to the federal income

tax. That substantial risk was not disclosed to investors or prospective investors.

On July 13, 1998, the Commission entered a cease and desist order, by consent, against thirty-eight (38) other Mississippi counties, cities and towns, Admin. Proc. File No. 3-9650, Securities Act of 1933 Release No. 7554, Securities Exchange Act of 1934 Release No. 40194. (Rels. 33-7616, 34-40770; File No. 3-9724)

INVESTMENT COMPANY ACT RELEASES

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, ET AL.

An order has been issued pursuant to Section 26(b) of the Investment Company Act to The Mutual Life Insurance Company of New York (MONY), MONY Life Insurance Company of America (MONY America and collectively with MONY, the Companies), MONY Variable Account A (MONY Account) and MONY America Variable Account A (collectively with MONY Account, the Accounts) OCC Accumulation Trust and MONY Series Fund (collectively with OCC Accumulation Trust, the Companies and the Accounts, Applicants) approving the substitution of shares of the Money Market Portfolio Series of the MONY Series Fund, Inc. for the shares of the Money Market Series of the OCC Accumulation Trust held by the Accounts to fund certain variable annuity contracts issued by the Companies. An order also has been issued pursuant to Section 17(b) of the Act, granting exemptions from Section 17(a) to the extent necessary to permit Applicants to carry out the above-referenced substitution in whole or in part through an in-kind redemption and purchase. (Rel. IC-23593 - December 10)

VARIABLE INSURANCE FUNDS, INC., ET AL.

An order has been issued exempting Variable Insurance Funds (Trust) and BISYS Fund Services (BISYS) from Sections 9(a), 13(a), 15(a) and 15(b) of the Investment Company Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder, to the extent necessary to permit shares of current or future series of the Trust and shares of any other investment company that is designed to fund variable insurance products (collectively, Funds) and for which BISYS, or any of its affiliates, may serve now or in the future as principal underwriter or administrator, to be offered and sold to, and held by: (1) separate accounts funding variable annuity and variable life insurance contracts of both affiliated and unaffiliated life insurance companies; (2) qualified pension and retirement plans outside of the separate account context; (3) the manager of a Fund or certain related corporations; and (4) the general account of a life insurance company or certain related corporations, whose separate account holds or will hold, shares of the Funds. (Rel. IC-23594 - December 10)

