

sec news digest

Issue 75-214
(SEC Docket, Vol. 8, No. 4 - November 18)

SECURITIES & EXCHANGE COMMISSION
RECEIVED

November 5, 1975

NOV 6 1975

RULES AND RELATED MATTERS

NOTICE OF ORDER APPROVING PROPOSED RULE CHANGE BY CBOE

The Commission approved, effective November 3, CBOE's proposed rule change to facilitate the process through which a member can petition to become a candidate for the Board of Directors or the Nominating Committee of the CBOE. (Rel. 34-11789)

NOTICE OF FILING OF PROPOSED RULE CHANGE BY SELF-REGULATORY ORGANIZATIONS

The Boston Stock Exchange has filed a proposed rule change under Rule 19b-4 to change its procedures with respect to the execution of round-lot orders and to clarify the definition of the next transaction occurring in the primary market. Publication of the proposal is expected to be made in the Federal Register during the week of November 10. (Rel. 34-11791)

The Midwest Stock Exchange has filed on October 28 an amendment under Rule 19b-4 to delete the reference to interface charges contained in its previous submission which amended the schedule of charges for services rendered by its wholly-owned subsidiaries, the Midwest Securities Trust Company and the Midwest Clearing Corporation. Publication of the proposal is expected to be made in the Federal Register during the week of November 10. (Rel. 34-11792)

COMMISSION APPROVED DTC RULE CHANGE

On November 4 the Commission issued an order approving an amendment to the rules of The Depository Trust Company (DTC), a subsidiary of the New York Stock Exchange, Inc. (the NYSE), increasing the number of directors on DTC's board from fourteen to fifteen. The amendment was submitted by the NYSE, pursuant to Rule 19b-4 under the Securities Exchange Act of 1934, and was published in the Federal Register on September 30 (40 F.R. 44906). (Rel. 34-11793)

COMMISSION ANNOUNCEMENTS

TEMPORARY SUSPENSION OF THE REGULATION A EXEMPTION OF TIMBERLINE MINERALS, INC.

The Commission has issued an order temporarily suspending the Regulation A exemption from registration under the Securities Act of 1933 with respect to a public offering of securities of Timberline Minerals, Inc. (Timberline) of Dubois, Wyoming. The underwriter for the offering was United Securities Corporation located in Casper, Wyoming.

According to the order, the Commission has reason to believe that: (a) the notification and offering circular of Timberline contains untrue statements of material facts; (b) the terms and conditions of Regulation A have not been complied with; and (c) the offering was made in violation of Section 17(a) of the Securities Act of 1933, as amended. (Rel. 33-5641)

DECISIONS IN ADMINISTRATIVE PROCEEDINGS

BAR OF CHARLES V. MERCER, JR. AFFIRMED

The decision of the National Association of Securities Dealers, Inc. barring Charles V. Mercer, Jr., of Dallas, Texas, from associating himself in any capacity with any NASD member and also fining him \$5,000 has been affirmed. Accordingly, Mercer's application for review of the NASD's action has been dismissed. Like the NASD, the Commission

found that Mercer was responsible for his firm's failure to comply with net capital requirements, its transfer of securities to controlled accounts on month-end dates to conceal net capital position, failure to segregate customers' funds properly during "best efforts" underwriting, withdrawal of other customers' funds from segregated account, allocation of shares during public offering to accounts restricted by "free-riding and withholding" interpretation, agreement to repurchase part of publicly offered shares, purchases and sales of securities at unfair prices and failure to comply with recordkeeping provisions.

Mercer's claims of procedural fairness were found to be without substance. Mercer's claim that the penalties were excessive was also rejected. On this issue the Commission said: "The penalties imposed by the Association are drastic. And so far as we can tell from the materials before us, Mercer was unassisted by counsel at any stage in the proceedings. We have therefore reviewed the record with special care. Having done so, we find nothing therein that enables us to brand the penalties "excessive or oppressive." "Though he raises no real issue with respect to it, Mercer focuses entirely on the net capital phase of the case. He pays little heed to other aspects of the matter that we deem more significant. One of those other aspects, the conversion to the firm's own use of customers' monies that should have been kept segregated, involved fraud. Another, unfair prices, obviously victimized the firm's customers. These infractions are extremely serious and patently antithetical to the 'high standards of commercial honor and just and equitable principles of trade' that it is the NASD's mission to promote. Hence we see no disproportionality between the severity of the penalties and the gravity of the offenses for which they were imposed." (Rel. 34-11768)

IOS, LTD. (S.A.) AND ARTHUR LIPPER, III BARRED;
ARTHUR LIPPER CORPORATION REVOKED; PROCEEDINGS
AGAINST INVESTORS PLANNING CORPORATION OF AMERICA
CONTINUED

The Commission barred IOS, Ltd. (S.A.), of Geneva Switzerland, and Arthur Lipper, III, president of Arthur Lipper Corporation, a New York City broker-dealer, from association with any broker-dealer, and revoked the broker-dealer registration of Lipper Corp. It discontinued the proceedings against Investors Planning Corporation of America (IPC), now known as CIP, Inc., a New York City broker-dealer which was principally owned by IOS. In determining to discontinue that aspect of the proceedings, the Commission noted that IPC "was never an independent actor" and that "its present owners are wholly unaffiliated with IOS."

The remedial action was based on findings that during 1967 and 1968 IOS, which managed unregistered off-shore investment companies, arranged to have Lipper Corp. execute those companies' over-the-counter portfolio transaction and pay or "give up" a portion of the commissions on such business to IPC. The Commission concluded that IOS and IPC, aided and abetted by Lipper Corp. and Lipper, violated the antifraud provisions. In reaching this conclusion, the Commission found that: "Since neither of the IOS respondents (IOS and IPC) performed any brokerage function in connection with the over-the-counter transactions handled by Lipper Corp., it is apparent that they did nothing in return for the income that they derived from those transactions. They simply caused the funds to divert \$1,450,000 to them. Lipper Corp. was a mere conduit for the diversion. No extended discussion is required to demonstrate that this was a gross breach of fiduciary duty by the IOS respondents Since the Lipper respondents (Lipper Corp. and Lipper) knew about IOS's relationship to the foreign funds, and since their active assistance was an essential element of the scheme, they were clearly participants in the IOS respondents' breach of trust."

The Commission also concluded that IOS and IPC engaged in a similar rebative commission scheme with other brokers (not the Lipper respondents) in connection with the New York Stock Exchange portfolio transactions of Fund of America, Inc., a registered investment company for which IPC was the principal underwriter and investment adviser. In addition, the IOS respondents were found to have violated specified provisions of the Investment Company Act. (Rel. 34-11773)

ORDERS FOR PUBLIC PROCEEDINGS

COMMERCIAL SOLVENTS CORPORATION

The Commission has issued an order granting the application of Commercial Solvents Corporation, a Maryland corporation pursuant to Section 12(h) of the Securities Exchange Act of 1934, as amended, for an exemption from the provisions of Section 13 of the Act. (Rel. 34-11795)

COURT ENFORCEMENT ACTIONS

WESTERN EXPLORATION, INC., OTHERS ENJOINED

The Chicago Regional Office announced that on October 20 U.S. District Judge Robert M. Duncan of the Southern District of Ohio, Eastern Division, filed a final order permanently enjoining Robert L. Hersh of Los Angeles, California, from violations of the registration requirements of the securities laws. The following defendants were permanently enjoined from violations of the registration requirements of the securities laws: Bernard Levine of Los Angeles, California, on January 8; Daniel Berke, Carl Dubinsky and Leo Levy, all of Los Angeles, California, on January 30; and the following defendants were permanently enjoined from violations of the registration, antifraud and reporting provisions of the securities laws: Holloway Western Corporation of Newport Beach, California, on January 9; Western Exploration, Inc. and Monarch Royalty, Inc., formerly of Cardington, Ohio, on January 22. The defendants consented to the above judgments without admitting or denying the allegations of the Commission's complaint. (SEC v. Carl F. Long, et al., Civil Action No. C2-74-559, S.D. Ohio). (LR-7146)

INVESTMENT COMPANY ACT RELEASES

LENNON COMPANY AETNA LIFE STOCK INVESTMENT PROGRAMS

A notice has been issued giving interested persons until November 28 to request a hearing on a proposal by the Commission to declare by order on its own motion that the registration of Lennon Company Aetna Life Stock Investment Programs, Lennon Company Connecticut General Stock Investment Program and Lennon Company Travelers Stock Investment Program, have ceased to be in effect. (Rel. IC-9014 - Nov. 4)

E. I. DU PONT DE NEMOURS AND COMPANY

A notice has been issued giving interested persons until November 28 to request a hearing on an application of E. I. Du Pont De Nemours and Company for an order to permit the sale by Du Pont of its 26% equity interest in Pigment-Chemie, GmbH to Metallgesellschaft A.G., which owns the remaining 74% for 8,000,000 German marks or the equivalent of \$3,200,000. Christiana Securities Company, a registered closed-end investment company owns approximately 28% of Du Pont's common stock. (Rel. IC-9015 - Nov. 4)

HOLDING COMPANY ACT RELEASES

MIDDLE SOUTH UTILITIES, INC.

A notice has been issued giving interested persons until December 3 to request a hearing on proposals by Middle South Utilities, Inc., a registered holding company, and Arkansas Power & Light Company, a subsidiary, whereby Arkansas will issue and sell and Middle South will acquire a total of 1,200,000 additional shares of Arkansas' common stock for \$15 million. (Rel. 35-19233 - Nov. 3)

CENTRAL POWER AND LIGHT COMPANY

A notice has been issued giving interested persons until November 28 to request a hearing on a proposal by Central Power and Light Company, a subsidiary of Central and South West Corporation, that it amend its charter relating to its earnings test for issuing preferred stock and that the Commission permit it to pay common stock dividends out of certain restricted earned surplus; an order was also issued authorizing the solicitation of proxies in connection with the proposed Charter amendment. (Rel. 35-19234 - Nov. 4)

TRADING SUSPENSIONS

ADDITIONAL ACTION ON ONE TRADING SUSPENSION

The SEC has announced the suspension of exchange and over-the-counter trading in the securities of Canadian Javelin Ltd. for the further ten-day period November 5 - 14, inclusive.

SECURITIES ACT REGISTRATIONS

(S-1) CAROLINA INDUSTRIAL EXPLORATION PROGRAM

4301 Yancey Road, Charlotte, N. C. 28210 - \$25 million of limited partnership interests to be offered in units of \$5,000 plus possible voluntary additional assessments of \$6,250,000, to be offered by certain directors, officers and employees of the General Partner (Carolina Energy Company, Inc.). The Partnership is being organized to assist certain industrial and commercial customers of Piedmont Natural Gas Company, Inc., explore for natural gas. (File 2-54895 - Oct. 30)

(S-7) KENTUCKY UTILITIES COMPANY

120 S. Limestone St., Lexington, Ky. 40507 - 900,000 shares of common stock, to be offered for sale through underwriters headed by Blyth Eastman Dillon & Co. Inc., 1 Chase Manhattan Plaza, New York, N. Y. 10005. The company is an electric utility. (File 2-54896 - Oct. 30)

(S-7) PHILLIPS PETROLEUM COMPANY

Phillips Bldg., Bartlesville, Okla. 74004 - \$250 million of debentures, due 2000, to be offered for sale through underwriters headed by The First Boston Corp., 20 Exchange Pl., New York, N. Y. 10005. The company is a fully integrated oil company. (File 2-54901 - Oct. 30)

(S-1) CULLEN BANKERS, INC.

600 Jefferson St., Houston, Tex. 77002 - 135,000 shares of common stock, to be offered for sale through underwriters headed by Rotan Mosle Inc., 1500 S. Tower, Pennzoil Place, Houston, Tex. 77002. Cullen Bankers is a bank holding company. (File 2-54902 - Oct. 31)

REGISTRATIONS EFFECTIVE

Oct. 31: A. T. Cross Co., 2-54429; Agway Inc., 2-54668; Atlanta-Tampa Real Estate Partners, Ltd. 75 (90 days), 2-53389; Bliss & Laughlin Industries Inc., 2-54758; The Carborundum Co., 2-54658; Columbia Pictures Industries Inc., 2-54771; Friendly Ice Cream Corp., 2-54597; Genuine Parts Co., 2-54729; Intercraft Industries Corp., 2-54716; Montgomery Ward & Co., Inc., 2-53995; The Municipal Bond Fund, Series 23, 2-54417; Shearson Hayden Stone Inc., 2-54828; Somerset Importers, Ltd., 2-54852.

NOTE TO DEALERS. When applicable the 90-day period of time dealers are required to use the prospectus is noted above in parentheses after the name of the issuer. As to the other issuers, there may be no such requirement to use a prospectus, or the requirement may be for a period of only 40 days; see Section 4(3) of the Securities Act of 1933 and Rule 174 (17 CFR 230.174) thereunder.

NOTICE

Many requests for copies of documents referred to in the SEC News Digest have erroneously been directed to the Government Printing Office. Copies of such documents and of registration statements may be ordered from the Public Reference Section, Securities and Exchange Commission, Washington, D.C. 20549. The reproduction cost is 15¢ per page plus postage (\$2 minimum) and 30¢ per page plus postage for expedited handling (\$5 minimum). Cost estimates are given on request. All other referenced material is available in the SEC Docket.

SEC NEWS DIGEST is published daily. Subscription rates: \$64.45/yr in U.S. first class mail; \$80.60 elsewhere.
SEC DOCKET is published weekly. Subscription rates: \$43.70/yr in U.S. first class mail, \$54.65 elsewhere. The News Digest and the Docket are for sale by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.