

SEC NEWS DIGEST

Issue 97-26

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RULES AND RELATED MATTERS

REVISED COMPLIANCE DATES; EXEMPTIVE ORDER

The Commission revised the phase-in schedule for the implementation of the Order Execution Rules under the Securities Exchange Act of 1934 (Rule 11Ac1-4 and amendments to Rule 11Ac1-1 thereunder). Compliance with the Order Execution Rules continues to be required with respect to exchange-listed securities and the 50 Nasdaq securities phased-in on January 20, 1997. The phase-in schedule with respect to the next 100 Nasdaq securities is as follows: (1) 50 Nasdaq securities will be phased-in on February 10, 1997; (2) an additional 50 Nasdaq securities will be phased-in on February 24, 1997. The Commission exempted responsible brokers and dealers, electronic communications networks, exchanges, and associations, until April 14, 1997, from the requirements of the Order Execution Rules with respect to the Nasdaq securities not phased-in under such rules as of February 24, 1997. (Rel. 34-38246)

ADOPTION OF A FINAL RULE AMENDMENT

The Commission approved a final rule amendment to Rule 15c3-1 (Net Capital Rule) under the Securities Exchange Act (File No. S7-7-94) to permit broker-dealers to employ theoretical option pricing models in determining net capital requirements for listed options and related positions. The amendments are intended to simplify the Net Capital Rule's treatment of options for capital purposes and more accurately reflect the risk inherent in broker-dealer options positions. Publication of the adopting release is expected in the Federal Register during the week of February 10. (Rel. 34-38248)

ENFORCEMENT PROCEEDINGS

ORDER PURSUANT TO RULE 102(E) ISSUED AGAINST FOUR ATLANTA, GEORGIA CPAs

The Commission issued an Order pursuant to Rule 102(e) of the Commission's Rules of Practice against Daniel Langford, Daniel Langford Jr., Stephanus de Kock, and Peter Irby, all of Atlanta, Georgia, based on their having engaged in improper professional

conduct. At various times from 1991 through 1993 Langford, Langford Jr., de Kock and Irby, while employed by the accounting firm of Langford de Kock & Company, worked as independent auditors for Paragon Mortgage Corporation.

The Commission found that Paragon's 1991 financial statements, which were audited by the Langfords, failed to disclose that Paragon had made payments on personal loans incurred by certain of its senior officers. The Commission also found that Paragon's 1992 financial statements, which were audited by all four respondents, failed to disclose additional payments by Paragon on personal loans of corporate officers and overstated Paragon's revenues and income. These financial statements were contained in numerous Commission filings. In addition, during 1993, the Langfords failed to disclose in Commission filings that they had disagreed with Paragon over the recognition of certain revenues in quarterly financial statements, and Langford failed to disclose the disagreement to a successor auditor. The Commission found that each of the respondents violated generally accepted auditing standards.

The Langfords, de Kock and Irby consented to the Order, without admitting or denying the Commission's findings, denying them the privilege of appearing or practicing before the Commission as accountants with the right to apply to resume appearing or practicing before the Commission subject to certain conditions, after a period of four years for Langford, and three years each for Langford Jr., de Kock, and Irby. (Rel. 34-38249; AAE Rel. 877)

ORDER PURSUANT TO RULE 102(E) ISSUED AGAINST TIM COUCH, AN ATLANTA, GEORGIA CPA

The Commission issued an Order pursuant to Rule 102(e) of the Commission's Rules of Practice against Tim Couch, CPA of the Atlanta, Georgia area, based on his having engaged in improper professional conduct. Couch, a sole practitioner, audited the 1990 financial statements of Paragon Mortgage Corporation. The Commission found that those financial statements failed to disclose certain compensation expenses and also failed to disclose that Paragon had made payments on personal loans incurred by certain of its senior officers. The Commission also found that Couch reissued his audit report on Paragon's 1990 financial statements in Paragon's 1991 and 1992 Form 10-K and in two registration statements on Form S-1 filed by Paragon in 1992 and 1993. The Commission found that Couch's conduct violated generally accepted auditing standards.

Couch consented to the Order, without admitting or denying the Commission's findings, denying him the privilege of appearing or practicing before the Commission as an accountant with the right to apply to resume appearing or practicing before the Commission, subject to certain prophylactic conditions, after a period of four years. (Rel. 34-38250; AAE Rel. 878)

COMMISSION ENTERS CEASE-AND-DESIST ORDER AGAINST WILLIAM MANAK

The Commission entered an Order pursuant to Section 8A of the Securities Act of 1933 (Securities Act) and Section 21C of the Securities Exchange Act of 1934 (Exchange Act) ordering William T. Manak (Manak) to cease and desist from committing or causing any violation, and any future violation, of the antifraud provisions of the Securities Act and the Exchange Act, and the reporting and lying to the auditor provisions of the Exchange Act. Manak consented to the Order without admitting or denying the Commission's findings.

The Order finds that Manak caused 3Net Systems, Inc.'s (3Net) 1992 Form S-18 registration statement to state that six customers purchased and were using 3Net's new computer system, FAILSAFE, to fraudulently state that one customer's FAILSAFE system was fully operational, and to omit to disclose problems developing FAILSAFE resulting in FAILSAFE not having been successfully implemented for any customers. The Order finds Manak caused 3Net, in its 1992 Form 5-18 and its Form 10-KSB for the year ended June 30, 1992, to overstate FAILSAFE revenue for three customer contracts, inflating its fiscal 1991 revenue by \$1 million. The Order also finds that Manak caused 3Net to overstate its fiscal 1992 revenue by \$1 million for the same customers in its June 30, 1992 Form 10-KSB. (Rel. 33-7387; 34-38251; AAE Rel. 879)

SETTLEMENT REACHED WITH EZRA CHAMMAH IN INSIDER TRADING CASE

The Commission announced the entry on November 27, 1996, of a Final Consent Judgment of Permanent Injunction and Other Relief against Ezra Chammah (Chammah) by the U.S. District Court for the Southern District of New York, in connection with alleged illegal trading in the securities of Motel 6, L.P. (Motel 6) prior to the announcement of a tender offer for Motel 6 by Accor S.A. on July 12, 1990.

The Commission alleges that Hugh Thrasher, then executive vice president in charge of corporate communications at Motel 6, disclosed inside information concerning the tender offer to his friend, Carl V. Harris (Harris). Harris tipped a number of relatives, friends, and acquaintances, including Gregg Shawzin, who, in turn, tipped others, including his brother Mark Shawzin, who tipped Chammah.

Chammah consented to the entry of a Final Judgment, which permanently enjoins him from violating Sections 10(b) and 14(e) of the Securities and Exchange Act of 1934 and Rules 10b-5 and 14e-3 thereunder, without admitting or denying the allegations contained in the Commission's amended complaint. Chammah agreed to pay \$206,542.51 in disgorgement and prejudgment interest and a civil penalty of \$127,098.09 pursuant to the Insider Trading and Securities Fraud Enforcement Act of 1988. [SEC v. HUGH THRASHER, JOHN H. ANDERSON, EZRA CHAMMAH, STANLEY ELBAUM, SCOTT FORBES, GUILLERMO GOMEZ a/k/a WILLIAM GOMEZ, STEPHEN V.R. GOODHUE, JR., IRA GORMAN, GORMAN COMMODITIES & SECURITIES, INC., JONATHAN S. HIRSH, RONALD KUZNETSKY, DARRELL SANDY MARSH, JACK P. MARSH, MICHAEL R. NEWMAN, ROGER K. ODWAK, ANGELO PETROTTO, LEE ROSENBLATT, ROBERT

SACKS, JEFFREY A. SANKER, DAVID SCHAEN, LEONARD SCHAEN, JULIAN SCHOR, GREGG R. SHAWZIN, and MARK R. SHAWZIN., 92 Civ. 6987, JFK] (LR-15246)

SETTLEMENT REACHED WITH STANLEY ELBAUM IN INSIDER TRADING CASE

The Commission announced the entry on January 15 of a Final Consent Judgment of Permanent Injunction and Other Relief against Stanley Elbaum (Elbaum) by the U.S. District Court for the Southern District of New York, in connection with alleged illegal trading in the securities of Motel 6, L.P. (Motel 6) prior to the announcement of a tender offer for Motel 6 by Accor S.A. on July 12, 1990.

The Commission alleges that Hugh Thrasher, then executive vice president in charge of corporate communications at Motel 6, disclosed inside information concerning the tender offer to his friend, Carl V. Harris (Harris). Harris tipped a number of relatives, friends, and acquaintances, including Gregg Shawzin, who, in turn, tipped others. Harris, along with Shawzin, tipped Michael Newman, who tipped Elbaum.

Elbaum consented to the entry of a Final Judgment, which permanently enjoins him from violating Sections 10(b) and 14(e) of the Securities and Exchange Act of 1934 and Rules 10b-5 and 14e-3 thereunder, without admitting or denying the allegations contained in the Commission's amended complaint. The Commission agreed that Elbaum would not pay a civil penalty pursuant to the Insider Trading and Securities Fraud Enforcement Act of 1988 in light of a demonstrated inability to pay based upon his sworn representations in a statement of financial condition. [SEC v. HUGH THRASHER, JOHN H. ANDERSON, EZRA CHAMMAH, STANLEY ELBAUM, SCOTT FORBES, GUILLERMO GOMEZ a/k/a WILLIAM GOMEZ, STEPHEN V.R. GOODHUE, JR., IRA GORMAN, GORMAN COMMODITIES & SECURITIES, INC., JONATHAN S. HIRSH, RONALD KUZNETSKY, DARRELL SANDY MARSH, JACK P. MARSH, MICHAEL R. NEWMAN, ROGER K. ODWAK, ANGELO PETROTTO, LEE ROSENBLATT, ROBERT SACKS, JEFFREY A. SANKER, DAVID SCHAEN, LEONARD SCHAEN, JULIAN SCHOR, GREGG R. SHAWZIN, and MARK R. SHAWZIN., 92 Civ. 6987, JFK] (LR-15246)

SETTLEMENT REACHED WITH DAVID SCHAEN IN INSIDER TRADING CASE

The Commission announced the entry on January 28 of a Final Consent Judgment of Permanent Injunction and Other Relief against David Schaen (Schaen) by the U.S. District Court for the Southern District of New York, in connection with alleged illegal trading in the securities of Motel 6, L.P. (Motel 6) prior to the announcement of a tender offer for Motel 6 by Accor S.A. on July 12, 1990.

The Commission alleges that Hugh Thrasher, then executive vice president in charge of corporate communications at Motel 6, disclosed inside information concerning the tender offer to his friend, Carl V. Harris (Harris). Harris tipped a number of relatives, friends, and acquaintances, including Schaen, the son of Leonard Schaen, Harris' stepfather.

Schaen consented to the entry of a Final Judgment, which permanently enjoins him from violating Sections 10(b) and 14(e) of the Securities and Exchange Act of 1934 and Rules 10b-5 and 14e-3 thereunder, without admitting or denying the allegations contained in the Commission's amended complaint. Schaen agreed to pay \$217,332.48 in disgorgement of profits and prejudgment interest thereon, but in light of a demonstrated inability to pay based upon his sworn representations in a statement of financial condition, the Commission agreed that payment of all but \$36,000 would be waived and Schaen would not pay a civil penalty pursuant to the Insider Trading and Securities Fraud Enforcement Act of 1988. [SEC v. HUGH THRASHER, JOHN H. ANDERSON, EZRA CHAMMAH, STANLEY ELBAUM, SCOTT FORBES, GUILLERMO GOMEZ a/k/a WILLIAM GOMEZ, STEPHEN V.R. GOODHUE, JR., IRA GORMAN, GORMAN COMMODITIES & SECURITIES, INC., JONATHAN S. HIRSH, RONALD KUZNETSKY, DARRELL SANDY MARSH, JACK P. MARSH, MICHAEL R. NEWMAN, ROGER K. ODWAK, ANGELO PETROTTO, LEE ROSENBLATT, ROBERT SACKS, JEFFREY A. SANKER, DAVID SCHAEN, LEONARD SCHAEN, JULIAN SCHOR, GREGG R. SHAWZIN, and MARK R. SHAWZIN., 92 Civ. 6987, JFK] (LR-15246)

DEFAULT JUDGMENT AGAINST IRA GORMAN IN INSIDER TRADING CASE

The Commission announced the entry on December 20, 1996, of a Judgment by Default Against Ira Gorman (Gorman) by the U.S. District Court for the Southern District of New York, in connection with alleged illegal trading in the securities of Motel 6, L.P. (Motel 6) prior to the announcement of a tender offer for Motel 6 by Accor S.A. on July 12, 1990.

The Commission alleges that Hugh Thrasher, then executive vice president in charge of corporate communications at Motel 6, disclosed inside information concerning the tender offer to his friend, Carl V. Harris (Harris). Harris tipped a number of relatives, friends, and acquaintances, including Gregg Shawzin, who, in turn, tipped others. Harris, along with Shawzin, tipped Gorman.

The Judgment by Default permanently enjoins Gorman from further violations of Sections 10(b) and 14(e) of the Securities and Exchange Act of 1934 and Rules 10b-5 and 14e-3 thereunder. Gorman was ordered to disgorge trading profits of \$717,233 and prejudgment interest thereon in the amount of \$519,634.76, and to pay a civil penalty of \$2,151,699 pursuant to the Insider Trading and Securities Fraud Enforcement Act of 1988. [SEC v. HUGH THRASHER, JOHN H. ANDERSON, EZRA CHAMMAH, STANLEY ELBAUM, SCOTT FORBES, GUILLERMO GOMEZ a/k/a WILLIAM GOMEZ, STEPHEN V.R. GOODHUE, JR., IRA GORMAN, GORMAN COMMODITIES & SECURITIES, INC., JONATHAN S. HIRSH, RONALD KUZNETSKY, DARRELL SANDY MARSH, JACK P. MARSH, MICHAEL R. NEWMAN, ROGER K. ODWAK, ANGELO PETROTTO, LEE ROSENBLATT, ROBERT SACKS, JEFFREY A. SANKER, DAVID SCHAEN, LEONARD SCHAEN, JULIAN SCHOR, GREGG R. SHAWZIN, and MARK R. SHAWZIN., 92 Civ. 6987, JFK] (LR-15246)

DEFAULT JUDGMENT AGAINST ANGELO PETROTTO IN INSIDER TRADING CASE

The Commission announced the entry on January 14 of a Judgment by Default Against Angelo Petrotto (Petrotto) by the U.S. District

Court for the Southern District of New York, in connection with alleged illegal trading in the securities of Motel 6, L.P. (Motel 6) prior to the announcement of a tender offer for Motel 6 by Accor S.A. on July 12, 1990.

The Commission alleges that Hugh Thrasher, then executive vice president in charge of corporate communications at Motel 6, disclosed inside information concerning the tender offer to his friend, Carl V. Harris (Harris). Harris tipped a number of relatives, friends, and acquaintances, including Petrotto. A number of Harris' tippees, in turn, tipped others.

The Judgment by Default permanently enjoins Petrotto from further violations of Sections 10(b) and 14(e) of the Securities and Exchange Act of 1934 and Rules 10b-5 and 14e-3 thereunder. Petrotto was ordered to disgorge trading profits of \$16,274 and prejudgment interest thereon in the amount of \$11,790.51, and to pay a civil penalty of \$48,822 pursuant to the Insider Trading and Securities Fraud Enforcement Act of 1988. [SEC v. HUGH THRASHER, JOHN H. ANDERSON, EZRA CHAMMAH, STANLEY ELBAUM, SCOTT FORBES, GUILLERMO GOMEZ a/k/a WILLIAM GOMEZ, STEPHEN V.R. GOODHUE, JR., IRA GORMAN, GORMAN COMMODITIES & SECURITIES, INC., JONATHAN S. HIRSH, RONALD KUZNETSKY, DARRELL SANDY MARSH, JACK P. MARSH, MICHAEL R. NEWMAN, ROGER K. ODWAK, ANGELO PETROTTO, LEE ROSENBLATT, ROBERT SACKS, JEFFREY A. SANKER, DAVID SCHAEEN, LEONARD SCHAEEN, JULIAN SCHOR, GREGG R. SHAWZIN, and MARK R. SHAWZIN., 92 Civ. 6987, JFK] (LR-15246)

COMPLAINT FILED AGAINST RONALD MITCHELLETTE AND ROBERT HARDY

The Commission announced that on January 30 it filed a complaint in the United States District Court for the Southern District of Florida, Civil Action No. 97-8064-CIV-HURLEY, against Ronald J. Mitchellette (Mitchellette), formerly of Palm Beach, Florida, and Robert Hardy (Hardy), of Palm Beach, Florida. In its complaint, the Commission alleges that, in connection with a private offering of debt securities by Carlisle-Asher Management Company (CAMC), at the time a Palm Beach based investment advisory firm, Mitchellette and Hardy, by jointly preparing and using a fraudulent offering document, and additionally, Mitchellette, by misappropriating offering proceeds, engaged in securities fraud. The Commission alleges in its complaint that the offering document contained false and misleading statements concerning the source and value of fee-generating mutual funds under CAMC's management; legal proceedings against CAMC and its parent company; CAMC's efforts to acquire other investment advisers; CAMC's financial condition; the amount of commissions paid to brokers; the backgrounds and composition of CAMC's management; and the use of offering proceeds.

The Commission alleges that the defendants fraudulent conduct, resulting in approximately \$1 million in losses to investors, was in violation of Section 17(a) of the Securities Act of 1933, as well as Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The Commission seeks in its lawsuit permanent injunctions against Mitchellette and Hardy, disgorgement of their

ill-gotten profits and monetary penalties. [SEC v. Ronald J. Mitchellette and Robert Hardy, USDC, SD Fla., Civil Action No. 97-8064-CIV-HURLEY] (LR-15247)

NOTICE OF DISMISSAL FILED IN CIVIL ACTION AGAINST LINDA KING

The Commission announced that on January 24 a Notice of Dismissal was filed in the U.S. District Court for the Southern District of West Virginia in the civil action against Defendant Linda M. King (King). On September 6, 1996, the Commission had filed a complaint seeking an order of the Court mandating that King comply with the terms of a prior Commission order. That order was issued in connection with the Burnett Grey & Company, Inc., et al. administrative proceeding, which involved net capital and books and records violations at a now-defunct broker-dealer. The Commission's order required King, among other things, to pay a civil money penalty of \$5,000, which she subsequently failed to do.

After King was served with the complaint and prior to filing an answer in the action, King paid the \$5,000 penalty in compliance with the Commission's order. Accordingly, voluntary dismissal by the Commission was appropriate. [SEC v. Linda M. King, Civil Action No. 2:96-0863, S.D. W.Va.] (LR-15248)

INVESTMENT COMPANY ACT RELEASES

AMERICAN SKANDIA TRUST, ET AL.

A notice has been issued giving interested persons until March 3 to request a hearing on an application filed by American Skandia Trust (Fund), American Skandia Investment Services, Inc. (Adviser), and INVESCO Trust Company (INVESCO). The application requests an order pursuant to Section 6(c) of the Investment Company Act granting an exemption from Section 15(a) of the Act to permit INVESCO to serve as the investment subadvisor to the INVESCO Equity Income Portfolio of the Fund, without formal approval by the contract owners of that portfolio, pursuant to a new investment management agreement (New Agreement). The order would cover an interim period not greater than 120 days (Interim Period) and would permit INVESCO to receive from the Adviser fees earned under the New Agreement during the Interim Period. (Rel. IC-22496 - February 5)

SELF-REGULATORY ORGANIZATIONS

IMMEDIATE EFFECTIVENESS OF PROPOSED RULE CHANGE

A proposed rule change filed by the Chicago Stock Exchange relating to Specialist fees (SR-CHX-97-01) has become effective under Section 19(b)(3)(A) of the Securities Exchange Act of 1934. Publication of the proposal is expected in the Federal Register during the week of

February 10. (Rel. 34-38237)

ACCELERATED APPROVAL OF PROPOSED RULE CHANGE

The Commission granted accelerated approval of a proposed rule change (SR-NASD-96-52) filed by the National Association of Securities Dealers relating to the reporting of short sale transactions by market makers exempt from the NASD's short sale rule. (Rel. 34-38240)

APPROVAL OF PROPOSED RULE CHANGES

The Commission approved a proposed rule change submitted by the Pacific Stock Exchange (SR-PSE-96-36) to require that all PSE non-self-clearing floor brokers maintain error accounts. (Rel. 34-38241)

The Commission approved a proposed rule change filed by the MBS Clearing Corporation (SR-MBSCC-96-06) that will require participants that use securities to satisfy their participants fund deposit requirements to deliver the securities to MBSCC's account at an entity approved by MBSCC. Publication of the proposal is expected in the Federal Register during the week of February 10. (Rel. 34-38242)

The Commission approved a proposed rule change submitted by the American Stock Exchange (SR-Amex-96-39) to modify its rules regarding precedence when orders in the trading crowd are on parity with orders in the specialist's book. In addition, the rule change incorporates various minor updates and clarifications into the Exchange's rules and Company Guide. (Rel. 34-38238)

PROPOSED RULE CHANGE

The American Stock Exchange filed a proposed rule change (SR-Amex-97-02) to restrict the practice of "intraday trading." Publication of the proposal is expected in the Federal Register during the week of February 10. (Rel. 34-38243)

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.

