

# sec news digest

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## ENFORCEMENT PROCEEDINGS

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### PUBLIC ADMINISTRATIVE PROCEEDINGS INSTITUTED AGAINST GEORGE CONWAY

The Commission issued an order instituting public administrative proceedings against George J. Conway (Conway). The Order alleges willful violations of certain registration and antifraud provisions of the federal securities laws in the offer and sale of over \$15 million worth of Canadian Trade Bank, Ltd., "certificates of deposit". Conway made material misrepresentations and failed to disclose material facts to investors regarding, among other things, the existence of a legitimate bank, the safety of the investment and the use of proceeds. As a result of the scheme, Conway personally profited by at least \$57,000. The Order alleges further that on September 15, 1995, Conway was enjoined from future violations of certain registration and antifraud provisions of the federal securities laws and that he had been convicted of felonies involving the fraudulent offer and sale of securities. A public hearing will be held to determine, among other things, whether the allegations against Conway are true. (Rel. 34-36734)

### PUBLIC ADMINISTRATIVE PROCEEDINGS INSTITUTED AGAINST MICHAEL RANDY

The Commission issued an order instituting public administrative proceedings against Michael J. Randy (Randy). The Order alleges willful violations of certain registration and antifraud provisions of the federal securities laws in the offer and sale of over \$15 million worth of Canadian Trade Bank, Ltd. "certificates of deposit". Randy made material misrepresentations and failed to disclose material facts to investors regarding, among other things, the existence of a legitimate bank, the safety of the investment and the use of proceeds. As a result of the scheme, Randy personally profited by a least \$5 million. The Order alleges further that on September 15, 1995, Randy was enjoined from future violations of certain registration and anti-fraud provisions of the federal securities laws and that he had been convicted of felonies involving the fraudulent offer and sale of securities. A public hearing will be held to determine, among other things, whether the allegations against the respondents are true. (Rel. 34-36735)

## PUBLIC ADMINISTRATIVE PROCEEDINGS INSTITUTED AGAINST P. MICHAEL GOODMAN

The Commission issued an order instituting public administrative proceedings against P. Michael Goodman (Goodman). The Order alleges willful violations of certain registration and antifraud provisions of the federal securities laws in the offer and sale of over \$15 million worth of Canadian Trade Bank, Ltd. "certificates of deposit". Goodman made material misrepresentations and failed to disclose material facts to investors regarding, among other things, the existence of a legitimate bank, the safety of the investment and the use of proceeds. As a result of the scheme, Goodman personally profited by at least \$240,000. The Order alleges further that on September 15, 1995, Goodman was enjoined from future violations of certain registration and antifraud provisions of the federal securities laws and that he had been convicted of felonies involving the fraudulent offer and sale of securities. A public hearing will be held to determine, among other things, whether the allegations against Goodman are true. (Rel. 34-36736)

## COMMISSION BARS JAY MOORE

On January 19, the Commission simultaneously instituted and settled public administrative proceedings against a registered investment adviser, The DeForest Company, Inc. (DCI), and DCI's president, Jay DeForest Moore (Moore). The Commission's Order Instituting Public Administrative Proceedings, Making Findings and Imposing Remedial Sanctions (Order) found that the Respondents had willfully violated Sections 17(a)(1), (2) & (3) of the Securities Act of 1933, Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 promulgated thereunder, Sections 206(1), (2) & (4) of the Investment Advisers Act, and Rule 206(4)-2 promulgated thereunder and that, on February 13, 1995, the United States District Court for the Northern District of Ohio had permanently enjoined the Respondents from violating those same provisions of the securities laws.

The Order finds that from March 1990 through January 1995, Moore and DCI raised approximately \$891,000 from the sale of interests in The DeForest Investors, Inc. (DII) to several DCI clients. Moore and DCI represented to investors that DII was a mutual fund operated by Moore and DCI which bought and sold securities. In fact, DII existed in name only and Moore and DCI used the investor funds to pay their own business and personal expenses, as well as to pay back those DII investors who requested that a portion of their interest in DII be returned. Moore and DCI misappropriated a net total of approximately \$826,000 from DII investors.

The Order revokes DCI's registration as an investment adviser and permanently bars Moore from associating with any broker, dealer, municipal securities dealer, investment company or investment adviser. (Rel. IA-1548)

#### COMMISSION SUSTAINS BULK OF NASD SANCTIONS AGAINST FRANKLIN-LORD, INC. AND JOHN CATHCART

The Commission has sustained the bulk of the NASD's sanctions against Franklin-Lord, Inc. (firm), an NASD member firm, and John E. Cathcart, its former president. The Commission upheld the NASD's censure of the firm and Cathcart; suspension of the firm from NASD membership for five days; suspension of Cathcart from association with any NASD member for 30 days; and requirement that Cathcart requalify by examination as a general securities representative and a general securities principal. However, the Commission reduced the fines imposed on the firm and Cathcart to \$10,000 each.

The Commission found that the firm and Cathcart failed to comply with an NASD restrictive agreement, filed inaccurate applications for broker-dealer registration, and effected transactions in municipal securities without paying the required registration fee to the MSRB and without having a qualified municipal securities principal.

The Commission noted that the NASD District Committee had fined the firm and Cathcart \$20,000, jointly and severally, and that on review of those sanctions, the NASD National Committee, fined them \$20,000 each. In taking that action, the National Committee stated that since Cathcart was no longer a manager or owner of the firm, it would be inappropriate to permit either respondent to take advantage of the payment of the fine by the other. In reducing the fines to \$10,000 each, the Commission concluded that the National Committee "doubled the fines against [respondents] without an adequate explanation of the reasons for such action." (Rel. 34-36741)

#### WILLIAM GIORDANO SANCTIONED FOR FAILURE TO SUPERVISE PHILIP TUMMINIA

The Commission announced the institution and settlement of administrative proceedings pursuant to Sections 15(b) (6) and 19(h) of the Securities Exchange Act of 1934 (Exchange Act) against William V. Giordano (Giordano). The Commission's Order finds that Giordano failed reasonably to supervise Philip Tumminia (Tumminia) with a view to preventing violations of the federal securities laws.

The Order makes the following findings. Giordano was chief operating officer of Adler, Coleman Clearing Corporation (Adler) while Tumminia was a registered representative of Adler and a "direct access" broker on the New York Stock Exchange. From October 1991 through August 1992, Tumminia carried out a fraudulent scheme with his wife, who was then head trader at Shearson Lehman Advisors (SLA). Tumminia charged and personally received excessive mark-ups totaling at least \$570,000 on trades ordered by his wife and cleared through Adler for certain registered investment companies and other clients of SLA, in violation of certain antifraud provisions of the federal securities laws. On September 13, 1994, Tumminia was enjoined, on consent, from future violations in SEC v. Donna Tumminia and Philip Tumminia, 94 Civ. 6286 (CBM) (SDNY). Giordano failed to conduct, or to instruct other Adler personnel to conduct, reasonable supervision of the amounts of Tumminia's mark-ups. The Order notes the responsibility of broker-dealers to supervise direct access brokers who are associated persons.

Without admitting or denying the Commission's findings, Giordano consented to issuance of the Order, which suspends him from acting in a supervisory capacity for six months and imposes a civil penalty of \$20,000. (Rel. 34-36742)

#### COMPLAINT FILED AGAINST TECHNOLOGY INTERNATIONAL, LTD. AND OTHERS

The Commission announced today that a complaint was filed in the United States District Court for the District of Columbia against Technology International, Ltd. (TIL); Neil F. Garfield, TIL's chairman and president; B.J. Thomas, TIL's Chief Financial Officer; and three of TIL's salesmen, Kyle Weston, Albert Weston and David Rockwell.

The Commission's complaint alleges that the defendants other than Thomas, acting as unregistered broker-dealers, raised at least \$826,000 from investors through sales of unregistered securities of TIL, using high-pressure, boiler-room sales tactics, and by materially misrepresenting TIL's business activities, prospects, and financial condition. The complaint further alleges that TIL's financial statements for the third quarter of fiscal year 1991 prepared by Thomas were materially misstated because TIL violated Generally Accepted Accounting Principles by improperly including assets it did not own and improperly deferring general and administrative expenses.

The complaint alleges violations of the antifraud, broker-dealer registration, securities registration and reporting provisions and seeks injunctive relief, disgorgement, prejudgment interest and civil penalties. [SEC v. Technology International, Ltd., Neil F. Garfield, B.J. Thomas, Kyle Weston, Albert Weston and David Rockwell, Civil Action No. 1:96CV00025, D.D.C.] (LR-14784; AAE Rel 754)

## CRIMINAL CONTEMPT MOTION FILED AGAINST DAVID ZUCKERMAN

On January 4, the Commission and the United States Attorney for the Southern District of Texas filed a criminal contempt motion against David Stuart Zuckerman for violating two separate court orders freezing his assets. On September 14, 1992, the Honorable Sim Lake, U.S. District Court Judge, entered an order of permanent injunction enjoining Zuckerman from violations of the federal securities laws, freezing his assets and determining that disgorgement and civil penalties were appropriate. Zuckerman was ultimately ordered to disgorge \$1,121,000 of ill-gotten gains, plus prejudgment interest in the amount of \$128,220 and to pay \$550,000 in civil penalties. Zuckerman was prohibited from selling, assigning or pledging his assets until he satisfied his obligation to pay disgorgement and civil penalties. The motion alleges that Zuckerman violated the Court's orders by pledging a 42 foot yacht as security for a \$170,000 loan, and selling his interest in an airplane. [U.S. ex rel. SEC v. David Zuckerman, SD Texas, Houston Division, Criminal Action No. H-96-03] (LR-14788)

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## INVESTMENT COMPANY ACT RELEASES

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### THE CARDINAL GROUP, ET AL.

An order has been issued on an application filed by The Cardinal Group, et al. under Section 17(b) of the Investment Company Act. The order grants relief from Section 17(a) of the Act. The order permits applicants to effectuate a reorganization between certain registered open-end management investment companies. (Rel. IC-21685 - January 18)

### VAN KAMPEN MERRITT GROWTH FUND (A SERIES OF VAN KAMPEN AMERICAN CAPITAL EQUITY TRUST)

A notice has been issued giving interested persons until February 12 to request a hearing on an application filed by Van Kampen Merritt Growth Fund (a series of Van Kampen American Capital Equity Trust, formerly a sub-trust of Van Kampen Merritt Equity Trust) for an order under Section 8(f) of the Investment Company Act of 1940 declaring that applicant has ceased to be an investment company. (Rel. IC-21686 - January 18)

### VAN KAMPEN MERRITT NEW YORK QUALITY MUNICIPAL TRUST II

A notice has been issued giving interested persons until February 12 to request a hearing on an application filed by Van Kampen Merritt New York Quality Municipal Trust II for an order under Section 8(f) of the Investment Company Act declaring that applicant has ceased to be an investment company. (Rel. IC-21687 - January 18)

## VAN KAMPEN MERRITT CALIFORNIA QUALITY MUNICIPAL TRUST II

A notice has been issued giving interested persons until February 12 to request a hearing on an application filed by Van Kampen Merritt California Quality Municipal Trust II for an order under Section 8(f) of the Investment Company Act declaring that applicant has ceased to be an investment company. (Rel. 34-21688 - January 18)

## VAN KAMPEN MERRITT SENIOR INCOME OPPORTUNITY TRUST

A notice has been issued giving interested persons until February 12 to request a hearing on an application filed by Van Kampen Merritt Senior Income Opportunity Trust for an order under Section 8(f) of the Investment Company Act declaring that applicant has ceased to be an investment company. (Rel. IC-21689 - January 18)

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## HOLDING COMPANY ACT RELEASES

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### ARKANSAS POWER & LIGHT COMPANY

An order has been issued authorizing a proposal by Arkansas Power & Light Company (AP&L), an electric public utility subsidiary company of Entergy Corporation, a registered holding company, whereby AP&L will, among other things, borrow money from and make equity capital contributions to newly organized subsidiaries formed solely to issue and sell preferred securities in the aggregate amount of \$200 million from time to time through December 31, 2000. (Rel. 35-26455)

### HOPE GAS, INC., ET AL.

An order has been issued authorizing a proposal by Hope Gas, Inc. (Hope Gas) and CNG Producing Company (CNGP), both subsidiaries of Consolidated Natural Gas Company, a registered holding company, whereby Hope Gas will sell all of its oil and gas exploration and production properties to CNGP for their net book value of approximately \$4.6 million. (Rel. 35-26452)

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## SELF-REGULATORY ORGANIZATIONS

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### WITHDRAWALS GRANTED

An order has been issued granting the application of Exce. Industries, Inc. to strike from listing and registration its Common Stock, No Par Value, on the American Stock Exchange. (Rel. 34 36705)

An order has been issued granting the application of Keithley Instruments, Inc. to strike from listing and registration its Common Shares, Without Par Value, on the American Stock Exchange. (Rel. 34-36706)

An order has been issued granting the application of ReadiCare, Inc. to strike from listing and registration its Common Stock, \$.01 Par Value, on the American Stock Exchange. (Rel. 34-36707)

#### DELISTING GRANTED

An order has been issued granting the application of the New York Stock Exchange to strike from listing and registration SCOR U.S. Corporation, Common Stock, \$.30 Par Value. (Rel. 34-36722)

#### PROPOSED RULE CHANGE

The Depository Trust Company filed a proposed rule change (SR-DTC-95-23) seeking to implement the matching feature of the Institutional Delivery System. Publication of the proposal is expected in the Federal Register during the week of January 22. (Rel. 34-36685)

The American Stock Exchange filed with the Commission a proposed rule change (SR-Amex-95-58) to list and trade index warrants based on the undervalued market basket index. Publication of the notice is expected in the Federal Register during the week of January 22. (Rel. 34-36721)

#### ACCELERATED APPROVAL OF PROPOSED RULE CHANGE

The Commission granted accelerated approval of a proposed rule change (SR-NSCC-95-16) filed by the National Securities Clearing Corporation regarding receiving financial and operational information with respect to NSCC members and their correspondent broker-dealers directly from the National Association of Securities Dealers, Inc. and the New York Stock Exchange, Inc. Publication of the proposal is expected in the Federal Register during the week of January 22. (Rel. 34-36697)

#### APPROVAL OF PROPOSED RULE CHANGE

The Commission approved a proposed rule change filed by the National Association of Securities Dealers (SR-NASD-95-51) to reorganize the NASD Manual with a new numbering system. Publication of the approval order is expected in the Federal Register the week of January 15. (Rel. 34-36698)

The Commission approved a proposed rule change (SR-PTC-95-06) filed by the Participants Trust Company modifying its processing system. (Rel. 34-36711)

The Commission approved a proposed rule change filed by the National Securities Clearing Corporation (SR-NSCC-95-13) that enables members settling mutual fund transactions in same day funds to settle through a settling bank. (Rel. 34-36714)

The Commission has approved proposed rule changes by the American Stock Exchange (SR-Amex-94-56), Chicago Board Options Exchange (SR-CBOE-95-14), and Pacific Stock Exchange (SR-PSE-95-01) that permit the listing and trading of BOUNDS (Buy-Write Options Unitary Derivatives), which are long term options that possess similar characteristics similar to a covered call writing strategy. Publication of the approval order is expected in the Federal Register during the week of January 22. (Rel. 34-36710)

#### IMMEDIATE EFFECTIVENESS OF PROPOSED RULE CHANGES

A proposed rule change (SR-CBOE-95-72) filed by the Chicago Board Options Exchange to delay, until March 30, 1996, the effectiveness of that portion of CBOE Interpretation .04 to Rule 30.20 that prohibits CBOE members from using blanket assurances that securities are available for borrowing to satisfy their affirmative determination requirements with respect to short selling has become immediately effective under Section 19(b)(3)(A) of the Securities Exchange Act of 1934. Publication of the notice is expected in the Federal Register during the week of January 22. (Rel. 34-36709)

A proposed rule change (SR-Amex-95-55) filed by the American Stock Exchange to increase the Exchange's options transaction charge, options floor brokerage fee, and CRD fee, as well as adopt a new technology fee, has become immediately effective under Section 19(b)(3)(A) of the Securities Exchange Act of 1934. Publication of the notice is expected in the Federal Register during the week of January 22. (Rel. 34-36733)